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Title 50 —Wildlife and Fisheries

Chapter VI —Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce

Part 660 —Fisheries off West Coast States

Subpart D —West Coast Groundfish—Limited Entry Trawl Fisheries

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§ 660.150 Mothership (MS) Co-op Program.

- (a) **General.** The MS Co-op 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 co-op 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 an MS/CV-endorsed permit may fish in either the co-op or non-coop portion of the MS Co-op Program, but not both. In addition to the requirements of this section, the MS Co-op Program is subject to the following groundfish regulations of subparts C and D of this part:
- (1) Pacific whiting seasons § 660.131(b), subpart D.
 - (2) Area restrictions specified for midwater trawl gear used to harvest Pacific whiting fishery specified at § 660.131(c), Subpart D for GCAs, RCAs, Salmon Conservation Zones, BRAs, and EFHCAs.
 - (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, § 660.115 Trawl fishery cost recovery program, § 660.120 Trawl fishery crossover provisions, § 660.130 Trawl fishery management measures, and § 660.131 Pacific whiting fishery management measures.
 - (5) The MS Co-op Program may be restricted or closed as a result of projected overages within the MS Co-op Program, the C/P Co-op Program, or the Shorebased IFQ Program. As determined necessary by the Regional Administrator, area restrictions, season closures, or other measures will be used to prevent the trawl sectors in aggregate or the individual trawl sector (Shorebased IFQ, MS Co-op, or C/P Co-op) from exceeding an ACL, ACT, 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) **Mothership vessels —**

- (i) **Mothership vessel participation requirements.** A vessel is eligible to receive and process catch as a mothership in the MS Co-op Program if:
 - (A) The vessel is registered to an MS permit; and
 - (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.
- (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); maintain records as specified at § 660.113(a); and maintain and submit all records and reports specified at § 660.113(c) including, economic data, scale tests records, cease fishing reports, and cost recovery.
 - (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 mothership 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);
 - (2) Provide a NMFS-approved platform scale, belt scale, and test weights that meet the requirements described in section § 660.15(b).
 - (D) **Cost recovery program.** Collect and remit to NMFS cost recovery program fees as specified at § 660.115.

(2) **Mothership catcher vessels —**

- (i) **Mothership catcher vessel participation requirements —**
 - (A) A vessel is eligible to harvest in the MS Co-op Program if the following conditions are met:
 - (1) If the vessel is used to fish as a mothership catcher vessel for a permitted MS co-op, 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 co-op.
 - (2) If the vessel is used to harvest fish in the non-coop fishery, the vessel is registered to an MS/CV-endorsed limited entry permit.
 - (3) 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.

- (C) **Cost recovery program.** Vessel must pay cost recovery program fees, as specified at § 660.115.

(3) **MS co-ops –**

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

- (A) Be issued a MS co-op 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 co-op manager; and
- (F) Include at least 20 percent of all MS/CV-endorsed permits as members. The co-op membership percentage will be interpreted by rounding to the nearest whole permit (*i.e.*, less than 0.5 rounds down and 0.5 and greater rounds up).

- (ii) **MS co-op responsibilities.** A MS co-op is responsible for:

- (A) Applying for and being registered to a MS co-op permit;
- (B) Organizing and coordinating harvest activities of vessels authorized to fish for the co-op;
- (C) Reassigning catch history assignments for use by co-op members;
- (D) Organizing and coordinating the transfer and leasing of catch allocations with other permitted co-ops through inter-co-op agreements;
- (E) Monitoring harvest activities and enforcing the catch limits of co-op members;
- (F) Submitting an annual report.
- (G) Having a designated co-op manager. The designated co-op manager must:
 - (1) Serve as the contact person between NMFS, the Council, and other co-ops;
 - (2) Be responsible for the annual distribution of catch and bycatch allocations among co-op members;
 - (3) Oversee reassignment of catch allocations within the co-op;
 - (4) Oversee inter-co-op catch allocation reassignments;
 - (5) Prepare and submit an annual report on behalf of the co-op;
 - (6) Be authorized to receive or respond to any legal process in which the co-op is involved; and
 - (7) Notify NMFS if the co-op dissolves.

- (iii) **MS co-op compliance and joint/several liability.** An MS co-op must comply with the provisions of this section. The MS co-op, 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 co-op,

member permit owner, and owner and operator of a vessel registered to a co-op member permit may be charged jointly and severally for violations of the provisions of this section. For purposes of enforcement, an MS co-op is a legal entity that can be subject to NOAA enforcement action for violations of the provisions of this section.

(c) MS Co-op Program species and allocations —

- (1) MS Co-op Program species.** All species other than Pacific whiting are managed with set-asides for the MS and C/P Co-op Programs, as described in the biennial specifications.
- (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.** Each MS/CV endorsement's associated catch history assignment of Pacific whiting will be annually allocated to a single permitted MS co-op or to the non-coop fishery. If multiple MS/CV endorsements and their associated CHAs are registered to a limited entry permit, that permit may be simultaneously registered to more than one MS co-op or to both a co-op(s) and non-coop fishery. Once assigned to a permitted MS co-op or to the non-coop fishery, each MS/CV endorsement's catch history assignment remains with that permitted MS co-op or non-coop fishery for that calendar year. When the mothership sector allocation is established, the information for the conversion of catch history assignment to pounds will be made available to the public through a FEDERAL REGISTER announcement and/or public notice and/or the NMFS website. The amount of whiting from the catch history assignment will be issued to the nearest whole pound using standard rounding rules (*i.e.*, less than 0.5 rounds down and 0.5 and greater rounds up).
 - (1)** In years where the Pacific whiting harvest specification is known by the start of the mothership sector primary whiting season specified at § 660.131(b)(2)(iii)(B), allocation for Pacific whiting will be made by the start of the season.
 - (2)** In years where the Pacific whiting harvest specification is not known by the start of the mothership sector primary whiting season specified at § 660.131(b)(2)(iii)(B), NMFS will issue Pacific whiting allocations in two parts. Before the start of the primary whiting season, NMFS will allocate Pacific whiting based on the MS Co-op Program allocation percent multiplied by the lower end of the range of potential harvest specifications for Pacific whiting for that year. After the final Pacific whiting harvest specifications are established, NMFS will allocate any additional amounts of Pacific whiting to the MS Co-op Program.
 - (B) Non-whiting groundfish species catch —**
 - (1)** At-sea set-asides of non-whiting groundfish species will be managed on an annual basis unless there is a risk of a harvest specification being exceeded, unforeseen impact on other 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.

- (2) Groundfish species not addressed in paragraph (c)(2)(i)(B)(1) of this section, will be managed on an annual basis unless there is a risk of a harvest specification being exceeded, unforeseen impact on other fisheries, or conservation concerns, in which case inseason action may be taken.
 - (3) 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.
 - (C) **Rounding rules and MS/CV allocations.** Rounding rules may affect distribution of the MS Co-op Program allocations among the catch history assignments for individual MS/CV-endorsed permits. NMFS will distribute such allocations to the maximum extent practicable, not to exceed the total allocation.
- (ii) **Annual co-op allocations —**
 - (A) **Pacific whiting.** Each permitted MS co-op 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 co-op agreement for a given calendar year. Other limited entry permits registered to vessels that will fish for the co-op do not bring catch allocation to a permitted MS co-op.
 - (B) **Single MS/CV Co-op Fishery.** If all MS/CV-endorsed permits are members of a single co-op in a given year and there is not a non-coop fishery, then NMFS will allocate 100 percent of the MS Co-op Program allocation to that co-op.
- (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 co-op allocations.
 - (B) **Announcement of the non-coop fishery allocations.** Information on the amount of Pacific whiting and non-whiting groundfish with allocations that will be made available to the non-coop fishery when the final Pacific whiting specifications for the mothership sector is established and will be announced to the public through a FEDERAL REGISTER announcement and/or public notice and/or the NMFS website.
- (3) **Reaching an allocation or sub-allocation.** When the mothership sector Pacific whiting allocation, or Pacific whiting sub-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 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 co-op sub-allocation of Pacific whiting is reached, further harvesting or receiving of groundfish by vessels fishing in the permitted MS co-op must cease, unless the permitted MS co-op is operating under an NMFS-accepted inter-co-op agreement.

- (iii) When the non-coop fishery sub-allocation of Pacific whiting is projected to be reached, further harvesting or receiving of groundfish by vessels fishing in the non-coop fishery must cease.

(4) [Reserved]

- (5) **Announcements.** The Regional Administrator will announce in the FEDERAL REGISTER when the mothership sector allocation of Pacific whiting 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 may be made effective immediately by actual notice to fishers and processors, by email, internet, 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 co-ops (inter-co-op).**

- (A) Through an inter-co-op agreement, the designated co-op managers of permitted MS co-ops may distribute Pacific whiting allocations among one or more permitted MS co-ops.

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

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

- (2) **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.

(d) **MS co-op permit and agreement —**

(1) **Eligibility and registration —**

- (i) **Eligibility.** To be an eligible co-op entity a group of MS/CV-endorsed permit owners (co-op members) must be a recognized entity under the laws of the United States or the laws of a State and represent all of the co-op members.

- (ii) **Annual registration and deadline.** Each year, a co-op entity intending to participate as a co-op under the MS Co-op Program must submit an application for a MS co-op permit between January 17 and March 17 of the year in which it intends to fish. NMFS will not consider any applications received after March 17. An MS co-op permit expires on December 31 of the year in which it was issued.

- (iii) **Application for MS co-op permit.** The designated co-op manager, on behalf of the co-op 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 MS co-op permit. An application will not be considered complete if any required application fees and annual co-op 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 West

Coast Region (WCR) website (<https://www.fisheries.noaa.gov/permit/groundfish-mothership-cooperative-permit>) or by request from NMFS. The designated co-op manager must sign the application acknowledging the responsibilities of a designated co-op manager defined in paragraph (b)(3) of this section. For permit owners with more than one MS/CV endorsement and associated CHA, paragraph (g)(2)(iv)(D) of this section specifies how to join an MS co-op(s).

- (A) **Co-op agreement.** Signed copies of the co-op agreement must be submitted to NMFS before the co-op is authorized to engage in fishing activities. A co-op agreement must include all of the information listed in this paragraph to be considered a complete co-op agreement. NMFS will only review complete co-op agreements. A co-op 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) **Co-op agreement contents.** Each co-op agreement must be signed by all of the co-op members (MS/CV-endorsed permit owners) and include the following information:
- (i) A list of all vessels and permit owners participating in the co-op and their share of the allocated catch history assignments 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 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 co-op.
 - (iv) A description of the coop's plan to adequately monitor and account for the catch of Pacific whiting and non-whiting groundfish, and to monitor and account for the catch of prohibited species.
 - (v) A clause stating that if a permit is registered to a new permit owner during the effective period of the co-op agreement, any new owners of that member permit would be co-op members required to comply with membership restrictions in the co-op agreement.
 - (vi) A description of the coop's enforcement and penalty provisions adequate to maintain catch of Pacific whiting and non-whiting groundfish within the allocations.
 - (vii) A description of measures to reduce catch of overfished species.
 - (viii) A clause describing the co-op manager's responsibility for managing inter-co-op reassignments of catch history assignment, should any occur.
 - (ix) 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 co-op during the year, and the submission deadlines for that report.
 - (x) Identification of the designated co-op manager.

(xi) 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 co-op.

(2) **Inter-co-op agreement.** The co-op entity must provide, at the time of annual application, copies of any inter-co-op agreement(s) into which the co-op has entered. Such agreements must incorporate and honor the provisions of the individual co-op agreements for each co-op that is a party to the inter-co-op agreement. Inter-co-op agreements are specified at paragraph (e) of this section.

(B) **Acceptance of a co-op agreement —**

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

(2) Co-op agreements that are not accepted may be resubmitted for review by sufficiently addressing the deficiencies identified in the NMFS letter and resubmitting the entire co-op permit application by the date specified in the NMFS letter.

(3) An accepted co-op agreement that was submitted with the MS co-op permit application and for which a MS co-op permit was issued will remain in place through the end of the calendar year. The designated co-op manager must resubmit a complete co-op agreement to NMFS consistent with the co-op agreement contents described in paragraph (d)(1)(iii)(A)(1) of this section if there is a material change to the co-op agreement.

(4) Within 7 calendar days following a material change, the designated co-op manager must notify NMFS of the material change. Within 30 calendar days, the designated co-op manager must submit to NMFS the revised co-op agreement with a letter that describes such changes. NMFS will review the material changes and provide a letter to the co-op manager that either accepts the changes as given or does not accept the revised co-op agreement with a letter stating the reasons that it was not accepted by NMFS. The co-op may resubmit the co-op agreement with further revisions to the material changes responding to NMFS concerns.

(iv) **Effective date of MS co-op permit.** A MS co-op 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 co-op or the designated co-op manager notifies NMFS that the co-op has completed fishing for the calendar year,

(B) The co-op has reached its Pacific whiting allocation,

(C) A material change to the co-op agreement has occurred and the designated co-op manager failed to notify NMFS within 7 calendar days of the material change and submit to NMFS the revised co-op agreement with a letter that describes such changes within 30 calendar days, or

(D) NMFS has determined that a co-op failure occurred.

- (2) **Initial administrative determination.** For all complete applications, NMFS will issue an IAD if the application is disapproved. An approved application will result in issuance of the permit. If disapproved, the IAD will provide the reasons for this determination. The IAD for a MS co-op permit follows the same requirement as specified for limited entry permits at § 660.25(g)(4)(ii); if the applicant does not appeal the IAD within the 30 calendar days, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.
- (3) **Appeals.** An appeal to a MS co-op 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 co-op permit consistent with the provisions given at § 660.25(f), subpart C.

(e) **Inter-co-op agreements —**

- (1) **General.** Permitted MS co-ops may voluntarily enter into inter-co-op agreements for the purpose of sharing permitted MS co-op allocations of Pacific whiting and allocated non-whiting groundfish. If two or more permitted MS co-ops enter into an inter-co-op agreement, the inter-co-op agreement must incorporate and honor the provisions of each permitted MS co-op subject to the inter-co-op agreement.
- (2) **Submission of inter-co-op agreements.** Inter-co-op agreements must be submitted to NMFS for acceptance.
- (3) **Inter-co-op agreement review process.** Each designated co-op manager must submit a copy of the inter-co-op agreement signed by both designated co-op managers for review. Complete co-op agreements containing all items listed under paragraph (d)(1)(iii)(A)(1) will be reviewed by NMFS.

(f) **Mothership (MS) permit.**

- (1) **General.** Any vessel that processes or receives deliveries as a mothership processor in the Pacific whiting fishery mothership sector must be registered to an MS permit. A vessel registered to an MS permit may receive fish from a vessel that fishes in an MS co-op and/or may receive fish from a vessel that fishes in the non-coop fishery at the same time or during the same year.
 - (i) **Vessel size endorsement.** An MS permit does not have a vessel size endorsement. The endorsement provisions at § 660.25(b)(3)(iii), subpart C, do not apply to an MS permit.
 - (ii) **Restriction on C/P vessels operating as motherships.** Restrictions on a vessel registered to a limited entry permit with a C/P endorsement operating as a mothership are specified at § 660.160, subpart D.
- (2) **Renewal, change of permit ownership, or vessel registration —**
 - (i) **Renewal.** An MS permit must be renewed annually consistent with the limited entry permit regulations given at § 660.25(b)(4). 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 registered to a different permit owner 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 owner 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.** An 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.** An MS permit is subject to the limited entry permit change of vessel registration regulations given at § 660.25(b)(4), subpart C.

(3) **Appeals.** An appeal to an MS 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 an MS permit consistent with the provisions given at § 660.25(f), Subpart C.

(5) **Cost recovery.** The owner of a vessel registered to an MS permit, the operator of a vessel registered to an MS permit, and the owner of the MS permit registered to that vessel, are considered to be the fish buyer as defined at § 660.111, and must comply with the cost recovery program specified at § 660.115.

(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 co-op if authorized by the co-op. Within the MS Co-op Program, an MS/CV-endorsed permit may participate in an MS co-op or in the non-coop fishery. An 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.

(i) **Catch history assignment.** NMFS will assign a catch history assignment to each MS/CV-endorsed permit. The catch history assignment is based on the catch history in the Pacific whiting mothership sector during the qualifying years of 1994 through 2003. The catch history assignment is expressed as a percentage of Pacific whiting of the total mothership sector allocation as described at paragraph (d)(2)(i) of this section. Catch history assignments 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).

(ii) **Pacific whiting mothership sector allocation.** The catch history assignment allocation accrues to the co-op to which the MS/CV-endorsed permit is tied through private agreement, or will be assigned to the non-coop fishery if the MS/CV-endorsed permit does not participate in the co-op fishery.

(iii) **MS/CV endorsement and CHA non-severable.** Subject to the regulations at paragraph (g)(2)(iv) and (v) of this section, an MS/CV endorsement and its associated CHA are permanently linked together as originally issued by NMFS and cannot be divided or registered separately to another limited entry trawl permit. An MS/CV endorsement and its associated CHA must be registered to a limited entry trawl permit and any change in endorsement registration must be to another limited entry trawl permit.

(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.*** An MS/CV-endorsed permit must be renewed annually consistent with the limited entry permit regulations given at § 660.25(b)(4). During renewal, all MS/CV-endorsed limited entry permit owners must make a preliminary declaration regarding their intent to participate in the co-op or non-co-op portion of the MS Co-op Program for the following year. MS/CV-endorsed permits not obligated to a permitted MS co-op by March 17 of the fishing year will be assigned to the non-co-op 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.*** An 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.*** An 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) ***Change in MS/CV endorsement registration.*** As specified at § 660.25(b)(3)(v), each MS/CV endorsement has an associated CHA that is permanently linked as originally issued by NMFS and cannot be divided or registered separately to another limited entry trawl permit. An MS/CV endorsement and associated CHA must be registered to a limited entry trawl permit and any change in MS/CV endorsement registration must be to another limited entry trawl permit. Any change in MS/CV endorsement registration will be registered separately on the limited entry trawl permit. An MS/CV endorsement and its associated CHA cannot be registered to any other person other than the specified owner of the limited entry trawl permit to which it is registered.
 - (A) ***Multiple MS/CV endorsements on a limited entry trawl permit.*** Multiple MS/CV endorsements and associated CHAs may be registered to a single limited entry trawl permit. If multiple endorsements are registered to a single limited entry trawl permit, the whiting CHA amount (expressed as a percent) will remain in the amount that it was originally issued by NMFS and will not be combined as a single larger CHA, unless two or more MS/CV-endorsed permits are combined for purposes of increasing the size endorsement, as specified at § 660.25(b)(4)(ii)(B). Any change in MS/CV endorsement registration may be disapproved if the person owning the limited entry trawl permit has aggregate CHA amounts in excess of the accumulation limits specified at paragraph (g)(3) of this section.
 - (B) ***Application.*** NMFS will begin accepting applications for a change in MS/CV endorsement registration beginning September 1, 2014. A request for a change in MS/CV endorsement registration must be made between September 1 and December 31 of each year. Any transfer of MS/CV endorsement and its associated CHA to another limited entry trawl permit must be requested using a Change in Registration of a Mothership/Catcher Vessel Endorsement/Catch History Assignment Application form and the permit owner or an authorized representative of the permit owner must certify that the application is true and correct by signing and dating the form. In addition, the form must be notarized, and the permit owner selling the MS/CV endorsement and its CHA must provide the sale price of

the MS/CV endorsement and its associated CHA. If any assets in addition to the MS/CV endorsement and its associated CHA are included in the sale price, those assets must be itemized and described.

- (C) **Effective date.** Any change in MS/CV endorsement registration from one limited entry trawl permit to another limited entry trawl permit will be effective on January 1 in the year following the application period.
 - (D) A limited entry trawl permit owner with multiple MS/CV-endorsements and associated CHA on a single permit may assign each distinct MS/CV endorsement and catch history assignment separately to co-op(s) or the non-coop fishery. In such cases, as part of the co-op permit application process, specified at paragraph (d)(1)(iii) of this section, the permit owner must specify on the co-op permit application form which MS/CV endorsement and associated CHA is specifically registered to a particular co-op.
 - (v) **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 an 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 an 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. If a trawl permit has more than one MS/CV endorsements and it is combined with a non C/P-endorsed trawl permit with no such endorsements, the MS/CV endorsements on the resulting permit will be maintained as separate endorsements on the resulting permit. 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.
 - (vi) **One-time request to undo a permit combination.** If two or more MS/CV-endorsed permits have been combined before January 1, 2012 for purposes of increasing the vessel's size endorsement, a permit owner of the resulting combined permit will have until February 29, 2012 to undo that permit combination. The permit owner must submit a letter to NMFS requesting such action. The letter must be postmarked or hand-delivered to NMFS by the deadline.
- (3) **Accumulation limits –**
- (i) **MS/CV-endorsed permit ownership limit.** No person shall own MS/CV-endorsed permits for which the collective Pacific whiting allocation total is greater than 20 percent of the total mothership sector 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 of an MS/CV-endorsed permit. An ownership interest form will also be required whenever a new permit owner obtains an MS/CV-endorsed permit as part of a request for a change in permit ownership. Accumulation limits will be determined by calculating the percentage of ownership interest a person has in any MS/CV-endorsed permit and the amount of the Pacific whiting catch history assignment given on the permit. Determination of ownership interest will be subject to the individual and collective rule.

- (A) **Ownership—Individual and collective rule.** The Pacific whiting catch history assignment that applies to a person's accumulation limit will include:
 - (1) The catch history assignment on any MS/CV-endorsed permit owned by that person, and
 - (2) That portion of the catch history assignment on any MS/CV-endorsed permit owned by an entity in which that person has an economic or financial interest, where the person's share of interest in that entity will determine the portion of that entity's catch history assignment that counts toward the person's limit.
- (B) [Reserved]
- (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.
- (D) **Divestiture.** For MS/CV-endorsed permit owners that are found to exceed the accumulation limits during the initial issuance of MS/CV-endorsed permits, an adjustment period will be provided during which they will have to completely divest of ownership in permits that exceed the accumulation limits. Any person that NMFS determines, as a result of the initial issuance of MS/CV-endorsed permits, to own in excess of 20 percent of the total catch history assignment in the MS Co-op Program applying the individual and collective rule described at § 660.150(g)(3)(i)(A) will be allowed to receive such permit(s), but must divest themselves of the excess ownership by August 31, 2016. Owners of such permit(s) may receive and use the MS/CV-endorsed permit(s), up to the time their divestiture is completed. After August 31, 2016, any MS/CV-endorsed permits owned by a person (including any person who has ownership interest in the owner named on the permit) in excess of the accumulation limits will not be issued (renewed) until the permit owner complies with the accumulation limits.
 - (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 an MS/CV-endorsed permit action follows the same process as the general permit appeals process defined at § 660.25(g), subpart C.
- (5) **Fees.** The Regional Administrator is authorized to charge a fee for administrative costs associated with the issuance of an MS/CV-endorsed permit, as provided at § 660.25(f), subpart C.
- (6) **Application requirements and initial issuance for MS/CV endorsement —**

- (i) **Eligibility criteria for MS/CV endorsement.** Only a current trawl limited entry permit with a qualifying history of Pacific whiting deliveries in the MS Pacific whiting sector is eligible to receive an MS/CV endorsement. Any past catch history associated with the current limited entry trawl permit accrues to the permit. If a trawl limited entry permit is eligible to receive both a C/P endorsement and an MS/CV endorsement, the permit owner must choose which endorsement to apply for (*i.e.*, the owner of such a permit may not receive both a C/P and an MS/CV endorsement). NMFS will not recognize any other person as permit owner other than the person listed as permit owner in NMFS permit database.
- (ii) **Qualifying criteria for MS/CV endorsement.** In order to qualify for an MS/CV endorsement, a qualifying trawl-endorsed limited entry permit must have been registered to a vessel or vessels that caught and delivered a cumulative amount of at least 500 mt of Pacific whiting to motherships between 1994 through 2003. The calculation will be based on the following:
 - (A) To determine a permit's qualifying catch history, NMFS will use documented deliveries to a mothership in Pacific whiting observer data as recorded in the relevant NORPAC dataset on August 1, 2010.
 - (B) The qualifying catch history will include any deliveries of Pacific whiting to motherships by vessels registered to limited entry trawl-endorsed permits that were subsequently combined to generate the current permit.
 - (C) If two or more limited entry trawl permits have been simultaneously registered to the same vessel, NMFS will divide the qualifying catch history evenly between all such limited entry trawl-endorsed permits during the time they were simultaneously registered to the vessel.
 - (D) History of illegal deliveries will not be included in the qualifying catch history.
 - (E) Deliveries made from Federal limited entry groundfish permits that were retired through the Federal buyback program will not be included in the qualifying catch history.
 - (F) Deliveries made under provisional "A" permits that did not become "A" permits and "B" permits will not be included in the qualifying catch history.
- (iii) **Qualifying criteria for catch history assignment.** A catch history assignment will be specified as a percent on the MS/CV-endorsed permit. The calculation will be based on the following:
 - (A) For determination of a permit's catch history, NMFS will use documented deliveries to a mothership in Pacific whiting observer data as recorded in the relevant NORPAC dataset on August 1, 2010.
 - (B) NMFS will use relative history, which means the catch history of a permit for a year divided by the total fleet history for that year, expressed as a percent. NMFS will calculate relative history for each year in the qualifying period from 1994 through 2003 by dividing the total deliveries of Pacific whiting to motherships for the vessel(s) registered to the permit for each year by the sum of the total catch of Pacific whiting delivered to mothership vessel(s) for that year.
 - (C) NMFS will select the eight years with the highest relative history of Pacific whiting, unless the applicant requests a different set of eight years during the initial issuance and appeals process, and will add the relative histories for these years to generate the permit's total

relative history. NMFS will then divide the permit's total relative history by the sum of all qualifying permits' total relative histories to determine the permit's catch history assignment, expressed as a percent.

- (D) The total relative history will include any deliveries of Pacific whiting to motherships by vessels registered to limited entry trawl-endorsed permits that were subsequently combined to generate the current permit.
 - (E) If two or more limited entry trawl permits have been simultaneously registered to the same vessel, NMFS will split the catch history evenly between all such limited entry trawl-endorsed permits during the time they were simultaneously registered to the vessel.
 - (F) History of illegal deliveries will not be included in the calculation of a permit's catch history assignment or in the calculation of relative history for individual years.
 - (G) Deliveries made from Federal limited entry groundfish permits that were retired through the Federal buyback program will not be included in the calculation of a permit's catch history assignment other than for the purpose of calculating relative history for individual years.
 - (H) Deliveries made under provisional "A" permits that did not become "A" permits and "B" permits will not be included in the calculation of a permit's catch history assignment other than for the purpose of calculating relative history for individual years.
- (iv) **MS/CV endorsement and catch history assignment application.** Persons may apply for an initial issuance of an MS/CV endorsement on a limited entry trawl permit and its associated catch history assignment in one of two ways: complete and submit a prequalified application received from NMFS, or complete and submit an application package. The completed application must be either postmarked or hand-delivered within normal business hours no later than November 1, 2010. If an applicant fails to submit a completed application by the deadline date, they forgo the opportunity to receive consideration for an initial issuance of an MS/CV endorsement and associated catch history assignment.
- (A) **Prequalified application.** A "prequalified application" is a partially pre-filled application where NMFS has preliminarily determined the catch history that may qualify the applicant for an initial issuance of an MS/CV endorsement and associated catch history assignment. NMFS will mail prequalified application packages to the owners of current limited entry trawl permits, as listed in the NMFS permit database at the time applications are mailed, which NMFS determines may qualify for an MS/CV endorsement and associated catch history assignment. NMFS will mail the application by certified mail to the current address of record in the NMFS permit database. The application will contain the basis of NMFS' calculation. The application package will include, but is not limited to: a prequalified application (with landings history), a Trawl Identification of Ownership Interest form, and any other documents NMFS believes are necessary to aid the limited entry permit owner in completing the application.
 - (B) **Request for an application.** Any owner of a current limited entry trawl permit that does not receive a prequalified application that believes the permit qualifies for an initial issuance of an MS/CV endorsement and associated catch history assignment must complete an application package and submit the completed application to NMFS by the application deadline. Application packages are available on the NMFS Web site (<https://www.fisheries.noaa.gov/region/west-coast>) or by contacting SFD. An application

must include valid NORPAC data, copies of NMFS observer data forms, or other credible information that substantiates the applicant's qualification for an initial issuance of an MS/CV endorsement and associated catch history assignment.

- (v) ***Corrections to the application.*** If the applicant does not accept NMFS' calculation in the prequalified application either in part or whole, in order for NMFS to reconsider NMFS' calculation, the applicant must identify in writing to NMFS which parts of the application that the applicant contends to be inaccurate, and must provide specific credible information to substantiate any requested corrections. The completed application and specific credible information must be provided to NMFS in writing by the application deadline. Written communication must be either post-marked or hand-delivered within normal business hours no later than November 1, 2010. Requests for corrections may only be granted for changes to the selection of the eight years with the highest relative history of whiting and errors in NMFS' use or application of data, including:
- (A) Errors in NMFS' use or application of data from NORPAC;
 - (B) Errors in NMFS' calculations;
 - (C) Errors in the identification of the permit owner, permit combinations, or vessel registration as listed in the NMFS permit database; and
 - (D) Errors in NMFS' use or application of ownership interest information.

(vi) ***Submission of the application and application deadline —***

- (A) ***Submission of the application.*** Submission of the complete, certified application includes, but is not limited to, the following:
- (1) The applicant is required to sign and date the application and have the document notarized by a licensed Notary Public.
 - (2) The applicant must certify that they qualify to own an MS/CV-endorsed permit and associated catch history assignment.
 - (3) The applicant must indicate they accept NMFS' calculation of initial issuance of an MS/CV-endorsed permit and associated catch history assignment provided in the prequalified application, or provide credible information that demonstrates their qualification for an MS/CV-endorsed permit and associated catch history assignment.
 - (4) The applicant is required to provide a complete Trawl Identification of Ownership Interest Form as specified at paragraph (g)(3)(i)(C) of this section.
 - (5) Business entities may be required to submit a corporate resolution or other credible documentation as proof that the representative of the entity is authorized to act on behalf of the entity; and
 - (6) NMFS may request additional information of the applicant as necessary to make an IAD on initial issuance of an MS/CV-endorsed permit and associated catch history assignment.

(B) **Application deadline.** A complete, certified application must be either postmarked or hand-delivered within normal business hours to NMFS West Coast Region, Permits Office, Bldg. 1, 7600 Sand Point Way NE., Seattle, WA 98115, no later than November 1, 2010. NMFS will not accept or review any applications received or postmarked after the application deadline. There are no hardship provisions for this deadline.

(vii) **Permit transfer during application period.** NMFS will not review or approve any request for a change in limited entry trawl permit owner at any time after either November 1, 2010 or the date upon which the application is received by NMFS, whichever occurs first, until a final decision is made by the Regional Administrator on behalf of the Secretary of Commerce on that permit.

(viii) **Initial Administrative Determination (IAD).** NMFS will issue an IAD for all complete, certified applications received by the application deadline date. If NMFS approves an application for initial issuance of an MS/CV-endorsed permit and associated catch history assignment, the applicant will receive an MS/CV endorsement on a limited entry trawl permit specifying the amounts of catch history assignment for which the applicant has qualified. If NMFS disapproves an application, the IAD will provide the reasons. If known at the time of the IAD, NMFS will indicate if the owner of the MS/CV-endorsed permit has ownership interest in catch history assignments that exceed the accumulation limits and are subject to divestiture provisions given at paragraph (g)(3)(i)(D) of this section. If the applicant does not appeal the IAD within 60 calendar days of the date on the IAD, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(ix) **Appeals.** For an MS/CV-endorsed permit and associated catch history assignment issued under this section, the appeals process and timelines are specified at § 660.25(g), subpart C. For the initial issuance of an MS/CV-endorsed permit and associated catch history assignment, the bases for appeal are described in paragraph (g)(6)(v) of this section. Items not subject to appeal include, but are not limited to, the accuracy of data in the relevant NORPAC dataset on August 1, 2010.

(7) **Cost recovery.** The fish seller, as defined at § 660.111, is subject to the cost recovery program specified at § 660.115.

(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 Co-op Program may discard minor operational amounts of catch at sea if the observer or EMS has accounted for the discard (i.e., a maximized retention fishery).

(j) **Observer requirements —**

(1) **Observer coverage requirements —**

(i) **Coverage.** The following observer coverage pertains to certified observers obtained from an observer provider permitted by NMFS.

- (A) **MS vessels.** Any vessel registered to an MS permit 125 ft (38.1 m) LOA or longer must carry two certified observers, and any vessel registered to an MS permit shorter than 125 ft (38.1 m) LOA must carry one 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 MS vessel must carry one certified observer each day that the vessel is used to take groundfish, unless the catcher vessel has a valid EM Authorization and is fishing with EM under § 660.604 of subpart J.
 - (C) **Gear testing exemption.** Vessels are exempt from the requirement to maintain observer coverage as specified in this paragraph (j) while gear testing as defined at § 660.11. The vessel operator must submit a valid declaration for gear/equipment testing, as required by § 660.13(d)(4)(iv)(A), and must notify the Observer Program of the gear testing activity at least 48 hours prior to departing on a trip to test gear/equipment.
- (ii) **Observer workload –**
- (A) **MS vessels.** 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 must be reported to the Observer Program and OLE by the observer provider. The observer must be available for an interview with the Observer Program or 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) **MS vessels.** 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 designee.
 - (ii) **Safe conditions.** MS vessels 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 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. Maintain safe conditions on the vessel for the protection of observer(s) including adherence to all USCG and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel, and provisions at §§ 600.725 and 600.746 of this chapter.

(iii) **Computer hardware and software.** MS vessels must:

- (A) Provide hardware and software pursuant to regulations at § 679.51(e)(iii)(B) of this chapter.
- (B) 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.
- (C) Ensure that the MS vessel has installed the most recent release of NMFS data entry software or other approved software prior to the vessel receiving, catching or processing IFQ species.
- (D) 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.

(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) **MS vessels.** 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 MS vessels, between MS vessels and C/P vessels, or between a MS vessel 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.
 - (xi) **Housing on vessel in port.** During all periods an observer is housed on a vessel, the vessel operator must ensure that at least one crew member is aboard.
- (3) **Procurement of observer services –**
- (i) **MS vessels.** Owners of vessels required to carry observers under paragraph (j)(1)(i) of this section must arrange for observer services from an observer provider, except that:
 - (A) Vessels are required to procure observer services directly from the Observer Program 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 an observer provider.
 - (B) Vessels are required to procure observer services directly from the Observer Program and an 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 an observer provider.
 - (ii) **Catcher vessels.** Owners of vessels required to carry observers under paragraph (j)(1)(i) of this section must arrange for observer services from an observer provider, except that:
 - (A) Vessels are required to procure observer services directly from the Observer Program 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 an observer provider.
 - (B) Vessels are required to procure observer services directly from the Observer Program and an 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 an observer provider.
- (4) **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) *Hiring an observer candidate* –

(A) *MS vessels.*

- (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/fram/observer/index.cfm>.
- (2) 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 the observer will return all phone calls, emails, text messages, or other forms of communication within the time specified by the Observer Program;
 - (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.

(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/fram/observer/index.cfm>.
- (2) 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 the observer will return all phone calls, emails, text messages, or other forms of communication within the time specified by the Observer Program;

- (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; and
 - (iii) That the observer successfully completes a Red Cross (or equivalent) basic cardiopulmonary resuscitation/first aid certification course prior to the end of the Observer Program Training class.
 - (iii) **Ensure that observers complete duties in a timely manner** –
 - (A) **MS vessels.** An observer provider must ensure that observers employed by that observer provider do the following in a complete and timely manner:
 - (1) Submit to NMFS all data, logbooks, and reports as required by the observer manual;
 - (2) Report for his or her scheduled debriefing and complete all debriefing responsibilities;
 - (3) Return all sampling and safety gear to the Observer Program Office;
 - (4) Submit all biological samples from the observer's deployment by the completion of the electronic vessel and/or processor survey(s); and
 - (5) Immediately report to the Observer Program Office and the OLE any refusal to board an assigned vessel.
 - (B) **Catcher vessels.** An observer provider must ensure that observers employed by that observer provider do the following in a complete and timely manner:
 - (1) Submit to NMFS all data, logbooks, and reports and biological samples as required under the Observer Program policy deadlines;
 - (2) Report for his or her scheduled debriefing and complete all debriefing responsibilities;
 - (3) Return all sampling and safety gear to the Observer Program Office; and
 - (4) Immediately report to the Observer Program Office and the OLE any refusal to board an assigned vessel.
 - (iv) **Observers provided to vessel** –
 - (A) **MS vessels.** Observers provided to MS vessels:
 - (1) Must have a valid North Pacific groundfish observer certification with required endorsements and an At-Sea Hake Observer Program endorsement;
 - (2) Must not have informed the observer 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 with the required endorsements;
 - (2) Must have not informed the observer 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 (required in paragraph (j)(4)(xi)(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.
- (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 specified at paragraph (j)(1)(i) of this section. An alternate observer must be supplied in each case where injury or illness prevents an 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 observer provider is in a contractual relationship due to lack of available observers by the estimated embarking time of the vessel, the observer provider must report it to the Observer Program at least four 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) **MS vessels.** An observer provider must provide to each of its observers under contract:
- (1) All necessary transportation, including arrangements and logistics, to the initial location of deployment, to all subsequent vessel assignments during that deployment, and to and from the location designated for an observer to be interviewed by the Observer Program; 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 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 24 hours following the vessel's arrival in port when the observer is scheduled to disembark.
 - (iv) 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) Has a check-in system in which the observer is required to contact the observer provider each time they depart and return to port on a vessel.
- (3) Remains available to OLE and the Observer Program until the conclusion of debriefing.
- (4) Receives all necessary transportation, including arrangements and logistics to the initial location of deployment, to all subsequent vessel assignments during that deployment, and to and from the location designated for an observer to be interviewed by the Observer Program; 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 24 hours following the vessel's arrival in port when the observer is scheduled to disembark.
 - (ii) Otherwise, each observer between vessels, while still under contract with an 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** —

(A) **MS vessels.** 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.** Unless alternative arrangements are approved by the Observer Program Office, an observer provider must not deploy an observer on the same vessel more than 90 calendar days in a 12-month period.
- (ix) **Verify vessel's Commercial Fishing Vessel Safety Decal.** An observer provider must ensure that the observer completes an observer vessel safety checklist, and verify that a vessel has a valid USCG Commercial Fishing Vessel Safety Decal as required under paragraph (j)(2)(ii)(B) of this section prior to the observer embarking on the first trip and before an observer may get underway aboard the vessel. The provider must submit all vessel safety checklists to the Observer Program, as specified by Observer Program policy. 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 Office.** An observer provider must provide all of the following information by electronic transmission (email), 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.** 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, email 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 email 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 § 660.12(e); § 660.112(a)(4); or § 600.725(o), (t) and (u) of this chapter;
 - (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.

(6) **Certificates of insurance.** The observer service provider must submit copies of "certificates of insurance" that name the Northwest Fisheries Science Center Observer Program manager as the "certificate holder" to the Observer Program Office by February 1 of each year. The certificates of insurance shall verify all coverage provisions specified at § 600.748(b) and (c) of this chapter and state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled.

(B) **Catcher vessels.** An observer provider must provide all of the following information by electronic transmission (email), 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 10 business days prior to the beginning of a scheduled West Coast groundfish observer certification training or briefing session. Submissions received less than 10 business days prior to a West Coast groundfish observer certification training or briefing session will be approved by the Observer Program on a case-by-case basis.

(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; and length of observer 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); and length of observer contract.

(iii) The Observer Program will notify the observer provider which observers require debriefing and the specific time period the observer provider has to schedule a date, time, and location for debriefing. The observer provider must contact the 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 expires 12 months after

the physical exam occurred and 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.** The observer provider must submit copies of “certificates of insurance” that name the Northwest Fisheries Science Center Observer Program manager as the “certificate holder” to the Observer Program Office by February 1 of each year. The certificates of insurance shall verify all coverage provisions specified at § 600.748(b) and (c) of this chapter and state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled.
- (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 as required at § 660.18(f).
- (6) **Biological samples.** The observer provider must ensure that biological samples are stored/handled properly prior to delivery/transport to NMFS.
- (7) **Observer status report.** Observer providers must provide NMFS with an updated list of observer trip per Observer Program protocol. Trip information includes observer provider name, observer last name, observer first name, trip start date, trip end date, status of observer, vessel name, and vessel identification number.
- (8) **Other information.** An observer provider 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.
- (9) **Other reports.** Reports of the following must be submitted in writing to the Observer Program Office by the observer provider via fax or email address designated by the Observer Program Office within 24 hours after the observer provider becomes aware of the information:

- (i) Any information regarding possible observer harassment;
 - (ii) Any information regarding any action prohibited under § 660.12(e); § 660.112(a)(4); or § 600.725(o), (t) and (u) of this chapter;
 - (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.
- (xii) **Replace lost or damaged gear.** Lost or damaged gear issued to an observer by NMFS must be replaced by the observer provider. All replacements must be provided to NMFS and 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 under 5 U.S.C. 552a or as otherwise required by law remain confidential and are not further released to any person outside the employ of the observer provider company to whom the observer was contracted except with written permission of the observer.
- (xiv) **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, catch monitor or other biological sampling services, in any federal or state managed fisheries, 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 any person 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 regarding:
 - (A) Observer use of alcohol;
 - (B) Observer use, possession, or distribution of illegal drugs in violation of applicable law; 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 of this chapter or U.S. Coast Guard and other applicable rules, regulations, statutes, or guidelines pertaining to safe operation of the vessel.

(5) **Observer certification and responsibilities —**

- (i) **Applicability.** Observer certification authorizes an individual to fulfill duties as specified in writing by the NMFS Observer Program Office while under the employ of a NMFS-permitted observer provider and according to certification 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 certifications and endorsements.
- (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 § 660.16 at the time of the issuance of the certification;
 - (2) Have provided, through their observer provider:
 - (i) Information identified by NMFS at § 679.52(b) of this chapter regarding an observer candidate's health and physical fitness for the job;
 - (ii) Meet all observer education and health standards as specified in § 679.52(b) of this chapter; and
 - (iii) Have successfully completed NMFS-approved training as prescribed by the 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.

- (iv) Have not been decertified under paragraph (j)(5)(ix) of this section, or pursuant to § 679.53(c) of this chapter.

(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 at 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) **MS vessels —**

- (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 whiting 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) Have a valid North Pacific groundfish observer certification;

- (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 any required briefings as prescribed by the Observer Program; and comply with all of the other requirements of this section.
- (B) **Catcher vessels.** The following endorsements as prescribed by the Observer Program must be obtained in addition to observer certification, in order for an observer to deploy.
 - (1) **West Coast Groundfish Observer Program training endorsement.** A 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 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, as defined by the Observer Program, after receiving a training endorsement or annual general endorsement, must complete all applicable debriefing requirements specified by the Observer Program. A deployment endorsement is issued to observers who meet the performance standards specified by the Observer Program. A deployment endorsement must be obtained prior to any subsequent deployments for the remainder of that calendar year. If a deployment endorsement is not issued, certification training must be repeated.
- (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) **MS vessels.**
 - (1) Successfully perform their assigned duties as described in the observer manual or other written instructions from the Observer Program.
 - (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 any required 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 debriefing expectations including meeting Observer Program performance standards reporting for assigned debriefings or interviews.
- (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.
 - (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 any required trainings or briefings as prescribed by the 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 a Red Cross (or equivalent) basic cardiopulmonary resuscitation/first aid certification.
 - (7) Successfully meet all expectations in all debriefings including reporting for assigned debriefings or interviews and meeting program standards.
 - (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 45 days every 12 months. On a case-by case basis, the Observer Program may consider waiving the 45 day requirement.

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

- (A) Must not have a direct financial interest, other than the provision of observer services 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.
 - (B) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from any person 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 or floating stationary 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 or floating stationary 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 assigned duties as described in the observer manual or other written instructions from the Observer Program Office.
 - (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 to any person except the owner or operator of the observed vessel, an authorized officer, or NMFS.
 - (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 IADs 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 an IAD.** 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. Decertification is effective 30 calendar days after the date on the IAD, unless there is an appeal.
- (D) **Appeals.** A certified observer who receives an IAD that suspends or revokes his or her observer certification may appeal the determination within 30 calendar days after the date on the IAD to the Office of Administrative Appeals pursuant to § 660.19.

(k) **MS co-op failure –**

- (1) The Regional Administrator will determine that a permitted MS co-op is considered to have failed if:
 - (i) The co-op members dissolve the co-op, or
 - (ii) The co-op membership falls below 20 percent of the MS/CV-endorsed limited entry permits, or
 - (iii) The co-op agreement is no longer valid.
- (2) If a permitted MS co-op dissolves, the designated co-op manager must notify NMFS SFD in writing of the dissolution of the co-op.
- (3) In the event of a NMFS determined co-op failure, or reported failure, the designated co-op manager will be notified in writing about NMFS' determination. Upon notification of a co-op failure, fishing under the MS co-op permit will no longer be allowed. Should a co-op 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 co-op that failed, by any former members of the co-op that failed, or any other MS co-op for the remainder of that calendar year.

[75 FR 60897, Oct. 1, 2010, as amended at 75 FR 78406, Dec. 15, 2010; 76 FR 27547, May 11, 2011; 76 FR 53838, Aug. 30, 2011; 76 FR 74744, Dec. 1, 2011; 77 FR 45512, Aug. 1, 2012; 77 FR 55157, Sept. 7, 2012; 78 FR 18896, Mar. 28, 2013; 78 FR 68772, Nov. 15, 2013; 78 FR 75282, Dec. 11, 2013; 80 FR 22290, Apr. 21, 2015; 81 FR 27011, May 5, 2016; 83 FR 762, Jan. 8, 2018; 83 FR

64004, Dec. 12, 2018; 84 FR 31160, June 28, 2019; 84 FR 68810, Dec. 17, 2019; 85 FR 37029, June 19, 2020; 85 FR 35601, June 11, 2020; 86 FR 26443, May 14, 2021; 86 FR 58813, Oct. 25, 2021; 87 FR 54909, Sept. 8, 2022; 87 FR 77027, Dec. 16, 2022; 87 FR 77006, Dec. 16, 2022; 88 FR 81358, 81359, Nov. 22, 2023]