DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 660

[Docket No. 100212086–0532–05]

RIN 0648–AY68

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

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

ACTION: Final rule.

SUMMARY: NMFS is implementing Amendments 20 and 21 to the Pacific Coast Groundfish Fishery Management Plan (FMP), which were partially approved by the Secretary on August 9, 2010. Amendment 20 establishes a trawl rationalization program for the Pacific Coast groundfish fishery. Amendment 20's trawl rationalization program consists of: An individual fishing quota (IFQ) program for the shorebased trawl fleet (including whiting and non-whiting sectors); and cooperative (coop) programs for the at-sea (whiting only) mothership and catcher/processor trawl fleets. Amendment 21 establishes fixed allocations for limited entry trawl participants. This final rule supplements the final rule published on October 1, 2010 (75 FR 60868), and provides additional program details, including: Program components applicable to IFQ gear switching, observer programs, retention requirements, equipment requirements, catch monitors, catch weighing requirements, coop permits, coop agreement requirements, first receiver site licenses, quota share (QS) accounts, vessel accounts, further tracking and monitoring components, and economic data collection requirements.

DATES: This rule is effective January 1, 2011.

ADDRESSES: Background information and documents, including the final environmental impacts statements for Amendment 20 and Amendment 21, are available at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/.* NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is summarized in the Classification section of this final rule. Copies of the FRFA and the Small Entity Compliance Guide are available from William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE., Seattle, WA 98115–0070; or by phone at 206–526–6150. Copies of the Small Entity Compliance Guide are also available on the Northwest Regional Office Web site at *http://www.nwr.noaa.gov/.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE., Seattle, WA 98115–0070, and to OMB by e-mail to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

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

SUPPLEMENTARY INFORMATION:

Background

The Amendment 20 trawl rationalization program is a limited access privilege program under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), as reauthorized in 2007. It consists of: (1) An IFQ program for the shorebased trawl fleet; and (2) coop programs for the mothership and catcher-processor trawl fleets. The trawl rationalization program is intended to increase net economic benefits, create individual economic stability, provide full utilization of the trawl sector allocation, consider environmental impacts, and achieve individual accountability of catch and bycatch. Amendment 21 establishes fixed allocations for limited entry trawl participants. These allocations are intended to improve management under the rationalization program by streamlining its administration, providing stability to the fishery, and addressing halibut bycatch.

The trawl rationalization program is scheduled to be implemented on January 1, 2011. Due to the complexity of the program and the tight timeline for implementation, NMFS has issued, or is in the process of issuing multiple rulemakings to implement this program. The following actions are related to the trawl rationalization program:

- A final rule (75 FR 4684, January 29, 2010) which announced that potential participants in the program should review and, if necessary, correct their data that will be used for the issuance of QS, permits, and endorsements. It also established which data NMFS would use and requested ownership information from potential participants.
- A notice of availability for Amendments 20 and 21 (75 FR 26702, May 12, 2010).
- A proposed rule (75 FR 32994, June 10, 2010) followed by a final rule (75 FR 60868, October 1, 2010) that implemented Amendments 20 and 21, focused on provisions deemed necessary to issue permits and endorsements in time for use in the 2011 fishery and to have the 2011 harvest specifications reflect the new allocation scheme. In addition, the October 1st rule also restructured the entire Pacific Coast groundfish regulations at 50 CFR part 660 from one subpart (Subpart G) to five subparts (Subparts C–G).
- A correction to the June 10th proposed rule (75 FR 37744, June 30, 2010) which corrected two dates referenced in the preamble to the proposed rule regarding the decision date for the FMP amendments and the end date for the public comment period.
- The Secretary's review of and decision to partially approve Amendments 20 and 21 on August 9, 2010.
- A proposed rule (75 FR 53380, August 31, 2010) which proposed for implementation on January 1, 2011, additional program details, including: Measures applicable to gear switching for the IFQ program, observer programs, retention requirements, equipment requirements, catch monitors, catch weighing requirements, coop permits, coop agreement requirements, first receiver site licenses, QS accounts, vessel accounts, further tracking and monitoring components, and economic data collection requirements.
- A correction to the October 1st final rule (75 FR 67032, November 1, 2010) to make sure the correct trip limit tables for 2010 remain effective after November 1, 2010.

This final rule follows the August 31st proposed rule (75 FR 53380) and implements additional program components for the trawl rationalization program. The preambles to both the June 10th and August 31st proposed rules provided more details on the program and are not fully repeated here. The preamble to the June 10th proposed rule (75 FR 32994), called the "initial issuance" proposed rule because it proposed the requirements for initial issuance of new permits and endorsements for the trawl rationalization program, provided detailed information on the trawl rationalization program and a general overview on the provisions in Amendments 20 and 21. In addition, the

preamble to the August 31st proposed rule (75 FR 53380), called the "program components" proposed rule because it proposed further program details for the trawl rationalization program, provided more detail on the additional program components being proposed.

The Pacific Fishery Management Council (Council) began scoping on trailing actions for the trawl rationalization program in the Fall of 2010 and intends to continue developing trailing actions at its 2011 Council meetings on topics including, but not limited to: Cost recovery, safe harbors/community fishing associations, the severability of MS/CV endorsements from limited entry trawl permits, and resubmission of Amendment 21 in response to NMFS' partial disapproval.

Comments and Responses

NMFS solicited public comment on the proposed rule (75 FR 53380, August 31, 2010). The comment period ended September 30, 2010. NMFS received 15 individual letters of comments on the proposed rule submitted by individuals or organizations.

Some commenters have incorporated by reference previous comments submitted during the Council process or on a rulemaking (notice of availability 75 FR 26702, May 12, 2010; proposed rule 75 FR 32994, June 10, 2010; final rule 75 FR 60868, October 1, 2010) for the initial issuance of permits and endorsements and the review of Amendments 20 and 21. Comments presented to the Council are part of the record and were considered by the Council during its deliberation. Comments on the previous rulemaking were addressed in the final rule for that rulemaking.

General Comments in Support and Opposed

Comment 1. NMFS received multiple comments expressing general support for the proposed rule.

Response. NMFS acknowledges these comments.

Comment 2. NMFS received multiple comments expressing general disagreement with the proposed rule and amendments.

Response. NMFS acknowledges these comments.

Comments on Implementation of the Program

Comment 3. One commenter stated that the program and implementing regulations should not be effective until January 1, 2012, in order to provide sufficient time for the groundfish industry to plan their operations under the new regulatory system.

Response. This program has been developed by the Council and NMFS through a public process for over six years, and ample opportunities have been provided for input into the design of the program. The starting date for the trawl rationalization program was discussed and debated on multiple occasions at Council meetings, and based on the input from the public, the Council recommended, and NMFS agreed, to a target implementation date of January, 2011. NMFS notes the commenter's recommendation, but has determined that implementing the program at the earliest practicable date best serves the public interest. NMFS disagrees that any delay is necessary.

Comment 4. One commenter described port outreach efforts and a workshop undertaken by the organization designed to complement the outreach being conducted by NMFS. These outreach meetings and workshop are an effort to speed the transition process to the new trawl rationalization program and provide fishermen tools for success under the catch shares program. Port outreach meetings were held in seven ports, with topics covering ways to reduce observer and operating costs, managing quota portfolios, establishing a business plan, and managing constraining stocks among others. In addition, the two-day informational workshop was attended by over 150 fishery participants; panels included topics on regulatory requirements; managing risks associated with constraining species and modifying fishing behavior; approaches for maximizing opportunity; gear modification; handling techniques and behavior changes; mapping and "hotspot" management; trading, tracking, and financing of quota portfolios; strategies for minimizing observer and other costs; and strategies for improving revenues.

Response. NMFS appreciates the commenter's outreach efforts. In addition to the outreach efforts by outside organizations, NMFS has held a series of public workshops along the West Coast during the months of September and October, 2010, to assist program participants in transitioning to the new trawl rationalization program. Further information on NMFS's outreach efforts is described in the response to Comment 5.

Comments on the Rulemaking and Trailing Amendments

Comment 5. Some commenters stated that the complexity of the rulemakings for the trawl rationalization program have made it difficult to provide meaningful public input.

Response. NMFS acknowledges that implementation of the trawl rationalization program, and associated rulemakings, has been complex. However, NMFS has been making every effort to make the implementation process as simple as possible and to explain the process in many public forums. While the Council developed the trawl rationalization program over several years, the Council and NMFS set an implementation date of January 1, 2011, giving NMFS and the Council approximately a year and a half to develop regulations and fine tune the program. This is a tight timeline for such a complex program which would dramatically change the operation and management of the trawl sector. Because of the tight timeline, NMFS had to split implementation into several rulemakings, focused on timing the rulemakings to allow potential participants the most time possible for the different phases of implementation given the resources available to implement the program. Early in the rulemaking process, NMFS brought forward this approach to the Council at their September 2009 meeting. In addition, NMFS published a brochure in December 2009 which was mailed out to the industry announcing the proposed January 1, 2011 implementation, the rulemaking schedule, and some additional details on the first rulemaking.

The first rulemaking, which spanned late 2009 and early 2010, announced that potential participants should be reviewing and, if necessary, correcting their data before NMFS used the relevant data for initial issuance of permits and endorsements (proposed rule: 74 FR 47545, September 16, 2009; final rule: 75 FR 4684, January 29, 2010). NMFS initially announced that corrections should be done by late-May 2010 and before the initial issuance proposed rule published. NMFS later extended the deadline to July 1 in the initial issuance proposed rule (75 FR 32994, June 10, 2010) for both the Pacific Fisheries Information Network (PacFIN) dataset and for NMFS' Northwest Fisheries Science Center's Pacific whiting observer data from NORPAC (a database of North Pacific fisheries and Pacific whiting information) (this was later changed to August 1, 2010 for NORPAC data through a public notice dated June 22, 2010 (NMFS–SEA–10–08)). This first rulemaking also required completion of an ownership interest form. The results of these forms would be used, in part, to populate the ownership interest forms that would be part of the

application process. This rulemaking laid the groundwork for the application process that would take place in the fall of 2010.

Soon after the final rule published for this first rulemaking, the Council began meetings of its Regulatory Deeming Workgroup (RDW), an advisory body to the Council. The RDW held several public meetings between February and June 2010 to review the regulations that NMFS was developing for the program, to work through implementation details, and to bring issues forward to the Council, as needed. NMFS updated the RDW at all of their meetings on the implementation process and the status of the various rulemakings. The RDW meetings generally preceded Council meetings. The Council then discussed the rulemakings, including the implementation process and schedule, at all of their meetings to date in 2010.

In the spring of 2010, the NOA for both Amendments 20 and 21 was published, announcing an open public comment period on the amendments (75 FR 26702, May 12, 2010). Shortly thereafter, the second rulemaking was initiated that announced the FMP amendments and the initial issuance process for certain new permits and endorsements which required a more intensive application process, and thus more time for implementation. In addition, this rulemaking reorganized the existing groundfish regulations to accommodate the new trawl rationalization program. Staggered after this second rulemaking was the third rulemaking, the subject of this final rule, which announces additional program details for January 1, 2011, including: IFQ gear switching, observer programs, retention requirements, equipment requirements, catch monitors, catch weighing requirements, coop permits, coop agreement requirements, first receiver site licenses, quota share (QS) accounts, vessel accounts, further tracking and monitoring components, and economic data collection requirements. All of these rulemakings have described NMFS' overall approach to the rulemakings and implementation.

To provide support and guidance for the public during this process, NMFS has provided outreach along the West Coast in September and October 2010. These outreach efforts were used to announce the program details and implementation logistics, including the rulemakings and public comment periods. In addition, NMFS Office of Law Enforcement has provided several additional outreach sessions in October 2010 on compliance under the program. NMFS has also created a Web site on the trawl rationalization program to keep the interested public up to date and published and mailed several fact sheets, each focused on different aspects of the program. These fact sheets are also available on the Web site. Finally, NMFS has mailed and e-mailed several public notices to the industry and interested public regarding the trawl rationalization program. So while NMFS acknowledges that this has been a complex rulemaking, NMFS believes that the agency has made every effort to keep the industry and public informed of our approach and aware of the rulemaking process.

Comment 6. One commenter requested that the Pacific whiting season start dates for the shorebased IFQ fishery, the mothership fishery, and the catcher-processor fishery be revisited under a trailing amendment. The commenter explained that separate season start dates between the sectors is no longer needed under a rationalized fishery; staggered start dates contradict the intent of the program, undermining the goals of the program to increase net economic benefits and create individual economic stability.

Response. Start dates for the Pacific whiting season are not part of the program components rule. The Council discussed the Pacific whiting season start dates at its April and June 2010 meetings, and decided not to modify the season start dates at that time. The Council will continue to review management measures in the groundfish trawl fisheries after implementation of the rationalization program, and recommend changes where deemed appropriate. NMFS welcomes and encourages public participation in the Council decision-making process to address issues such as this.

Comment 7. One commenter stated that implementing cost recovery through a trailing amendment does not allow the public or policy makers to know the full economic ramifications of the program. The commenter suggested delaying the program until a cost recovery program has been developed.

Response. Although a recommendation was made by the Council, and NMFS agreed, that the cost recovery program would be implemented through the Council process as a trailing amendment to the program, that does not mean that the "costs" associated with cost recovery cannot be estimated. Under the MSA, as amended, cost recovery associated with program implementation is capped, or restricted to 3 percent of the value of the fishery. This anticipated cost recovery has been considered by NMFS in its record of decision. NMFS encourages public participation as the Council develops and recommends the cost recovery program to be implemented by NMFS, based on those recommendations.

Comment 8. Some commenters stated that community fishing associations (CFAs) should be implemented at the start of the program rather than as a trailing amendment. One commenter suggests delaying the program until CFAs have been developed.

Response. NMFS acknowledges that there are members of the public who feel that CFAs should be implemented at the start of the program. Although the Council considered incorporating provisions for CFAs into the alternatives early in the development process, no strong recommendation or advocacy was voiced by members of the public or representatives on the Trawl Individual Quota Committee, which was intended to represent a cross section of interests for the development of recommendations on structuring the trawl rationalization program. Proposals for including provisions for CFAs in the program emerged later on, when the Council was at the point of adopting a preferred alternative in November 2008, in part tied to the issue of how to deal with QS holding in excess of accumulation limits. Further refinement of the preferred alternative, which occurred at Council meetings in 2009, included additional consideration of CFA provisions. Specifically, at the April 2009 Council meeting, Agenda Item F.4 addressed CFAs, and it was at this time that the Council concluded that it would be more appropriate for CFA provisions to be implemented through a trailing action. However, the moratorium on the transfer of QS during the first two years of the program, combined with provisions to allow divestiture of QS over accumulation limits during years 3 and 4 of the program, were designed to facilitate the transfer of QS to CFAs. The moratorium is in part intended to slow the movement of QS holdings out of communities during a time when the trailing action for CFAs can be developed and implemented in a considered fashion. Recommendations for how to structure the CFA provisions in a trailing action are welcome and should be brought forward as that proposal is developed. The Council is likely to begin developing CFA provisions in 2011 so that they could be in place before the QS divestiture period begins.

Comment 9. One commenter stated that the adaptive management program (AMP) should be promptly implemented as a trailing amendment to address unforeseen impacts, promote

bycatch reduction, and promote sustainable fishing practices.

Response. The AMP was established through the October 1st initial issuance final rule (75 FR 60868), and consists of two primary phases. For the first two years of the program, the 10 percent AMP share is allocated to nonwhiting QS owners to ease the transition to an IFQ system. The Council and NMFS will be evaluating the changes that will occur after implementation, and will then be able to react as necessary in the second phase to address specific objectives for the AMP, identified on page 402 of Appendix A of the FEIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery." This interim situation will also allow for some identification of unforeseen impacts associated with this program, which will better inform both the Council and NMFS in addressing the issues.

Comments on Policies and Legal Standards

Comment 10. One commenter incorporated by reference comments they had previously made on the initial issuance proposed rule and Amendments 20 and 21 on National Standards 1, 2, 4, 6, and 8.

Response. NMFS's responses to comments 56–68 in the final rule to initiate implementation of Amendments 20 and 21 (75 FR 60868, 60884–60887) describe how Amendments 20 and 21, as well as that final rule, comply with National Standards 1, 2, 4, and 8. The explanations articulated there equally apply to the instant rule. With regard to National Standard 6, the commenter does not provide an explanation of why either of the rules or the underlying amendments would be inconsistent with National Standard 6. Nevertheless, this response will address consistency with National Standard 6.

National Standard 6 states that conservation and management measures must: "take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches." 16 U.S.C. 1851(a)(6). The National Standard Guidelines further state that every effort should be made to develop FMPs that discuss and take into account vicissitudes and that, to the extent practicable, FMPs should provide a suitable buffer in favor of conservation. 50 CFR 600.335(c)(2).

Amendments 20 and 21 are expected to give fishermen greater flexibility in determining when and how to fish, thus giving fishermen greater ability to respond individually to unanticipated occurrences. The AMP will provide additional management flexibility and will facilitate response to unanticipated circumstances. Thus, these amendments and the program components implemented through this rule are consistent with National Standard 6.

Comment 11. One commenter stated that the program is inconsistent with National Standards 5 and 8 of the MSA.

Response. As described in NMFS's response to comment 62 in the final rule to initiate implementation of Amendments 20 and 21 (75 FR 60868, 60885), Amendments 20 and 21 were designed to achieve multiple objectives and are consistent with National Standard 5. NMFS has determined that this rule to implement certain components of those amendments is consistent with National Standard 5 for the reasons stated in that previous preamble. NMFS's responses to comments 64–67 in the final rule to initiate implementation of Amendments 20 and 21 (75 FR 60868, 60886) explain how Amendments 20 and 21 are consistent with National Standard 8. NMFS has determined that this rule to implement certain components of those amendments is consistent with National Standard 8 for the reasons stated in that previous preamble. See also responses to comments in the FEIS for Amendment 20, particularly responses to comments 108 and 109.

Comment 12. One commenter stated that the program should be revised to fully retain public control over our public fisheries resources and indicated that the statements in the regulations and Amendments that NMFS retains the right to modify, revoke, or suspend altogether the catch share system are not enough.

Response. Congress, NMFS, and the Council have been clear and explicit that in a limited access privilege program, what is being granted is a privilege that is modifiable and revocable at any time without compensation to the privilege holder (see Section A–2.3.4 of the EIS). NMFS's responses to comments in the FEIS for Amendment 20, particularly responses to comments 86 and 87, provide further discussion on this issue and are not repeated here. In addition, the regulations at §§ 660.25 and 660.100 clearly state that any permits, endorsements, or amounts of harvest from the trawl rationalization program are a privilege that may be revoked, limited, or modified at any time.

Comments on Program Costs, Community Impacts, and the Burden on Small Businesses

Comment 13. Some commenters stated NMFS should minimize and mitigate impacts on small businesses and small communities; the program should not benefit large businesses at the expense of small businesses. One commenter stated that the burden of paperwork and costs of the program would be too much for small businesses and small communities and requested that the paperwork burden be streamlined.

Response. NMFS responded to similar comments in the October 1st final rule (75 FR 60868) about the impacts on small businesses. In particular, concerns were raised about negative impacts on deckhands and smaller boats; that program costs to fishermen, including the costs of entering the fishery and the costs of observers and monitoring are too high; that observer rules need to change for trawl and small boats to reflect the vastly different bycatch which occurs when mistakes are made; about the impact of the allocation formulas on Fort Bragg fishermen; concern that average fishermen will not be able to afford to participate and that this could lead to increased consolidation and leave many ports no longer viable; about negative impacts on processors, that small processors will be driven out of business due to consolidation; and that it will eliminate the "mom and pop businesses."

NMFS has responded to these comments in detail in the October 1st initial issuance final rule (75 FR 60868). That response is applicable to the comments associated with this rule. In terms of impacts on small businesses, the trawl rationalization program is intended to increase net economic benefits, create economic stability, provide full utilization of the trawl sector allocation, consider environmental impacts, and promote conservation through individual accountability for catch and bycatch. The allocations of quota under the new program do not differ significantly from status quo allocations made biennially in terms of total allocations. However, instead of fleetwide quotas, there will now be individual allocations of quota shares and quota pounds to permit owners. Allocations of overfished species constrain all groundfish fishermen, for both large and small operations. In some cases, smaller operators may be constrained to a greater extent. This was recognized in development of the program, and operators are encouraged to work together cooperatively, through mechanisms like combining and sharing quota amounts. The program provides for leasing of additional quota as needed to facilitate operations. The program includes provisions that would have a beneficial impact on small entities. It

would create a management program under which most recent participants in the Pacific Coast groundfish limited entry trawl fishery (many of which are small entities) would be eligible to continue participating in the fishery and under which the fishery itself would experience an increase in economic profitability. Small entities choosing to exit the fishery should receive financial compensation from selling their permit or share of the resource. To prevent a particular individual, corporation, or other entity from acquiring an excessive share of the total harvest privileges in the program, accumulation limits would restrict the amount of harvest privileges that can be held, acquired, or used by individuals and vessels. In addition, for the shoreside sector of the fishery, an AMP was created to mitigate any adverse impacts, including impacts on small entities and communities that might result from the program.

It is expected that the shorebased IFQ fishery will lead to consolidation and this may affect small processors, particularly if they are in disadvantaged ports. Chapter 4 of the Amendment 20 FEIS analyzed the effects on processors from various perspectives: The distribution of landings across west coast ports may change as a result of fleet consolidation, industry agglomeration, and the comparative advantage of ports (a function of bycatch rates in the waters constituting the operational area for the port, differences in infrastructure, and other factors). In particular, the Council analysis indicated that processors associated with disadvantaged communities may see trawl groundfish volumes decline. The analysis highlights that those processors receiving landings from Central California or Neah Bay may see a reduction in trawl caught groundfish if the market is able to redirect activity toward more efficient and advantaged ports. However, in addition to increased landings that are expected to result from the IFQ program, small processors and disadvantaged communities may benefit from the control limits, vessel limits, and adaptive management policies. Control limits will limit the ability of large processors to obtain shares of the fisheries while the AMP processes will allow the Council to consider the impacts on small processors and disadvantaged communities when allocating the AMP quota (10 percent of the total non-whiting trawl quotas). Although vessel accumulation limits tend to lower economic efficiency and restrict profitability for the average vessel, they could help retain vessels in communities because more vessels would remain.

Another process by which small processors and disadvantaged communities may benefit will be the future development of CFAs. Some of the potential benefits of CFAs include: Ensuring access to the fishery resource in a particular area or community to benefit the local fishing economy; enabling the formation of risk pools and sharing monitoring and other costs; ensuring that fish delivered to a local area will benefit local processors and businesses; providing a local source of QSs for new entrants and others wanting to increase their participation in the fishery; increasing local accountability and responsibility for the resource; and benefiting other providers and users of local fishery infrastructure.

In summary, the major impacts of this rule appear to be on shoreside processors which are a mix of large and small processors, and on shorebased trawlers which are also a mix of large and small companies. The non-whiting shorebased trawlers are currently operating at a loss or at best are "breaking even." The new rationalization program would lead to profitability, but with a reduction of about 50 percent of the fleet. This program would lead to major changes in the fishery. To help mitigate against these changes, as discussed above, the agency has announced its intent, subject to available Federal funding, that participants would initially be responsible for 10 percent of the cost of hiring observers and catch monitors. The industry proportion of the costs of hiring observers and catch monitors would be increased every year so that by 2014, once the fishery has transitioned to the rationalization program, the industry would be responsible for 100 percent of the cost of hiring the observers and catch monitors. NMFS believes that an incrementally reduced subsidy to industry funding would enhance the observer and catch monitor program's stability, ensure 100 percent observer and catch monitor coverage, and facilitate the industries' successful transition to the new quota system. In addition, to help mitigate against negative impacts of this program, the Council has adopted an AMP where starting in year 3 of the program, 10 percent of non-whiting QS would be set aside every year to address community impacts and industry transition needs. After reviewing the initial effects of IFQ programs in other parts of the world, the Council had placed a short term QS trading prohibition so that fishermen can learn from their experiences and not make premature sales of their QS. The Council is also envisioning future regulatory processes that would allow community fisheries associations to be established to help aid communities and fishermen.

NMFS has taken a hard look at the reporting burdens of the program and, given the program requirements, reduced the burden on small businesses to the extent possible. For instance, in the IFQ fishery, transactions for QS accounts and vessel accounts will be done online, reducing the paperwork burden. The QS permit renewal process will be the same as the current limited entry permit renewal process and during the same time period because initially most QS permit owners would already be familiar with the limited entry permit renewal process. Similarly, in the mothership sector, the MS/CV-endorsed permit renewal will be combined with their declaration of intent to obligate to a mothership processor so that both are done on the same form at the same time. To the extent possible, NMFS will send out permit renewal forms and other associated forms, such as the ownership interest form, pre-filled to reduce the burden on respondents. For the EDC, the survey design has sought to avoid duplication of data collection, and was developed from meetings with industry participants to discuss making survey questions easily understandable and consistent with the record keeping practices of survey respondents to reduce the burden on respondents. For the trawl monitoring requirements, NMFS has reduced the burden of the catch monitoring plans for first receivers by only requiring essential information needed to assure adequate catch accounting. To reduce the burden of requiring electronic fish tickets, fish ticket software will be provided at no cost, and will use a standard operating system and common software already owned by most businesses; fish ticket software will be compatible with the existing fish ticket requirements in each of the three states; and the software can be used to print a paper copy for submission to the state, when state law allows. To reduce costs, NMFS has determined that a person certified as both an observer and a catch monitor can serve in both capacities, within limitations on hours worked. After consideration of all these efforts and the requirements of the program, NMFS has determined that the remaining reporting requirements are necessary.

Comment 14. One commenter expressed concerns that the inequitable distribution of overfished species QS, such as Canary Rockfish, disproportionately impacts California,

while favoring Washington and Oregon; that the program should not result in an unfair allocation between the states; and that the program should be designed to result in an even consolidation between states and between the sectors (non-whiting shorebased IFQ, whiting shorebased IFQ, mothership sector, and catcher/processor sector).

Response. With respect to the effects on the States including industry consolidation effects, NMFS acknowledges that this program may have different impacts on different states and on different communities. As mentioned above, one of the potential purposes of the AMP is to address differential impacts upon communities and thus the states. National Standard 4 requires that when it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) Fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges. The National Standard 4 guidelines at § 600.325(c)(3)(i)(B) state that: "An allocation of fishing privileges may impose a hardship on one group if it is outweighed by the total benefits received by another group or groups. An allocation need not preserve the status quo in the fishery to qualify as fair and equitable, if a restructuring of fishing privileges would maximize overall benefits. The Council should make an initial estimate of the relative benefits and hardships imposed by the allocation, and compare its consequences with those of alternative allocation schemes, including the status quo."

Thus, the Councils are given wide latitude to determine what is equitable within a particular fishery and to create the appropriate management measures to accomplish the goals of an FMP. The issue of allocation of overfished species was addressed extensively in the response to comments in the October 1st final rule. (75 FR 60868, comments 29 and 31.) Generally speaking, the Council evaluated the impacts of its allocation decisions and adequately determined that, after weighing the costs and benefits of its proposed scheme, the allocations selected were to the overall benefit of the fishery and its participants.

Comment 15. One commenter stated that NMFS has not adopted criteria for participation in CFAs as required by law and improperly excluded CFAs from initial allocations. The commenter further stated that the 10 percent set aside for the AMP would not be enough to meet the needs of CFAs, smaller vessels idled by the program, processors, or new entrants. Another commenter stated that the 10 percent set aside for the AMP should be used to mitigate transition impacts and be used as an incentive pool for conservation results and to improve the program.

Response. NMFS responded to a similar comment in the October 31st final rule (75 FR 60868, comment 41) which is incorporated here by reference. NMFS disagrees that communities have been excluded from initial allocations. Communities have not been precluded from acquiring groundfish limited entry trawl permits, which would make them eligible for the initial allocation of QS associated with a permit. Additionally, the Council's preferred alternative includes a very broad definition of who may own quota shares, so communities are not precluded from acquiring quota once the program is implemented. Just as non-trawl fishermen currently need to obtain a trawl-endorsed limited entry permit to participate in the trawl fishery, under the trawl catch shares program, a trawl permit and quota pounds is all that is needed to participate.

NMFS also disagrees with the statement that the Council and NMFS did not follow the law with regard to CFAs. NMFS created the trawl rationalization program, including allocation to an AMP, consistent with the MSA and with communities in mind. The trawl catch shares program includes several ways to participate beyond the initial issuance of quota share. The AMP specifically reserves 10 percent of the non-whiting shoreside quota share to allocate in such a manner as to promote a wide range of important objectives, beginning with year 3 of the program. The objectives for this program are: Community stability, processor stability, conservation, unintended/unforeseen consequences of IFQ management, and facilitation of new entrants. NMFS agrees with the commenter's statement that the 10 percent set aside for the AMP should be used to mitigate transition impacts. During the first 2 years of the program, the AMP will help mitigate transition impacts by distributing the resulting to QP to trawlers with non-whiting QS to help them as they adjust to the new program, begin to work together and pool their resources, and adjust to new costs. In ongoing years, the AMP will help mitigate impacts of the program and promote conservation following the objectives for the AMP stated above.

In addition to the AMP, the Council is also developing provisions for community involvement through CFAs as a trailing amendment. The trawl catch shares program includes a moratorium on the transfer of quota share during the first two years of the program (quota pounds will be able to be transferred during the moratorium), combined with provisions to require divestiture of quota share over accumulation limits during years 3 and 4 of the program. The moratorium is in part intended to slow the movement of quota share holdings out of communities during a time when the trailing action for community fishing associations can be developed and implemented in a considered fashion. Recommendations for how to structure the CFA provisions in a trailing action are welcome and should be brought forward as that proposal is developed by the Council. Moreover, the Council specifically acknowledged flexibility to adapt to changing circumstances, including provisions for a comprehensive review of the program that includes a community advisory committee, to evaluate effectiveness in relation to the original program goals and objectives, scheduled for year five of the program. The trawl rationalization program has addressed and continues to address directly these issues and ways to improve the program.

Comment 16. One commenter stated that the rapid increase in value of QS and QP will make it hard for communities and CFAs to participate in the program. The commenter further stated that NMFS' new measure to allow limited entry trawl permit transfers during a window of time before the permit and endorsement application period will foster quick inflation of QS value.

Response. NMFS appreciates the commenter's insight into the value of QS based on NMFS providing a window of opportunity for limited entry permit transfers before the permit and endorsement application period. NMFS' intent in providing this window in the October 31st initial issuance final rule (75 FR 60868) was solely to provide some additional flexibility for potential participants in the program in making their business decisions before being locked into their business arrangement for the next 2 years. As stated in the preamble to the final initial issuance rule, NMFS believes this change is consistent with the Council's intent to provide an opportunity for entry level participants to obtain a qualifying trawl limited entry permit prior to initial issuance with reasonable certainty of anticipated QS that would be issued on the basis of that permit. Further, for

permit owners that have qualifying history that would exceed control limits, this change will provide an opportunity to divest permits prior to calculation of QS and any redistribution of QS.

Comments on the Observer and Catch Monitor Programs

Comment 17. Some commenters stated that alternatives should be explored to reduce the industry and taxpayer costs of the program, such as not requiring the industry to pay for observer (*i.e.,* the government should pay as part of its enforcement mandate), requiring less than 100 percent observer coverage, allowing the use of cameras, or measures to reduce observer costs below $350–500 per day. Another commenter agreed with NMFS that an observer can also be a catch monitor to reduce costs but also to gain data tracking efficiencies. A third commenter stated support for 100 percent observer coverage and rigorous observer and catch monitor training requirements.

Response. Less than 100 percent observer coverage and the use of cameras to supplement or substitute for observer coverage were considered by the Council during the program's development, but were rejected. Full and independent accountability of all catch is key to the success of the catch shares program especially programs using individual fishing quotas. NMFS has recognized the increased costs to the industry and is therefore planning to subsidize the cost of observer coverage for at least the first year, subject to appropriations (see response to Comment 22). The defraying of cost via this subsidy will give the fleet time to develop cost cutting measures with other industry members in their port and with the observer provider companies. NMFS recognizes the importance of reigning in costs to the industry and the public and will continue to investigate and implement efficiencies when practical. One such efficiency is that a person can be trained and certified as both an observer and as a catch monitor. That person could act in both capacities even for the same vessel's offload, subject to maximum work hour requirements and other limitations, which may provide some cost savings.

Comment 18. The Pacific Fishery Management Council commented in agreement with the conflict of interest regulations as proposed by NMFS under Alternative 2 for the observer and catch monitor regulations. Another commenter supported rigorous conflict of interest provisions.

Response. In the August 31st proposed rule (75 FR 53380), NMFS provided two alternative sections addressing conflict of interest provisions applicable to observers and catch monitors; Alternative 1 provided provisions as deemed by the Council, Alternative 2 presented the NMFS-proposed language. NMFS provided its rationale for the NMFS-proposed alternative in the proposed rule, and explained that the NMFS-proposed conflict of interest provisions are consistent with existing language in NMFS policy statement 04–109–01 and current standards in the West Coast Groundfish Observer Program. NMFS specifically requested comment on which provisions to include in the final rule and NMFS received no comments in disagreement with the NMFS-proposed alternative included in the final rule.

Comment 19. One commenter stated that Morro Bay, California, will not have enough trawlers to support a catch monitor.

Response. NMFS responded to a similar comment regarding costs of monitoring in the October 31st final rule (75 FR 60873, comment 22). As stated in the response to the prior comment: "Analyses indicate that the program benefits will outweigh the program costs. The EIS anticipates that the value of the fishery will increase through a variety of mechanisms, including increased efficiency of existing vessels, the transfer of effort to the most efficient vessels, and increased retention of target species. The program includes opportunities for adaptive management if actual impacts differ from projected impacts. [* * *] To aid the fishing industry during the transition to a rationalized fishery, the agency has announced its intent, subject to available Federal funding, to cover a portion of the initial cost of hiring observers and catch monitors. As stated by the agency, participants would initially be responsible for 10 percent of the cost of hiring observers and catch monitors, with that amount increased every year so that by 2014, the industry would be responsible for 100 percent of the cost of hiring the observers and catch monitors."

Landings monitoring is an essential component to the rationalization program developed by the Council. Thus, industry members and catch monitor providers need to work together to resolve local implementation issues such as the development of cost-effective deployment of catch monitors in Morro Bay. One potential solution provided for in this final rule would be to contract with providers for the services of observers that are also certified as catch monitors. Such "dual certified" observers, which would already be on board the vessel participating in the Shorebased IFQ Program, could assume the catch monitor role for the IFQ first receiver. Coordination between the fishing vessel, the IFQ first receiver, and the observer/catch monitor provider will help alleviate concerns of program costs under circumstances such as those presented at Morro Bay. NMFS anticipates that further opportunities to reduce costs will develop with experience under the program. See also the response to Comment 20.

Comment 20. California Department of Fish and Game (CDFG) commented that it supports an ongoing dialogue with NMFS and the states about the use of state employees as observers or catch monitors within the trawl rationalization program, provided that such dialogue includes a mechanism to reimburse the states for the use of state employees.

Response. NMFS acknowledges the comment and plans to continue its dialogue with the states regarding the use of state employees as observers and/or catch monitors. Initial discussions conducted thus far indicate that the states are interested in providing some catch monitor services. If state employees serve as catch monitors, NMFS anticipates that reimbursement for costs associated with such services would be a component of legal contracts entered into between the states and the IFQ first receivers or vessels to which the states provide services. NMFS looks forward to continued discussions with the states to support coordination of the trawl rationalization program with state employees.

Comment 21. Some commenters asked for clarification of the terms, "authorized officer," "authorized person," and "NMFS staff" with regard to the catch monitor and observer regulations. One commenter stated that persons authorized access to first receiver facilities should include state-authorized employees, both law enforcement and non-law enforcement, and Pacific States Marine Fisheries Commission staff. Both of these types of personnel are involved in the monitoring and enforcement of the groundfish fishery. The commenter also noted inconsistent use of the terms "authorized officer" and "authorized person" in the regulations and recommended a consistent and encompassing use of the term "authorized person." Another commenter asked that the term "NMFS staff" be defined and should be more

narrow than any employee of NMFS. The commenter suggested a definition.

Response. NMFS appreciates the comments and how they highlight the variety of management and enforcement persons that are involved in the program. However, NMFS disagrees that further definitions are necessary at this time. NMFS believes that the current use of the terms is appropriate and serves to distinguish the different persons that must have access to, or accomplish other duties in connection to program management and enforcement. "Authorized officer" is a term already defined under the MSA in regulations found at 50 CFR part 600. The term is focused exclusively on enforcement officers, both state and Federal, and includes NOAA agents and officers, state officers acting under a JEA with NOAA and USCG boarding officers. This term is important for use involving inspection and enforcement activities. "Authorized person" is not defined but was included to identify persons other than enforcement officers and NMFS staff who are authorized to conduct duties related to the program. The term includes catch monitors as they are not NMFS staff, but are employees of contractors. These persons have authority to conduct duties pursuant to the program regulations. NMFS staff are those persons who have authority to conduct duties under the program regulations, as well. As for state employees, these persons have independent authority under state laws to enter the facility and do their jobs.

Comment 22. One commenter asked if NMFS' offer to cover up to 90 percent of the costs of the observer program during the first year of the program was for all sectors of the fishery, or only the Shorebased IFQ Program.

Response. There is no assurance or guarantee that NMFS will provide funding, as the funding depends on Congressional appropriation. However, assuming that an appropriation is made and those funds are made available to the program and not otherwise restricted, NMFS NWR would apply these funds to help defray both the observer and catch monitor program costs. Further, NMFS would make the funds available to all three sectors (MS, C/P, and Shorebased) not just the Shorebased IFQ program.

Comment 23. One commenter suggested that language on the catch monitor program stating that "monitors have access to telephone lines during the times that Pacific whiting was being processed" may be an artifact of previous regulations for catch monitors. The commenter suggested that NMFS re-examine whether this language should apply to more species than Pacific whiting.

Response. NMFS agrees with the comment and, upon further review, has determined that this requirement is no longer necessary. The commenter was correct that catch monitors may need access to more species that just Pacific whiting for the Shorebased IFQ Program. In addition, any phone may be used, a cell phone or a telephone. However, the IFQ first receiver will not have to provide catch monitors with access to a phone while IFQ species are being processed. That is the responsibility of the catch monitor provider as stated at § 660.17(e)(8)(i)(A). NMFS is removing this language from the IFQ first receiver responsibilities at § 660.140(i)(4). See the section on "Changes from the Proposed Rule."

Comments on the Economic Data Collection (EDC) Program

Comment 24. Some commenters stated that the economic data collection questionnaire was too detailed and burdensome for small businesses. One of those commenters suggested that if it is an annual questionnaire, it should be simplified to collect only crucial information. If the detailed questionnaire is continued, it should be collected periodically, not annually. Another commenter stated that the EDC program is too narrow and will not capture the effects of the trawl rationalization program on jobs, businesses, and communities.

Response. In developing the trawl catch share program, NMFS is striking a balance. NMFS believes the importance and benefits of this program outweighs the burden on small businesses. The statute authorizing LAP programs such as this, Section 303A of the MSA, requires periodic reviews. In order to do that, NMFS must collect both baseline and annual information to judge the effectiveness of the program for the 5 year review. NMFS will continue to work through the Council process to make any necessary changes to the program to assure that that program does collect information needed by the Council meets the requirements of the MSA and the Council including providing assessments on the impacts of the program on jobs, businesses, and communities.

NMFS' authority to collect economic information is limited to those vessels and processors harvesting and processing fish that are regulated under the MSA. Although NMFS could ask for economic information from persons or entities that are not directly regulated under a fishery program, it would be unable to require submission of the information. This is a critical difference and NMFS cannot establish a voluntary economic information program that would certainly be rejected by non-fishery industry persons and entities. NMFS could not ensure confidentiality of voluntarily submitted information and this problem would mean NMFS would never receive information or receive information that was incomplete or unreliable. An incomplete or unreliable database would be unusable.

Regarding a commenter's concern over the EDC program not capturing the effects of the trawl rationalization program on lost jobs, closed businesses, and devastated communities, the Northwest Fisheries Science Center will conduct voluntary interviews through the Trawl Rationalization Program Human Dimensions Study to try and capture some of these other effects of the program.

Comment 25. One commenter agreed with NMFS' definition of "processor" for the EDC Program.

Response. NMFS acknowledges this commenter's concurrence with the proposed definition for "processor" for the EDC program.

Comment 26. One commenter expressed concerns about the EDC audit process, in particular the potential use of a third-party auditor to examine EDC submissions. The comment focused on the handling of "extremely sensitive commercial information". The comment acknowledges that NMFS states that submitted information is confidential, but the comment suggests that there are no standards or rules in place to ensure confidentiality. Further, the comment questions whether NMFS can ask for tax information and require its submission to a third-party auditor and whether this practice may violate IRS rules.

Response. While NMFS understands the concern about information confidentiality, this issue was highlighted in the proposed rule and NMFS explained that the EDC program will ensure information confidentiality. Information submitted to NMFS pursuant to the trawl program is considered confidential not only under the MSA, which specifically states that submitted information is confidential and not disclosable, but also there are at least two other Federal acts that NMFS uses to hold commercial and financial information confidential, namely the FOIA and Trade Secrets Act. NMFS has promulgated regulations that describe information confidentiality and processes to ensure its confidentiality at 50 CFR 600.405. Further, NMFS follows a detailed policy-based process, titled NAO 216–100, directing specifically

how NMFS employees and contractors ensure information confidentiality. NMFS personnel as well as any third-party contractor, such as an auditor, are required to retain information confidentiality. Should information be mishandled and inappropriately disclosed, both civil and criminal sanctions could be applied depending on the circumstances. To further ensure the confidentiality of information submitted to third-parties such as auditors, NMFS wrote regulatory language at section 660.114(e) describing the EDC audit procedures that indicates that any information required for verification of economic data, including that provided to a third-party auditor, is considered a required submission to NMFS. In other economic information collection programs, such as those found in the North Pacific crab and Bering sea trawl groundfish programs, NMFS has adopted the use of professional auditors to evaluate economic and financial information. Due to resource limitations, NMFS has no choice but to contract for these special services and cannot provide them "in-house." Finally, NMFS—like private institutions—can require submission of financial documents, including tax reporting forms, if necessary to ensure that its program receives reliable, verifiable information. If this was not the case, NMFS could not carry-out Congress' intent that commercial and financial information be collected and evaluated for this limited access program's future evaluation and potential effectiveness.

Comment 27. One commenter suggested revised wording for the economic data collection program regulations at § 660.114 to require only one owner of a processor to submit the required data, if the processor is owned by more than one person. The commenter stated that not all owners may have access to the level of detail required on the forms and the additional burden of requiring all owners to submit the data is unnecessary.

Response. NMFS agrees, but does not conclude that a change in the proposed rule text is necessary. NMFS is aware that some processors are owned by more than one person. However, a processor can be considered a single person or entity and thus would report its information on one form. Thus, NMFS requires only one EDC form from a processor provided that the form provides all relevant and complete information from the processor. All owners of a processor, however, are subject to the risk that with the filing of one form for the processor, that the form may not be timely filed or properly completed by whoever is identified as the responsible party for submitting it on behalf of the processor and thus, all the owners.

Comment 28. One commenter suggested that the language in § 660.114, for the trawl fishery economic data collection program, should be revised to read "holder" of a first receiver site license rather than "owner" because the license is a privilege and conveys no ownership rights.

Response. NMFS agrees with the commenter that first receiver site licenses are a privilege and not a right, but declines to change the term from "owner" to "holder" as the commenter suggests. The regulations at § 660.100 clearly state that any privileges (including IFQ first receiver site licenses) in the trawl rationalization program may be revoked, limited, or modified at any time. In order to take delivery of groundfish caught in the Shorebased IFQ Program, an IFQ first receiver would need to have a first receiver site license. "IFQ first receivers" are defined in the October 31st final rule (75 FR 60868) at § 660.111 as "persons who first receive, purchase, or take custody, control, or possession of catch onshore directly from a vessel that harvested the catch while fishing under the Shorebased IFQ Program described at § 660.140, subpart D." For the first receiver site license owner, the term "license owner" is defined at § 660.11 as "a person who is the owner of record with NMFS, SFD, Permits Office of a License issued under § 660.140, subpart D" and is cross-referenced from the "permit owner" definition.

Comments on Ownership and Transfer

Comment 29. One commenter asked if an estate completes probate court during the first two years of the program, can ownership of the limited entry trawl permit and QS permit be transferred from the estate administrator to a beneficiary.

Response. The proposed rule states that "[d]uring the first 2 years after implementation of the program, QS or IBQ cannot be transferred to another QS permit owner, except under U.S. court order and as approved by NMFS." 50 CFR 660.140(d)(3)(ii)(B)(*1*). During the first two years of the program, QS and IBQ are non-transferable. However, NMFS recognizes that there may be some circumstances where a court may order or authorize the distribution of assets, including QS or IBQ. Such a circumstance may arise as a result of death or dissolution of a QS owner, such as in probate or in a bankruptcy action. NMFS drafted this regulatory provision to accommodate such circumstances. Such a transfer would still be subject to review by NMFS, however, to determine whether the transferee is eligible to own QS and whether the ownership interest of the transferee would be within the control limits; NMFS will not approve a transfer if the transferee is ineligible to own QS or if the ownership interest of the transferee would exceed control limits as a result of the transfer. NMFS recognizes that not all distributions of assets in probate or bankruptcy may be set forth in a court order. Accordingly, NMFS has clarified its intent by modifying the regulatory provision to state that "[d]uring the first 2 years after implementation of the program, QS or IBQ cannot be transferred * * * except under U.S. court order or authorization and as approved by NMFS."

Comment 30. One commenter asked if two limited entry trawl permits are owned by the same entity, for example an estate administrator, can the resulting QS from the two limited entry trawl permits be separated into two QS permits if the court orders the permits to be divided between beneficiaries.

Response. In the situation described by this commenter, where a court orders division of the permits, NMFS would transfer the QS and IBQ to the separate beneficiaries, subject to NMFS' approval of the transfer. For NMFS to approve such a transfer, NMFS would first determine whether each beneficiary is eligible to own QS; if a beneficiary is eligible and does not already own a QS permit, NMFS would issue a QS permit to the beneficiary. NMFS would also review the transfer to determine whether either beneficiary's ownership interest in QS or IBQ would exceed control limits as a result of the transfer. If a beneficiary is not eligible to own QS, or if the transfer of QS would cause the beneficiary's ownership of QS or IBQ to exceed control limits, NMFS would not approve the transfer. NMFS would respond in the same manner if the transfer is otherwise authorized by a court. See response to Comment 29.

Comment 31. Several commenters commented on application of ownership limits on trusts.

a. One commenter agreed with NMFS that the trustee should be considered the owner of a trust.

Response. NMFS acknowledges this comment.

b. Another commenter agreed that NMFS correctly identified the nature of trust ownership, but expressed concern that a trustor or beneficiaries could exert control over the trust. The commenter suggested that to prevent this, all parties to the trust (trustor, trustee, and beneficiaries) should be charged with

100 percent of the trust ownership for purposes of application of control limits. Another commenter similarly expressed concern that accumulation limits may be exceeded through ownership by a trust, and also suggested 100 percent ownership be applied to the trustor, trustee, and beneficiary for control test purposes.

Response. NMFS acknowledges the comment that accumulation limits may be exceeded by other parties besides a trustee where QS or IBQ is owned by a trust, but distinguishes between the different accumulation limits that apply. "Accumulation limits," as defined in the proposed rule, means "the maximum extent of permissible *ownership, control or use* of a privilege within the trawl rationalization program[.]" 75 FR 53413 (emphasis added). As stated in the preamble to the proposed rule, NMFS interprets an *ownership* interest by a trust to vest ownership in the trustee; this interpretation applies specifically to permissible ownership. Ownership limits would apply to ownership of MS/CV-endorsed permits and catch history assignment, MS permits, and to QS and IBQ as a subset of applicable control limits. With regard to QS and IBQ and control limits Amendment 20 to the FMP states that "[t]he term 'own or control' was shortened to 'control' for simplicity[;] 'Control' includes ownership[.]" (Appendix E, footnote y, at E–21, August 2010.) In the proposed rule, control limits applicable to the Shorebased IFQ Program are defined as "the maximum amount that a person may *own* or control[.]" 75 FR 53413 (emphasis added). NMFS' interpretation that ownership of QS or IBQ by a trust would vest ownership in the trustee (or trustees, if more than one) only applies to the maximum permissible ownership aspect of compliance with control limits.

Ownership of QS or IBQ by a trust and control by any party other than the trustee—whether such party is the trustor, a beneficiary, or any other party—are two different things. While ownership is one way in which a party may exercise control, control is broader than ownership and a determination of control depends on further investigation beyond identification of the legal ownership of the QS or IBQ involved. A person may exceed control limits for QS or IBQ despite having no ownership of the QS or IBQ. Investigations regarding alleged violations of control limits will depend on the facts unique to each situation; NMFS will make a determination based on all relevant facts and circumstances revealed in an investigation. Ownership will be one fact considered, but not the only one. As stated in the preamble to the proposed rule, NMFS acknowledges that additional information, such as the trust document, may be needed to determine compliance with control limits. As the commenter points out, other facts may be needed as well. Accordingly, the proposed rule and this final rule includes provisions that NMFS may ask for additional information it believes to be necessary for a determination of compliance with control limits.

NMFS disagrees with the commenters' suggestion that NMFS should attribute trust ownership to parties other than the trustee for control limit purposes. One of the commenters described scenarios where parties other than the trustee may possibly exert control, either directly or indirectly, over the trust, the trustee, or the QS or IBQ; however, the commenter has not provided sufficient facts to enable NMFS to determine whether control limits are exceeded under these scenarios. The commenters' suggested approach would presume control exists regardless of the facts and would attribute control to trustors and beneficiaries even where they have no actual control. NMFS acknowledges that one of the commenters expressed concern that an investigation of control would require "valuable time of NMFS staff[,]" but this applies for any enforcement investigation of control by parties other than legal owners, regardless of whether the ownership interest is a trust or any other form of ownership interest. Accordingly, NMFS declines to revise its interpretation of the attribution of ownership interest of a trust to the trustee.

Comment 32. One commenter stated that the proposed Shorebased IFQ Program does not comply with MSA limitations on who can hold, acquire, or use limited access privileges, and that unrestricted ownership of quota shares will increase the cost of entry into the fishery and thwart the conservation benefits of the program.

Response. Section 303A(c)(5)(E) of the MSA states that in developing a limited access privilege program to harvest fish a Council shall "authorize limited access privileges to harvest fish to be held, acquired, used by, or issued under the system to persons who substantially participate in the fishery, including in a specific sector of such fishery, as specified by the Council." NOAA interprets that provision to mean that those who substantially participate in the fishery must be among those eligible to acquire QS, but are not the only entities or person who can receive QS. In other words, as long as those who substantially participate in the fishery are included as those eligible to receive QS, this provision of the statute is satisfied. The Council's eligibility criteria at § 660.140(d)(2) would allow all entities that currently substantially participate in the shorebased IFQ fishery to hold, acquire, use or be issued QS.

Comment 33. One commenter stated that the proposed Shorebased IFQ Program does not comply with the MSA because it allows QS to be acquired to perfect a security interest.

Response. Section 303A(c)(1)(D) of the MSA, which addresses requirements for eligibility for limited access programs, does not prohibit the acquisition of QS to perfect a security interest. This section states that the same statutory eligibility criteria apply to all persons who acquire a privilege to harvest fish, including those who acquire a limited access privilege solely for the purpose of perfecting or realizing on a security interest in such privilege. The MSA would allow United States citizens, corporations, partnerships, other entities established under the laws of the United States or any State, or permanent resident aliens to acquire privileges to harvest fish, including acquiring a privilege for the purpose of perfecting or realizing on a security interest in such privilege, if they meet the eligibility and participation requirements established in the program. The MSA requires that a limited access privilege program prohibit other persons from acquiring a harvesting privilege. The eligibility and participation requirements for the Shorebased IFQ Program in § 660.140(d) are consistent with the MSA.

Comment 34. One commenter asked for clarification in the final rule on whether NMFS addressed the Council's motion that does not require the size (or length) endorsement on a vessel to be reduced for limited entry trawl permits transferred to smaller vessels.

Response. NMFS addressed this issue, consistent with the Council motion, in the October 1st final rule (75 FR 60868) at § 660.25(b)(3)(iii)(B)(*1*) which states, "A limited entry permit may be registered for use with a vessel up to 5 ft (1.52 m) longer than, the same length as, or any length shorter than, the size endorsed on the existing permit without requiring a combination of permits or a change in the size endorsement." Previously, limited entry fixed gear and limited entry trawl permits had different size endorsements limitations. Trawl rationalization changed these requirements making the trawl size endorsement limitations mirror the limited entry fixed gear (i.e., the size endorsement of neither type of permit

has to be reduced if registered to a smaller vessel).

Comments on Initial Allocation of Catch Shares

Comment 35. One commenter stated that the allocation formula for overfished species rewarded fishermen that caught overfished species while penalizing those that successfully avoided them.

Response. NMFS responded to a similar comment in the October 31st final rule (75 FR 60868, comment 31) which stated, "The Council considered and rejected the option of allocating overfished species for nonwhiting trips using the same method as for other nonwhiting IFQ species as not appropriate under the circumstances. In particular, the relative weighting approach, by which landings for a year are measured as a percent of all landings for the year and species, would have given a particularly high amount of credit for pounds caught during the rebuilding period. Additionally, QS would have been allocated to those who targeted some of the overfished species in the mid-1990s (before they were declared overfished) rather than to those who need such QS to access current target species. Accordingly, the Council rejected the approach of using the same allocation formula for overfished species as for nonwhiting target species based on the desire to not reward bycatch during the rebuilding period and in order to provide QS to those who would need it to cover incidental catch taken with their target species QS allocation. Regarding the comment that overfished species years selected were arbitrary, the Council's methodology for allocating overfished species is significantly different than the methodology for allocating target catch. The 1994–2003 period is still used to determine the target species allocation, and the harvest patterns from the 2003–2006 logbooks are used to determine the amount of overfished species an entity would need to take its target species. In this fashion, more recent information for the fishery is used without rewarding post control date increases in effort. The 1994–2003 harvest patterns were not used to determine a target species QS recipients need for overfished species QS. This is because of the substantial changes in fishing patterns which were induced by the determination that some species were overfished and the implementation of the RCAs and because the RCAs will remain in place after the trawl rationalization system is put into place. Therefore, the Council considered that an estimate of likely patterns of activity should be based on a period of time when the RCAs were in place. The RCAs were not in place for most of the 1994–2003 period but were in place for 2003–2006, further supporting the conclusion to use this period for the allocation of overfished species."

Comment 36. Several commenters stated that the program should not result in an unfair allocation between the states, and should be designed to result in an even consolidation between states and between the sectors (non-whiting shorebased IFQ, whiting shorebased IFQ, mothership sector, and catcher/processor sector). One commenter stated that California fishermen have received an unfair allocation of overfished species compared to fishermen in Washington and Oregon, which was not discussed by the Council, analyzed under NEPA, or justified under the Magnuson-Stevens Act.

Response. NMFS responded to a similar comment in the October 31st final rule (75 FR 60868, 60885, comment 61). As stated in the response to the prior comment: "The trawl rationalization program was developed through the Council process, which facilitates substantial participation by state representatives. Generally, state proposals are brought forward when alternatives are crafted and integrated to the degree practicable. Decisions about catch allocation between different sectors or gear groups are also part of this participatory process, and emphasis is placed on equitable division while ensuring conservation goals. The Council determined that none of the alternatives considered, including the final plan, would discriminate against residents of different states. The rationalization program was structured to provide fair and equitable allocations of both target species and overfished species to participants." These concerns were expressly identified and addressed in the FEIS for Amendment 20, as well. See the FEIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery" in Chapter 6, Section 6.2 on pages 611. See also the response to Comment 14, *supra.*

Comment 37. One commenter disagreed with NMFS' decision to move forward with formal allocations to the trawl fishermen, favoring the most impactful gear. The commenter is hopeful that the program can still be utilized to create conservation benefits and lessen bycatch and habitat impacts from destructive gears.

Response. NMFS responded to a similar comment in the October 31st final rule (75 FR 60868, comment 81) which stated, in part, "The action [from the October 31st final rule] largely limits the trawl allocation of many of the Amendment 21 species to percentages less than the historical trawl catch shares to the benefit of the non-trawl sectors. For instance, the proposed action limits the maximum trawl allocation of any Amendment 21species to 95 percent of the directed harvest when historical trawl catch shares for many of these species have been higher than 95 percent. Amendment 21 species' allocations that tend to favor non-trawl sectors (i.e., non-trawl sector allocations greater than observed in the 1995 to 2005 historical catch) include Pacific cod, Pacific ocean perch, chilipepper rockfish south of 40°10′ N. lat., splitnose rockfish south of 40°10′ N. lat., shortspine thornyhead north of 34°27′ N. lat., longspine thornyhead north of 34°27′ N. lat., darkblotched rockfish, Dover sole, English sole, petrale sole, arrowtooth flounder, starry flounder, and species in the Other Flatfish complex. All other Amendment 21 species' allocations under the proposed action are generally favorable to non-trawl sectors in that the highest non-trawl sector catch percentages analyzed were proposed to be allocated to the non-trawl sectors. The only exception to this general trend is lingcod, where a more favorable trawl allocation was adopted as the final action. The rationale for a higher trawl allocation of lingcod is that, unlike the non-trawl sectors that predominantly use hook-and-line gear to target groundfish, the trawl sectors are not as constrained by management measures designed to foster yelloweye rockfish rebuilding. This is because the mandatory use of trawls with small-diameter footropes (i.e., at least 8 inches) shoreward of the RCA effectively keeps bottom trawls out of the high relief habitats where yelloweye occur. A higher trawl allocation of lingcod would minimize stranding of harvestable yields of lingcod that would otherwise be allocated to non-trawl sectors and unavailable for harvest due to yelloweye rebuilding constraints. Thus, the inter-sector allocation does not provide more bottom trawl opportunity than status quo management measures and allocations.

In addition, the trawl rationalization allows limited entry trawl permit holders to switch from trawl to fixed gears to fish their quotas, which, in turn, would reduce trawl impacts. It also allows nontrawl vessels to harvest the allocation to the trawl sector if they acquire a trawl permit and IFQ. These facts lead to the conclusion that potential adverse impacts from trawl

gear could be expected to be lower under the proposed action than under status quo management or under any of the other alternatives analyzed. Moreover, the allocations are consistent with the current distribution of fishing opportunity among groundfish sectors. Even if the fixed gear sector had the capacity and desire to catch significantly greater amounts of groundfish, which is questionable, those factors are not, in and of themselves, criteria for determining allocations. Allocations are necessary precisely because more than one group has some level of "capacity and desire," which engenders potential conflicts over resource access that must be resolved through allocation."

Comments on the Shorebased IFQ Program

Comment 38. One commenter disagrees with the regulatory provision that allows the Shorebased IFQ Program to be closed as a result of a projected overage in another trawl sector (MS Coop Program, C/P Coop Program). The commenter believes NMFS misinterpreted the Council's intent.

Response. NMFS acknowledges the comment, and appreciates the commenter's concern. This concern was raised by representatives of the trawl sectors through the Council during the regulatory deeming process. As explained at that time, this language reflects NMFS' authority to take action in any and/or all sectors of the fishery based on a conservation concern. Overfishing or projected overages on OYs are expected to be less likely under the trawl rationalization program, however, consistent with the MSA, NMFS retains the authority to take action to protect the status of the stocks, if needed.

Comment 39. One commenter stated that fishermen who receive minimal QS or zero QS for overfished bycatch species would face the choice of being tied up at the dock or paying other fishermen for the privilege of using their IFQ for overfished bycatch species.

Response. NMFS disagrees with the comment that these are the only choices available to fishermen that receive low initial allocations of QS for overfished bycatch species. QS is associated with QS permit owners, and is tracked in the QS permit owner's QS account. Each year, NMFS will deposit QP in the QS account based on the amount of QS for the IFQ species and the shoreside trawl allocation for that species. In order for a fisherman to use QP, the fisherman must obtain QP to transfer into the fisherman's unique vessel account associated with the vessel the fisherman will use to catch the fish. QP is required in the vessel account to cover catch of IFQ species.

Unless a fisherman has a negative balance of QP for any IFQ species in their vessel account, they can go fishing in the Shorebased IFQ Program. This is true even if they have zero QP for some IFQ species, including overfished bycatch species. To the extent that the fisherman is adept at avoiding bycatch of IFQ species which the fisherman has no QP for, no QP need ever be transferred to that fisherman's vessel account for those species. If the fisherman does catch IFQ species for which they do not have QP, the fisherman would have 30 days to obtain and transfer QP for that species into their vessel account. Alternatively, if the amount of QP that they need to cover the overage is within the carryover provisions, they can opt out of the fishery for the remainder of the year and use the next year's QP to cover that overage (see comment 41). Fisherman also have the option of working together to share their QP for overfished bycatch species by avoiding overfished bycatch species as much as possible, forming risk pools to use collectively, and using that amount to address inadvertent catch of unwanted bycatch by members of the pooling arrangement.

Comment 40. One commenter supported the proposed requirement that the owner of a vessel account must cover a deficit for any IFQ species within 30 days of when the deficit occurs, or, if the vessel chooses to invoke the carryover provision to avoid penalties, opt out of the fishery for the remainder of the year. The commenter also suggested that in order to encourage clean fishing practices, NMFS should limit the number of times a vessel can use this provision to two years total.

Response. In the August 31st proposed rule (75 FR 53380), NMFS specifically requested comment on the carryover provision. NMFS acknowledges the comment in support of the proposed regulation and the requirement to opt out of the IFQ fishery for the remainder of the year if a fisherman invokes the carryover provision to cover a deficit. Nothing in the Council motion, however, authorizes NMFS to limit the carryover provision to only two years of the program. Amendment 20 does not restrict the carryover provision to the first two years of the program, but does provide a method for future revision of the carryover limit, which may be changed during the biennial specifications process. Appendix E, A–2.2.2b; at E–13. Moreover, the carryover provision, as well as other relevant issues, will be reviewed during the 5-year review. To the extent that the commenter suggests a more restrictive carryover provision than that described in the proposed rule, the appropriate avenue for consideration of this suggestion under the FMP would be through the biennial specifications process or as part of the 5-year review.

Comment 41. Another commenter stated that the proposed rule would require fishermen to cover a deficit within 30 days or opt out of the fishery for the year, and that under the commenter's reading of the proposed rule, fishermen that receive zero QS/QP would start from a position of noncompliance, and would be required to first obtain QP to fish for target species.

Response. The commenter correctly states that a deficit must be covered within 30 days, but does not accurately state what would be required for compliance with this provision. In order to harvest fish without incurring a deficit, a vessel must have sufficient QP in its vessel account. Each vessel participating in the Shorebased IFQ Program would have a vessel account, and all vessel accounts start with a zero balance. In order to be in compliance, the owner of the vessel would have to acquire QP only for the fish that it catches; having a zero balance for QP for any one IFQ species does not automatically result in noncompliance.

Under the rationalized fishery, fishermen have several options to plan their fishing strategies. A QS owner may choose to transfer the resulting QP to the owner's own vessel account, or may elect to lease the QP and transfer them to another vessel account entirely. A vessel owner that chooses to go fishing can obtain QP before the vessel goes fishing, whether from the vessel owner's own QS account or by transfer from another owner of QP, for IFQ species that the vessel intends to harvest or anticipates harvesting, and may go fishing with a zero balance for IFQ species which it intends to avoid. Moreover, if a vessel fishing with a zero balance for an IFQ species were to catch that species, the vessel would have 30 days after that occurrence within which to obtain sufficient QP to cover the deficit, and if the deficit is within the carryover limit, the vessel owner has the option to opt out of the IFQ fishery for the remainder of the year and cover the deficit with QP issued in the following year. A vessel that opts out of the IFQ fishery to use the carryover provision may still fish in other fisheries during the remainder of the year, and may transfer unused QP from the vessel account to another vessel account.

Under none of these scenarios would the fisherman be in a "position of noncompliance," despite having started with a zero balance of QP.

Comment 42. Multiple commenters addressed NMFS' proposed weight conversions. Some commenters agreed with NMFS on the need for a standard, coastwide set of conversion factors for fish not landed whole. The commenters agreed with the values NMFS published in the August 31st proposed rule (75 FR 53380) for most species. For sablefish, lingcod, Pacific whiting, and skates, the commenters recommended NMFS use values from the Oregon Department of Fish and Wildlife (ODFW). Another commenter only supported a non-sector specific sablefish conversion factor of 1.6, but did not support any other proposed additional weight conversion factors at this time for several reasons.

Response. In the August 31st proposed rule (75 FR 53380), NMFS specifically requested comment on the actual values and implications of the proposed conversion factors. NMFS' intent is to have consistent coastwide conversion factors that are as consistent as possible with existing state practices. It is NMFS' understanding that processors will report on electronic fish tickets in a similar manner as the states have been doing for the state paper fish ticket system, which is to report the groundfish species to sorting groups with their current condition noted (e.g., headed and gutted (eviscerated)). If the states have more restrictive landings requirements on the species or condition that fish may be landed in, the Federal regulations will not supersede those more restrictive state requirements. The conversion factor would be applied to the state, PacFIN, or Federal data systems later in the process. While ideally the Federal weight conversion factors would be consistent with values used by the states, they are independent and may be different. As stated in the preamble to the proposed rule, Federal regulations at § 660.60(h)(5)(ii) state that Federal conversion factors will be used for participants in the Shorebased IFQ Program. However, for the limited entry fixed gear and open access fisheries, the regulations say that state conversion factors will be used.

Based on Council discussion at the September 2010 meeting and on public comment received, NMFWS has revised the regulations in this final rule to make sablefish, lingcod, and Pacific whiting consistent with the values from the Oregon Department of Fish and Wildlife (ODFW), with some exceptions, and to clarify that Federal regulations do not supersede more restrictive state regulations on landings requirements for the species or condition that fish may be landed. NMFS is not adopting ODFW conversion factors for filleted Pacific whiting, for winged skates, or for glazed sablefish because processing of groundfish is prohibited at-sea by vessels in the Shorebased IFQ Program at § 660.112(b)(1)(xii), with narrow exceptions, inapplicable here. In addition, skates are not an IFQ species. The value from ODFW for lingcod of 1.1 uses the term "gilled and gutted" which is equivalent to "gutted with the head on" in Federal regulations. The values for other groundfish species will remain as previously specified in the August 31st proposed rule, including a value for Pacific whiting that has been headed and gutted with tail removed. This conversion factor is necessary because there is an exception from the prohibition on processing at-sea for Pacific whiting for vessels that are equal to or shorter than 75-ft (23-m) that head, gut, remove tails and freeze whiting. See the section on "Changes from the Proposed Rule." The conversion factors implemented through this final rule are based on the best available information and are subject to change on the basis of improved scientific information.

Comment 43. One commenter disagreed with the proposed regulations at § 660.113(a)(4)(i) to record the weight of fish on electronic fish tickets in round weight only. The commenter suggested that the weight of fish recorded on electronic fish tickets should be the weight of the fish based on the condition it was landed in, whether dressed or round, and the conversion factors for dressed fish should be applied after the fish ticket reporting. The commenter provided several reasons why this would be preferable, including: ease for the catch monitors to verify weights without dealing with conversion factors; more assurance by NMFS and states that the correct conversion factors are applied, reducing the likelihood of confusion for buyers between state and electronic fish tickets; and consistent weights between state and electronic fish tickets.

Response. NMFS appreciates the comment and has reviewed the required information for electronic fish tickets. NMFS is developing an electronic fish ticket system where weight limit conversion factor will be automated and applied once the data is entered into the data system. Accordingly, the required information that IFQ first receivers must provide on electronic fish tickets is being revised in this final rule to require the actual weight and condition of species landed, rather than the round weight. NMFS is also requiring the vessel account number to be reported on the electronic fish ticket to accurately track landed catch to a specific vessel account. To be clear, the Federal electronic landing report (electronic fish ticket) does not replace any state reporting requirements for landings but is in addition to those requirements.

Comment 44. One commenter stated that NMFS failed to consider impacts of gear switching on fixed gear fisheries, on ports and processors dependent on species harvested by trawl gear, and on the inequities created between sectors (fixed gear and trawl) for gear conversion.

Response. As discussed in response to the commenter's similar comments on Amendments 20 and 21 to the FMP, the potential effects of the trawl rationalization program on other fisheries and on ports and processors dependent on species harvested by trawl gear are specifically addressed in the FEIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery" in Chapter 4, Sections 4.8.2 and 4.8.3 on pages 402–409, and Section 4.9.2 on pages 413–423, respectively. Potential effects specifically due to gear switching that were analyzed in the FEIS include spillover of vessel participation, grounds competition, market competition and regional shifts in landings. These potential effects were identified and analyzed, to the extent possible, without the knowledge of observed or actual impacts. These potential impacts were highlighted for the purpose of monitoring behavioral changes in the fishery, understanding their impacts, and reacting through the Council process to minimize impacts. These matters will also be evaluated through the 5 year comprehensive review of the trawl rationalization program.

Regarding the comment about alleged inequities between sectors, under the license limitation program, trawl vessels are already allowed to use fixed gear to take the trawl allocation, albeit they must do so under the open access regulations, which have much lower limits. In contrast, fixed gear endorsements give a vessel access to the fixed gear allocation. Allowing trawl vessels to switch gear (or other vessels to acquire a trawl permit and IFQ) does not give trawl-permitted vessels access to the fixed gear quota; it merely allows the vessel to use nontrawl gear to take the trawl IFQ. Moreover, with regard to intersector allocations and allowing fixed gear to harvest trawl quota, it should be noted that trawlers who have entered the fishery since 1994 have had to buy trawl permits to access trawl quota, thus in this respect other vessels

would be on an even footing with trawl vessels. This issue of requiring a trawl permit and quota to harvest trawl quota with fixed gear was addressed in the response to comments on the Amendment 20 FEIS at page 661. On average there are about 120 trawl vessels that participate in the fishery each year; however, there are about 168 permits. This indicates some opportunity for nontrawl vessels to acquire trawl permits and use trawl IFQ. Further, it is expected that there will be consolidation in the trawl fleet, increasing the number of trawl permits potentially available for use by nontrawl vessels. Thus, despite the limited scope, the IFQ system will allow for some use of trawl IFQ by nontrawl vessels.

Comment 45. One commenter expressed support for gear switching and recommended that NMFS create incentives for permanent conversion to lower impact gears.

Response. NMFS acknowledges the comment in support of gear switching provisions in the proposed rule; however, nothing in Amendment 20 allows NMFS to provide incentives for permanent gear conversion. The Council considered and rejected permanent gear conversion in its development of alternatives for Amendment 20. The Council's rationale for rejecting permanent gear conversion is included in the FEIS at Appendix A, Section A.7, on pages A–419 to A–423. Since permanent gear conversion is not within the scope of the trawl rationalization program, NMFS declines to provide any incentives for permanent gear conversion.

Comment 46. One commenter was concerned with the timing of applying for an interim first receiver site license and the start of the fishery. The commenter suggested that, if the fishery starts January 1, 2011, no first receiver site license (interim or permanent) should be required until February 1, 2011.

Response. NMFS understands the commenter's concerns, but believes the interim first receiver site license will accommodate the needs of the fishery. Due to the quick implementation of this program, the interim first receiver site license was developed to allow industry participants time to obtain permanent site licenses. An interim first receiver site license is required before an IFQ first receiver begins accepting landings of IFQ species, which could be as early as January 1, 2011. Site licenses are required for tracking and documentation purposes to account for the landings from the quota-based program. NMFS will work with industry from the start of the program through June 30, 2011, to complete an acceptable application and monitoring plan for an annual first receiver site license, including site inspections. First receivers that have accepted Pacific whiting in the past three years are already familiar with many of the site license requirements, including preparation of a monitoring plan, and should only require some modifications to their plans such as expanding them to cover more groundfish species.

Comment 47. Some commenters stated that the maximized retention in the Shorebased IFQ Program should be consistent with the existing maximized retention fishery, where some discards are allowed for operational and safety reasons, but those discards are estimated by an observer.

Response. In the August 31st proposed rule (75 FR 53380), NMFS specifically requested comment on any implications that the prohibition on discarding may have on the prosecution of a maximized retention fishery, and further requested comment on what should constitute discarding under this provision of the Shorebased IFQ Program. NMFS agrees with the commenters that the maximized retention in the Shorebased IFQ Program should be consistent with the existing maximized retention fishery. Under current practices in the maximized retention Pacific whiting fisheries, some minor amounts of operational discard are allowed. Under trawl rationalization, any minor operational amounts of discard would be estimated by the observer and deducted from allocations. NMFS has modified the final rule language in the Shorebased IFQ Program to be consistent with the MS Coop Program language on maximized retention which allows minor operational amounts of discard which are estimated by the observer. See the section on "Changes from the Proposed Rule."

Comment 48. One commenter disagreed with the requirement that a vessel fish in a single management area during a single trip. The commenter stated that with 100 percent observer coverage, observer access to vessel location, all catch recorded, and—in the future—electronic logbooks, there is no need to restrict a vessel's operation by restricting them to a single management area per trip.

Response. Several IFQ species are either a single species with different QS by area; or are a single species in one area and a component of an assemblage, such as minor shelf rockfish or minor slope rockfish, in another. For instance, QS for sablefish is issued with area distinctions either north or south of 36° N. lat. Likewise, QS for shortspine thornyhead is issued with area distinctions either north or south of 34°27′ N. lat. One example of an IFQ species would be yellowtail rockfish, which is an individual IFQ species north of 40°10′, but a component of the minor shelf rockfish species complex south of 40°10′. Similar distinctions exist for bocaccio rockfish, chilipepper rockfish, cowcod, Pacific ocean perch, and splitnose rockfish.

Discards will be accounted for at the tow level, with 100 percent observer coverage and haul locations. However, not all retained catch will be estimated by observers. Landed catch, therefore, would not be attributable to the appropriate management area if a vessel were to fish in multiple management areas in one trip. For example, if a vessel were to catch sablefish both North and South of 36° in the same trip, it would not be possible for an IFQ first receiver to sort or for the catch monitor to verify how much sablefish was caught in either area in order to enter on the electronic fish ticket the appropriate amount for sablefish north of 36° N. lat. versus sablefish south of 36° N. lat. Nor would it be possible for NMFS to determine how much QP should be subtracted from the vessel account for their QP of each IFQ species.

NMFS raised this concern with the Council in its March 2010 meeting. Because landings are a mix of all hauls taken during a single trip, NMFS indicated its intent to implement this provision in order to simplify sorting requirements, at-sea observation, and enforcement of IFQ limits. NMFS considers this approach to be the most straightforward and efficient method to track and verify total catch of a vessel's IFQ limits for individual species and rockfish complexes. Therefore, the Council deemed, and NMFS has implemented, the requirement in the Shorebased IFQ Program for a vessel to fish in a single management area during a trip.

Comment 49. One commenter requested clarification on the provision that allows a vessel to deliver a load of fish to more than one first receiver and how that relates to the requirement that all fish be offloaded once an offload has begun.

Response. A vessel may make more than one delivery as part of the same landing. Current regulations at § 660.11 define land or landing as "to begin transfer of fish, offloading fish, or to offload fish from any vessel[;] Once transfer of fish begins, all fish aboard the vessel are counted as part of the landing." This definition does not prohibit a landing from being offloaded

through more than one delivery; however, all fish aboard a vessel at the start of the first transfer are considered part of the same landing. Current regulations at § 660.12(e)(5) prohibit vessels from landing fish without observer coverage when a vessel is required to carry an observer. The proposed regulations at §§ 660.112(b)(1)(xiii) and 660.140(h)(1) clarify that observer coverage requirements under the Shorebased IFQ Program include having an observer onboard during a trip until such time that all fish from that trip have been offloaded. Observers must also be onboard the vessel during transit from one delivery site to another. Section 660.60(h)(2) reiterates the definition of a landing at § 660.12, and clarifies that not only are all fish aboard the vessel at the time offloading begins counted as part of the same landing, but also that they would be required to be reported as such. Section 660.60(h)(2) of the proposed rule would also prohibit catcher vessels in the mothership sector from setting the gear for a subsequent haul; however, the regulations did not specify that all fish from an IFQ landing would need to be completed before a new fishing trip begins. NMFS appreciates the comment pointing to this discrepancy in the regulations, and accordingly is including additional regulatory language to clarify that an IFQ landing would need to be offloaded prior to starting a new fishing trip. See the section on "Changes from the Proposed Rule" for specific regulatory citations.

Comment 50. One commenter requested clarification on the printed record requirement for scales at first receivers as stated at § 660.140(j)(2)(i) and (ii). The commenter stated that one paragraph exempted scales used for bulk weighing from the printed record requirement while the other paragraph limits the exemption based on the purchasing record of the first receiver and other factors having nothing to do with bulk weighing.

Response. The commenter appears to have misread the exemption. Scales NOT designed for bulk weighing may be exempted from all or part of the printed record requirements (i.e. platform scales). The second paragraph referenced outlines the conditions that are required to obtain the exemption. Based on comments received from industry during public workshops, including comments about the costs for small business that do not accept large volumes of fish, NMFS considered a specific standard for this exemption as appropriate. The requirement for a printed record is to assist the catch monitor in independently monitoring the sorting and weighing processes and ensuring catch accountability. Monitoring may be conducted effectively at facilities that accept small volumes of catch, without the need for a printed record from non-bulk weighing scales, pending the first receiver ensuring that all catch is weighed and that independent verification of the weights are possible.

Comment 51. One commenter suggested that the responsibilities of the first receiver site license should go to the "holder" of the license rather than the owner of the first receiver company because the holder could be an individual other than an owner and restrictions on the license is a primary enforcement tool.

Response. NMFS agrees with the comment. NMFS is revising the final rule at § 660.140(j)(2)(i) and (j)(3) to change the regulations from "the owner of an IFQ first receiver must* * *" to "the IFQ first receiver must* * *." "IFQ first receivers" are defined in the October 31st final rule (75 FR 60868) at § 660.111 as "persons who first receive, purchase, or take custody, control, or possession of catch onshore directly from a vessel that harvested the catch while fishing under the Shorebased IFQ Program described at § 660.140, subpart D." For the first receiver site license owner, the term "license owner" is defined at § 660.11 as "a person who is the owner of record with NMFS, SFD, Permits Office of a License issued under § 660.140, subpart D" and is cross-referenced from the "permit owner" definition. See the section on "Changes from the Proposed Rule" for specific regulatory citations.

Comments on At-Sea Whiting Programs (Mothership or Catcher/Processor)

Comment 52. One commenter stated that transfers of MS/CV endorsed permits should be effective immediately rather than at the start of the next cumulative limit period because 2-month cumulative trip limits do not apply to the at-sea fishery. Another commenter agreed with NMFS' statement in the proposed rule that transfers of MS permits and C/P-endorsed limited entry permits would be effective immediately upon reissuance to the new vessel because neither of these permits would be affected by trip limits.

Response. In the August 31st proposed rule (75 FR 53380), NMFS specifically requested comment on the effective date for an MS/CV-endorsed limited entry permit's second transfer within the same year. At the September 2010 Council meeting and in the Council's letter of public comment on the August 31st proposed rule, the Council stated that the second transfer of an MS/CV-endorsed limited entry permit should be effective immediately because trip limits will not apply to the at-sea sectors (MS or C/P) in 2011 and 2012. NMFS agrees with the Council's recommendation and revised the regulations in this final rule to reflect that. See the section on "Changes from the Proposed Rule" for specific regulatory citations. NMFS also agrees with the second commenter who reaffirmed NMFS regulations in the proposed rule that transfers of MS permits and C/P-endorsed limited entry permits would be effective immediately because they are not subject to trip limits.

Comment 53. Some commenters stated that there is no need for the regulations on the at-sea sector donation program (which allows amounts over retention limits to be donated instead of discarded) because there are no 2-month cumulative trip limits in the at-sea fishery.

Response. In the August 31st proposed rule (75 FR 53380), NMFS specifically requested comment on the implications of removing or retaining the at-sea sector donation program and requested suggested language revisions. The at-sea sector donation program, called the "bycatch reduction and full utilization program for at-sea processors" in regulation, was previously established to allow vessels harvesting unsorted catch to retain and donate amounts of groundfish that were in excess of trip limits. At the September 2010 Council meeting, the Council clarified that the at-sea sector regulations should not require vessels to be subject to trip limits for bycatch of non-whiting groundfish species. In addition to public comment from the Council, another commenter supported this conclusion and both recommended that the donation program is no longer necessary. NMFS agrees with this conclusion and has removed the at-sea donation program from the regulations in this final rule. See the section on "Changes from the Proposed Rule" for specific regulatory citations.

In reviewing regulations that may no longer be necessary because of changes in the trip limit requirements for the at-sea fishery, NMFS also notes that there may be regulations that are no longer necessary or need revisions because of changes in the trip limit requirements for the Shorebased IFQ Program. For the 2011–2012 groundfish harvest specifications and management measures, the Council has recommended trip limits only for non-

IFQ species. The trawl fishery crossover provision regulations, specified in the October 1st final rule at § 660.120, list requirements for handling trip limits when a vessel crosses over a management area within a 2-month cumulative trip limit period. However, all of the species listed in this section of the regulations are now IFQ species that are no longer subject to 2-month cumulative trip limits. NMFS intends to revisit these regulations through a future action to determine if they should be removed altogether or revised with new species or based on changing management concerns.

Comment 54. One commenter asked for clarification on whether discarding of non-whiting species would be required in the absence of 2-month cumulative trip limits in the at-sea fishery.

Response. The regulations for at-sea coop programs would not require discarding of non-whiting groundfish species in the absence of 2-month cumulative trip limits. Allocations of non-whiting species to the at-sea sectors are specified at § 660.150(c) for the MS Coop Program and at § 660.160(c) for the C/P Coop Program, including allocations for some overfished non-whiting groundfish species at risk of being caught with Pacific whiting, set-asides for other non-whiting groundfish species less likely to be caught in whiting fisheries, and no allocation or set-aside for species not expected to be caught in whiting fisheries. Over time, the Council may revisit these allocations, set-asides (or lack thereof), and trip limits if catch of non-whiting groundfish species increases in the at-sea sectors.

Comment 55. One commenter agreed with NMFS' interpretation of the processor obligation for the MS Coop Program where the MS/CV-endorsed permit's catch history assignment is obligated to an MS permit for the year. The commenter also agreed with the timing of the declaration in regulations which is reported to NMFS through the annual MS/CV-endorsed limited entry trawl permit renewal and again through the MS Coop permit application.

Response. NMFS acknowledges this comment.

Comment 56. One commenter asked for clarification about items applicable to the MS Coop Program that NMFS disapproved in Amendment 20, as stated in the preamble to the August 31st proposed rule (75 FR 53380, 53396), and whether they should apply to the C/P Coop Program. In particular, the commenter questioned the requirement for coop agreements to be submitted to the Council and available for public review before the coop is authorized to go fishing, and the requirement to submit a letter to the Department of Justice and provide a copy to NMFS.

Response. On August 9, 2010, NMFS made its decision to partially approve Amendments 20 and 21 to the FMP. The preamble to the October 1st final rule (75 FR 60868) discussed the partial approval of Amendments 20 and 21. The August 31st proposed rule (75 FR 53380) for the additional program components, developed by NMFS and deemed by the Council prior to NMFS' partial approval of the amendments, contained several provisions that NMFS subsequently disapproved. The commenter correctly noted that the preamble to the August 31st proposed rule (75 FR 53380, 53396) described disapproval of items applicable to the MS Coop Program, but did not specify whether similar provisions should apply to the C/P Coop Program. The similar provisions applicable to the C/P Coop Program were not specifically contained in Amendment 20 to the FMP and thus were not specifically disapproved by NMFS' decision on the Amendments; however, they had been deemed by the Council as necessary and appropriate in the regulations for the implementation of the program. NMFS has considered the issue in light of the disapproval of provisions of Amendment 20 applicable to the MS Coop Program, and believes the reasons for disapproval apply equally to the C/P Coop Program. Accordingly, with this final rule, NMFS is removing the requirement that the C/P coop file a coop contract with the Council and make it available for public review and the requirement that the C/P coop file a letter from the Department of Justice and provide a copy to NMFS. See the section on "Changes from the Proposed Rule" for specific regulatory citations.

Items NMFS Requested Comment on in the Proposed Rule

In addition to the comments received above, NMFS specifically requested comment on several items in the proposed rule. NMFS received comments on some but not all of those items. Where NMFS has made changes to the proposed rule where comments were specifically requested, these specific requests are identified in the section on "Changes from the Proposed Rule."

Changes From the Proposed Rule

A. All Trawl Programs

I. Changes To Reflect Recent NMFS Actions

Some changes are made in this final rule to update the regulations to reflect actions that have been implemented at 50 CFR part 660 since the proposed rule (75 FR 53380, August 31, 2010) was published. The regulations in this final rule were reviewed and revised to reflect changes implemented in the final rule published on October 1, 2010 (75 FR 60868), called the "initial issuance" final rule. For example, § 660.25(b)(4)(iv)(A) was revised to include the language from the final rule regarding the restriction on changes in permit ownership during application period.

II. Changes Due to Partial Disapproval of Amendment 20

On August 9, 2010, NMFS made its decision to partially approve Amendments 20 and 21 to the FMP. The preamble to the final rule (75 FR 60868, October 1, 2010) discussed the partial approval of Amendments 20 and 21. The proposed rule (75 FR 53380, August 31, 2010), which was developed by NMFS and deemed necessary by the Council prior to NMFS' partial approval of the amendments, contained several provisions in the MS Coop Program and C/P Coop Program that NMFS subsequently disapproved. Public comment on the proposed rule requested clarification whether the items that were disapproved only affected the MS Coop Program, or whether similar provisions applicable to the C/P Coop Program would also be revised. The similar provisions applicable to the C/P Coop Program were not specifically contained in Amendment 20 to the FMP, however, they had been deemed by the Council as necessary and appropriate for the implementation of the program. NMFS has considered the issue in light of the disapproval of provisions of Amendment 20 applicable to the MS Coop Program, and believes the reasons for disapproval apply equally to the C/P Coop Program. Accordingly, with this final rule, NMFS is removing or revising regulatory language for three provisions based on the partial disapproval of Amendment 20: (1) The requirement that MS coops or the C/P coop file a coop contract with the Council and to make it available for public review [it must still be filed with NMFS]; (2) the requirement that MS coops or the C/P coop file a letter from the Department of Justice; and (3) the

requirement that MS coop agreements include a clause that at least a majority of the members are required to dissolve the coop.

The first provision stated: "Signed copies of the coop agreement must be submitted to NMFS and the Council and available for public review before the coop is authorized to engage in fishing activities." NMFS disapproved of the requirement to submit agreements to the Council and for public review because not only would it be impracticable given the timing for public review, but also could violate restrictions on the disclosure of confidential information under the MSA. Accordingly, NMFS is revising this provision in the final rule for both the MS Coop Program (§ 660.150 (d)(1)(iii)(A)) and the C/P Coop Program (§ 660.160 (d)(1)(iii)(A)) to state: "Signed copies of the coop agreement must be submitted to NMFS before the coop is authorized to engage in fishing activities." The second provision would have required coops to submit a letter to the Department of Justice requesting a business review letter on the fishery coop, and to submit copies of all such correspondence with a coop permit application. NMFS disapproved this provision because compliance with antitrust laws is a separate and distinct obligation of each and every participant and does not need to be a requirement specified in the FMP. Accordingly, NMFS is removing this provision entirely in the final rule for both the MS Coop Program (from § 660.150 (d)(1)(iii)(A)(*2*)) and the C/P Coop Program (from § 660.160 (d)(1)(iii)(A)(*2*)). The third provision would have required coop agreements in the MS Coop Program to include "A requirement that agreement by at least a majority of the members is required to dissolve the coop." NMFS disapproved this provision because it would interfere with private parties' ability to contract and agree to the terms of dissolution that are appropriate for their coop. Accordingly, NMFS is removing this provision in the final rule for the MS Coop Program from § 660.150 (d)(1)(iii)(A)(*1*).

III. Observer and Catch Monitor Programs

In the proposed rule (75 FR 53380, August 31, 2010), NMFS specifically requested comment on two alternatives to the conflict of interest provisions of the observer and catch monitor regulations. Alternative 1 (Council-deemed) represented the more narrow interpretation of the conflict of interest regulations recommended and deemed by the Council. As mentioned in the preamble to the proposed rule, NMFS had concerns that the Council's recommended regulatory language was not consistent with national policy, with conflict of interest regulations for other sectors of the groundfish fishery, or with regulations for other NMFS programs. Therefore, NMFS proposed to implement Alternative 2 (NMFS-proposed) using its authority under section 305(d) of the MSA to publish language in the final rule that differs from what was deemed by the Council. The Council discussed this issue further at their September 2010 meeting and submitted public comment on the proposed rule supporting Alternative 2 (NMFS-proposed) (see Comment 18). With this final rule, NMFS is implementing the conflict of interest regulations from Alternative 2 (NMFS-proposed) in the proposed rule for the observer programs (§§ 660.140(h)(6)(vii)), 660.150(j)(6)(vii), and 660.160(g)(6)(i)(G)) and for the catch monitor program (§ 660.18(c)).

In this final rule, NMFS has further clarified a provision at § 660.112(b)(1)(xiii), Trawl fishery—prohibitions, to make it clear that observer coverage must continue until all IFQ species from the trip are offloaded, regardless of whether the fish is delivered to one or multiple IFQ first receiver(s). Once all IFQ species from the trip are offloaded, the observer will inspect the hold to verify that all IFQ species have been offloaded, completing that trip. In addition, new prohibitions have been added to § 660.12, General groundfish prohibitions, at paragraphs (e)(9) and (f)(9) to make it clear that it is prohibited to fail to meet observer provider and catch monitor provider responsibilities.

Also in this final rule, NMFS has further clarified provisions in the observer program regulations on the effective date of a decertification. The following sentence has been added to regulations at §§ 660.140(h)(6)(ix)(C), 660.150(j)(6)(ix)(C), 660.160(g)(6)(i)(I)(*3*), "Decertification is effective 30 calendar days after the date on the IAD, unless there is an appeal." Language for the observer and catch monitor regulations at §§ 660.18, 660.140(h), 660.150(j), and 660.160(g) have also been revised to make the language on the IAD and appeals more consistent between these sections and with the IAD and appeals language for the trawl rationalization permits and endorsements. Language in these sections has also been revised to make them as consistent with each other as appropriate.

With this final rule, language at § 660.17, Catch monitors and catch monitor providers, and at § 660.18, Certification and decertification procedures for catch monitors and catch monitor providers, was revised in some places to replace the terms "processor" or "processing facility" with "first receiver." Language in these sections has also been revised to make them as consistent as possible with similar provisions for the observer program at §§ 660.140(h), 660.150(j), and 660.160(g). New language was added to the catch monitor provider responsibilities at § 660.17(e)(1)(vii) consistent with similar requirements for the observer program to include additional specifications for the health and fitness exams of catch monitors, including a certificate of insurance. In § 660.17(e)(1)(ix) regarding priority given to candidates that prove their knowledge of West Coast marine species, ability to communicate in writing, etc. was deleted from this final rule because it is not necessary to specify in regulation. Also consistent with the observer program requirements, a new paragraph was added to the catch monitor provider responsibilities at § 660.17(e)(14) to include information on catch monitor training certificate, annual briefing requirement, and validity of the certificate.

With this final rule, a sentence was deleted from § 660.140(i)(2) that stated, "IFQ first receivers are responsible for all associated costs including training time, debriefing time, and lodging while deployed." This sentence was deleted because this is a requirement of the catch monitor provider. The contract between the catch monitor provider and the first receiver will determine the cost paid for catch monitor services.

Based on public comment received (see Comment 23), NMFS is removing regulations regarding telephone access while processing whiting (§ 660.140(i)(4)(iv) of the August 31st proposed rule) because they are no longer necessary.

IV. Initial Issuance Appeals Deadline

NMFS has decided to extend the deadline to appeal an IAD for the initial issuance of the following permits and endorsements: QS permit and associated QS and/or IBQ, MS permit, MS/CV endorsement and associated catch history assignment, and C/P endorsement. Upon further consideration, NMFS is extending the deadline published in the October 1st final rule (75 FR 60868) from 30 calendar days to 60 calendar days. NMFS believes this extension of time is warranted given the time of year in which NMFS anticipates sending out IADs and the potential difficulties in

meeting a 30 day deadline due to holidays, with corresponding reduced staffing, increased administrative burdens, and potential postal delays. Additionally, the extension provides applicants more time to gather documentation in support of any appeal that applicants may wish to make. The regulations at §§ 660.25(g)(4), 660.140(d)(8)(ix), 660.150(f)(6)(vi) and (g)(6)(viii), and 660.160(e)(6)(vii) are revised to reflect the 60 calendar day deadline to appeal an IAD.

V. Minor Edits

NMFS has made some minor edits to the regulations to make terminology more consistent (e.g., references to shorebased IFQ fishery are edited to read Shorebased IFQ Program) and to correct typographical errors and technical errors (e.g., capitalize Shorebased IFQ Program; use "an" before MS permit and MS/CV-endorsed permit; and add a hyphen to "MS/CV-endorsed" and "C/P-endorsed"). In addition, in § 660.25(b)(4) regarding limited entry permits, NMFS has replaced the term "transfer" with "change in vessel registration" as appropriate to distinguish such transfers from changes in permit ownership. To the extent that "transfer" may be used in other sections where a similar confusion may arise, NMFS intends to clarify the term as appropriate in future rulemakings.

B. Shorebased IFQ Program

I. General

Some general changes are made to regulatory language in this final rule. Similar to what was implemented with the "initial issuance" final rule (75 FR 60868, October 1, 2010), where appropriate, the terms "QS" and "QP" have been revised to read "QS and IBQ" and "QP or IBQ pounds," respectively. Pacific halibut is listed as an IFQ species. Pacific halibut, however, has an individual bycatch quota (IBQ) which is distinct from QS for groundfish species listed under the groundfish FMP. This change is to make it clear that Pacific halibut IBQ and IBQ pounds are distinct and may be managed differently than QS or QP.

II. Maximized Retention in the Pacific Whiting IFQ Fishery

In the proposed rule (75 FR 53380, August 31, 2010), NMFS specifically requested comment on any implications that the prohibition on discarding may have on the prosecution of a maximized retention fishery, and further requested comment on what should constitute discarding under this provision of the Shorebased IFQ Program. NMFS received two comments on this issue, both of which stated that the maximized retention provision in the Shorebased IFQ Program should be consistent with the existing maximized retention fishery, where some discards are allowed for operational and safety reasons, but those discards are estimated by an observer (see Comment 47). Under current practices in the maximized retention Pacific whiting fisheries, some minor amounts of operational discard are allowed. Under trawl rationalization, any minor operational amounts of discard would be estimated by the observer and deducted from allocations. NMFS raised this issue at the Council's March 2010 meeting for the maximized retention fishery in the mothership sector (Agenda Item E.6.b, NMFS Report 1, March 2010, #25). For the Shorebased IFQ Program, however, the Council motion was ambiguous. In the proposed rule, NMFS proposed regulations consistent with the Council motion, but not consistent with current practice nor with regulations for the MS Coop Program. With this final rule and based on public comment, NMFS is revising the language at § 660.140(g)(2) to be consistent with the MS Coop Program language at § 660.150(i). The revised language reads, "Maximized retention vessels participating in the Pacific whiting IFQ fishery may discard minor operational amounts of catch at sea if the observer has accounted for the discard (i.e., a maximized retention fishery)." In addition, the prohibition on discarding IFQ species at § 660.112(b)(1)(xiv) is revised to clarify that it is prohibited to discard IFQ species at sea unless that discard has been documented or estimated by an observer.

III. Weight Limits and Conversions

In the proposed rule (75 FR 53380, August 31, 2010), NMFS specifically requested comment on the actual values and implications of the proposed conversion factors. NMFS received multiple comments on this issue (see Comment 42). Based on the September 2010 Council meeting and on public comment received, the regulations at § 660.60(h)(5) have been revised in this final rule to make sablefish, lingcod, and Pacific whiting consistent with the values from ODFW (with some exceptions, described below) and to clarify that Federal regulations do not supersede more restrictive state regulations on landings requirements for the species or condition that fish may be landed. There will not be a Federal conversion factor for filleted Pacific whiting, for winged skates, or for glazed sablefish because processing of groundfish is prohibited at-sea by vessels in the Shorebased IFQ Program at § 660.112(b)(1)(xii), with narrow exceptions, inapplicable here. In addition, skates are not an IFQ species and so are not appropriate to be included. The value from ODFW for lingcod of 1.1 uses the term "gilled and gutted" which is equivalent to "gutted with the head on" in Federal regulations. The values for other groundfish species will remain as previously specified in the August 31st proposed rule. The conversion factors implemented through this final rule are based on the best available scientific information and may change in a future rulemaking based on improved science.

In this final rule, NMFS is also revising regulations at § 660.113(b)(4)(i) on recordkeeping and reporting for electronic fish tickets in the Shorebased IFQ Program. In making the revisions to the weight limit and conversions regulations and in response to public comment (see Comment 43), NMFS reviewed the required information for electronic fish tickets. NMFS is developing an electronic fish ticket system where weight limit conversion factor will be automated and applied once the data is input in the data system. Accordingly, the required information that IFQ first receivers must provide on electronic fish tickets is being revised in this final rule to require the actual weight and condition of species landed, rather than the round weight. NMFS is also requiring the vessel account number to be reported on the electronic fish ticket to accurately track landed catch to a specific vessel account.

IV. Landing Groundfish in the Shorebased IFQ Program

NMFS received public comment requesting clarification of the provision that allows a vessel to deliver a load of fish to more than one first receiver and how that relates to the requirement that all fish be offloaded once an offload has begun (see Comment 49). Based on the public comment received, NMFS is further clarifying this provision in the final rule at § 660.60(h)(2) and is adding a prohibition at § 660.112(b)(1)(xv). These changes will clarify that a vessel participating in the Shorebased IFQ Program may not begin a new fishing trip until all fish aboard the vessel have been offloaded.

V. IFQ Species and Species Groupings

The regulations at § 660.140(c)(1), as specified in the initial issuance final rule (75 FR 60868, October 1, 2010), list

the IFQ species/species groups and area specific designations for those species. Those regulations also state that the IFQ species groupings and area subdivisions will be those for which OYs are specified in the ABC/OY tables, and those for which there is an area-specific precautionary harvest policy. Upon further review, NMFS determined that the IFQ species list published in the initial issuance final rule did not match the ABC/OY table, in particular with regards to area designations for those species. The description of IFQ species in this section needs to be clarified in order for the reallocation provisions (§ 660.140(c)(3)(vii)) to be applied in the future. This final rule clarifies the area designations at § 660.140(c)(1) for the following IFQ species: Pacific ocean perch (north of 40°10′ N. lat.), chilipepper rockfish (south of 40°10′ N. lat.), bocaccio (south of 40°10′ N. lat.), splitnose rockfish (south of 40°10′ N. lat.), yellowtail rockfish (north of 40°10′ N. lat.), cowcod (south of 40°10′ N. lat.), minor shelf rockfish complex north (of 40°10′ N. lat.), minor shelf rockfish complex south (of 40°10′ N. lat.), minor slope rockfish complex north (of 40°10′ N. lat.), and minor slope rockfish complex south (of 40°10′ N. lat.). Similarly, language is revised to reflect these area designations in the tables at § 660.140(d)(4)(i)(C) on the QS and IBQ control limits and at § 660.140(e)(4)(i) on the vessel limits.

In addition, NMFS is clarifying regulations at § 660.140(c)(1) in this final rule to reference the definition of "Groundfish" at § 660.11 for the list of which individual groundfish species are included in the minor shelf complex north and south of 40°10′ N. lat., in the minor slope complex north and south 40°10′ N. lat., and in the other flatfish complex.

VI. QS Accounts and Vessel Accounts

With this final rule, NMFS has expanded the description of the operation of QS accounts and vessel accounts. NMFS has further clarified regulations to require designated account managers for both QS accounts and vessel accounts; to prohibit QP and IBQ pound transfers between vessel accounts from December 15 through 31 each year in order to allow NMFS to reconcile accounts; and to clarify that once a QS account transaction or vessel account transaction has been accepted by the transferee, the transaction will be considered final and permanent. In addition to these more substantive changes which are further described below, NMFS has made some minor changes to these regulations to make the QS account regulations and vessel account regulations more consistent with each other. For example, information on the type of computer access necessary to use the vessel account has been added to the regulations at § 660.140(e), consistent with the regulations for the QS account.

The proposed rule generally described QS accounts and vessel accounts that NMFS will use to manage QS and IBQ, and QP and IBQ pounds, respectively. The final rule expands upon this description, providing further detail of how the QS accounts and vessel accounts will operate. The revised paragraph describes how NMFS will manage QS accounts and vessel accounts, particularly with regards to how NMFS will issue QP and IBQ pounds each year, how NMFS will adjust QS and IBQ amounts if and when necessary, and the mechanics for operation of these accounts. Additionally, NMFS has clarified how the operation of online access to these accounts will function, particularly in regard to transfers between accounts.

In the proposed rule (75 FR 53380, August 31, 2010), the vessel account regulations (§ 660.140(e)) specified an account manager, but the same requirement was not specified under the QS account regulations (§ 660.140(d)(3)). A designated account manager is necessary for either a QS account or a vessel account in order to manage the account activity in cases where the account owner is a business (individuals may name themselves as an account manager). Without a designated account manager when the account owner is a business, sensitive information (*e.g.,* notices of account activity or the personal identification number (PIN) or password) may not get directed to the proper person. The designated account manager would be identified to NMFS through the QS permit or vessel account renewal process (except that for the 2011 fishery, the designated QS account manager may be requested by NMFS through a separate process because this information was not included on the initial issuance applications for QS permits). The designated account manager's contact information, such as phone number and email, would be requested. Their email address, while optional, provides the most flexibility and quickest resource for disseminating information. The designated account manager is an extension of what NMFS brought forward at the June 2010 Council meeting (Agenda Item B.6.b, Supplemental NMFS Report 3, June 2010, #10) which stated that NMFS would issue a unique ID and PIN to account owners. If the account owner is not a business but is an individual person, the account owner would be the designated account manager. Because of the sensitive nature of this information and because account owners may be businesses, NMFS is revising language in this final rule to identify designated account managers and their contact information for QS accounts and for vessel accounts.

There may be times when transactions in QS accounts and vessel accounts may need to be prohibited. As stated in the August 31st proposed rule for both types of accounts, "during the year there may be situations where NMFS deems it necessary to prohibit transfers (i.e., account reconciliation, system maintenance, or for emergency fishery management reasons)." In addition, the August 31st proposed rule stated that, for QS accounts, transactions are prohibited between December 1 and December 31 each year. This prohibition is intended to provide time for the QS account to remain stable for a period of time prior to the start of the next fishing year so that NMFS can issue the corresponding QP and IBQ pounds in to the QS account (*see* Council's June 2010 meeting, Agenda Item B.6.b, Supplemental NMFS Report 3, #9). Upon further consideration and as the logical extension of what was proposed, NMFS has determined to apply a similar requirement to vessel accounts as that proposed for QS accounts. For vessel accounts, this prohibition is intended to allow time for the vessel account to remain stable in order to calculate any carryover provisions that would be applicable for the next fishing year. However, QP and IBQ pounds in vessel accounts need to be available as late as possible in the year to provide flexibility to fishermen fishing later in the year and to allow vessel account owners to cover deficits. Therefore, for vessel accounts, NMFS has adopted a shorter time for the agency to reconcile the account, approximately two weeks. With this final rule, regulations at § 660.140(e) have been revised to prohibit QP and IBQ pound transfers between vessel accounts from December 15 through 31 each year. This provision may be reviewed and revised through a future rulemaking based on experience during the first years of the program.

NMFS has clarified in this final rule at § 660.140(d)(3) and (e) that transactions in QS accounts or vessel accounts are final and permanent once the transaction is accepted by both parties. NMFS will not review or undo these transactions once they are accepted by both parties. If one of the parties feels the transaction was for the wrong amount, they would need to

resolve any dispute over the transaction on their own independently of NMFS, and if an adjustment is needed to resolve the dispute, would need to conduct another transfer. NMFS will only review transactions if an error is identified with NMFS' online system.

VII. Transfers of QS and/or IBQ

The proposed rule would prohibit transfer of QS or IBQ in the first two years of the program except under U.S. court order as approved by NMFS. NMFS recognizes, however, that there may be some circumstances where a court may authorize the distribution of assets, including QS or IBQ, without a specific court order. Such a circumstance may arise as a result of death or dissolution of a QS owner, such as in probate or in a bankruptcy action. Based on public comment received, the regulations at § 660.140(d)(3)(ii)(B)(*1*) have been revised in this final rule to allow QS and IBQ transfers during the first two years of the program under a U.S court order or authorization, to accommodate such circumstances (see Comment 29). Such transfers would still be subject to NMFS' approval, including a determination of the transferee's eligibility to own QS and a determination that the transferee's ownership interest would not exceed applicable control limits (see Comment 30).

VIII. Eligibility To Own a QS Permit

The August 31st proposed rule (75 FR 53380) included language that states that eligibility to own and control a U.S. fishing vessel with a fishery endorsement pursuant to 46 U.S.C. 12113 is required for U.S. citizens, permanent resident aliens, and for corporations, partnerships, or other entities, in order to be eligible to own a QS permit. However, application of Title 46 of the U.S. Code to U.S. citizens or permanent resident aliens in this context is confusing. Under 46 U.S.C. 12113, all U.S. citizens are automatically eligible to own and control a U.S. fishing vessel with a fishery endorsement, thus the additional language is redundant. Also, under 46 U.S.C. 12113, all permanent resident aliens are ineligible to own and control a U.S. fishing vessel with a fishery endorsement, thus the additional language appears to effectively bar permanent resident aliens from owning a QS permit. In this final rule, NMFS has retained the language deemed by the Council in the proposed rule. However, NMFS will continue to assess this issue, and if appropriate, may request further consideration by the Council.

IX. Carryover Provision

In the proposed rule, NMFS included a provision that would allow a vessel owner to cover a deficit in the vessel account with QP from the following year if the deficit is within the carryover limit and the vessel declares out of the IFQ fishery for the remainder of the year prior to the 30-day deadline by which a deficit would otherwise be required to be covered. The declaration by the vessel owner that the vessel opts out of the IFQ fishery for the remainder of the year would notify NMFS enforcement in order to delay opening an investigation for failure to cover the deficit within 30 days. The proposed regulation, however, did not specify how the vessel owner would be able to declare out of the fishery. In this final rule, NMFS has specified that the vessel owner could declare out of the IFQ fishery by a written letter to the NMFS Office of Law Enforcement declaring the vessel owner's intent to declare out of the Shorebased IFQ Program for the remainder of the year and invoke the carryover provision to cover the deficit. Because the declaration would provide evidence documenting the vessel owner's intent to remain out of the fishery for the remainder of the year, NMFS has determined that the letter from the vessel owner must be signed, dated, and notarized. If the deficit occurs less than 30 days before the end of the calendar year, declaring out of the Shorebased IFQ Program for the remainder of the year would not be required, however, the vessel owner must notify the NMFS Office of Law Enforcement of the owner's intent to invoke the carryover provision to cover the deficit. This final rule clarifies what would meet the carryover provision requirement for declaring out of the fishery for the remainder of the year.

X. IFQ First Receiver and First Receiver Site Licenses

NMFS is revising the final rule at § 660.140(j)(2)(i) and (j)(3) to change the regulations from "the owner of an IFQ first receiver must * * *" to "the IFQ first receiver must * * *." This change is being made to clarify that the obligation applies to the IFQ first receiver, and is being made after further consideration and review of the record and in response to public comment (see Comment 51).

In addition, NMFS is revising this final rule at § 660.140(f) to clarify the first receiver site license application process and to revise language to be clear that the non-interim site licenses are effective for one year from the date of issuance. A catch monitoring plan, including a written request for a site inspection, must be submitted with a first receiver site license application. Once NMFS receives the application package, NMFS will contact the applicant to arrange a site inspection.

C. At-Sea Coop Programs

Some changes from the August 31st proposed rule (75 FR 53380) for the At-sea Coop Programs, both the MS Coop Program and the C/P Coop Program, resulting from items disapproved in Amendment 20 were discussed previously in the preamble for this final rule under "A. All Trawl Programs, II. Changes due to Partial Disapproval of Amendment 20."

I. Effective Date of Permit Transfers and No Trip Limits

In the proposed rule (75 FR 53380), NMFS specifically requested comment on the effective date for an MS/CV-endorsed limited entry permit's second transfer within the same year. At the September 2010 Council meeting and in the Council's letter of public comment on the August 31st proposed rule, the Council stated that the second transfer of an MS/CV-endorsed limited entry permit should be effective immediately because trip limits will not apply to the at-sea sectors (MS or C/P) in 2011 and 2012. Based on the September 2010 Council meeting and on public comment received (see Comment 52), the regulations at § 660.25(b)(4)(vi)(C) have been revised in this final rule to make the second transfer of an MS/CV-endorsed limited entry permit effective immediately. In addition, the regulations at § 660.131(b)(3), Trip limits in the whiting fishery, have been clarified in this final rule to be clear that they only apply to the Shorebased IFQ Program.

II. At-Sea Sector Donation Program

In the proposed rule (75 FR 53380), NMFS specifically requested comment on the implications of removing or retaining the at-sea sector donation program and requested suggested language revisions. The at-sea sector donation program was an optional provision in the August 31st proposed rule regulations at § 660.131(g), where it was called the "bycatch reduction and full utilization program for at-sea processors." This program was previously established to allow vessels harvesting unsorted catch in the at-sea sectors to retain and donate amounts of groundfish that were in excess of trip limits. At the September 2010 Council meeting, the Council clarified that the at-sea sector regulations should not require vessels to be subject to trip

limits for bycatch of non-whiting groundfish species. Therefore, the donation program is no longer necessary. Based on the September 2010 Council meeting and on public comment received which supported removal of donation program (see Comment 53), the proposed rule regulations at § 660.131(g) have been removed in this final rule.

III. MS Coop Program Processor Obligation for 2011

In this final rule, NMFS is revising regulations for the timing of the processor obligation provision in the MS Coop Program for 2011. The regulations specifying coop agreement contents for the MS Coop Program include a clause stating that each MS/CV-endorsed permit must have notified a specific MS permit by September 1 of the previous year of that MS/CV-endorsed permit's intent to obligate its catch history assignment to that MS permit in that year. Because these regulations will not be effective until after September 1, 2010, this clause must be adjusted for application to the 2011 fishery. This final rule revises the regulations at § 660.150(d)(1)(iii)(A)(*1*)(*iii*) to require a coop agreement to include "[a] processor obligation clause indicating that each MS/CV-endorsed permit has notified a specific MS permit by September 1 of the previous year of that MS/CV-endorsed permit's intent to obligate its catch history assignment to that MS permit, except that for the 2011 fishery, such notification must have been made prior to submission of the MS coop permit application."

IV. Minor Edits

NMFS has made some minor edits to the regulations to make references in the regulatory text consistent. Specifically, this final rule revises language to make references in § 660.25(e)(1) and (2) consistent with the categories in the paragraph headers at § 660.150 for MS coop permits and § 660.160 for the C/P coop permit. The revised language removes references to "renewal" and "change of permit ownership" because these provisions do not apply to coop permits. In addition, the regulations at § 660.111, "accumulation limit" (2)(i), is revised to clarify that the MS permit usage limit only applies to a person "owning an MS permit."

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the Pacific Coast Groundfish FMP, other provisions of the MSA, and other applicable law. To the extent that the regulations in this final rule differ from what was deemed by the Council, NMFS invokes its independent authority under 16 U.S.C. 1855(d).

NMFS and the Council prepared final environmental impact statements (EISs) for Amendment 20 and for Amendment 21 to the Pacific Coast Groundfish FMP. A notice of availability was published on June 25, 2010 (75 FR 36386). In partially approving FMP Amendments 20 and 21 on August 9, 2010, NMFS issued a Record of Decision (ROD) for each amendment identifying the selected alternatives. Copies of the RODs are available from NMFS (*see* **ADDRESSES**).

NMFS finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective January 1, 2011. The trawl rationalization program has been developed through the public fishery management council process since 2003 and has culminated in multiple rulemakings over the fall of 2009 through 2010. NMFS announced through the Pacific Fishery Management Council process and through these rulemakings its intent to implement this program on January 1, 2011. The public has been aware of this implementation date. In addition, NMFS has conducted numerous outreach workshops along the West Coast over the fall of 2010 to assist the affected public in preparing for January 1, 2011 implementation (*see* response to comment 5 in the preamble). NMFS has also provided outreach specifically to the shorebased IFQ first receivers for the new requirements under the program and also provided an interim first receiver site license with a shortened issuance process in order to facilitate implementation on January 1. In addition, NMFS provided preliminary guidance during the fall of 2010 to assist first receivers in preparing their catch monitoring plans in anticipation of a January 1, 2011 implementation.

NMFS has determined it is critical to the fishery to implement this program on January 1, 2011, the start of the fishing year. The program creates a system where participants can choose when to fish during the year, giving them ample time to harvest their available catch and to come into compliance with these regulations. Under the Shorebased IFQ Program, fishermen can choose when to fish between January 1 and December 15 every year. Under the At-Sea Coop Programs, fishermen can choose when to fish after their season opens in the spring through December every year. Thus, the program provides fishermen with more individual choice on when to fish than the two-month cumulative limit system that was in place before the trawl rationalization program. Delaying the effectiveness of this rule and beginning January 1 with the two-month cumulative limit system in place prior to implementing the trawl rationalization program would be confusing to the public, would cause problems in the fishery, and would be contrary to the public good. If the trawl fishery starts the year with two-month cumulative limits, the fleet could catch up to the available trip limits for some groundfish species, which could create an incentive for participants to fish as much as possible at the start of the year, especially if the participant knew they did not receive much initial allocation of certain groundfish species. There would then be a lag time of up to several months before the landings data would be available to determine the remaining amount of catch available to the trawl fishery to start the trawl rationalization program. There is likelihood that some species could have little or no harvest remaining for the trawl rationalization program in 2011. Thus, a delay in the effectiveness of the program could require unnecessarily restrictive measures later in the year, including possible fishery closures, to make up for harvest that would be allowed under the two-month cumulative limits at the start of the year. In addition, it would be confusing to the public to have two different systems of regulations including, but not limited to, different harvest limits, observer requirements, permit requirements, and reporting requirements. These reasons constitute good cause under authority contained in 5 U.S.C. 553(d)(3), to establish an effective date less than 30 days after date of publication.

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

The preamble to the proposed rule (75 FR 53380, August 31, 2010) included a detailed summary of the analyses contained in the IRFA. NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA) prepared a FRFA in support of this rule. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS's responses to those comments. A copy of the FRFA is available from NMFS (*see* **ADDRESSES**) and a summary of the FRFA follows:

The Council prepared two EIS documents: Amendment 20—Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery, which creates the structure and management details of the trawl fishery

rationalization program; and Amendment 21—Allocation of Harvest Opportunity Between Sectors of the Pacific Coast Groundfish Fishery, which allocates the groundfish stocks between trawl and non-trawl fisheries. Each of the two EIS's prepared by the Council provide economic analyses of the Council's preferred alternatives and draft RIR and IRFAs (DEIS IRFAs). The DEIS IRFAs were updated and combined into a single RIR/IRFA for use with the "initial issuance" proposed rule that was published on June 10, 2010 (75 FR 32994) (June 10th PR IRFA). The June 10th PR IRFA reviewed and summarized the benefits and costs, and the economic effects of the Council's recommendations as presented in the two EIS's. In addition, the June 10th PR IRFA contained additional information on characterizing the participants in the fishery and on the tracking and monitoring costs associated with this program.

The June 10th PR IRFA analyzed the overall program as recommended by the Pacific Fishery Management Council. The analysis encompassed aspects of the initial issuance rule which establishes the allocations set forth under Amendment 21 and procedures for initial issuance of permits, endorsements, quota shares, and catch history assignments under the IFQ and coop programs. It also encompassed this rule—the "program components" rule which provides additional details, including: Program components applicable to IFQ gear switching, observer programs, retention requirements, equipment requirements, catch monitors, catch weighing requirements, coop permits/agreements, first receiver site licenses, quota share accounts, vessel accounts, further tracking and monitoring components, and economic data collection requirements. Revenue and landings data in the RIR/IRFA for the program components proposed rule (75 FR 53380, August 31, 2010) (August 31st PR IRFA) were updated based on recent analysis by the Council (Appendix F: Historical Landings and Revenue in Groundfish Fisheries; Agenda Item B.3.a, Attachment 3, June 2010). The Council analysis provided revenue trends based on inflation adjusted dollars where estimates are adjusted to current (2009) dollars. The August 31st PR IRFA was also revised based on comments received on the initial issuance rule and included a discussion of the other alternatives considered by the Council.

Although other alternatives were examined, the FRFA focused on the two key alternatives—the No-Action Alternative and the Preferred Alternative. The EISs include an economic analysis of the impacts of all the alternatives and the August 31st PR IRFA and the FRFA incorporate this analysis. For the Amendment 20 EIS, the alternatives ranged from status quo (no action), to IFQ for all trawl sectors, IFQ for the non-whiting sector and coops for all whiting sectors, and IFQ for the shorebased sector and coops for the at-sea sectors (preferred). Various elements were part of each of these alternatives and varied among them, including initial qualifications and allocations, accumulation limits, grandfathering, processor shares, species covered, number of sectors, adaptive management, area management, and carryover provisions. The preferred alternative was a blending of components from the other alternatives analyzed in the EIS. For the Amendment 21 EIS, alternatives were provided for 6 decision points: (1) Limited entry trawl allocations for Amendment 21 species, (2) shoreside trawl sector allocations, (3) trawl sector allocations of trawl-dominant overfished species, (4) at-sea whiting trawl sector set-asides, (5) Pacific halibut total bycatch limits, and (6) formal allocations in the FMP. For most of these decision points, the alternatives within them were crafted around approximately maintaining historical catch levels by the sectors or, in some cases, increasing opportunity for the non-trawl sector.

By focusing on the two key alternatives in the August 31st PR IRFA and in the FRFA (no action and preferred), it encompasses parts of the other alternatives and informs the reader of these regulations. The analysis of the no action alternative describes what is likely to occur in the absence of the proposed action. It provides a benchmark to compare the incremental effects of the action. Under the no action alternative, the current, primary management tool used to control the Pacific coast groundfish trawl catch includes a system of two month cumulative landing limits for most species and season closures for Pacific whiting. This management program would continue under the no action alternative. Only long-term, fixed allocations for Pacific whiting and sablefish north of 36° N. lat. would exist. All other groundfish species would not be formally allocated between the trawl and non-trawl sectors. Allocating the available harvest of groundfish species and species complexes would occur in the Council process of deciding biennial harvest specifications and management measures and, as such, would be considered short term allocations.

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

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

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

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

While the Pacific whiting fishery has grown in importance in recent years, harvests in the non-whiting component of the limited entry trawl fishery have declined steadily since the 1980s. Non-whiting trawl ex-vessel revenues (adjusted for inflation) in the fishery peaked in the mid 1990s at about $40 million. Following the passage of the Sustainable Fisheries Act (1996) and the listing of several species as overfished, harvests became increasingly restricted and landings and revenues declined steadily until 2002. Over the period 2005 to 2009, inflation adjusted ex-vessel revenues from groundfish in the non-whiting trawl sector have averaged $27 million annually; ranging from $24 million (2005) to $32 million (2008). The 2009 fishery earned $30 million in ex-vessel revenues. Under the trawl rationalization program, shorebased whiting sector will be joined with the shorebased non-whiting sector. For perspective, when these fisheries are combined, their total ex-vessel revenues have averaged about $36 million annually over the last five years.

Expected Effects of Amendment 21—Intersector Allocation

The allocation of harvest opportunity between sectors under the new regulations (75 FR 60868, October 1, 2010) does not differ significantly from the allocation made biennially under the no action alternative. The primary economic effect of the long-term allocation under the new regulations is to provide more certainty in future trawl harvest opportunities, which would enable better business planning for participants in the rationalized fishery. As described elsewhere, the trawl rationalization program could create an incentive structure and facilitate more comprehensive monitoring to allow bycatch reduction and effective management of the groundfish fisheries. In support of the trawl rationalization program, the main socioeconomic impact of Amendment 21 allocations is longer term stability for the trawl industry. While the preferred Amendment 21 allocations do not differ significantly from status quo ad hoc allocations made biennially, there is more certainty in future trawl harvest opportunities, which enables better business planning for participants in the rationalized fishery. This is the main purpose for the Amendment 21 actions. The economic effects of Amendment 21 arise from the impacts on current and future harvests. The need to constrain groundfish harvests to address overfishing has had substantial socioeconomic impacts. The groundfish limited entry trawl sector has experienced a large contraction, spurred in part by a partially federally-subsidized vessel and permit buyback program implemented in 2005. This $46 million buyback program was financed by a Congressional appropriation of $10 million and an industry loan of $36 million. Approximately 240 groundfish, crab, and shrimp permits were retired from state and federal fisheries, and there was a 35 percent reduction in the groundfish trawl permits. To repay the loan, groundfish, shrimp and crab fisheries are subject to landings fees. Follow-on effects of the buyback have been felt in coastal communities where groundfish trawlers comprise a large portion of the local fleet. As the fleet size shrinks and ex-vessel revenues decline, income and employment in these communities is affected. Fishery-related businesses in the community may cease operations because of lost business. This can affect non-groundfish fishery sectors that also depend on the services provided by these businesses, such as providing ice and buying fish. An objective to the trawl rationalization program is to mitigate some of these effects by increasing revenues and profits within the trawl sector. However, because further fleet consolidation is expected, the resulting benefits are likely to be unevenly distributed among coastal communities. Some communities may see their groundfish trawl fleet shrink further as the remaining vessels concentrate in a few major ports. Species subject to Amendment 21 allocations would be: lingcod, Pacific cod, sablefish south of 36° N. lat., Pacific ocean perch, widow rockfish, chilipepper rockfish, splitnose rockfish, yellowtail rockfish north of 40° 10′ N. lat., shortspine thornyhead (north and south of 34° 27′ N. lat.), longspine thornyhead north of 34° 27′ N. lat., darkblotched rockfish, minor slope rockfish (north and south of 40° 10′ N. lat.), Dover sole, English sole, petrale sole, arrowtooth flounder, starry flounder, and Other Flatfish. While the preferred Amendment 21 allocations of these species do not differ significantly from status quo ad hoc allocations made biennially, there is more certainty in future trawl harvest opportunities, which enables better business planning for participants in the rationalized fishery. This is the main purpose for the Amendment 21 actions.

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

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

halibut in Area 2A trawl fisheries is to limit the bycatch and progressively reduce the bycatch to provide more benefits to directed halibut fisheries. The program establishes a limit for total Pacific halibut bycatch mortality (legal-sized and sublegal fish) through the use of an individual bycatch quota in the trawl fishery. The initial amount for the first four years of the trawl rationalization program would be calculated by taking 15 percent of the Area 2A Total Constant Exploitation Yield (CEY) as set by the IPHC for the previous year, not to exceed 130,000 lbs per year for total mortality. For example, if the trawl rationalization program went into effect in 2013, the trawl halibut IBQ would be set at 15 percent of the Area 2A CEY adopted for 2012 or 130,000 lbs per year, whichever is less, for each year from 2013 through 2016 (years 1 through 4 of the program). Beginning with the fifth year of implementation, the maximum amount set aside for the trawl rationalization program would be reduced to 100,000 lbs per year for total mortality. This amount may be adjusted through the biennial specifications process for future years.

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

Effects of Amendment 20—Trawl Rationalization

An overall comprehensive model that simultaneously captures changes in fishermens' behavior, changes in the markets, and changes in communities was not feasible because of lack of data and empirical analyses that show needed relationships. Instead, a set of models designed to focus on specific issues was developed. For example, models were used to: analyze the effects of the initial allocation of QS in the trawl IFQ program; project geographic shifts in fishery patterns; and illustrate the potential for reducing bycatch, increasing target catch, and increasing revenues. To illustrate the benefits of the IFQ program, a model projecting the expected amount of fleet consolidation in the shorebased non-whiting fishery was developed. This model illustrated the potential for the fleet to reduce bycatch and potentially increase the amount of target species harvested. This model was primarily based on bycatch reduction experiences in the Pacific whiting fishery and under an Exempted Fishing Permit carried out in the arrowtooth flounder fishery. The model accounted for the fact that trawlers harvest many species (multiple outputs). The model also used fish ticket data and the data from the recently completed West Coast Limited Entry Cost Earnings Survey sponsored by the NMFS Northwest Fisheries Science Center. (For the other sectors, similar models could not be developed because the appropriate cost data was unavailable.)

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

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

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

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

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

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

Costs for the non-whiting sector of the limited entry trawl fishery are expected to decrease under the preferred alternative because of productivity gains related to fleet consolidation. Productivity gains would be achieved through lower capital requirements and a move to more efficient vessels. Operating costs for the non-whiting sector are predicted to decrease by as much as 60 percent annually. Based on estimates of current costs, this percentage decrease represents a $13.8 million cost reduction relative to the no action alternative.

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

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

New entrants are likely to face a barrier to entry in the Pacific coast groundfish limited entry trawl fishery in the form of the cost of acquiring QS (or a coop share in the case of the at-sea whiting sector). This disadvantages them in comparison to those entities that receive an initial allocation of harvest privileges. Small entities may be particularly disadvantaged to the degree that they may find it more difficult to finance such quota purchases. Among the goals the Council identified for the adaptive management program was to use the reserved non-whiting QS to facilitate new entry into the fishery. In addition, the Council identified, as a trailing action, a framework to allow the establishment and implementation of Community Fishing Associations as part of the adaptive management program. These entities could facilitate entry into the fishery by leasing QS at below market rates, thereby leveling the playing field in terms of costs between initial recipients of QS and new entrants.

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

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

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

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

The allocation of 20 percent of the initial shorebased whiting QS to the shoreside processor portion of the groundfish fishery would give these processors more influence in negotiations over ex-vessel prices and would tend to offset the gains in bargaining power for harvesters. For example, a processor could use QS to induce a harvester that is short of quota pounds for a Pacific whiting trip to make deliveries under specified conditions and prices. However, because of a reduction in peak harvest volume, fewer processing companies and/or facilities may be necessary to handle harvest volumes of Pacific whiting, meaning some companies may find themselves without enough product to continue justifying processing operations of Pacific whiting. Revenues from harvesting and processing trawl-caught groundfish are expected to increase. Revenues in the non-whiting trawl sector are projected to increase by 20 to 80 percent in a rationalized fishery, depending on bycatch rate reductions and stock status. Revenue increases are mainly expected because under rationalized fisheries, target species quotas can be more fully utilized. Currently, in the non-whiting sector, cumulative landing limits for target species have to be set lower because the bycatch of overfished species cannot be directly controlled. Introducing accountability at the individual vessel level provides a strong incentive for bycatch avoidance (because of the actual or implicit cost of quota needed to cover bycatch species) and prevents the bycatch of any one vessel from affecting the harvest opportunity of others. Whiting fisheries are more directly managed through quotas, and in recent years, by limits on bycatch. Beginning in 2009, bycatch limits have been established for each of the three whiting sectors. For the shore-based and mothership whiting sectors, the fishery can potentially close before the whiting allocation is fully harvested because a bycatch cap is reached. (The catcher-processor sector currently operates as a voluntary co-op and is therefore better able to coordinate harvest strategy to avoid reaching bycatch limits.) However, in general, the whiting sectors have been able to harvest their sector allocations. Whiting vessels could increase revenues due to improved product recovery as a result of the ability to better control harvest timing. As mentioned above, the ability for vessels managed under IFQs to use other types of legal groundfish gear could allow some increases in revenue by targeting higher-value line or pot gear caught fish.

Harvester and possibly processor costs are expected to decrease because of productivity gains related to fleet consolidation. Cost savings would be due to lower capital requirements and a move to more efficient vessels in the non-whiting sector. Costs are predicted to decrease by as much as 60 percent annually, which based on estimates of current operating costs would represent a $13.8 million decrease. Similar levels of consolidation are expected for shorebased and mothership catcher vessels. Proposed mitigation measures could reduce these costs savings. For example, a 1 percent quota share accumulation limit could reduce cost savings by as much as 20 percent. But the accumulation limits considered in the alternatives are not expected to introduce higher costs at current prices and harvest volume. The proposed action would introduce some new costs. First, up to 3 percent of the value of landings may be assessed to cover administrative and management costs. Second, new at-sea observer requirements would be introduced and vessels would have to pay the cost, estimated at $350–$500 a day.

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

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

The Amendment 20 DEIS IRFA presents an explicit range of costs based on different daily observer cost rates. What follows is a summary of those estimates—these estimates are focused on the shorebased non-whiting fishery so that it is compared to the results of the NWFSC economic model of this fishery. After a transition period, for the shorebased fishery, the initial estimates of the annual federal and state agency costs to run this program are about $5 million; and after the transition period, these costs could fall to $4.0 million. Based on the observer cost of $500 per day, the annual costs to the vessel of observer monitoring is about $4 million. Based on $350 per day, the annual costs of compliance monitors is just over $1 million. These figures add up to about $10 million. From a cost-benefit viewpoint, if consolidation leads to $14 million savings from reduced harvesting costs and the new program

increases the tracking and monitoring costs of $10 million, there is a projected net gain of about $4 million. These estimates do not take into account expectations that agency, observer and compliance costs are likely to be reduced due to consolidation or the expected increases in revenues discussed above. Better planning by the industry and companies that provide the observers and compliance monitors should further reduce costs. Recent analyses developed for the North Pacific Fishery Management Council and for the New England Fishery Management Council were reviewed. The New England Council analysis includes observer cost estimates associated with the Canadian Pacific Groundfish fishery. Based on a review of these analyses, a daily observer rate of $350 a day is feasible. If so, the annual shoreside non-whiting costs of observers and catch monitors will add up to about $3.5 million. (For purposes of implementing the observer and catch monitoring reimbursement program, NMFS is continuing to research what is the appropriate daily rate.)

In contrast to the shoreside non-whiting fishery, the effect of the preferred alternative on revenues and costs in the whiting sector of the limited entry trawl fishery can only be discussed qualitatively, as there is no economic model because of lack of cost data. The lower motivation to "race for fish" due to coop harvest privileges is expected to result in improved product quality, slower-paced harvest activity, increased yield (which should increase ex-vessel prices), and enhanced flexibility and ability for business planning. The overall effect of these changes would be higher revenues and profits for harvesters in the shoreside and mothership portions of the whiting fishery in comparison to the no action alternative. Under the preferred alternative, some consolidation may occur in the shoreside and mothership sectors of the Pacific whiting fishery, though the magnitude of consolidation is expected to be less than in the non-whiting sector. The existing catcher-processor coop would continue under the preferred alternative, with effects on the catcher-processor sector that look similar, or identical, to those of the no action alternative. However, the change from a vessel-based limit under Amendment 15 to the permit-based limit of Amendment 21 will provide additional flexibility that currently does not exist in the catcher-processor fishery. Using estimates of $350 per day for observers and compliance monitors, the total annual costs of observers and catch monitors for the whiting sector (shoreside harvesters, processors, mothership processors, mothership catcher vessels, and catcher-processors) is about $1.5 million. Additional agency costs associated with managing these whiting fisheries are included in the estimates provided in the above discussion on shorebased non-whiting costs.

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

NMFS makes the following conclusions based primarily on analyses associated with fish ticket data and limited entry permit data, available employment data provided by processors, information on the charterboat and tribal fleets, and available industry responses to on-going surveys on ownership. Entities were analyzed as to whether they were only affected by the Amendment 21 allocation processes (non-trawl), or if they were affected by both Amendments 20 and 21 (trawl).

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

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

NMFS received several comments that concerned the burdens and effects on small businesses and on small communities, but not specifically on the IRFA. These include comments about the burden of paperwork and costs of the program on small businesses and small communities; that NMFS should minimize and mitigate impacts on small businesses and small communities; that the program should not result in an unfair allocation between the states; that the program should be designed to result in an even consolidation between states and between the sectors (non-whiting shorebased IFQ, whiting shorebased IFQ, mothership sector, and

catcher/processor sector) and that the program should not benefit large businesses at the expense of small businesses.

NMFS responded to similar comments in the final initial issuance rule (75 FR 60868, October 1, 2010) on the impacts on small businesses. In particular, concerns were raised about negative impacts on smaller boats, deckhands, and smaller boats; that program costs to fishermen, including the costs of entering the fishery and the costs of observers and monitoring are too high; that observer rules need to change for trawl and small boats to reflect the vastly different bycatch which occurs when mistakes are made; about the impact of the allocation formulas on Fort Bragg fishermen; concern that average fishermen will not be able to afford to participate and that this will lead to increased consolidation and leave many ports no longer viable; about negative impacts on processors, that small processors will be driven out of business due to consolidation; and that it will eliminate the "mom and pop businesses."

NMFS has responded to these comments in detail in the final initial issuance rule. The overall general nature of NMFS' response is applicable to the comments associated with this rule. In terms of impacts on small businesses, the trawl rationalization program is intended to increase net economic benefits, create economic stability, provide full utilization of the trawl sector allocation, consider environmental impacts, and promote conservation through individual accountability for catch and bycatch. The allocations of quota under the new program do not differ significantly from status quo allocations made biennially in terms of total allocations. However, instead of fleetwide quotas, there will now be individual allocations of quota shares and quota pounds to permit owners. Allocations of overfished species constrain all groundfish fishermen, for both large and small operations. In some cases, smaller operators may be constrained to a greater extent. This was recognized in development of the program, and operators are encouraged to work together cooperatively, through mechanisms like combining and sharing quota amounts. The program provides for leasing of additional quota as needed to facilitate operations. The program includes provisions that would have a beneficial impact on small entities. It would create a management program under which most recent participants in the Pacific Coast groundfish limited entry trawl fishery (many of which are small entities) would be eligible to continue participating in the fishery and under which the fishery itself would experience an increase in economic profitability. Small entities choosing to exit the fishery should receive financial compensation from selling their permit or share of the resource. To prevent a particular individual, corporation, or other entity from acquiring an excessive share of the total harvest privileges in the program, accumulation limits would restrict the amount of harvest privileges that can be held, acquired, or used by individuals and vessels. In addition, for the shoreside sector of the fishery, an AMP was created to mitigate any adverse impacts, including impacts on small entities and communities that might result from the program.

It is expected that the shorebased IFQ fishery will lead to consolidation and this may affect small processors, particularly if they are in disadvantaged ports. Chapter 4 of the FEIS analyzed the effects on processors from various perspectives: The distribution of landings across west coast ports may change as a result of fleet consolidation, industry agglomeration, and the comparative advantage of ports (a function of bycatch rates in the waters constituting the operational area for the port, differences in infrastructure, and other factors). In particular, the Council analysis indicated that processors associated with disadvantaged communities may see trawl groundfish volumes decline. The analysis highlights that those processors receiving landings from Central California or Neah Bay may see a reduction in trawl caught groundfish if the market is able to redirect activity toward more efficient and advantaged ports. However, in addition to increased landings that are expected to result from the IFQ program, small processors and disadvantaged communities may benefit from the control limits, vessel limits, and adaptive management policies. Control limits will limit the ability of large processors to obtain shares of the fisheries while the adaptive management processes will allow the Council to consider the impacts on small processors, and disadvantaged communities when allocating the adaptive management quota (10 percent of the total non-whiting trawl quotas). Although vessel accumulation limits tend to lower economic efficiency and restrict profitability for the average vessel, they could help retain vessels in communities because more vessels would remain.

Another process by which small processors and disadvantaged communities may benefit from will be the future development of CFAs. Some of the potential benefits of CFAs include: Ensuring access to the fishery resource in a particular area or community to benefit the local fishing economy; enabling the formation of risk pools and sharing monitoring and other costs; ensuring that fish delivered to a local area will benefit local processors and businesses; providing a local source of QSs for new entrants and others wanting to increase their participation in the fishery; increasing local accountability and responsibility for the resource; and benefiting other providers and users of local fishery infrastructure.

In summary, the primary impacts of this rule appear to be on shoreside processors which are a mix of large and small processors, and on shorebased trawlers which are also a mix of large and small companies. The non-whiting shorebased trawlers are currently operating at a loss or at best are "breaking even." The new rationalization program would lead to profitability, but only with a reduction of about 50 percent of the fleet. This program would lead to major changes in the fishery. To help mitigate against these changes, as discussed above, the agency has announced its intent, subject to available Federal funding, that participants would initially be responsible for 10 percent of the cost of hiring observers and catch monitors. The industry proportion of the costs of hiring observers and catch monitors would be increased every year so that by 2014, once the fishery has transitioned to the rationalization program, the industry would be responsible for 100 percent of the cost of hiring the observers and catch monitors. NMFS believes that an incrementally reduced subsidy to industry funding would enhance the observer and catch monitor program's stability, ensure 100 percent observer and catch monitor coverage, and facilitate the industries' successful transition to the new quota system. In addition, to help mitigate against negative impacts of this program, the Council has adopted an Adaptive Management Program where starting in year 3 of the program, 10 percent of non-whiting QS would be set aside every year to address community impacts and industry transition needs. After reviewing the initial effects of IFQ programs in other parts of the world, the council had placed a short term QS trading prohibition so that fishermen can learn from their experiences and not make premature sales of their QS. The Council is also envisioning future regulatory processes that would allow community fisheries associations to be

established to help aid communities and fishermen.

NMFS has taken a hard look at the reporting burden of the program and we believe we have reduced the burden on small businesses to the extent possible. The reporting requirements are necessary. With respect to the effects on the States including industry consolidation effects, NMFS acknowledges that this program has different impacts on different states and on different communities. This rulemaking does not set up an allocation scheme. As mentioned above, one of the potential purposes of the Adaptive Management Program is to address differential impacts upon communities and thus the states.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northwest Regional Office and the guide will be sent to all permit owners for the fishery. The guide and this final rule will also be available on the Northwest Regional Office Web site (*see* **ADDRESSES**) and upon request.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by the Office of Management and Budget (OMB) under control numbers 0648–0271 (Northwest Region Logbook Family of Forms), 0648–0573 (Expanded Vessel Monitoring System Requirement for the Pacific Coast Groundfish Fishery), 0648–0593 (NMFS Observer Programs' Information That Can be Gathered Only Through Questions), 0648–0618 (West Coast Groundfish Trawl Economic Data), 0648–0620 (Pacific Coast Groundfish Trawl—permits and licenses), and 0648–0619 (Northwest Region Groundfish Trawl Fishery Monitoring and Catch Accounting Program). Public reporting burden for the Economic Data Collection survey is estimated to average 8 hours per response (268 responses). Public reporting burden for QS Permit Renewal Application is estimated to average 0.33 hours per response (120 responses), First Receiver Site License Initial Issuance/Renewal Application is estimated to average 0.5 hours per response (80 responses), MS Renewal Application is estimated to average 0.33 hours per response (6 responses), MS Transfer Application is estimated to average 0.5 hours per response (3 responses), C/P Coop Permit Transfer Application is estimated to average 3 hours per response (1 response), MS Coop Permit Application is estimated to average 3 hours per response (1 response), Change in vessel fishing for coop form is estimated to average 0.33 hours per response (3 responses), Material Change form is estimated to average 2 hours per response (3 responses), MS Withdrawal/Mutual Exception form is estimated to average 2 hours per response (2 responses), Ownership Interest Form Renewal is estimated to average 0.5 hours per response (156 responses), Ownership Interest Form Transfer, is estimated to average 0.5 hours per response (20 responses), Vessel Account Registration (Initial) is estimated to average 0.5 hours per response (120 responses), Vessel Account Registration (ongoing) is estimated to average 0.5 hours per response (10 responses), Vessel Account Renewal (annual) is estimated to average 0.33 hour per response (30 responses), QS Account Registration is estimated to average 1 hour per response (1 response), QS/QP transfer from QS account to vessel account is estimated to average 0.25 hours per response (180 responses), QP Transfer from vessel account to vessel account is estimated to average 0.25 hours per response (600 responses), Transaction Dispute Request is estimated to average 1 hour per response (10 responses). Public reporting burden for the catch monitor providers, Application preparation & submission is estimated to average 10 hours per response (3 responses), Training registration is estimated to average 1 hour per response (3 responses), Exit Interview registration is estimated to average 10 minutes per response (3 responses), Appeals—written response and submission is estimated to average 4 hours per response (1 response). Public reporting burden for the catch monitors application appeals—written response & submission is estimated to average 4 hours per response (5 responses). Public reporting burden for the catch monitoring plans, Preparation & submission is estimated to average 4 hours per response (80 responses), Inspection is estimated to average 2 hours per response (80 response), inseason scale testing is estimated to average 1 hour per response (80 responses), reports are estimated to average 10 minutes per response (2,400 responses). Public reporting burden for electronic fish tickets is estimated to average 10 minutes per response (400 responses). Public reporting burden for the changes to the declaration reporting system (OMB Control No. 0648–0573) and the changes to the observer program (OMB Control No. 0648–0593) are not expected to change the public reporting burden. Public reporting burden for the changes to the cease fishing report for the at-sea whiting fisheries (OMB Control No. 0648–0271) will reduce the public reporting burden. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Send comments on these or any other aspects of the collection of information to NMFS, Northwest Region, at the **ADDRESSES** section above; and to OMB by e-mail to *OIRA_Submission@omb.eop.gov;* or fax to 202–395–7285.

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

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the Pacific Coast groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the FMP for the Pacific Coast groundfish fishery was not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

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

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

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

Lower Columbia River coho (70 FR 37160, June 28, 2005) were recently listed and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead.

The Southern Distinct Population Segment (DPS) of green sturgeon was listed as threatened under the ESA (71 FR 17757, April 7, 2006). The southern DPS of Pacific eulachon was listed as threatened on March 18, 2010, under the ESA (75 FR 13012). NMFS has reinitiated consultation on the fishery, including impacts on green sturgeon, eulachon, marine mammals, and turtles. After reviewing the available information, NMFS has concluded that, consistent with Sections 7(a)(2) and 7(d) of the ESA, the proposed action would not jeopardize any listed species, would not adversely modify any designated critical habitat, and would not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

Amendments 20 and 21 to the FMP were developed after meaningful consultation and collaboration, through the Council process, with the tribal representative on the Council. The Amendments have no direct effect on tribes; these proposed regulations were deemed by the Council as "necessary or appropriate" to implement the FMP as amended.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: December 1, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR chapter VI are amended as follows:

15 CFR Chapter IX

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

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

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

■ 2. In § 902.1(b), in the table under the entry "50 CFR", add new entries and corresponding OMB numbers for §§ 660.13, 660.14, 660.16, 660.17, 660.114, 660.140, 660.150, 660.160, 660.216, and 660.316; and revise the entries for §§ 660.25 and 660.113.

The additions and revisions read as follows:

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

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR	
* * * * *	
660.13	–0573
660.14	–0573
660.16	–0593
660.17	–0619
660.25	–0203, –0620
660.113	–0271, –0573, –0618, –0619
660.114	–0618
660.140	–0593, –0619, –0620
660.150	–0593, –0620
660.160	–0593, –0620
660.216	–0593
* * * * *	
660.316	–0593
* * * * *	

50 CFR Chapter VI

PART 660—FISHERIES OFF WEST COAST STATES

■ 3. The authority citation for part 660 is revised to read as follows:

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

■ 4. In § 660.11, the definitions for "Processing or to process" and "Processor" are revised to read as follows:

§ 660.11 General definitions.

* * * * *

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

mean heading and gutting unless additional preparation is done. (Also see an exception to certain requirements at § 660.131(a), subpart D pertaining to Pacific whiting shoreside vessels 75-ft (23-m) or less LOA that, in addition to heading and gutting, remove the tails and freeze catch at sea.)

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

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

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

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

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

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

(2) [Reserved]

* * * * *

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

§ 660.12 General groundfish prohibitions.

* * * * *

(e) * * *

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

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

(9) Fail to meet the observer provider responsibilities specified at §§ 660.140, 660.150, 660.160, subpart D.

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

(2) Interfere with or bias the monitoring procedure employed by a catch monitor, including either mechanically or manually sorting or discarding catch before it's monitored.

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

(4) Harass a catch monitor by conduct that:

(i) Has sexual connotations,

(ii) Has the purpose or effect of interfering with the catch monitor's work performance, and/or

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

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

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

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

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

(9) Fail to meet the catch monitor provider responsibilities specified at § 660.140, subpart D.

* * * * *

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

§ 660.13 Recordkeeping and reporting.

* * * * *

(d) * * *

(5) * * *

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

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

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

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

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

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

* * * * *

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

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

(*8*) Limited entry demersal trawl, shorebased IFQ,

* * * * *

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

§ 660.14 Vessel Monitoring System (VMS) requirements.

* * * * *

(b) * * *

(1) Any vessel registered for use with a limited entry "A" endorsed permit (i.e., not an MS permit) that fishes in state or Federal waters seaward of the baseline from which the territorial sea is measured off the States of Washington, Oregon or California (0–200 nm offshore).

* * * * *

■ 8. Section 660.15 is revised to read as follows:

§ 660.15 Equipment requirements.

(a) *Applicability.* This section contains the equipment and operational requirements for scales used to weigh catch at sea, scales used to weigh catch at IFQ first receivers, computer hardware for electronic fish ticket software, and computer hardware for electronic logbook software. Unless otherwise specified by regulation, the operator or manager must retain, for 3 years, a copy of all records described in this section and make available the records upon request of NMFS staff or authorized officer.

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

(2) *Annual inspection.* Once a scale is installed on a vessel and approved by NMFS for use, it must be inspected annually as described in 50 CFR 679.28(b).

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

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

(i) *Belt scales.* The MPE for the daily at-sea scale test is plus or minus 3 percent of the known weight of the test material. The scale must be tested by weighing at least 400 kg (882 lb) of fish or an alternative material supplied by the scale manufacturer on the scale under test. The known weight of the fish or test material must be determined by weighing it on a platform scale approved for use under 50 CFR 679.28(b)(7).

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

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

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

(A) Notify the observer at least 15 minutes before the time that the test will be conducted, and conduct the test while the observer is present.

(B) Conduct the scale test and record the following information on the at-sea scale test report form:

(*1*) Vessel name;

(*2*) Month, day, and year of test;

(*3*) Time test started to the nearest minute;

(*4*) Known weight of test weights;

(*5*) Weight of test weights recorded by scale;

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

(*7*) Sea conditions at the time of the scale test.

(C) Maintain the test report form on board the vessel until the end of the fishing year during which the tests were conducted, and make the report forms available to observers, NMFS staff, or authorized officers. In addition, the vessel owner must retain the scale test report forms for 3 years after the end of the fishing year during which the tests were performed. Each scale test report form must be signed by the vessel operator immediately following completion of each scale test.

(5) *Scale maintenance.* The vessel owner must ensure that the vessel operator maintains the scale in proper operating condition throughout its use, that adjustments made to the scale are made so as to bring the performance errors as close as practicable to a zero value, and that no adjustment is made that will cause the scale to weigh inaccurately.

(6) *Printed reports from the scale.* The vessel owner must ensure that the printed reports are provided to NMFS as required by this paragraph. Printed reports from the scale must be maintained on board the vessel until the end of the year during which the reports were made, and be made available to NMFS staff or authorized officers. In addition, the vessel owner must retain printed reports for 3 years after the end of the year during which the printouts were made.

(i) *Reports of catch weight and cumulative weight.* Reports must be printed at least once every 24 hours. Reports must also be printed before any information stored in the scale computer memory is replaced. Scale weights must not be adjusted by the scale operator to account for the perceived weight of water, slime, mud, debris, or other materials. Scale printouts must show:

(A) The vessel name and Federal vessel permit number;

(B) The date and time the information was printed;

(C) The haul number;

(D) The total weight of the haul; and

(E) The total cumulative weight of all fish and other material weighed on the scale since the last annual inspection.

(ii) *Printed report from the audit trail.* The printed report must include the information specified in sections 2.3.1.8, 3.3.1.7, and 4.3.1.8 of appendix A to 50 CFR part 679. The printed report must be provided to the authorized scale inspector at each scale inspection and must also be printed at any time upon request of NMFS staff or other authorized officer.

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

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

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

(2) *Visibility.* NMFS staff, NMFS-authorized personnel, or authorized officers must be allowed to observe the

weighing of catch on the scale and be allowed to read the scale display at all times.

(3) *Printed scale weights.* (i) An IFQ first receiver must ensure that printouts of the scale weight of each delivery or offload are made available to NMFS staff, to NMFS-authorized personnel, or to authorized officers at the time printouts are generated. An IFQ first receiver must maintain printouts on site until the end of the fishing year during which the printouts were made and make them available upon request by NMFS staff, NMFS-authorized personnel, or authorized officers for 3 years after the end of the fishing year during which the printout was made.

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

(A) The IFQ first receiver's name;

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

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

(D) The date the information is printed; and

(E) The name and vessel registration or documentation number of the vessel making the delivery. The scale operator may write this information on the scale printout in ink at the time of printing.

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

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

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

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

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

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

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

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

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

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

(ii) [Reserved]

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

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

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

(iii) Microsoft Access 2003 or newer.

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

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

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

■ 9. Section 660.16 is revised to read as follows:

§ 660.16 Groundfish observer program.

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

(b) *Purpose.* The purpose of the Groundfish Observer Program is to collect fisheries data necessary and appropriate for, among other relevant purposes, management, compliance monitoring, and research in the groundfish fisheries and for the conservation of living marine resources.

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

West Coast Groundfish Fishery	Regulation section
(1) Shorebased IFQ Program—Trawl Fishery	§ 660.140, subpart D.

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

■ 10. Section 660.17 is added to read as follows:

§ 660.17 Catch monitors and catch monitor providers.

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

(b) *Catch monitor certification requirements.* NMFS may certify individuals who:

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

(2) Have successfully completed NMFS-approved training.

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

(ii) If a candidate fails training, he or she will be notified in writing on or before the last day of training. The notification will indicate: The reasons the candidate failed the training; whether the candidate can retake the training, and under what conditions.

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

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

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

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

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

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

(4) Keep confidential and not disclose data and observations collected at the first receiver to any person except, NMFS staff or authorized officers or others as specifically authorized by NMFS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) Absence of a conflict of interest.

(D) Absence of relevant criminal convictions.

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

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

(e) *Catch monitor provider responsibilities.* (1) *Provide qualified candidates to serve as catch monitors.* To be qualified a candidate must:

(i) Be a U.S. citizen or have authorization to work in the United States;

(ii) Be at least 18 years of age;

(iii) Have a high school diploma and;

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

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

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

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

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

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

(A) Physical fitness exams shall be conducted by a medical doctor who has been provided with a description of the job duties and work conditions and who provides a written conclusion regarding the candidate's fitness relative to the required duties and work conditions. A signed and dated statement from a licensed physician that he or she has physically examined a catch monitor or catch monitor candidate. The statement must confirm that, based on that physical examination, the catch monitor or catch monitor 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 catch monitor or catch monitor candidate from performing his or her duties satisfactorily. The physician's statement must be submitted to the catch monitor program office prior to certification of a catch monitor. The physical exam must have occurred during the 12 months prior to the catch monitor's or catch monitor candidate's deployment. The physician's statement will expire 12 months after the physical exam occurred. A new physical exam must be performed, and accompanying statement submitted, prior to any deployment occurring after the expiration of the statement.

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

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

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

(*2*) States Worker's Compensation as required.

(*3*) Commercial General Liability.

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

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

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

(i) Compliance with the standards of conduct, responsibilities, conflict of interest standards and drug and alcohol policy;

(ii) Willingness to complete all responsibilities of current deployment prior to performing jobs or duties which are not part of the catch monitor responsibilities.

(iii) Commitment to return all sampling or safety equipment issued for the deployment.

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

(i) Must have a valid catch monitor certification;

(ii) Must not have informed the provider prior to the time of assignment that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement, as required in paragraph (e)(1)(vii)(A) of this section that would prevent him or her from performing his or her assigned duties; and

(iii) Must have successfully completed all NMFS required training and briefing before assignment.

(5) *Respond to industry requests for catch monitors.* A catch monitor provider must provide a catch monitor for assignment pursuant to the terms of the contractual relationship with the first receiver to fulfill first receiver requirements for catch monitor coverage under paragraph (e)(10)(i)(C)(*1*)(*ii*) of this section. An alternate catch monitor must be supplied in each case where injury or illness prevents the catch monitor from performing his or her duties or where the catch monitor resigns prior to completion of his or her duties. If the catch monitor provider is unable to respond to an industry request for catch monitor coverage from a first receiver for whom the provider is in a contractual relationship due to the lack of available catch monitors, the provider must report it to NMFS at least 4 hours prior to the expected assignment time.

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

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

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

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

(8) *Provide catch monitor assignment logistics.*

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

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

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

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

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

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

(F) While under contract with a permitted catch monitor provider, catch monitor shall be provided with accommodations in accordance with the contract between the catch monitor and the catch monitor provider. If the catch monitor provider is responsible for providing accommodations under the contract with the catch monitor, the accommodations must be at a licensed hotel, motel, bed and breakfast, or other accommodations that have an assigned bed for each catch monitor that no other person may be assigned to for the duration of that catch monitor's stay.

(ii) [Reserved]

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

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

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

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

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

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

(A) Training registration materials consist of the following:

(*1*) Date of requested training;

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

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

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

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

(B) Briefing registration materials consist of the following:

(*1*) Date and type of requested briefing session;

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

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

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

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

(*2*) [Reserved]

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

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

(B) Catch monitors.

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

(iv) *Catch monitor status report.* Each Tuesday, catch monitor providers must provide NMFS with an updated list of contact information for all catch monitors that includes the catch monitor's name, mailing address, e-mail address, phone numbers, first receiver assignment for the previous week and whether or not the catch monitor is "in service", indicating when the catch monitor has requested leave and/or is not currently working for the provider.

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

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

(A) Any information regarding possible catch monitor harassment;

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

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

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

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

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

(14) *Catch monitor program training and certification*—(i) A training certification signifies the successful completion of the training course required to obtain catch monitor certification. This endorsement expires when the catch monitor has not been deployed and performed sampling duties as required by the catch monitor program office for a period of time, specified by the catch monitor program, after his or her most recent debriefing. The catch monitor can renew the certification by successfully completing training once more.

(ii) *Catch monitor program annual briefing.* Each catch monitor must attend an annual briefing prior to his or her first deployment within any calendar year subsequent to a year in which a training certification is obtained. To maintain certification, a catch monitor must successfully complete the annual briefing, as specified by the catch monitor program. All briefing attendance, performance, and conduct standards required by the catch monitor program must be met.

(iii) *Maintaining the validity of a catch monitor certification.* After initial issuance, a catch monitor must keep their certification valid by meeting all of the following requirements specified below:

(A) Successfully perform their assigned duties as described in the Catch Monitor Manual or other written instructions from the catch monitor program.

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

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

(D) Successfully complete NMFS-approved annual briefings as prescribed by the catch monitor program.

(E) Successful completion of a briefing by a catch monitor 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 catch monitor program.

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

(G) Submit all data and information required by the catch monitor program within the program's stated guidelines.

■ 11. Section 660.18 is revised to read as follows:

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

(a) *Certification official.* The Regional Administrator (or a designee) will designate a NMFS catch monitor certification official who will make decisions on whether to issue or deny catch monitor or catch monitor provider certification pursuant to the regulations at §§ 660.17 and 660.18, subpart C.

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

(i) § 660.17(b) for catch monitors; and

(ii) § 660.17(d) for catch monitor providers.

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) *Decertification.* (1) *Decertification review official*—The Regional

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

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

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

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

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

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

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

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

(3) *Issuance of IAD.* Upon determination that decertification is warranted under § 660.17(c) or (e), the decertification official will issue a written IAD. The IAD will identify the specific reasons for the action taken. Decertification is effective 30 calendar days after the date on the IAD, unless there is an appeal.

(4) *Appeals.* A certified catch monitor who receives an IAD that suspends or revokes his or her catch monitor certification may appeal the determination within 30 calendar days after the date on the IAD to the Office of Administrative Appeals pursuant to § 679.43.

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

§ 660.25 Permits.

* * * * *

(b) * * *

(4) *Limited entry permit actions—renewal, combination, stacking, change of permit ownership or permit holdership, and change in vessel registration—*

(i) * * *

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

* * * * *

(iv) *Changes in permit ownership and permit holder*—(A) *General.* The permit owner may convey the limited entry permit to a different person. The new permit owner will not be authorized to use the permit until the change in permit ownership has been registered with and approved by the SFD. The SFD will not approve a change in permit ownership for a limited entry permit with a sablefish endorsement that does not meet the ownership requirements for such permit described at paragraph (b)(3)(iv)(C) of this section. The SFD will not approve a change in permit ownership for a limited entry permit with an MS/CV endorsement or an MS permit that does not meet the ownership requirements for such permit described at § 660.150(g)(3), subpart D, and § 660.150(f)(3), subpart D, respectively. Change in permit owner and/or permit holder applications must be submitted to SFD with the appropriate documentation described at paragraph (b)(4)(vii) of this section.

(*1*) During the initial issuance application period for the trawl rationalization program, NMFS will not review or approve any request for a change in limited entry trawl permit owner, as specified at § 660.140(d)(8)(viii) for QS permit applicants, at § 660.150(g)(6)(vii) for MS/CV endorsement applicants, and at § 660.160(d)(7)(vii) for C/P endorsement applicants. The initial issuance application period for the trawl rationalization program will begin on either November 1, 2010, or the date upon which the application is received by NMFS, whichever occurs first.

(*2*) [Reserved]

* * * * *

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

(B) *Application.* A complete application must be submitted to SFD in order for SFD to review and approve a change in vessel registration. At a minimum, a permit owner seeking to change vessel registration of a limited entry permit shall submit to SFD a signed application form and his/her current limited entry permit before the first day of the cumulative limit period in which they wish to fish. If a permit owner provides a signed application and current limited entry permit after the first day of a cumulative limit period, the permit will not be effective until the succeeding cumulative limit period. SFD will not approve a change in vessel registration until it receives a complete application, the existing permit, a current copy of the USCG 1270, and other required documentation.

(C) *Effective date.* Changes in vessel registration on permits will take effect no sooner than the first day of the next major limited entry cumulative limit period following the date that SFD receives the signed permit change in vessel registration form and the original limited entry permit, except that changes in vessel registration on MS permits and C/P-endorsed permits will take effect immediately upon reissuance to the new vessel, and a change in vessel registration on MS/CV-endorsed permits will take effect immediately upon reissuance to the new vessel only on the second transfer for the year. No change in vessel registration is effective until the limited entry permit has been reissued as registered with the new vessel.

* * * * *

(vi) *Restriction on frequency of changes in vessel registration*—(A) *General.* A permit owner may designate the vessel registration for a permit as "unidentified," meaning that no vessel has been identified as registered for use with that permit. No vessel is authorized to use a permit with the vessel registration designated as "unidentified." A vessel owner who removes a permit from his vessel and registers that permit as "unidentified" is not exempt from VMS requirements at

§ 660.14, subpart C unless specifically authorized by that section. When a permit owner requests that the permit's vessel registration be designated as "unidentified," the transaction is not considered a change in vessel registration for purposes of this section. Any subsequent request by a permit owner to change from the "unidentified" status of the permit in order to register the permit with a specific vessel will be considered a change in vessel registration and subject to the restriction on frequency and timing of changes in vessel registration.

* * * * *

(C) *Limited entry MS permits and limited entry permits with an MS/CV or a C/P endorsement.* Limited entry MS permits and limited entry permits with an MS/CV or a C/P endorsement may be registered to another vessel up to two times during the fishing season as long as the second change in vessel registration is back to the original vessel. The original vessel is either the vessel registered to the permit as of January 1, or if no vessel is registered to the permit as of January 1, the original vessel is the first vessel to which the permit is registered after January 1. After the original vessel has been established, the first change in vessel registration would be to another vessel, but any second change in vessel registration must be back to the original vessel. For an MS/CV-endorsed permit on the second change in vessel registration back to the original vessel, that vessel must be used to fish exclusively in the MS Coop Program described § 660.150, and declare in to the limited entry mid water trawl, Pacific whiting mothership sector as specified at § 660.13(d)(5)(iv).

* * * * *

(e) *Coop permit*—(1) *MS coop permit.* An MS coop permit conveys a conditional privilege to an eligible coop entity to receive and manage a coop's allocation of designated species and species groups. An MS coop permit is not a limited entry permit. The provisions for the MS coop permit, including eligibility, annual registration, fees, and appeals are described in the MS Coop Program at § 660.150, subpart D.

(2) *C/P coop permit.* A C/P coop permit conveys a conditional privilege to an eligible coop entity to receive and manage a coop's allocation of designated species and species groups. A C/P coop permit is not a limited entry permit. The provisions for the C/P coop permit, including eligibility, annual registration, fees, and appeals are described in the C/P Coop Program at § 660.160, subpart D.

* * * * *

(g) * * *

(4) *Timing of appeals.* (i) For permit actions related to the application and initial issuance process for QS permits, MS permits, MS/CV endorsements, and C/P endorsements for the trawl rationalization program listed in subpart D of part 660, if an applicant appeals an IAD, the appeal must be postmarked, faxed, or hand delivered to NMFS no later than 60 calendar days after the date on the IAD. If the applicant does not appeal the IAD within 60 calendar days, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(ii) For all other permit actions, if an applicant appeals an IAD, the appeal must be postmarked, faxed, or hand delivered to NMFS no later than 30 calendar days after the date on the IAD. If the applicant does not appeal the IAD within 30 calendar days, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(iii) The time period to submit an appeal begins with the date on the IAD. If the last day of the time period is a Saturday, Sunday, or Federal holiday, the time period will extend to the close of business on the next business day.

* * * * *

§ 660.26 [Removed]

■ 13. Section 660.26 is removed.

■ 14. In § 660.55, paragraph (i)(2) is revised to read as follows:

§ 660.55 Allocations.

* * * * *

(i) * * *

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

* * * * *

■ 15. In § 660.60, paragraph (d)(1), paragraph (h)(2), and paragraph (h)(5)(ii) are revised; and paragraphs (h)(5)(iii) and (h)(5)(iv) are removed to read as follows:

§ 660.60 Specifications and management measures.

* * * * *

(d) * * *

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

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

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

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

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

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

* * * * *

(h) * * *

(2) *Landing.* As stated at § 660.11, subpart C (in the definition of "Landing"), once the offloading of any species begins, all fish aboard the vessel are counted as part of the landing and must be reported as such. All fish from an IFQ landing must be offloaded from the vessel before a new fishing trip begins. Transfer of fish at sea is prohibited under § 660.12, subpart C, unless a vessel is participating in the primary whiting fishery as part of the mothership or catcher/processor sectors, as described at § 660.131(a), subpart D. Catcher vessels in the mothership sector must transfer all catch from a haul to the same vessel registered to an MS permit prior to the gear being set for a subsequent haul. Catch may not be transferred to a tender vessel.

* * * * *

(5) * * *

(ii) *Weight limits and conversions.* To determine the round weight, multiply the processed weight times the conversion factor. Federal commercial groundfish regulations do not supersede more restrictive state commercial groundfish regulations, including landings requirements regarding groundfish species or the condition in which they may be landed.

(A) Limited entry fixed gear or open access fisheries. The weight limit conversion factor established by the state where the fish is or will be landed

will be used to convert the processed weight to round weight for purposes of applying the trip limit or other allocation. Weight conversions provided herein are those conversions currently in use by the States of Washington, Oregon, and California and may be subject to change by those states. Fishery participants should contact fishery enforcement officials in the state where the fish will be landed to determine that state's official conversion factor.

(*1*) *Sablefish.* The following conversion applies to both the limited entry fixed gear and open access fisheries when trip limits are in effect for those fisheries. For headed and gutted (eviscerated) sablefish the weight conversion factor is 1.6 (multiply the headed and gutted weight by 1.6 to determine the round weight).

(*2*) *Lingcod.* The following conversions apply in both limited entry fixed gear and open access fisheries.

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

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

(*iii*) The weight conversion factor for headed and gutted lingcod is 1.5. The conversion factor for lingcod that has only been gutted with the head on is 1.1.

(B) *Shorebased IFQ Program.* For vessels landing sorted catch, the weight conversions for purposes of applying QP are provided below.

(*1*) *Sablefish.* The weight conversion factor for headed and gutted (eviscerated) sablefish is 1.6.

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

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

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

(*iii*) The weight conversion factor for headed and gutted (eviscerated) lingcod is 1.5; for lingcod that has only been gutted with the head on, the weight conversion factor is 1.1.

(*3*) *Pacific whiting.* For headed and gutted Pacific whiting (head removed just in front of the collar bone and viscera removed,) the weight conversion factor is 1.56; and for headed and gutted Pacific whiting with the tail removed the weight conversion factor is 2.0.

(*4*) *Rockfish (including thornyheads), except POP.* For headed and gutted (eviscerated), the weight conversion factor is 1.75; for headed and gutted, western cut (head removed just in front of the collar bone and viscera removed,) the weight conversion factor is 1.66; for headed and gutted, eastern cut (head removed just behind the collar bone and viscera removed,) the weight conversion factor is 2.0.

(*5*) *Pacific ocean perch (POP).* For headed and gutted (eviscerated), the weight conversion factor is 1.6.

(*6*) *Pacific cod.* For headed and gutted (eviscerated), the weight conversion factor is 1.58.

(*7*) *Dover sole, English sole, and* "*other flatfish*". For headed and gutted (eviscerated), the weight conversion factor is 1.53.

(*8*) *Petrale sole.* For headed and gutted (eviscerated), the weight conversion factor is 1.51.

(*9*) *Arrowtooth flounder.* For headed and gutted (eviscerated), the weight conversion factor is 1.35.

(*10*) *Starry flounder.* For headed and gutted (eviscerated), the weight conversion factor is 1.49.

* * * * *

■ 16. Section 660.100 is revised to read as follows:

§ 660.100 Purpose and scope.

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

■ 17. In § 660.111, the following definitions are removed: "Pacific whiting shoreside first receivers", "Pacific whiting shoreside or shore-based fishery", "Pacific whiting shoreside vessel," and "Vessel limits"; the definition of "Pacific whiting IFQ fishery" is revised; and new definitions are added in alphabetical order for: "Accumulation limits," "Charterer," "Complete economic data collection (EDC) form," "IFQ trip", "Lessee," and "Pacific whiting IFQ trip".

§ 660.111 Trawl fishery—definitions.

* * * * *

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

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

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

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

(ii) MS/CV permit ownership limit means the maximum amount of catch history assignment that a person may own, no more than 20 percent of the MS sector's allocation of Pacific whiting, as described at § 660.150(g)(3)(i).

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

* * * * *

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

* * * * *

Complete economic data collection (EDC) form means that a response is

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

* * * * *

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

* * * * *

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

* * * * *

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

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

* * * * *

■ 18. In § 660.112:
■ a. Paragraph (f) is removed;
■ b. Paragraph (a)(2) is added;
■ c. Paragraph (a)(3)(iii) is added;
■ d. Paragraph (a)(4) is redesignated as paragraph (a)(5), and a new paragraph (a)(4) is added; and
■ e. Paragraphs (b) through (e) are added to read as follows:

§ 660.112 Trawl fishery—prohibitions.

* * * * *

(a) * * *

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

* * * * *

(3) * * *

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

* * * * *

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

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

* * * * *

(b) *Shorebased IFQ Program*—(1) *General.* (i) Own or control by any means whatsoever an amount of QS or IBQ that exceeds the Shorebased IFQ Program accumulation limits.

(ii) Fish in the Shorebased IFQ Program with a vessel that does not have a valid vessel account or that has a vessel account with a deficit (negative balance) for any species/species group.

(iii) Have any IFQ species/species group catch (landings and discards) from an IFQ trip not covered by QP for greater than 30 days from the date the deficit (negative balance) from that trip is documented, unless the deficit is within the limits of the carryover provision specified at § 660.140(e)(5), subpart D, in which case the vessel has 30 days after the QP for the following year are issued to eliminate the deficit.

(iv) Transfer the limited entry trawl endorsed permit to another vessel or sell the limited entry trawl endorsed permit to another owner if the vessel registered to the permit has an overage (catch not covered by QP), until the overage is covered, regardless of the amount of the overage.

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

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

(vii) Fish in more than one IFQ management area, specified at § 660.140(c)(2), on the same trip.

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

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

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

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

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

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

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

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

(xiv) Discard IFQ species/species group at sea unless the observer has documented or estimated the discards.

(xv) Begin a new fishing trip until all fish from an IFQ landing have been offloaded from the vessel.

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

(ii) Fail to sort fish received from a IFQ landing prior to first weighing after offloading as specified at § 660.130(d)(2) for the Shorebased IFQ Program, except the vessels declared in to the limited entry midwater trawl, Pacific whiting shorebased IFQ at § 660.13(d)(5)(iv)(A), subpart C may weigh catch on a bulk scale before sorting as described at § 660.140(j)(2).

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

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

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

case-by-case basis, a temporary written waiver may be granted by the Assistant Regional Administrator or designee if he/she determines that the failure to obtain coverage of a catch monitor was due to circumstances beyond the control of the first receiver. The duration of the waiver will be determined on a case-by-case basis.

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

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

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

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

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

(c) *MS and C/P Coop Programs.* (1) Process Pacific whiting in the fishery management area during times or in areas where at-sea processing is prohibited for the sector in which the vessel fishes, unless:

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

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

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

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

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

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

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

(d) *MS Coop Program (coop and non-coop fisheries).* (1) Catch, take, or harvest fish in the mothership non-coop fishery with a vessel that is not registered to a current MS/CV-endorsed limited entry trawl permit.

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

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

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

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

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

(7) Process more than 45 percent of the annual mothership sector's Pacific whiting allocation.

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

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

(10) Catch, take, or harvest fish for a MS coop with a vessel that has not been identified by the coop as a vessel authorized to harvest that coop's allocation.

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

(12) Sort or discard any portion of the catch taken by a catcher vessel in the mothership sector before the catcher vessel observer completes sampling of the catch, except for minor operational amounts of catch lost by a catcher vessel provided the observer has accounted for the discard (i.e., a maximized retention fishery).

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 660.113 Trawl fishery—recordkeeping and reporting.

* * * * *

(a) *General requirements.* (1) All records or reports required by this paragraph (a) must: be maintained in English, be accurate, be legible, be based on local time, and be submitted in a timely manner.

(2) *Retention of Records.* All records used in the preparation of records or reports specified in this section or corrections to these reports must be maintained for a period of not less than three years after the date of landing and must be immediately available upon request for inspection by NMFS or authorized officers or others as specifically authorized by NMFS. Records used in the preparation of

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

(b) *Shorebased IFQ Program.* (1) *Economic data collection (EDC) program.* The following persons are required to submit an EDC form as specified at § 660.114:

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

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

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

(2) *Electronic vessel logbook.* [Reserved]

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

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

(i) *Required information.* All IFQ first receivers must provide the following types of information: Date of landing, vessel that made the delivery, vessel account number, gear type used, catch area, first receiver, actual weights of species landed listed by species or species group including species with no value, condition landed, number of salmon by species, number of Pacific halibut, and any other information deemed necessary by the Regional Administrator as specified on the appropriate electronic fish ticket form.

(ii) *Submissions.* The IFQ first receiver must:

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

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

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

(D) Submit a completed electronic fish ticket for every IFQ landing no later than 24 hours after the date the fish are received, unless a waiver of this requirement has been granted under provisions specified at paragraph (b)(4)(iv) of this section.

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

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

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

(c) *MS Coop Program (coop and non-coop fisheries)*—(1) *Economic data collection (EDC) program.* The following persons are required to submit a complete economic data collection form as specified at § 660.114.

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

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

(2) *NMFS-approved scales*—(i) *Scale test report form.* Mothership vessel operators are responsible for conducting scale tests and for recording the scale test information on the at-sea scale test report form as specified at § 660.15(b), subpart C, for mothership vessels.

(ii) *Printed scale reports.* Specific requirements pertaining to printed scale reports and scale weight print outs are specified at § 660.15(b), subpart C, for mothership vessels.

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

(3) *Annual coop report*—(i) The designated coop manager for the mothership coop must submit an annual report to the Pacific Fishery Management Council for their November meeting each year. The annual coop report will contain information about the current year's fishery, including:

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

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

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

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

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

(ii) The annual coop report submitted to the Pacific Fishery Management Council must be finalized to capture any additional fishing activity that year and submitted to NMFS by March 31 of the following year before a coop permit is issued for the following year.

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

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

(2) *NMFS-approved scales*—(i) *Scale test report form.* Catcher/processor vessel operators are responsible for conducting scale tests and for recording the scale test information on the at-sea scale test report form as specified at § 660.15(b), subpart C, for C/P vessels.

(ii) *Printed scale reports.* Specific requirements pertaining to printed scale reports and scale weight print outs are specified at § 660.15(b), subpart C, for C/P vessels.

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

(3) *Annual coop report*—(i) The designated coop manager for the C/P coop must submit an annual report to the Pacific Fishery Management Council for their November meeting each year. The annual coop report will contain information about the current year's fishery, including:

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

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

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

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

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

(ii) The annual coop report submitted to the Pacific Fishery Management Council must be finalized to capture any additional fishing activity that year and submitted to NMFS by March 31 of the following year before a coop permit is issued for the following year.

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

■ 20. Section 660.114 is added to read as follows:

§ 660.114 Trawl fishery—economic data collection program.

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

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

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

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

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

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

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

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

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

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

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

§ 660.116 [Removed]

■ 21. Section 660.116 is removed.

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

§ 660.130 Trawl fishery—management measures.

(a) *General.* Limited entry trawl vessels are those vessels registered to a limited entry permit with a trawl endorsement and those vessels registered to an MS permit. Most species taken in limited entry trawl fisheries will be managed with quotas (see § 660.140), allocations or set-asides (see § 660.150 or § 660.160), or cumulative trip limits (see trip limits in Tables 1 (North) and 1 (South) of this subpart), size limits (see § 660.60 (h)(5), subpart C), seasons (see Pacific whiting at § 660.131(b), subpart D), gear restrictions (see paragraph (b) of this section) and closed areas (see paragraph (e) of this section and §§ 660.70 through 660.79, subpart C). The trawl fishery has gear requirements and harvest limits that differ by the type of trawl gear on board and the area fished. Groundfish

vessels operating south of Point Conception must adhere to CCA restrictions (see paragraph (e)(1) of this section and § 660.70, subpart C). The trip limits in Tables 1 (North) and 1 (South) of this subpart apply to vessels participating in the limited entry groundfish trawl fishery and may not be exceeded. Federal commercial groundfish regulations are not intended to supersede any more restrictive state commercial groundfish regulations relating to federally-managed groundfish.

* * * * *

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

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

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

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

(2) *Sorting requirements for the Shorebased IFQ Program*—(i) *First receivers.* Fish landed at IFQ first receivers (including shoreside processing facilities and buying stations that intend to transport catch for processing elsewhere) must be sorted, prior to first weighing after offloading from the vessel and prior to transport away from the point of landing, except the vessels declared in to the limited entry midwater trawl, Pacific whiting shorebased IFQ at § 660.13(d)(5)(iv)(A), subpart C, may weigh catch on a bulk scale before sorting as described at § 660.140(j)(2).

(ii) *Catcher vessels.* All catch must be sorted to the species groups specified in paragraph (d)(1) of this section for vessels with limited entry permits, except those retaining all catch during a Pacific whiting IFQ trip. The catch must not be discarded from the vessel and the vessel must not mix catch from hauls until the observer has sampled the catch. Prohibited species must be sorted according to the following species groups: Dungeness crab, Pacific halibut, Chinook salmon, other salmon. Non-groundfish species must be sorted as required by the state of landing.

(3) *Sorting requirements for the at-sea sectors of the Pacific whiting fishery.*

(i) Pacific whiting at-sea processing vessels may use an accurate in-line conveyor or hopper type scale to derive an accurate total catch weight prior to sorting. Immediately following weighing of the total catch, the catch must be sorted to the species groups specified in paragraph (d)(1) of this section and all incidental catch (groundfish and non-groundfish species) must be accurately accounted for and the weight of incidental catch deducted from the total catch weight to derive the weight of target species.

(ii) *Catcher vessels in the MS sector.* If sorting occurs on the catcher vessel, the catch must not be discarded from the vessel and the vessel must not mix catch from hauls until the observer has sampled the catch.

* * * * *

■ 23. In § 660.131:

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

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

■ c. Paragraph (j) is redesignated as paragraph (g) to read as follows:

§ 660.131 Pacific whiting fishery management measures.

* * * * *

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

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

(3) The Pacific whiting IFQ fishery is composed of vessels that harvest Pacific whiting for delivery shoreside to IFQ first receivers during the primary season.

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

(i) For the Shorebased IFQ Program, Pacific whiting IFQ fishery, the period(s) of the large-scale target fishery is conducted after the season start date;

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

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

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

(i) *Procedures.* The primary seasons for the whiting fishery north of 40°3′ N. lat. generally will be established according to the procedures of the PCGFMP for developing and implementing harvest specifications and apportionments. The season opening dates remain in effect unless changed, generally with the harvest specifications and management measures.

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

(iii) *Primary whiting season start dates and duration.* After the start of a primary season for a sector of the whiting fishery, the season remains open for that sector until the sector allocation of whiting or non-whiting groundfish (with allocations) is reached

or projected to be reached and the fishery season for that sector is closed by NMFS. The starting dates for the primary seasons for the whiting fishery are as follows:

(A) Catcher/processor sector—May 15.

(B) Mothership sector—May 15.

(C) Shorebased IFQ Program, Pacific whiting IFQ fishery.

(*1*) North of 42° N. lat.—June 15;

(*2*) Between 42°–40°30′ N. lat.—April 1; and

(*3*) South of 40°30′ N. lat.—April 15.

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

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

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

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

* * * * *

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

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

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■ 24. In § 660.140:

■ a. Paragraphs (a), (d)(1), (d)(4)(i)(C), (d)(4)(iv), and (d)(8)(ix) are revised;

■ b. The heading of paragraph (b) is revised, and text is added to paragraph (b).

■ c. The heading of paragraph (c) and paragraph (c)(1) are revised, paragraph (c)(2) is redesignated as paragraph (c)(3) and a new paragraph (c)(2) is added, and the newly redesignated paragraph (c)(3)(vi) is revised;

■ d. Paragraphs (c)(3)(vii), (d)(2), (d)(3), (d)(5), and (e) through (h) are added; and

■ e. Paragraphs (j) through (m) are redesignated as paragraphs (i) through (l), the headings of newly designated paragraphs (i) and (k) are revised, and text is added to the newly redesignated paragraphs (i) through (l) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(a) *General.* The Shorebased IFQ Program requirements in this section will be effective beginning January 1, 2011, except for paragraphs (d)(4), (d)(6), and (d)(8) of this section, which are effective immediately. The Shorebased IFQ Program applies to qualified participants in the Pacific Coast Groundfish fishery and includes a system of transferable QS for most groundfish species or species groups, IBQ for Pacific halibut, and trip limits or set-asides for the remaining groundfish species or species groups. NMFS will issue a QS permit to eligible participants and will establish a QS account for each QS permit owner to track the amount of QS or IBQ and QP or IBQ pounds owned by that owner. QS permit owners may own QS or IBQ for IFQ species, expressed as a percent of the allocation to the Shorebased IFQ Program for that species. NMFS will issue QP or IBQ pounds to QS permit owners, expressed in pounds, on an annual basis, to be deposited in the corresponding QS account. NMFS will establish a vessel account for each eligible vessel owner participating in the Shorebased IFQ Program, which is independent of the QS permit and QS account. In order to use QP or IBQ pounds, a QS permit owner must transfer the QP or IBQ pounds from the QS account into the vessel account for the vessel to which the QP or IBQ pounds is to be assigned. Harvests of IFQ species may only be delivered to an IFQ first receiver with a first receiver site license. In addition to the requirements of this section, the Shorebased IFQ Program is subject to the following groundfish regulations of subparts C and D:

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

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

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

(b) *Participation requirements and responsibilities*—(1) *IFQ vessels.* (i) Vessels must be registered to a groundfish limited entry permit, endorsed for trawl gear with no C/P endorsement.

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

(iii) All IFQ species/species group catch (landings and discards) must be covered by QP or IBQ pounds. Any deficit (negative balance in a vessel account) must be cured within 30 calendar days from the date the deficit from that trip is documented in the vessel account, unless the deficit is within the limits of the carryover

provision at paragraph (e)(5) of this section, in which case the vessel may declare out of the IFQ fishery for the remainder of the year in which the deficit occurred, and must cure the deficit within 30 days after the issuance of QP or IBQ pounds for the following year.

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

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

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

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

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

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

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

(i) Ensure that all catch removed from a vessel making an IFQ delivery is weighed on a scale or scales meeting the requirements described in § 660.15(c), subpart C;

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

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

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

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

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

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

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

* * * * *

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

(1) *IFQ species.* IFQ species are those groundfish species and Pacific halibut in the exclusive economic zone or adjacent state waters off Washington, Oregon and California, under the jurisdiction of the Pacific Fishery Management Council, for which QS and IBQ will be issued. Groupings and area subdivisions for IFQ species are those groupings and area subdivisions for which OYs are specified in the Tables 1a through 2d, subpart C, and those for which there is an area-specific precautionary harvest policy. The lists of individual groundfish species included in the minor shelf complex north of 40°10′ N. lat., minor shelf complex south of 40°10′ N. lat., minor slope complex north 40°10′ N. lat., minor slope complex south of 40°10′ N. lat., and in the other flatfish complex are specified under the definition of "groundfish" at § 660.11. The following are the IFQ species:

IFQ SPECIES

ROUNDFISH
Lingcod
Pacific cod
Pacific whiting
Sablefish N. of 36°
Sablefish S. of 36°
FLATFISH
Dover sole
English sole
Petrale sole
Arrowtooth flounder
Starry flounder
Other flatfish stock complex
Pacific halibut (IBQ) N. of 40°10′
ROCKFISH
Pacific ocean perch N. of 40°10′
Widow rockfish
Canary rockfish
Chilipepper rockfish S. of 40°10′
Bocaccio S. of 40°10′
Splitnose rockfish S. of 40°10′
Yellowtail rockfish N. of 40°10′
Shortspine thornyhead N. of 34°27′
Shortspine thornyhead S. of 34°27′
Longspine thornyhead N. of 34°27′
Cowcod S. of 40°10′
Darkblotched rockfish
Yelloweye rockfish
Minor shelf rockfish complex N. of 40°10′
Minor shelf rockfish complex S. of 40°10′
Minor slope rockfish complex N. of 40°10′
Minor slope rockfish complex S. of 40°10′

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

(i) Between the US/Canada border and 40°10′ N. lat.,

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

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

(iv) Between 34°27′ N. lat. and the US/Mexico border.

* * * * *

(3) * * *

(vi) For each IFQ species, NMFS will determine annual sub-allocations to individual QS accounts by multiplying the percent of QS or IBQ registered to the account by the amount of each respective IFQ species allocated to the Shorebased IFQ Program for that year. For each IFQ species, NMFS will deposit QP or IBQ pounds in the respective QS account in the amount of each sub-allocation determined.

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

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

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

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

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

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

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

* * * * *

(d) *QS permits and QS accounts*—(1) *General.* In order to obtain QS and/or IBQ, a person must apply for a QS permit. NMFS will determine if the applicant is eligible to own QS and/or IBQ in accordance with paragraph (d)(2) of this section. If eligible, NMFS will issue a QS permit, and will establish a QS account to track QS and IBQ balances for all IFQ species identified at § 660.140(c)(1). NMFS will issue initial allocations of QS and IBQ in accordance with paragraph (d)(8) of this section. Transfers of QS and IBQ, and of QP or IBQ pounds, are subject to provisions at paragraph (d)(3) of this section. QS permit owners can monitor the status of their QS and IBQ, and associated QP and IBQ pounds, throughout the year in their QS account.

(i) *Annual QS adjustments.* On or about January 1 each year, QS permit owners will be notified, via the IFQ Web site and their QS account, of any adjustments to their QS and/or IBQ allocations, for each of the IFQ species. Updated QS and/or IBQ values, if applicable, will reflect the results of: any recalculation of initial allocation formulas resulting from changes in provisional OYs used in the allocation formulas or appeals, any redistribution of QS and IBQ (*e.g.,* resulting from permanent revocation of applicable permits, subject to accumulation limits), and any transfers of QS and/or IBQ made during the prior year.

(ii) *Annual QP and IBQ pound allocations.* QP and IBQ pounds will be deposited into QS accounts annually. QS permit owners will be notified of QP deposits via the IFQ Web site and their QS account. QP and IBQ pounds will be issued to the nearest whole pound using standard rounding rules (i.e. decimal amounts less than 0.5 round down and 0.5 and greater round up), except that in the first year of the Shorebased IFQ Program, issuance of QP for overfished species greater than zero but less than one pound will be rounded up to one pound. QS permit owners must transfer their QP and IBQ pounds from their QS account to a vessel account in order for those QP and IBQ pounds to be fished. QP and IBQ pounds must be transferred in whole pounds (i.e. no fraction of a QP or IBQ pound can be transferred). All QP and IBQ pounds in a QS account must be transferred to a vessel account by September 1 of each year in order to be fished.

(A) *Nonwhiting QP annual sub-allocations.* NMFS will issue QP for IFQ species other than Pacific whiting and Pacific halibut annually by multiplying the QS permit owner's QS for each such IFQ species by that year's shorebased trawl allocation for that IFQ species. Deposits to QS accounts for IFQ species other than Pacific whiting and Pacific halibut will be made on or about January 1 each year.

(B) *Pacific whiting QP annual allocation.* NMFS will issue QP for Pacific whiting annually by multiplying the QS permit owner's QS for Pacific whiting by that year's shorebased trawl allocation for Pacific whiting.

(*1*) In years where the Pacific whiting harvest specification is known by January 1, deposits to QS accounts for Pacific whiting will be made on or about January 1.

(*2*) In years where the Pacific whiting harvest specification is not known by January 1, NMFS will issue Pacific whiting QP in two parts. On or about January 1, NMFS will deposit Pacific whiting QP based on the shorebased trawl allocation 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 later in the year, NMFS will deposit additional QP to the QS account so that the total QP issued for that year is equal to the QS permit owner's QS for Pacific whiting multiplied by that year's shorebased trawl allocation for Pacific whiting.

(C) *Pacific halibut IBQ pounds annual allocation.* NMFS will issue IBQ pounds for Pacific halibut annually by multiplying the QS permit owner's IBQ percent by the shorebased component of the trawl mortality limit for that year (expressed in net weight), and dividing by 0.75 to convert to round weight pounds. Consistent with § 660.55(m), the shorebased component of the trawl mortality limit will be calculated by multiplying the total constant exploitation yield of the prior year by 15 percent, not to exceed 130,000 pounds in the first four years of the Shorebased IFQ Program and not to exceed 100,000 pounds starting in the fifth year of the Shorebased IFQ Program, less the set-aside amount of Pacific halibut to accommodate the incidental catch in the trawl fishery south of 40°10′ N. latitude and in the at-sea whiting fishery. Deposits to QS accounts for Pacific halibut IBQ pounds will be made on or about January 1 each year.

(D) [Reserved]

(2) *Eligibility and registration*—(i) *Eligibility.* Only the following persons are eligible to own QS permits:

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

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

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

with a fishery endorsement pursuant to sections 203(g) and 213(g) of the AFA.

(ii) *Registration.* A QS account will be established by NMFS with the issuance of a QS permit. The administrative functions associated with the Shorebased IFQ Program (e.g., account registration, landing transactions, and transfers) are designed to be accomplished online; therefore, a participant must have access to a computer with Internet access and must set up online access to their QS account to participate. The computer must have Internet browser software installed (e.g., Internet Explorer, Netscape, Mozilla Firefox); as well as the Adobe Flash Player software version 9.0 or greater. NMFS will mail initial QS permit owners instructions to set up online access to their QS account. NMFS may require QS account owners that are business entities to designate an account manager that may act on behalf of the entity and their contact information. NMFS will use the QS account to send messages to QS permit owners; it is important for QS permit owners to monitor their online QS account and all associated messages.

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

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

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

(D) QS permits will not be renewed until SFD has received a complete application for a QS permit renewal, which includes payment of required fees, complete documentation of QS permit ownership on the Trawl Identification of Ownership Interest Form as required under paragraph (d)(4)(iv) of this section, a complete economic data collection form if required under § 660.114, subpart D. The QS permit renewal will be considered incomplete until the required information is submitted. NMFS may require QS account owners that are business entities to designate an account manager and their contact information through the QS permit renewal process.

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

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

(ii) *Change of permit ownership and transfer restrictions*—(A) *Restriction on the transfer of ownership for QS permits.* A QS permit cannot be transferred to another individual or entity. The QS permit owner cannot change or add additional individuals or entities as owners of the permit (i.e., cannot change the registered permit owners as given on the permit). Any change to the owner of the QS permit requires the new owner(s) to apply for a QS permit, and is subject to accumulation limits and approval by NMFS.

(B) *Transfers of QS or IBQ or QP or IBQ pounds.* (*1*) *General.* Transfers of QS or IBQ from one QS account to another QS account and transfers of QP or IBQ pounds from a QS account to a vessel account must be accomplished via the online QS account. During the year there may be situations where NMFS deems it necessary to prohibit transfers (i.e., account reconciliation, system maintenance, or for emergency fishery management reasons). To make a transfer, a QS permit owner must initiate a transfer request by logging onto the online QS account. Following the instructions provided on the Web site, the QS permit owner must enter pertinent information regarding the transfer request including, but not limited to: IFQ species, amount of QS, IBQ, QP, or IBQ pounds to be transferred for each IFQ species; name and any other identifier of the eligible transferee (e.g., QS permit number, vessel account number); and the value of the transferred QS, IBQ, QP, or IBQ pounds for each IFQ species. The online system will verify whether all information has been entered and whether the transfer complies with ownership limits or vessel limits, as applicable. If the information is not accepted, an electronic message will record as much in the transferor's QS account explaining the reason(s). If the information is accepted, the online system will record the pending transfer in both the transferor's QS account and the transferee's QS account or vessel account. The transferee must approve the transfer by electronic signature in order for the transfer to be completed. If the transferee accepts the transfer, the online system will record the transfer and confirm the transaction in both the transferor's QS account and the transferee's QS account or vessel account through a transaction confirmation notice. Once the transferee accepts the transaction, the transaction is final and permanent.

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

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

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

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

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

* * * * *

(4) * * *

(i) * * *

(C) The Shorebased IFQ Program accumulation limits are as follows:

Species category	QS and IBQ control limit (in percent)
Non-whiting groundfish species	2.7
Lingcod—coastwide	2.5
Pacific cod	12.0
Pacific whiting (shoreside)	10.0
Sablefish:	
N. of 36° (Monterey north)	3.0
S. of 36° (Conception area)	10.0
Pacific ocean perch N. of 40°10′	4.0
Widow rockfish	5.1
Canary rockfish	4.4
Chilipepper rockfish S. of 40°10′	10.0
Bocaccio S. of 40°10′	13.2
Splitnose rockfish S. of 40°10′	10.0
Yellowtail rockfish N. of 40°10′	5.0
Shortspine thornyhead:	
N. of 34°27′	6.0
S. of 34°27′	6.0
Longspine thornyhead:	
N. of 34°27′	6.0
Cowcod S. of 40°10′	17.7
Darkblotched rockfish	4.5
Yelloweye rockfish	5.7
Minor rockfish complex N. of 40°10′:	
Shelf species	5.0
Slope species	5.0
Minor rockfish complex S. of 40°10′:	
Shelf species	9.0
Slope species	6.0
Dover sole	2.6
English sole	5.0
Petrale sole	3.0
Arrowtooth flounder	10.0
Starry flounder	10.0
Other flatfish stock complex	10.0
Pacific halibut (IBQ) N. of 40°10′	5.4

* * * * *

(iv) *Trawl identification of ownership interest form.* Any person that owns a limited entry trawl permit and that is applying for or renewing a QS permit shall document those persons that have an ownership interest in the limited entry trawl or QS permit greater than or equal to 2 percent. This ownership interest must be documented with the SFD via the Trawl Identification of Ownership Interest Form. For renewal, if the limited entry trawl permit and QS permit have identical ownership interest, only one form need be submitted attesting to such ownership. SFD will not issue a QS permit unless the Trawl Identification of Ownership Interest Form has been completed. Further, if SFD discovers through review of the Trawl Identification of Ownership Interest Form that a person owns or controls more than the accumulation limits and is not authorized to do so under paragraph (d)(4)(v) of this section, the person will be notified and the QS permit will be issued up to the accumulation limit specified in the QS or IBQ control limit table from paragraph (d)(4)(i) of this section. NMFS may request additional information of the applicant as necessary to verify compliance with accumulation limits.

* * * * *

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

* * * * *

(8) * * *

(ix) *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 QS and IBQ, the applicant will receive a QS permit specifying the amounts of QS and IBQ for which the applicant has qualified and the applicant will be registered to a QS account. If NMFS disapproves or partially disapproves an application, the IAD will provide the reasons. As part of the IAD, NMFS will indicate whether the QS permit owner qualifies for QS or IBQ in amounts that exceed the accumulation limits and are subject to divestiture provisions given at paragraph (d)(4)(v) of this section, or whether the QS permit owner qualifies for QS or IBQ that exceed the accumulation limits and does not qualify to receive the excess under paragraph (d)(4)(v) 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.

* * * * *

(e) *Vessel accounts*—(1) *General.* In order to participate in the Shorebased IFQ Program, a vessel must be registered to an eligible limited entry trawl permit. A vessel account will be established on request for an owner of a vessel registered to an eligible limited entry trawl permit in order to track QP and IBQ pounds. QP or IBQ pounds will have the same species/species groups and area designations as the QS or IBQ from which it was issued. Annually, QS or IBQ (expressed as a percent) are converted to QP or IBQ pounds (expressed as a weight) in a QS account. QP or IBQ pounds may be transferred from a QS account to a vessel account or from one vessel account to another vessel account. QP or IBQ pounds are required to cover catch (landings and discards) by limited entry trawl vessels of all IFQ species/species groups, except for:

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

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

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

(ii) *Registration.* A vessel account must be registered with the NMFS SFD Permits Office. A vessel account may be established at any time during the year. An eligible vessel owner must submit a request in writing to NMFS to establish a vessel account. The request must include the vessel name; USCG vessel registration number (as given on USCG Form 1270) or state registration number, if no USCG documentation; all vessel owner names (as given on USCG Form 1270, or on state registration, as applicable); and business contact information, including: Address, phone number, fax number, and e-mail. NMFS may require vessel account owners that are business entities to designate an account manager that may act on behalf of the entity and their contact

information. Requests for a vessel account must also include the following information: A complete economic data collection form as required under § 660.113(b), (c) and (d), subpart D, and a complete Trawl Identification of Ownership Interest Form as required under paragraph (e)(4)(ii) of this section. The request for a vessel account will be considered incomplete until the required information is submitted. Any change in the legal name of the vessel owner(s) will require the new owner to register with NMFS for a vessel account. A participant must have access to a computer with Internet access and must set up online access to their vessel account to participate. The computer must have Internet browser software installed (e.g., Internet Explorer, Netscape, Mozilla Firefox); as well as the Adobe Flash Player software version 9.0 or greater. NMFS will mail vessel account owners instructions to set up online access to their vessel account. NMFS may require vessel account owners that are business entities to designate an account manager that may act on behalf of the entity and their contact information. NMFS will use the vessel account to send messages to vessel owners in the Shorebased IFQ Program; it is important for vessel owners to monitor their online vessel account and all associated messages.

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

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

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

(D) Vessel accounts will not be renewed until SFD has received a complete application for a vessel account renewal, which includes payment of required fees, a complete documentation of permit ownership on the Trawl Identification of Ownership Interest Form as required under (e)(4)(ii) of this section, and a complete economic data collection form as required under § 660.114, subpart D. The vessel account renewal will be considered incomplete until the required information is submitted. NMFS may require vessel account owners that are business entities to designate an account manager that may act on behalf of the entity and their contact information.

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

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

(ii) *Change in vessel account ownership.* Vessel accounts are non-transferable and ownership of a vessel account cannot change. If the ownership of a vessel changes, then a new vessel account must be opened by the new owner in order for the vessel to participate in the Shorebased IFQ Program.

(iii) *Transfer of QP or IBQ pounds*—(A) *General.* QP or IBQ pounds may only be transferred from a QS account to a vessel account or between vessel accounts. QP or IBQ pounds cannot be transferred from a vessel account to a QS account. Transfers of QP or IBQ pounds are subject to accumulation limits. QP or IBQ pounds in a vessel account may only be transferred to another vessel account. QP or IBQ pounds must be transferred in whole pounds (i.e., no fraction of a QP or IBQ pound can be transferred). During the year there may be situations where NMFS deems it necessary to prohibit transfers (i.e., account reconciliation, system maintenance, or for emergency fishery management reasons).

(B) *Transfer procedures.* QP or IBQ pound transfers from one vessel account to another vessel account must be accomplished via the online vessel account. To make a transfer, a vessel account owner must initiate a transfer request by logging onto the online vessel account. Following the instructions provided on the Web site, the vessel account owner must enter pertinent information regarding the transfer request including, but not limited to: IFQ species, amount of QP or IBQ pounds to be transferred for each IFQ species (in whole pound increments); name and any other identifier of the eligible transferee (e.g., USCG documentation number or state registration number, as applicable) of the eligible vessel account receiving the transfer; and the value of the transferred QP or IBQ pounds. The online system will verify whether all information has been entered and whether the transfer complies with vessel limits, as applicable. If the information is not accepted, an electronic message will record as much in the transferor's vessel account explaining the reason(s). If the information is accepted, the online system will record the pending transfer in both the transferor's and the transferee's vessel accounts. The transferee must approve the transfer by electronic signature. If the transferee accepts the transfer, the online system will record the transfer and confirm the transaction in both accounts through a transaction confirmation notice. Once the transferee accepts the transaction, the transaction is final and permanent. QP or IBQ pounds may be transferred to vessel accounts at any time during January 1 through December 14 each year unless otherwise notified by NMFS. QP or IBQ pounds may not be transferred between December 15 and December 31 each year.

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

Species category	QP vessel limit (annual limit) (in percent)	Unused QP vessel limit (daily limit) (in percent)
Non-whiting groundfish species	3.2	

Species category	QP vessel limit (annual limit) (in percent)	Unused QP vessel limit (daily limit) (in percent)
Lingcod—coastwide	3.8	.....
Pacific cod	20.0	.....
Pacific whiting (shoreside)	15.0	.....
Sablefish:		
N. of 36° (Monterey north)	4.5	.....
S. of 36° (Conception area)	15.0	.....
Pacific ocean perch N. of 40°10′	6.0	4.0
Widow rockfish [1]	8.5	5.1
Canary rockfish	10.0	4.4
Chilipepper rockfish S. of 40°10′	15.0	.....
Bocaccio S. of 40°10′	15.4	13.2
Splitnose rockfish S. of 40°10′	15.0	.....
Yellowtail rockfish N. of 40°10′	7.5	.....
Shortspine thornyhead:		
N. of 34°27′	9.0	.....
S. of 34°27′	9.0	.....
Longspine thornyhead:		
N. of 34°27′	9.0	.....
Cowcod S. of 40°10′	17.7	17.7
Darkblotched rockfish	6.8	4.5
Yelloweye rockfish	11.4	5.7
Minor rockfish complex N. of 40°10′:		
Shelf species	7.5	.....
Slope species	7.5	.....
Minor rockfish complex S. of 40°10′:		
Shelf species	13.5	.....
Slope species	9.0	.....
Dover sole	3.9	.....
English sole	7.5	.....
Petrale sole	4.5	.....
Arrowtooth flounder	20.0	.....
Starry flounder	20.0	.....
Other flatfish stock complex	15.0	.....
Pacific halibut (IBQ) N. of 40°10′	14.4	5.4

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

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

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

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

(ii) *Deficit QP or IBQ pounds.* A vessel account with a deficit (negative balance) of QP or IBQ pounds for any IFQ species in the current year may cover that deficit with QP or IBQ pounds from the following year without incurring a violation if all of the following conditions are met:

(A) The vessel declares out of the Shorebased IFQ Program for the year in which the deficit occurred. To declare out of the Shorebased IFQ Program, the vessel owner must submit a signed, dated, and notarized letter to the NMFS Office of Law Enforcement, declaring the vessel owner's intent to declare out of the Shorebased IFQ Program for the remainder of the year and invoke the carryover provision to cover the deficit. (If the deficit occurs less than 30 days before the end of the calendar year, declaring out of the Shorebased IFQ Program for the remainder of the year is

not required, however, the vessel owner must notify the NMFS Office of Law Enforcement of the owner's intent to invoke the carryover provision to cover the deficit.)

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

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

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

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

(8) *Cost recovery.* [Reserved]

(f) *First receiver site license*—(1) *General.* Any IFQ first receiver that receives IFQ landings must hold a valid first receiver site license. The first receiver site license authorizes the holder to receive, purchase, or take custody, control, or possession of an IFQ landing at a specific physical site onshore directly from a vessel. Once the trawl rationalization program is implemented, a temporary, interim first receiver site license will be available by application to NMFS and will be valid until June 30, 2011, or until an application for a first receiver site license as specified in paragraph (f)(3) of this section is approved by NMFS, whichever comes first. An application for an interim first receiver site license is subject to all of the requirements in this paragraph (f) including the submission of a catch monitoring plan, except that the catch monitoring plan in paragraph (f)(3)(iii) does not have to have been previously accepted by NMFS and the site does not have to have been previously inspected.

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

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

(iii) A first receiver site license is valid for one year from the date it was issued by NMFS, or until the state license required by paragraph (f)(2)(i) of this section is no longer effective, whichever occurs first. IFQ first receivers must reapply for a first receiver site license each year and whenever a change in the ownership occurs.

(3) *Application process.* Persons interested in being licensed as an IFQ first receiver must submit a complete application for a first receiver site license to NMFS, Northwest Region, Permits Office, ATTN: Catch Monitor Coordinator, Bldg. 1, 7600 Sand Point Way NE, Seattle, WA 98115. NMFS will only consider complete applications for approval. A complete application includes:

(i) *State license.* A copy of a valid license issued by the state in which they operate which allows the person to receive fish from a catcher vessel.

(ii) *Contact information.* (A) The name of the first receiver,

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

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

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

(A) *Catch monitoring plan review process.* NMFS will accept a catch monitoring plan if it meets all the requirements specified in paragraph (f)(3)(iii)(C) of this section. The site must be inspected by NMFS staff or a NMFS designated inspector prior to acceptance to ensure that the first receiver conforms to the elements addressed in the catch monitoring plan. If NMFS does not accept a catch monitoring plan for any reason, a new or revised catch monitoring plan may be submitted.

(B) *Arranging an inspection.* The time and place of a monitoring plan inspection must be arranged by submitting a written request for an inspection as part of the application for a first receiver site license. After receiving a complete application for a first receiver site license, NMFS will contact the applicant to schedule a site inspection. The inspection request must include:

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

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

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

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

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

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

(*3*) *Scales used for weighing IFQ landings.* Identify each scale that will be used to weigh IFQ landings by the type and capacity and describe where it is located and what it will be used for. Each scale must be appropriate for its intended use.

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

(*5*) *Weight monitoring.* Detail how the IFQ first receiver will ensure that all catch is weighed and the process used to meet the catch weighing requirements specified at paragraph (j) of this section. If a catch monitoring plan proposes the use of totes in which IFQ species will be weighed, or a deduction for the weight of ice, the catch monitoring plan must detail how the process will accurately account for the weight of ice and/or totes.

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

catch. If catch is removed from a vessel by brailing, the delivery point normally will be the bin or belt where the brailer discharges the catch.

(*7*) *Observation area.* Designate and describe the observation area. The observation area is a location where a catch monitor may monitor the flow of fish during a delivery, including: Access to the observation area, the flow of fish, and lighting used during periods of limited visibility. Standards for the observation area are specified at paragraph (i)(4)(ii) of this section.

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

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

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

(*i*) The delivery point(s);

(*ii*) The observation area;

(*iii*) The lockable cabinet;

(*iv*) The location of each scale used to weigh catch; and

(*v*) Each location where catch is sorted.

(D) *Catch monitoring plan acceptance period and changes.* NMFS will accept a catch monitoring plan if it meets the performance standards specified in paragraph (f)(3)(iii)(C) of this section. For the first receiver site license to remain in effect, an owner or manager must notify NMFS in writing of any and all changes made in IFQ first receiver operations or layout that do not conform to the catch monitoring plan.

(E) *Changing a NMFS-accepted catch monitoring plan.* An owner and manager may change an accepted catch monitoring plan by submitting a plan addendum to NMFS. NMFS will accept the modified catch monitoring plan if it continues to meet the performance standards specified in paragraph (f)(3)(iii)(C) of this section. Depending on the nature and magnitude of the change requested, NMFS may require an additional catch monitoring plan inspection. A catch monitoring plan addendum must contain:

(*1*) Name and signature of the person submitting the addendum;

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

(*3*) A complete description of the proposed catch monitoring plan change.

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

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

(5) *Effective date.* The first receiver site license is effective upon approval and issuance by NMFS and will be effective for one year from the date of NMFS issuance.

(6) *Reissuance in subsequent years.* Existing license holders must reapply annually. If the existing license holder fails to reapply, the first receiver's site license will expire one year from the date of NMFS issuance of the license. The first receiver will not be authorized to receive or process groundfish IFQ species if their first receiver site license has expired.

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

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

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

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

(2) *Whiting maximized retention vessels.* Maximized retention vessels participating in the Pacific whiting IFQ fishery may discard minor operational amounts of catch at sea if the observer has accounted for the discard (i.e., a maximized retention fishery).

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

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

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

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

(B) [Reserved]

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

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

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

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

(ii) *Safe conditions.* (A) Maintain safe conditions on the vessel for the protection of observers including adherence to all U.S. Coast Guard and other applicable rules, regulations, statutes, and guidelines pertaining to safe operation of the vessel, including, but not limited to rules of the road, vessel stability, emergency drills, emergency equipment, vessel maintenance, vessel general condition and port bar crossings. An observer may refuse boarding or reboarding a vessel and may request a vessel to return to port if operated in an unsafe manner or if unsafe conditions are identified.

(B) Have on board a valid Commercial Fishing Vessel Safety Decal that certifies compliance with regulations found in 33 CFR Chapter I and 46 CFR Chapter I, a certificate of compliance issued pursuant to 46 CFR 28.710 or a valid certificate of inspection pursuant to 46 U.S.C. 3311.

(iii) *Computer hardware and software.* [Reserved]

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

(v) *Access.* Allow observer(s) free and unobstructed access to the vessel's bridge, trawl or working deck, holding bins, sorting areas, cargo hold, and any other space that may be used to hold, process, weigh, or store fish at any time.

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

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

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

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

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

(C) Collecting samples of catch.

(D) Collecting and carrying baskets of fish.

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

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

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

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

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

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

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

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

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

(3) *Procurement of observer services*—(i) Owners of vessels required to carry observers under paragraph (a)(1) of this section must arrange for observer services from a permitted observer provider, except that:

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

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

(ii) [Reserved]

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

(5) *Observer provider responsibilities.*

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

(B) *Observer contracts.* The observer provider must have a written contract or a written contract addendum signed by the observer and observer provider prior to the observer's deployment with the following clauses:

(*1*) That all the observer's in-season messages and catch reports required to be sent while deployed are delivered to the Observer Program Office as specified by written Observer Program instructions;

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

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

(iii) *Ensure that observers complete duties in a timely manner.* An observer provider must ensure that observers employed by that observer provider do the following in a complete and timely manner:

(A) Submit to NMFS all data, logbooks and reports and biological samples as required under the observer program policy deadlines.

(B) Report for his or her scheduled debriefing and complete all debriefing responsibilities; and

(C) Return all sampling and safety gear to the Observer Program Office at the termination of their contract.

(D) Immediately report to the Observer Program Office and the NOAA OLE any refusal to board an assigned vessel.

(iv) *Observers provided to vessel.* (A) Must have a valid West Coast Groundfish observer certification endorsement;

(B) Must not have informed the provider prior to the time of embarkation that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement, as required in paragraph (h)(5)(xi)(B) of this section that would prevent him or her from performing his or her assigned duties; and

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

(v) *Respond to industry requests for observers.* An observer provider must provide an observer for deployment pursuant to the terms of the contractual relationship with the vessel to fulfill vessel requirements for observer coverage under paragraphs (h)(5)(xi)(D) of this section. An alternate observer must be supplied in each case where injury or illness prevents the observer from performing his or her duties or where the observer resigns prior to completion of his or her duties. If the observer provider is unable to respond to an industry request for observer coverage from a vessel for whom the provider is in a contractual relationship due to the lack of available observers by the estimated embarking time of the vessel, the provider must report it to NMFS at least 4 hours prior to the vessel's estimated embarking time.

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

(vii) *Provide observer deployment logistics.* (A) An observer provider must ensure each of its observers under contract:

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

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

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

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

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

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

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

(*iii*) Otherwise, each observer between vessels, while still under contract with a permitted observer provider, shall be provided with accommodations in accordance with the contract between the observer and the observer provider. If the observer provider is responsible for providing accommodations under the contract with the observer, the accommodations must be at a licensed hotel, motel, bed and breakfast, or other shoreside accommodations that has an assigned bed for each observer that no other person may be assigned to for the duration of that observer's stay. Additionally, no more than four beds may be in any room housing observers at accommodations meeting the requirements of this section.

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

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

(ix) *Verify vessel's safety decal.* An observer provider must verify that a vessel has a valid USCG safety decal as required under paragraph (h)(2)(ii)(B) of this section before an observer may get underway aboard the vessel. One of the following acceptable means of verification must be used to verify the decal validity:

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

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

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

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

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

(*1*) Training registration materials consist of the following:

(*i*) Date of requested training;

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

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

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

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

(*vi*) Length of each observer's contract.

(*2*) Briefing registration materials consist of the following:

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

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

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

(*iv*) Length of each observer's contract.

(*3*) *Debriefing.* The West Coast Groundfish Observer Program will

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

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

(*ii*) [Reserved]

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

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

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

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

(*3*) States Worker's Compensation as required.

(*4*) Commercial General Liability.

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

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

(*2*) Observers.

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

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

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

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

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

(*1*) Any information regarding possible observer harassment;

(*2*) Any information regarding any action prohibited under § 660.112 or § 600.725(o), (t) and (u);

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

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

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

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

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

(xiv) *Limitations on conflict of interest.* Observer providers:

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

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

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

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

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

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

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

(*1*) Observer use of alcohol;

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

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

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

(xvi) *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 described at § 600.746 or U.S. Coast Guard and other applicable rules, regulations, statutes, or guidelines pertaining to safe operation of the vessel.

(6) *Observer certification and responsibilities*—(i) *Applicability.* Observer certification authorizes an individual to fulfill duties as specified in writing by the NMFS Observer Program Office while under the employ of a NMFS-permitted observer provider and according to certification requirements as designated under paragraph (h)(6)(iii) of this section.

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

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

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

(*2*) Have provided, through their observer provider:

(*i*) Information identified by NMFS at § 679.50 regarding an observer candidate's health and physical fitness for the job;

(*ii*) Meet all observer candidate education and health standards as specified in § 679.50; and

(*iii*) Have successfully completed NMFS-approved training as prescribed by the At-Sea Hake and/or West Coast Groundfish Observer Program. Successful completion of training by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Observer Program.

(*iv*) Have not been decertified under paragraph (h)(6)(ix) of this section, or pursuant to § 679.50.

(B) [Reserved]

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

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

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

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

(C) *West Coast Groundfish Observer Program deployment endorsement.* Each observer who has completed an initial deployment after their certification or annual briefing must receive a deployment endorsement to their certification prior to any subsequent deployments for the remainder of that year. An observer may obtain a deployment endorsement by successfully completing all briefing requirements, when applicable. The type of briefing the observer must attend and successfully complete will be specified in writing by the Observer Program during the observer's most recent debriefing.

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

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

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

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

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

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

all other briefing requirements established by the Observer Program.

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

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

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

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

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

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

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

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

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

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

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

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

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

(viii) *Standards of behavior.* Observers must:

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

(B) Immediately report to the Observer Program Office and the NOAA OLE any time they refuse to board a vessel.

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

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

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

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

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

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

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

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

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

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

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

(C) *Issuance of initial administrative determination.* Upon determination that suspension or decertification is warranted, the suspension/decertification official will issue a written IAD to the observer via certified mail at the observer's most current address provided to NMFS. The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken. 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 § 679.43.

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

(2) *Procurement of catch monitor services.* Owners or managers of each IFQ first receiver must arrange for catch monitor services from a certified catch monitor provider prior to accepting IFQ landings.

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

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

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

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

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

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

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

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

(C) *Adequate lighting.* Adequate lighting must be provided during periods of limited visibility.

(iii) Each IFQ first receiver must allow catch monitors free and unobstructed

access to any documentation required by regulation including fish tickets, scale printouts and scale test results.

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

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

(i) Orienting new catch monitors to the facility;

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

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

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

(j) *Catch weighing requirements*—(1) *Catch monitoring plan.* All first receivers must operate under a NMFS-accepted catch monitoring plan.

(2) *Sorting and weighing IFQ landings*—(i) *Approved scales.* The IFQ first receiver must ensure that all IFQ species received from a vessel making an IFQ landing are weighed on a scale(s) that meets the requirements specified at § 660.15(c).

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

(A) The first receiver's name;

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

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

(D) The date the information is printed; and

(E) The name and vessel registration or documentation number of the vessel making the delivery. The scale operator may write this information on the scale printout in ink at the time of printing.

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

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

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

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

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

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

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

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

(viii) *Pacific whiting.* For Pacific Whiting taken with midwater trawl gear, IFQ first receivers may use an in-line conveyor or hopper type scale to derive an accurate total catch weight prior to sorting. Immediately following weighing of the total catch and prior to processing or transport away from the point of landing, the catch must be sorted to the species groups specified at § 660.130(d) and all incidental catch (groundfish and non groundfish species) must be accurately weighed and the weight of incidental catch deducted from the total catch weight to derive the weight of target species.

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

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

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

(C) IFQ species or species group may be weighed in totes on a platform scale capable of printing a label or tag and recording the label or tag information to memory for printing a report as specified at § 660.15. The label or tag must remain affixed to the tote until the tote is emptied. The label or tag must show the following information:

(*1*) The species or species group;

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

(*3*) The date the label or tag was printed; and

(*4*) The vessel name.

(D) *Totes and ice.* If a catch monitoring plan proposes the use of totes in which fish will be weighed, or a deduction for the weight of ice, the deduction must be accurately accounted for. No deduction may be made for the weight of water or slime. This standard may be met by:

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

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

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

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

(3) *IFQ first receiver responsibilities relative to catch weighing and monitoring of catch weighing.* The IFQ first receiver must:

(i) *General.* (A) Ensure that all IFQ landings are sorted and weighed as specified at § 660.130(d) and in accordance with an approved catch monitoring plan.

(B) [Reserved]

(ii) *Catch monitors, NMFS staff, and authorized officers.* (A) Have a catch monitor on site the entire time an IFQ landing is being offloaded, sorted, or weighed.

(B) Notify the catch monitor of the offloading schedule.

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

(D) Ensure that catch monitors, NMFS staff, or an authorized officer are able to simultaneously observe the weighing of catch on the scale and read the scale display at any time.

(E) Ensure that printouts of the scale weight of each delivery or offload are made available to catch monitors, NMFS

staff, or an authorized officer at the time printouts are generated.

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

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

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

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

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

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

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

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

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

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

(2) [Reserved]

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

(i) Community stability;

(ii) Processor stability;

(iii) Conservation;

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

(v) Facilitating new entrants.

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

■ 25. In § 660.150;

■ a. Paragraph (a) introductory text and paragraphs (a)(3), (a)(4), (d), (f)(3), (f)(6)(vi), (g)(3)(i)(C), and (g)(6)(viii) are revised;

■ b. The headings of paragraphs (b), (c), (e), (g)(1)(iv), (g)(2), and (k) are revised, and text is added to paragraphs (b), (c), (e), (g)(1)(iv), (g)(2), and (k).

■ c. Paragraphs (f)(2), (f)(4), (g)(3)(ii), (g)(4), and (h) through (j) are added; and

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

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

§ 660.150 Mothership (MS) Coop Program.

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

* * * * *

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

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

* * * * *

(b) *Participation requirements and responsibilities*—(1) *Mothership vessels.* (i) *Mothership vessel participation requirements.* A vessel is eligible to receive and process catch as a mothership in the MS Coop Program if:

(A) The vessel is registered to an MS permit;

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

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

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

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

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

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

(*1*) Ensure that all catch is weighed in its round form on a NMFS-approved scale that meets the requirements described in section § 660.15(b), subpart C;

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

(2) *Mothership catcher vessels*—(i) *Mothership catcher vessel participation requirements*—(A) A vessel is eligible to harvest in the MS Coop Program if the following conditions are met:

(*1*) If the vessel is used to fish as a mothership catcher vessel for a permitted MS coop, the vessel is registered to a limited entry permit with a trawl endorsement and NMFS has been notified that the vessel is authorized to fish for the coop.

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

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

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

(B) [Reserved]

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

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

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

(A) Be issued a MS coop permit;

(B) Be composed of MS/CV-endorsed limited entry permit owners;

(C) Be formed voluntarily;

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

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

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

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

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

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

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

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

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

(F) Submitting an annual report.

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

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

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

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

(*4*) Oversee inter-coop catch allocation reassignments;

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

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

(*7*) Notify NMFS if the coop dissolves.

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

(c) *MS Coop Program species and allocations*—(1) *MS Coop Program species.* MS Coop Program species are as follows:

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

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

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

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

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

(B) *Non-whiting groundfish species catch*—(*1*) Non-whiting groundfish species with a mothership sector allocation will be divided annually between the permitted coops and the non-coop fishery. The pounds associated with each permitted MS coop will be provided when the coop permit is issued.

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

(*3*) Groundfish species not addressed in paragraph (*1*) or (*2*) above, will be managed on an annual basis unless there is a risk of a harvest specification being exceeded, unforeseen impact on another fisheries, or conservation concerns in which case inseason action may be taken.

(*4*) *Halibut set-asides.* Annually a specified amount of the Pacific halibut will be held in reserve as a shared set-aside for bycatch in the at-sea Pacific whiting fisheries and the shorebased trawl sector south of 40°10′ N. lat.

(ii) *Annual coop allocations*—(A) *Pacific whiting.* Each permitted MS coop is authorized to harvest a quantity of Pacific whiting that is based on the sum of the catch history assignments for each member MS/CV-endorsed permit identified in the NMFS-accepted coop agreement for a given calendar year. Other limited entry permits registered to vessels that will fish for the coop do not bring catch allocation to a permitted MS coop.

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

(iii) *Annual non-coop allocation*—(A) *Pacific whiting.* The non-coop whiting

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

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

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

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

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

(ii) When a permitted MS coop sub-allocation of Pacific whiting or non-whiting groundfish species is reached, further harvesting or receiving of groundfish by vessels fishing in the permitted MS coop must cease, unless the permitted MS coop is operating under an NMFS-accepted inter-coop agreement.

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

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

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

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

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

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

(6) *Redistribution of annual allocation*—(i) *Between permitted MS coops (inter-coop).* (A) Through an inter-coop agreement, the designated coop managers of permitted MS coops may distribute Pacific whiting and non-whiting groundfish allocations among one or more permitted MS coops, provided the processor obligations at paragraph (c)(7) of this section have been met or a mutual agreement exception at paragraph (c)(7)(iv) of this section has been submitted to NMFS.

(B) In the case of a MS coop failure during the Pacific whiting primary season for the mothership sector, unused allocation associated with the catch history will not be available for harvest by the coop that failed, by any former members of the coop that failed, or any other MS coop for the remainder of that calendar year.

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

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

(7) *Processor obligation and mutual agreement exceptions*—(i) *Processor obligation.* Through the annual MS/CV-endorsed limited entry permit renewal process, the MS/CV-endorsed permit owner must identify to NMFS to which MS permit the MS/CV permit owner intends to obligate the catch history assignment associated with that permit if they are participating in the MS coop fishery. Only one MS permit may be designated (the obligation may not be split among MS permits).

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

(iii) *Processor obligation when MS coop allocation is redistributed.* When a permitted MS coop redistributes Pacific whiting allocation within the permitted MS coop or from one permitted MS coop to another permitted MS coop through an inter-coop agreement, such allocations must be delivered to the

mothership registered to the MS permit to which the allocation was obligated under the processor obligation submitted to NMFS, unless a mutual agreement exception has been submitted to NMFS.

(iv) *Mutual agreement exception.* An MS/CV-endorsed permit's catch history assignment can be released from a processor obligation through a mutual agreement exception. The MS/CV-endorsed permit owner must submit a copy to NMFS of the written agreement that includes the initial MS permit owner's acknowledgment of the release of the MS/CV-endorsed permit owner's processor obligation and the MS/CV-endorsed permit owner must identify a processor obligation for a new MS permit.

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

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

(d) *MS coop permit and agreement*—(1) *Eligibility and registration.* (i) *Eligibility.* To be an eligible coop entity a group of MS/CV-endorsed permit owners (coop members) must be a recognized entity under the laws of the United States or the laws of a State and represent all of the coop members.

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

(iii) *Application for MS coop permit.* The designated coop manager, on behalf of the coop entity, must submit a complete application form and include each of the items listed in paragraph (d)(1)(iii)(A) of this section. Only complete applications will be considered for issuance of a MS coop permit. An application will not be considered complete if any required application fees and annual coop reports have not been received by NMFS. NMFS may request additional supplemental documentation as necessary to make a determination of whether to approve or disapprove the application. Application forms and instruction are available on the NMFS NWR Web site (*http://www.nwr.noaa.gov*) or by request from NMFS. The designated coop manager must sign the application acknowledging the responsibilities of a designated coop manager defined in paragraph (b)(3) of this section.

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

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

(*i*) A list of all vessels, and permit holders participating in the coop and their share of the allocated catch which must match the amount distributed to individual permit owners by NMFS.

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

(*iii*) A processor obligation clause indicating that each MS/CV-endorsed permit has notified a specific MS permit by September 1 of the previous year of that MS/CV-endorsed permit's intent to obligate its catch history assignment to that MS permit, except that for the 2011 fishery, such notification must have been made prior to submission of the MS coop permit application.

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

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

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

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

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

(*ix*) A clause describing the co-op manager's responsibility for managing inter-coop reassignments of catch history assignment, should any occur.

(*x*) A clause describing how the annual report will be produced to document the coop's catch, bycatch data, inseason catch history reassignments and any other significant activities undertaken by the coop during the year, and the submission deadlines for that report.

(*xi*) Identification of the designated coop manager.

(*xii*) Provisions that prohibit member permit owners that have incurred legal sanctions that prevent them from fishing groundfish in the Council region from fishing in the coop.

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

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

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

(*3*) An accepted coop agreement that was submitted with the MS coop permit application and for which a MS coop permit was issued will remain in place through the end of the calendar year. The designated coop manager must resubmit a complete coop agreement to

NMFS consistent with the coop agreement contents described in paragraph (d)(1)(iii)(A)(*1*) of this section if there is a material change to the coop agreement.

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

(iv) *Effective date of MS coop permit.* A MS coop permit will be effective upon the date approved by NMFS and will allow fishing from the start of the MS sector primary whiting season until the end of the calendar year or until one or more of the following events occur, whichever comes first:

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

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

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

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

(2) *Initial administrative determination.* For all complete applications, NMFS will issue an IAD that either approves or disapproves the application. If approved, the IAD will include a MS coop permit. If disapproved, the IAD will provide the reasons for this determination.

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

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

(5) *Cost recovery.* [Reserved]

(e) *Inter-coop agreements*—(1) *General.* Permitted MS coops may voluntarily enter into inter-coop agreements for the purpose of sharing permitted MS coop allocations of Pacific whiting and allocated non-whiting groundfish. If two or more permitted MS coops enter into an inter-coop agreement, the inter-coop agreement must incorporate and honor the provisions of each permitted MS coop subject to the inter-coop agreement.

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

(3) *Inter-coop agreement review process.* Each designated coop manager must submit a copy of the inter-coop agreement signed by both designated coop managers for review. Complete coop agreements containing all items listed under paragraph (d)(1)(iii)(A)(*1*) will be reviewed by NMFS.

* * * * *

(f) * * *

(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), subpart C. If a vessel registered to the MS permit will operate as a mothership in the year for which the permit is renewed, the permit owner must make a declaration as part of the permit renewal that while participating in the whiting fishery it will operate solely as a mothership during the calendar year to which its limited entry permit applies. Any such declaration is binding on the vessel for the calendar year, even if the permit is transferred during the year, unless it is rescinded in response to a written request from the permit owner. Any request to rescind a declaration must be made by the permit holder and granted in writing by the Regional Administrator before any unprocessed whiting has been taken on board the vessel that calendar year.

(ii) *Change of permit ownership.* 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) *Accumulation limits*—(i) *MS permit usage limit.* No person who owns an MS permit(s) may register the MS permit(s) to vessels that cumulatively process more than 45 percent of the annual mothership sector Pacific whiting allocation. For purposes of determining accumulation limits, NMFS requires that permit owners submit a complete trawl ownership interest form for the permit owner as part of annual renewal for the MS permit. An ownership interest form will also be required whenever a new permit owner obtains an MS permit as part of a permit transfer request. Accumulation limits will be determined by calculating the percentage of ownership interest a person has in any MS permit. Determination of ownership interest will subject to the individual and collective rule.

(ii) *Ownership—individual and collective rule.* The ownership that counts toward a person's accumulation limit will include:

(A) Any MS permit owned by that person, and

(B) A portion of any MS permit owned by an entity in which that person has an interest, where the person's share of interest in that entity will determine the portion of that entity's ownership that counts toward the person's limit.

(iii) *[Reserved]*

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

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

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(6) * * *

(vi) *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 permit, the applicant will receive an MS permit. If NMFS disapproves an application, the IAD will provide the reasons. 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.

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(g) *Mothership catcher vessel (MS/CV)—endorsed permit*—(1) *General.* Any vessel that delivers whiting to a mothership processor in the Pacific whiting fishery mothership sector must

be registered to an MS/CV-endorsed permit, except that a vessel registered to limited entry trawl permit without an MS/CV or C/P endorsement may fish for a coop if authorized by the coop. Within the MS Coop Program, an MS/CV-endorsed permit may participate in an MS coop or in the non-coop fishery. 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.

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(iv) *Restrictions on processing for MS/CV-endorsed permits.* A vessel registered to an MS/CV-endorsed permit in a given year shall not engage in processing of Pacific whiting during that year.

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(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), subpart C. During renewal, all MS/CV-endorsed limited entry permit owners must make a preliminary declaration regarding their intent to participate in the coop or non-coop portion of the MS Coop Program for the following year. If the owner of the MS/CV-endorsed permit intends to participate in the coop portion of the MS Coop Program, they must also declare which MS vessel to which they intend to obligate the permit's catch history assignment. MS/CV-endorsed permits not obligated to a permitted MS coop by March 31 of the fishing year will be assigned to the non-coop fishery. For an MS/CV-endorsed permit that is not renewed, the following occurs:

(A) For the first year after the permit is not renewed, the permit will be extinguished, and the catch history assignment from that permit will be assigned to the non-coop fishery.

(B) In the year after the permit is extinguished (the second year after the permit is not renewed), the catch history assignment from that permit will be redistributed proportionally to all valid MS/CV-endorsed permits.

(ii) *Change of permit ownership.* 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) *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. NMFS will not approve a permit combination if it results in a person exceeding the accumulation limits specified at paragraph (g)(3) of this section. Any request to combine permits is subject to the provision provided at § 660.25(b), including the combination formula for resulting size endorsements.

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(3) * * *

(i) * * *

(C) *Trawl identification of ownership interest form.* Any person that owns a limited entry trawl permit and that is applying for or renewing an MS/CV endorsement shall document those persons that have an ownership interest in the permit greater than or equal to 2 percent. This ownership interest must be documented with the SFD via the Trawl Identification of Ownership Interest Form. SFD will not issue an MS/CV endorsement unless the Trawl Identification of Ownership Interest Form has been completed. NMFS may request additional information of the applicant as necessary to verify compliance with accumulation limits. Further, if SFD discovers through review of the Trawl Identification of Ownership Interest Form that a person owns or controls more than the accumulation limits, the person will be subject to divestiture provisions specified in paragraph (g)(3)(i)(D) of this section.

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(ii) *Catcher vessel usage limit.* No vessel may catch more than 30 percent of the mothership sector's whiting allocation.

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

* * * * *

(6) * * *

(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.

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(h) *Non-coop fishery*—(1) *Access to non-coop fishery allocation.* All vessels registered to the MS/CV-endorsed permits assigned to the non-coop fishery will have access to harvest and deliver the aggregate catch history assignment of all MS/CV permits assigned to the non-coop fishery.

(2) *Non-coop fishery closure.* The non-coop fishery will be closed by automatic action as specified at § 660.60(d) when the Pacific whiting or non-whiting allocations to the non-coop fishery have been reached or are projected to be reached.

(i) *Retention requirements.* Catcher vessels participating in the MS Coop Program may discard minor operational amounts of catch at sea if the observer has accounted for the discard (i.e., a maximized retention fishery).

(j) *Observer requirements*—(1) *Observer coverage requirements.* (i) *Coverage.* (A) *Motherships.* Any vessel registered to an MS permit 125 ft (38.1 m) LOA or longer must carry two NMFS-certified observers, and any vessel registered to an MS permit shorter than 125 ft (38.1 m) LOA must carry one NMFS-certified observer, each day that the vessel is used to take, retain, receive, land, process, or transport groundfish.

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

(ii) *Observer workload*—(A) *Motherships.* The time required for the

observer to complete sampling duties must not exceed 12 consecutive hours in each 24-hour period.

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

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

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

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

(B) *Catcher vessels*—(*1*) Accommodations and food for trips less than 24 hours must be equivalent to those provided for the crew.

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

(ii) *Safe conditions.* Motherships and Catcher Vessels must:

(A) Maintain safe conditions on the vessel for the protection of observers including adherence to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel including, but not limited to, rules of the road, vessel stability, emergency drills, emergency equipment, vessel maintenance, vessel general condition, and port bar crossings. An observer may refuse boarding or reboarding a vessel and may request a vessel return to port if operated in an unsafe manner or if unsafe conditions are indentified.

(B) Have on board a valid Commercial Fishing Vessel Safety Decal that certifies compliance with regulations found in 33 CFR chapter I and 46 CFR Chapter I, a certificate of compliance issued pursuant to 46 CFR 28.710 or a valid certificate of inspection pursuant to 46 U.S.C. 3311.

(iii) *Computer hardware and software*—(A) Motherships must:

(*1*) Provide hardware and software pursuant to regulations at §§ 679.50(g)(1)(iii)(B)(1) through 679.50(g)(1)(iii)(B)(3).

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

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

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

(B) *Catcher vessels.* [Reserved]

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

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

(vi) *Prior notification.* Notify observer(s) at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer.

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

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

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

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

(C) Collecting samples of catch.

(D) Collecting and carrying baskets of fish.

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

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

(ix) *Sample station and operational requirements.*

(A) *Motherships.* To allow the observer to carry out required duties, the vessel owner must provide an observer sampling station that meets the following requirements:

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

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

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

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

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

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

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

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

(B) *Catcher vessels.* To allow the observer to carry out the required

duties, the vessel owner must provide an observer sampling station that is:

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

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

(x) *Transfer at sea.* Observers may be transferred at-sea between motherships, between motherships and catcher-processors, or between a mothership and a catcher vessel. Transfers at-sea between catcher vessels is prohibited. For transfers, both vessels must:

(A) Ensure that transfers of observers at sea via small boat under its own power are carried out during daylight hours, under safe conditions, and with the agreement of observers involved.

(B) Notify observers at least 3 hours before observers are transferred, such that the observers can finish any sampling work, collect personal belongings, equipment, and scientific samples.

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

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

(3) *Procurement of observer services*—(i) *Motherships*—(A) Owners of vessels required to carry observers under paragraph (j)(1)(i) of this section must arrange for observer services from a permitted observer provider, except that:

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

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

(B) [Reserved]

(ii) *Catcher vessels*—(A) Owners of vessels required to carry observers under paragraph (j)(1)(i) of this section must arrange for observer services from a permitted observer provider, except that:

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

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

(B) [Reserved]

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

(ii) *Catcher vessels.* [Reserved]

(5) *Observer provider responsibilities*—(i) *Provide qualified candidates to serve as observers.* Observer providers must provide qualified candidates to serve as observers. To be qualified, a candidate must have:

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

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

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

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

(ii) *Hiring an observer candidate*—(A) *Motherships.*

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

(*2*) *Observer contracts.* The observer provider must have a written contract or a written contract addendum that is signed by the observer and observer provider prior to the observer's deployment with the following clauses:

(*i*) That all the observer's in-season messages and catch reports required to be sent while deployed are delivered to the Observer Program Office as specified by written Observer Program instructions;

(*ii*) That the observer inform the observer provider prior to the time of embarkation if he or she is experiencing any new mental illness or physical ailments or injury 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*) *Observer contracts.* The observer provider must have a written contract or a written contract addendum that is signed by the observer and observer provider prior to the observer's deployment with the following clauses:

(*i*) That all the observer's in-season messages and catch reports required to be sent while deployed are delivered to the Observer Program Office as specified by written Observer Program instructions;

(*ii*) That the observer inform the observer provider prior to the time of embarkation if he or she is experiencing any new mental illness or physical ailments or injury 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 completes a basic cardiopulmonary resuscitation/first aid course prior to the end of the NMFS West Coast Groundfish Observer Training class.

(iii) *Ensure that observers complete duties in a timely manner*—(A) *Motherships.* 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 NOAA 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 as required by the Observer Manual;

(*2*) Report for his or her scheduled debriefing and complete all debriefing responsibilities; and

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

(*4*) Immediately report to the Observer Program Office and the NOAA OLE any refusal to board an assigned vessel.

(iv) *Observers provided to vessel*—(A) *Motherships.* Observers provided to mothership vessels:

(*1*) Must have a valid North Pacific groundfish observer certification endorsement and an At-Sea Hake Observer Program certification;

(*2*) Must not have not informed the provider prior to the time of embarkation that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement that would prevent him or her from performing his or her assigned duties; and

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

(B) *Catcher vessels.* Observers provided to catcher vessels:

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

(*2*) Must have not informed the provider prior to the time of embarkation that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement, as required in paragraph (j)(5)(x)(B)(*2*) of this section that would prevent him or her from performing his or her assigned duties; and

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

(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 the observer from performing his or her duties or where the observer resigns prior to completion of his or her duties. If the observer provider is unable to respond to an industry request for observer coverage from a vessel for whom the provider is in a contractual relationship due to lack of available observers by the estimated embarking time of the vessel, the provider must report it to the observer program at least 4 hours prior to the vessel's estimated embarking time.

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

(vii) *Provide observer deployment logistics*—(A) *Motherships.* An observer provider must provide to each of its observers under contract:

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

(*2*) Lodging, per diem, and any other services necessary to observers assigned to fishing vessels.

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

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

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

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

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

(*v*) An observer under contract who is between vessel assignments must be provided with shoreside accommodations pursuant to the terms of the contract between the observer provider and the observers. If the observer provider is responsible for providing accommodations under the contract with the observer, the accommodations must be at a licensed hotel, motel, bed and breakfast, or other shoreside accommodations for the duration of each period between vessel or shoreside assignments. Such accommodations must include an assigned bed for each observer and no other person may be assigned that bed for the duration of that observer's stay. Additionally, no more than four beds may be in any room housing observers at accommodations meeting the requirements of this section.

(B) *Catcher vessels.* An observer provider must ensure each of its observers under contract:

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

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

(*3*) Remains available to NOAA OLE and the Observer Program until the conclusion of debriefing.

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

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

(*i*) An observer under contract may be housed on a vessel to which he or she is assigned: Prior to their vessel's initial departure from port; for a period not to exceed 24 hours following the completion of an offload when the observer has duties and is scheduled to disembark; or for a period not to exceed twenty-four hours following the vessel's arrival in port when the observer is scheduled to disembark.

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

(*iii*) Otherwise, each observer between vessels, while still under contract with a permitted observer provider, shall be provided with accommodations in accordance with the contract between the observer and the observer provider. If the observer provider is responsible for providing accommodations under the contract with the observer, the accommodations must be at a licensed hotel, motel, bed and breakfast, or other shoreside accommodations that has an assigned bed for each observer that no other person may be assigned to for the duration of that observer's stay. Additionally, no more than four beds may be in any room housing observers at accommodations meeting the requirements of this section.

(viii) *Observer deployment limitations*—(A) *Motherships.* Unless alternative arrangements are approved

by the Observer Program Office, an observer provider must not:

(*1*) Deploy an observer on the same vessel more than 90 days in a 12-month period;

(*2*) Deploy an observer for more than 90 days in a single deployment;

(*3*) Include more than four vessels assignments in a single deployment, or

(*4*) Disembark an observer from a vessel before that observer has completed his or her sampling or data transmission duties.

(B) *Catcher vessels.* Not deploy an observer on the same vessel more than 90 calendar days in a 12-month period.

(ix) *Verify vessel's safety decal.* An observer provider must verify that a vessel has a valid USCG safety decal as required under paragraph (j)(2)(ii)(B) of this section before an observer may get underway aboard the vessel. One of the following acceptable means of verification must be used to verify the decal validity:

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

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

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

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

(A) *Motherships*—(*1*) *Training and briefing registration materials.* The observer provider must submit training and briefing registration materials to the Observer Program Office at least 5 business days prior to the beginning of a scheduled observer at-sea hake training or briefing session.

(*i*) Registration materials consist of the date of requested training or briefing with a list of observers including each observer's full name (i.e., first, middle and last names).

(*ii*) *Projected observer assignments.* Prior to the observer's completion of the training or briefing session, the observer provider must submit to the Observer Program Office a statement of projected observer assignments that include the observer's name; vessel, gear type, and vessel/processor code; port of embarkation; and area of fishing.

(*2*) *Observer debriefing registration.* The observer provider must contact the At-Sea Hake Observer Program within 5 business days after the completion of an observer's deployment to schedule a date, time and location for debriefing. Observer debriefing registration information must be provided at the time of debriefing scheduling and must include the observer's name, cruise number, vessel name(s) and code(s), and requested debriefing date.

(*3*) *Observer provider contracts.* If requested, observer providers must submit to the Observer Program Office a completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services under paragraph (j)(1)(i) of this section. Observer providers must also submit to the Observer Program Office upon request, a completed and unaltered copy of the current or most recent signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract and any agreements or policies with regard to observer compensation or salary levels) between the observer provider and the particular entity identified by the Observer Program or with specific observers. The copies must be submitted to the Observer Program Office via fax or mail within 5 business days of the request. Signed and valid contracts include the contracts an observer provider has with:

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

(*ii*) Observers.

(*4*) *Change in observer provider management and contact information.* Observer providers must submit notification of any other change to provider contact information, including but not limited to, changes in contact name, phone number, 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 §§ 660.112 or 600.725(o), (t) and (u);

(*iii*) Any concerns about vessel safety or marine casualty under 46 CFR 4.05–1(a)(1) through (7);

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

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

(B) *Catcher vessels.* An observer provider must provide all of the following information by electronic transmission (e-mail), fax, or other method specified by NMFS.

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

(*i*) Training registration materials consist of the following: Date of requested training; a list of observer candidates that includes each candidate's full name (i.e., first, middle and last names), date of birth, and gender; a copy of each candidate's academic transcripts and resume; a statement signed by the candidate under penalty of perjury which discloses the candidate's criminal convictions; projected observer assignments—Prior to the observer's completion of the training or briefing session, the observer provider must submit to the Observer Program Office a statement of projected observer assignments that include that includes each observer's name, current mailing address, e-mail address, phone numbers and port of embarkation ("home port"); and length of observers contract.

(*ii*) Briefing registration materials consist of the following: Date and type of requested briefing session; list of observers to attend the briefing session, that includes each observer's full name (first, middle, and last names); projected observer assignments—Prior to the observer's completion of the training or briefing session, the observer provider must submit to the Observer Program Office a statement of projected observer assignments that include that includes each observer's name, current mailing address, e-mail address, phone numbers and port of embarkation ("home port"); and length of observer contract.

(*iii*) *Debriefing.* The West Coast Groundfish Observer Program will notify the observer provider which observers require debriefing and the specific time period the provider has to schedule a date, time, and location for

debriefing. The observer provider must contact the West Coast Groundfish Observer program within 5 business days by telephone to schedule debriefings. Observer providers must immediately notify the observer program when observers end their contract earlier than anticipated.

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

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

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

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

(*iii*) States Worker's Compensation as required.

(*iv*) Commercial General Liability.

(*4*) *Observer provider contracts.* If requested, observer providers must submit to the Observer Program Office a completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services under paragraph (j)(1)(i) of this section. Observer providers must also submit to the Observer Program Office upon request, a completed and unaltered copy of the current or most recent signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract and any agreements or policies with regard to observer compensation or salary levels) between the observer provider and the particular entity identified by the Observer Program or with specific observers. The copies must be submitted to the Observer Program Office via fax or mail within 5 business days of the request. Signed and valid contracts include the contracts an observer provider has with:

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

(*ii*) Observers.

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

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

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

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

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

(*10*) *Other reports.* Reports of the following must be submitted in writing to the At-Sea Hake or West Coast Groundfish Observer Program Office by the observer provider via fax or 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 §§ 660.112 or 600.725(o), (t) and (u);

(*iii*) Any concerns about vessel safety or marine casualty under 46 CFR 4.05–1(a)(1) through (7);

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

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

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

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

(xiv) *Limitations on conflict of interest.* Observer providers must meet limitations on conflict of interest. Observer providers:

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

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

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

(*3*) Any business involved with purchasing raw or processed products from any vessel or shoreside processor participating in a fishery managed pursuant to an FMP in the waters off the

coasts of Alaska, California, Oregon, and Washington.

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

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

(xv) *Observer conduct and behavior.* Observer providers must develop and maintain a policy addressing observer conduct and behavior for their employees that serve as observers. The policy shall address the following behavior and conduct regarding:

(A) Observer use of alcohol;

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

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

(D) An observer provider shall provide a copy of its conduct and behavior policy by February 1 of each year, to: Observers, observer candidates and; the Observer Program Office.

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

(6) *Observer certification and responsibilities*—(i) *Applicability.* Observer certification authorizes an individual to fulfill duties as specified in writing by the NMFS Observer Program Office while under the employ of a NMFS-permitted observer provider and according to certification endorsements as designated under paragraph (j)(6)(iii) of this section.

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

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

(*1*) Are employed by an observer provider company permitted pursuant to § 679.50 at the time of the issuance of the certification;

(*2*) Have provided, through their observer provider:

(*i*) Information identified by NMFS at § 679.50 regarding an observer candidate's health and physical fitness for the job;

(*ii*) Meet all observer education and health standards as specified in § 679.50 and

(*iii*) Have successfully completed NMFS-approved training as prescribed by the At-Sea Hake and/or the West Coast Groundfish Observer Program. Successful completion of training by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Observer Program.

(*iv*) Have not been decertified under paragraph (j)(6)(ix) of this section, or pursuant to § 679.50.

(B) [Reserved]

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

(v) *Issuance of an observer certification.* An observer certification will be issued upon determination by the observer certification official that the candidate has successfully met all requirements for certification as specified 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) *Motherships*—(*1*) *North Pacific Groundfish Observer Program certification training endorsement.* A certification training endorsement signifies the successful completion of the training course required to obtain observer certification. This endorsement expires when the observer has not been deployed and performed sampling duties as required by the Observer Program Office for a period of time, specified by the Observer Program, after his or her most recent debriefing. The observer can renew the endorsement by successfully completing certification training once more.

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

(*3*) *North Pacific Groundfish Observer Program deployment endorsements.* Each observer who has completed an initial deployment after certification or annual briefing must receive a deployment endorsement to their certification prior to any subsequent deployments for the remainder of that year. An observer may obtain a deployment endorsement by successfully completing all pre-cruise briefing requirements. The type of briefing the observer must attend and successfully complete will be specified in writing by the Observer Program during the observer's most recent debriefing.

(*4*) *At-Sea Hake Observer Program endorsements.* A Pacific hake fishery endorsement is required for purposes of performing observer duties aboard vessels that process groundfish at sea in the Pacific whiting fishery. A Pacific whiting fishery endorsement to an observer's certification may be obtained by meeting the following requirements:

(*i*) Be a prior NMFS-certified observer in the groundfish fisheries off Alaska;

(*ii*) Receive an evaluation by NMFS for his or her most recent deployment that indicated that the observer's performance met Observer Program expectations for that deployment; successfully complete a NMFS-approved observer training and/or Pacific whiting briefing as prescribed by the Observer Program; and comply with all of the other requirements of this section.

(B) *Catcher vessels.* The following endorsements must be obtained in addition to observer certification, in order for an observer to deploy.

(*1*) *West Coast Groundfish Observer Program training certification endorsement.* A training certification endorsement signifies the successful completion of the training course required to obtain observer certification. This endorsement expires when the observer has not been deployed and performed sampling duties as required by the observer Program office for a

period of time, specified by the Observer Program, after his or her most recent debriefing. The observer can renew the endorsement by successfully completing training once more.

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

(*3*) *West Coast Groundfish Observer Program deployment endorsement.* Each observer who has completed an initial deployment after their certification or annual briefing must receive a deployment endorsement to their certification prior to any subsequent deployments for the remainder of that year. An observer may obtain a deployment endorsement by successfully completing all briefing requirements, when applicable. The type of briefing the observer must attend and successfully complete will be specified in writing by the Observer Program during the observer's most recent debriefing.

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

(A) *Motherships*—(*1*) Successfully perform their assigned duties as described in the Observer Manual or other written instructions from the Observer Program Office including calling into the NMFS deployment hotline upon departing and arriving into port each trip to leave the following information: Observer name, phone number, vessel name departing on, date and time of departure and date and time of expected return.

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

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

(*4*) Successfully complete NMFS-approved annual briefings as prescribed by the At-Sea Hake Observer Program.

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

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

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

(B) *Catcher vessels.* After initial issuance, an observer must keep their certification valid by meeting all of the following requirements specified below:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(viii) *Standards of behavior.* Observers must:

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

(B) Immediately report to the observer program office and the NMFS OLE any time they refuse to board.

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

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

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

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

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

(*i*) Failed to satisfactorily perform duties of observers as specified in writing by the NMFS Observer Program; or

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

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

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

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

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

(C) *Issuance of initial administrative determination.* Upon determination that suspension or decertification is warranted, the suspension/decertification official will issue a written IAD to the observer via certified mail at the observer's most current address provided to NMFS. The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken. 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 § 679.43.

(k) *MS coop failure*—(1) The Regional Administrator will determine that a permitted MS coop is considered to have failed if:

(i) The coop members dissolve the coop, or

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

(iii) The coop agreement is no longer valid.

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

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

■ 26. In § 660.160:

■ a. Paragraphs (a)(3) and (a)(4) are revised;

■ b. Paragraphs (g) and (h) are removed;

■ c. Paragraphs (b) through (f) are redesignated as paragraphs (c) through (g);

■ d. A new paragraph (b) is added;

■ e. Text is added to the newly designated paragraph (c)(2) and (d);

■ f. The headings of newly designated paragraphs (e)(2) through (e)(4) are revised;

■ g. New paragraphs (c)(3) through (c)(7) are added, and text is added to newly designated paragraphs (e)(2) through (e)(4);

■ h. The newly designated paragraph (e)(1) introductory text is revised, and newly designated paragraph (e)(5) is removed and reserved;

■ i. The newly designated paragraph (e)(7) is redesignated as paragraph (e)(6) and newly designated paragraph (e)(6)(vii) is revised;

■ j. Text is added to the newly designated paragraph (g); and

■ k. A new paragraph (h) is added to read as follows:

§ 660.160 Catcher/processor (C/P) Coop Program.

* * * * *

(a) * * *

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

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

* * * * *

(b) *Participation requirements and responsibilities*—(1) *C/P vessels*—(i) *C/P vessel participation requirements.* A vessel is eligible to fish as a catcher/processor in the C/P Coop Program if:

(A) The vessel is registered to a C/P-endorsed limited entry trawl permit.

(B) The vessel is not used to harvest fish as a catcher vessel in the mothership coop program in the same calendar year.

(C) The vessel is not used to fish as a mothership in the MS Coop Program in the same calendar year.

(ii) *C/P vessel responsibilities.* The owner and operator of a catcher/processor vessel must:

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

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

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

(*1*) Ensure that all catch is weighed in its round form on a NMFS-approved scale that meets the requirements described in § 660.15(b), subpart C;

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

(2) *C/P coops*—(i) *C/P coop participation requirements.* For a C/P coop to participate in the catcher/processor sector of the Pacific whiting fishery, the C/P coop must:

(A) Be issued a C/P coop permit;

(B) Be composed of all C/P-endorsed limited entry permits and their owners;

(C) Be formed voluntarily;

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

(E) Designate an individual as a coop manager.

(ii) *C/P coop responsibilities.* A C/P coop is responsible for:

(A) Applying for and being registered to a C/P coop permit;

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

(C) Allocating catch for use by specific coop members;

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

(E) Submitting an annual report.

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

(*1*) Serve as the contact person with NMFS and the Council;

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

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

(*4*) Be authorized to receive or respond to any legal process in which the coop is involved; and

(*5*) Notify NMFS if the coop dissolves.

(iii) *C/P coop compliance and joint/several liability.* A C/P coop must comply with the provisions of this section. The C/P coop, member limited entry permit owners, and owners and operators of vessels registered to member limited entry permits, are jointly and severally responsible for compliance with the provisions of this section. Pursuant to 15 CFR part 904, each C/P coop, member permit owner, and owner and operator of a vessel registered to a coop member permit may be charged jointly and severally for violations of the provisions of this section. For purposes of enforcement, a C/P coop is a legal entity that can be subject to NOAA enforcement action for violations of the provisions of this section.

* * * * *

(c) * * *

(2) *C/P Coop Program annual allocations.* The C/P Coop Program allocation of Pacific whiting is equal to the catcher/processor sector allocation. Only a single coop may be formed in the catcher/processor sector with the one permitted coop receiving the catcher/processor sector allocation.

(3) *Non-whiting groundfish species*—(i) Non-whiting groundfish species with a catcher/processor sector allocation are established in accordance with regulation at § 660.55(i). The pounds associated with each species will be provided when the coop permit is issued.

(ii) Groundfish species with at-sea sector set-asides will be managed on an annual basis unless there is a risk of a harvest specification being exceeded, unforeseen impact on another fisheries, or conservation concerns in which case inseason action may be taken. Set asides may be adjusted through the biennial specifications and management measures process as necessary.

(iii) Groundfish species not addressed under paragraph (i) or (ii) above, will be managed on an annual basis unless there is a risk of a harvest specification being exceeded, unforeseen impact on another fisheries, or conservation concerns in which case inseason action may be taken.

(4) *Halibut set-asides.* Annually a specified amount of the Pacific halibut will be held in reserve as a shared set-aside for bycatch in the at-sea Pacific whiting fisheries and the shorebased trawl sector south of 40°10′ N lat.

(5) *Non-whiting groundfish species reapportionment.* The Regional Administrator may make available for harvest to the mothership sector of the Pacific whiting fishery, the amounts of the catcher/processor sector's non-whiting catch allocation remaining when the catcher/processor sector reaches its Pacific whiting allocation or participants in the catcher/processor sector do not intend to harvest the remaining sector allocation. The designated coop manager must submit a cease fishing report to NMFS indicating that harvesting has concluded for the year. At any time after greater than 80 percent of the catcher/processor sector Pacific whiting allocation has been harvested, the Regional Administrator may contact the designated coop manager to determine whether they intend to continue fishing. When considering redistribution of non-whiting catch allocation, the Regional Administrator will take into consideration the best available data on total projected fishing impacts.

(6) *Reaching the catcher/processor sector allocation.* When the catcher/processor sector allocation of Pacific whiting or non-whiting groundfish catch allocation is reached or is projected to be reached, further taking and retaining, receiving, or at-sea processing by a catcher/processor is prohibited. No additional unprocessed groundfish may be brought on board after at-sea processing is prohibited, but a catcher/processor may continue to process catch that was on board before at-sea processing was prohibited. The catcher/processor sector will close when the allocation of any one species is reached or projected to be reached.

(7) *Announcements.* The Regional Administrator will announce in the **Federal Register** when the catcher/processor sector allocation of Pacific whiting or non-whiting groundfish with an allocation is reached, or is projected to be reached, and specify the appropriate action. In order to prevent exceeding an allocation and to avoid underutilizing the resource, prohibitions against further taking and retaining, receiving, or at-sea processing of Pacific whiting, or reapportionment of non-whiting groundfish with allocations may be made effective immediately by actual notice to fishers and processors, by e-mail, Internet (*http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Whiting-Management/index.cfm*), phone, fax, letter, press release, and/or USCG Notice to Mariners (monitor channel 16 VHF), followed by publication in the **Federal Register,** in which instance public comment will be sought for a reasonable period of time thereafter.

(d) *C/P coop permit and agreement*—(1) *Eligibility and registration*—(i) *Eligibility.* To be an eligible coop entity a group of C/P-endorsed permit owners (coop members) must be a recognized entity under the laws of the United States or the laws of a State and that represents all of the coop members.

(ii) *Annual registration and deadline.* Each year, the coop entity must submit a complete application to NMFS for a C/P coop permit. The application must be submitted to NMFS by between February 1 and March 31 of the year in which it intends to participate. NMFS will not consider any applications received after March 31. A C/P coop permit expires on December 31 of the year in which it was issued.

(iii) *Application for a C/P coop permit.* The designated coop manager, on behalf of the coop entity, must submit a complete application form and include each of the items listed in paragraph (d)(1)(iii)(A) of this section. Only complete applications will be considered for issuance of a C/P coop permit. An application will not be considered complete if any required application fees and annual coop reports have not been received by NMFS. NMFS may request additional supplemental documentation as necessary to make a determination of whether to approve or disapprove the application. Application forms and instruction are available on the NMFS NWR Web site (*http://www.nwr.noaa.gov*) or by request from NMFS. The designated coop manager

must sign the application acknowledging the responsibilities of a designated coop manager defined in paragraph (b)(2) of this section.

(A) *Coop agreement.* Signed copies of the coop agreement must be submitted to NMFS before the coop is authorized to engage in fishing activities. A coop agreement must include all of the information listed in this paragraph to be considered a complete coop agreement. NMFS will only review complete coop agreements. A coop agreement will not be accepted unless it includes all of the required information; the descriptive items listed in this paragraph appear to meet the stated purpose; and information submitted is correct and accurate.

(*1*) *Coop agreement contents.* The coop agreement must be signed by the coop members (C/P-endorsed permit owners) and include the following information:

(*i*) A list of all vessels registered to C/P-endorsed permits that the member permit owners intend to use for fishing under the C/P coop permit.

(*ii*) All C/P-endorsed limited entry member permits identified by permit number.

(*iii*) A description of the coop's plan to adequately monitor and account for the catch of Pacific whiting and non-whiting groundfish allocations, and to monitor and account for the catch of prohibited species.

(*iv*) A clause stating that if a permit is transferred during the effective period of the co-op agreement, any new owners of that member permit would be coop members and are required to comply with membership restrictions in the coop agreement.

(*v*) A description of the coop's enforcement and penalty provisions adequate to maintain catch of Pacific whiting and non-whiting groundfish within the allocations.

(*vi*) A description of measures to reduce catch of overfished species.

(*vii*) A clause describing how the annual report will be produced to document the coop's catch, bycatch data, and any other significant activities undertaken by the coop during the year, and the submission deadlines for that report.

(*viii*) Identification of the designated coop manager.

(*2*) [Reserved]

(B) *Acceptance of a coop agreement*—(*1*) If NMFS does not accept the coop agreement, the coop permit application will be returned to the applicant with a letter stating the reasons the coop agreement was not accepted by NMFS.

(*2*) Coop agreements that are not accepted may be resubmitted for review by sufficiently addressing the deficiencies identified in the NMFS letter and resubmitting the entire coop permit application by the date specified in the NMFS letter.

(*3*) An accepted coop agreement that was submitted with the C/P coop permit application and for which a C/P coop permit was issued will remain in place through the end of the calendar year. The designated coop manager must resubmit a complete coop agreement to NMFS consistent with the coop agreement contents described in this paragraph if there is a material change to the coop agreement.

(*4*) Within 7 calendar days following a material change, the designated coop manager must notify NMFS of the material change. Within 30 calendar days, the designated coop manger must submit to NMFS the revised coop agreement with a letter that describes such changes. NMFS will review the material changes and provide a letter to the coop manager that either accepts the changes as given or does not accept the revised coop agreement with a letter stating the reasons that it was not accepted by NMFS. The coop may resubmit the coop agreement with further revisions to the material changes responding to NMFS concerns.

(iv) *Effective date of C/P coop permit.* A C/P coop permit will be effective on the date approved by NMFS and will allow fishing from the start of the C/P sector primary whiting season until the end of the calendar year or until one or more of the following events occur, whichever comes first:

(A) NMFS closes the C/P sector fishing season for the year or the designated coop manager notifies NMFS that the coop has completed fishing for the calendar year,

(B) The C/P coop has reached its Pacific whiting allocation,

(C) A material change to the coop agreement has occurred and the designated coop manager failed to notify NMFS within 7 calendar days of the material change and submit to NMFS the revised coop agreement with a letter that describes such changes within 30 calendar days, or

(D) NMFS has determined that a coop failure occurred.

(2) *Initial administrative determination.* For all complete applications, NMFS will issue an IAD that either approves or disapproves the application. If approved, the IAD will include a C/P coop permit. If disapproved, the IAD will provide the reasons for this determination.

(3) *Appeals.* An appeal to a C/P coop permit action follows the same process as the general permit appeals process defined at § 660.25(g), subpart C.

(4) *Fees.* The Regional Administrator is authorized to charge fees for administrative costs associated with the issuance of a C/P coop permit consistent with the provisions given at § 660.25(f), subpart C.

(5) *Cost recovery.* [Reserved]

(e) *C/P-endorsed permit*—(1) *General.* Any vessel participating in the C/P sector of the non-tribal primary Pacific whiting fishery during the season described at § 660.131(b) of this subpart must be registered to a valid limited entry permit with a C/P endorsement. A C/P-endorsed permit is a limited entry permit and is subject to the limited entry permit provisions given at § 660.25(b), subpart C.

* * * * *

(2) *Renewal, change in permit ownership, vessel registration, or combination.*

(i) *Renewal.* A C/P-endorsed permit must be renewed annually consistent with the limited entry permit regulations given at § 660.25(b)(4), subpart C. If a vessel registered to the C/P-endorsed permit will operate as a mothership in the year for which the permit is renewed, the permit owner must make a declaration as part of the permit renewal that while participating in the whiting fishery they will operate solely as a mothership during the calendar year to which its limited entry permit applies. Any such declaration is binding on the vessel for the calendar year, even if the permit is transferred during the year, unless it is rescinded in response to a written request from the permit owner. Any request to rescind a declaration must be made by the permit holder and granted in writing by the Regional Administrator before any unprocessed whiting has been taken on board the vessel that calendar year.

(ii) *Change of permit ownership.* A C/P-endorsed permit is subject to the limited entry permit change in permit ownership regulations given at § 660.25(b)(4), subpart C.

(iii) *Change of vessel registration.* A C/P-endorsed permit is subject to the limited entry permit change of vessel registration regulations given at § 660.25(b)(4), subpart C.

(iv) *Combination.* If two or more permits are combined, the resulting permit is one permit with an increased size endorsement. A C/P-endorsed permit that is combined with another limited entry trawl-endorsed permit that does not have a C/P endorsement will result in a single trawl limited entry permit with a C/P endorsement with a larger size endorsement. Any request to

combine permits is subject to the provisions provided at § 660.25(b), including the combination formula for resulting size endorsements.

(3) *Appeals.* An appeal to a C/P-endorsed permit action follows the same process as the general permit appeals process defined at § 660.25(g), subpart C.

(4) *Fees.* The Regional Administrator is authorized to charge fees for the administrative costs associated with review and issuance of a C/P endorsement consistent with the provisions at § 660.25(f), subpart C.

(5) [Reserved]

* * * * *

(6) * * *

(vii) *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, the applicant will receive a C/P endorsement on a limited entry trawl permit. If NMFS disapproves an application, the IAD will provide the reasons. 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.

* * * * *

(g) *Observer requirements*—(1) *Observer coverage requirements*—(i) *Coverage.* Any vessel registered to a C/P-endorsed limited entry trawl permit that is 125 ft (38.1 m) LOA or longer must carry two NMFS-certified observers, and any vessel registered to a C/P-endorsed limited entry trawl permit that is shorter than 125 ft (38.1 m) LOA must carry one NMFS-certified observer, each day that the vessel is used to take, retain, receive, land, process, or transport groundfish.

(ii) *Observer workload.* The time required for the observer to complete sampling duties must not exceed 12 consecutive hours in each 24-hour period.

(iii) *Refusal to board.* Any boarding refusal on the part of the observer or vessel must be reported to the observer program and NOAA OLE by the observer provider. The observer must be available for an interview with the observer program or NOAA OLE if necessary.

(2) *Vessel responsibilities.* An operator and/or crew of a vessel required to carry an observer must provide:

(i) *Accommodations and food.* Provide accommodations and food that are equivalent to those provided for officers, engineers, foremen, deck-bosses or other management level personnel of the vessel.

(ii) *Safe conditions*—(A) Maintain safe conditions on the vessel for the protection of observers including adherence to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel, including but not limited to, rules of the road, vessel stability, emergency drills, emergency equipment, vessel maintenance, vessel general condition, and port bar crossings. An observer may refuse boarding or reboarding a vessel and may request a vessel to return to port if operated in an unsafe manner or if unsafe conditions are identified.

(B) Have on board a valid Commercial Fishing Vessel Safety Decal that certifies compliance with regulations found in 33 CFR chapter I and 46 CFR chapter I, a certificate of compliance issued pursuant to 46 CFR 28.710 or a valid certificate of inspection pursuant to 46 U.S.C. 3311.

(iii) *Computer hardware and software.* Catcher/processor vessels must:

(A) Provide hardware and software pursuant to regulations at §§ 679.50(g)(1)(iii)(B)(1) through 679.50(g)(1)(iii)(B)(3).

(B) Provide the observer(s) access to a computer required under paragraph (g)(2)(iii) of this section that is connected to a communication device that provides a point-to-point connection to the NMFS host computer.

(C) Ensure that the catcher/processor has installed the most recent release of NMFS data entry software provided by the Regional Administrator, or other approved software prior to the vessel receiving, catching or processing IFQ species.

(D) Ensure that the communication equipment required in paragraph (g)(2)(iii) of this section and used by observers to enter and transmit data, is fully functional and operational. "Functional" means that all the tasks and components of the NMFS supplied, or other approved, software described at paragraph (g)(2)(iii) of this section and the data transmissions to NMFS can be executed effectively aboard the vessel by the communications equipment.

(iv) *Vessel position.* Allow observer(s) access to, the vessel's navigation equipment and personnel, on request, to determine the vessel's position.

(v) *Access.* Allow observer(s) free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(vi) *Prior notification.* Notify observer(s) at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer.

(vii) *Records.* Allow observer(s) to inspect and copy any State or Federal logbook maintained voluntarily or as required by regulation.

(viii) *Assistance.* Provide all other reasonable assistance to enable observer(s) to carry out their duties, including, but not limited to:

(A) Measuring decks, codends, and holding bins.

(B) Providing the observer(s) with a safe work area.

(C) Collecting samples of catch.

(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) *Sampling station and operational requirements for catcher/processor vessels.* This paragraph contains the requirements for observer sampling stations. To allow the observer to carry out the required duties, the vessel owner must provide an observer sampling station that meets the following requirements:

(A) *Accessibility.* The observer sampling station must be available to the observer at all times.

(B) *Location.* The observer sampling station must be located within 4 m of the location from which the observer samples unsorted catch.

(C) *Access.* Unobstructed passage must be provided between the observer sampling station and the location where the observer collects sample catch.

(D) *Minimum work space.* The observer must have a working area of at least 4.5 square meters, including the observer's sampling table, for sampling and storage of fish to be sampled. The observer must be able to stand upright and have a work area at least 0.9 m deep in the area in front of the table and scale.

(E) *Table.* The observer sampling station must include a table at least 0.6 m deep, 1.2 m wide and 0.9 m high and no more than 1.1 m high. The entire surface area of the table must be available for use by the observer. Any area for the observer sampling scale is in addition to the minimum space requirements for the table. The observer's sampling table must be secured to the floor or wall.

(F) *Diverter board.* The conveyor belt conveying unsorted catch must have a removable board ("diverter board") to allow all fish to be diverted from the

belt directly into the observer's sampling baskets. The diverter board must be located downstream of the scale used to weigh total catch. At least 1 m of accessible belt space, located downstream of the scale used to weight total catch, must be available for the observer's use when sampling.

(G) *Other requirements.* The sampling station must be in a well-drained area that includes floor grating (or other material that prevents slipping), lighting adequate for day or night sampling, and a hose that supplies fresh or sea water to the observer.

(H) *Observer sampling scale.* The observer sample station must include a NMFS-approved platform scale (pursuant to requirements at § 679.28(d)(5)) with a capacity of at least 50 kg located within 1 m of the observer's sampling table. The scale must be mounted so that the weighing surface is no more than 0.7 m above the floor.

(x) *Transfer at sea.* Observers may be transferred at-sea between catcher-processors, between catcher-processors and motherships, or between a catcher-processor and a catcher vessel. Transfers at-sea between catcher vessels is prohibited. For transfers, both vessels must:

(A) Ensure that transfers of observers at sea via small boat under its own power are carried out during daylight hours, under safe conditions, and with the agreement of observers involved.

(B) Notify observers at least 3 hours before observers are transferred, such that the observers can finish any sampling work, collect personal belongings, equipment, and scientific samples.

(C) Provide a safe pilot ladder and conduct the transfer to ensure the safety of observers during transfers.

(D) Provide an experienced crew member to assist observers in the small boat in which any transfer is made.

(3) *Procurement of observer services*—(i) Owners of vessels required to carry observers under paragraph (g)(1) of this section must arrange for observer services from a permitted observer provider, except that:

(A) Vessels are required to procure observer services directly from NMFS when NMFS has determined and given notification that the vessel must carry NMFS staff or an individual authorized by NMFS in lieu of an observer provided by a permitted observer provider.

(B) Vessels are required to procure observer services directly from NMFS and a permitted observer provider when NMFS has determined and given notification that the vessel must carry NMFS staff and/or individuals authorized by NMFS, in addition to an observer provided by a permitted observer provider.

(ii) [Reserved]

(4) *Application to become an observer provider.* Any observer provider holding a valid permit issued by the North Pacific Groundfish Observer Program in 2010 can supply observer services and will be issued a West Coast Groundfish Observer Program permit.

(5) *Observer provider responsibilities*—(i) *Provide qualified candidates to serve as observers.* Observer providers must provide qualified candidates to serve as observers. To be qualified, a candidate must have:

(A) A Bachelor's degree or higher from an accredited college or university with a major in one of the natural sciences;

(B) Successfully completed a minimum of 30 semester hours or equivalent in applicable biological sciences with extensive use of dichotomous keys in at least one course;

(C) Successfully completed at least one undergraduate course each in math and statistics with a minimum of 5 semester hours total for both; and

(D) Computer skills that enable the candidate to work competently with standard database software and computer hardware.

(ii) *Hiring an observer candidate*—(A) The observer provider must provide the candidate a copy of NMFS-provided pamphlets, information and other literature describing observer duties (*i.e.* The At-Sea Hake Observer Program's Observer Manual) prior to hiring an observer candidate. Observer job information is available from the Observer Program Office's Web site at *www.nwfsc.noaa.gov/research/divisions/fram/observer/atseahake.cfm.*

(B) *Observer contracts.* The observer provider must have a written contract or a written contract addendum that is signed by the observer and observer provider prior to the observer's deployment with the following clauses:

(*1*) That all the observer's in-season messages and catch reports required to be sent while deployed are delivered to the Observer Program Office as specified by written Observer Program instructions;

(*2*) That the observer inform the observer provider prior to the time of embarkation if he or she is experiencing any new mental illness or physical ailments or injury since submission of the physician's statement as required as a qualified observer candidate that would prevent him or her from performing their assigned duties.

(iii) *Ensure that observers complete duties in a timely manner.* An observer provider must ensure that observers employed by that observer provider do the following in a complete and timely manner:

(A) Submit to NMFS all data, logbooks and reports as required by the Observer Manual;

(B) Report for his or her scheduled debriefing and complete all debriefing responsibilities;

(C) Return all sampling and safety gear to the Observer Program Office;

(D) Submit all biological samples from the observer's deployment by the completion of the electronic vessel and/or processor survey(s); and

(E) Immediately report to the Observer Program Office and the NOAA OLE any refusal to board an assigned vessel.

(iv) *Observers provided to vessel.* Observers provided to catcher processors:

(A) Must have a valid North Pacific groundfish observer certification endorsements and an At-Sea Hake Observer Program certification;

(B) Must not have informed the provider prior to the time of embarkation that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement that would prevent him or her from performing his or her assigned duties; and

(C) Must have successfully completed all NMFS required training and briefing before deployment.

(v) *Respond to industry requests for observers.* An observer provider must provide an observer for deployment as requested pursuant to the contractual relationship with the vessel to fulfill vessel requirements for observer coverage specified under paragraph (g)(1) of this section. An alternate observer must be supplied in each case where injury or illness prevents the observer from performing his or her duties or where the observer resigns prior to completion of his or her duties. If the observer provider is unable to respond to an industry request for observer coverage from a vessel for whom the provider is in a contractual relationship due to lack of available observers by the estimated embarking time of the vessel, the provider must report it to the observer program at least 4 hours prior to the vessel's estimated embarking time.

(vi) *Provide observer salaries and benefits.* An observer provider must provide to its observer employees salaries and any other benefits and personnel services in accordance with the terms of each observer's contract.

(vii) *Provide observer deployment logistics.* An observer provider must provide to each of its observers under contract:

(A) All necessary transportation, including arrangements and logistics, of observers to the initial location of deployment, to all subsequent vessel assignments during that deployment, and to the debriefing location when a deployment ends for any reason; and

(B) Lodging, per diem, and any other services necessary to observers assigned to fishing vessels.

(*1*) An observer under contract may be housed on a vessel to which he or she is assigned:

(*i*) Prior to their vessel's initial departure from port;

(*ii*) For a period not to exceed 24 hours following the completion of an offload when the observer has duties and is scheduled to disembark; or

(*iii*) For a period not to exceed twenty-four hours following the vessel's arrival in port when the observer is scheduled to disembark.

(*2*) [Reserved]

(C) During all periods an observer is housed on a vessel, the observer provider must ensure that the vessel operator or at least one crew member is aboard.

(D) An observer under contract who is between vessel assignments must be provided with shoreside accommodations in accordance with the contract between the observer and the observer provider. If the provider is providing accommodations, it must be at a licensed hotel, motel, bed and breakfast, or other shoreside accommodations for the duration of each period between vessel or shoreside assignments. Such accommodations must include an assigned bed for each observer and no other person may be assigned that bed for the duration of that observer's stay. Additionally, no more than four beds may be in any room housing observers at accommodations meeting the requirements of this section.

(viii) *Observer deployment limitations.* An observer provider must not exceed observer deployment limitations specified in this paragraph unless alternative arrangements are approved by the Observer Program Office. An observer provider must not:

(A) Deploy an observer on the same vessel for more than 90 days in a 12-month period;

(B) Deploy an observer for more than 90 days in a single deployment;

(C) Include more than four vessel assignments in a single deployment, or

(D) Disembark an observer from a vessel before that observer has completed his or her sampling or data transmission duties.

(ix) *Verify vessel's safety decal.* An observer provider must verify that a vessel has a valid USCG safety decal as required under paragraph (g)(2)(ii)(B) of this section before an observer may get underway aboard the vessel. One of the following acceptable means of verification must be used to verify the decal validity:

(A) The observer provider or employee of the observer provider, including the observer, visually inspects the decal aboard the vessel and confirms that the decal is valid according to the decal date of issuance; or

(B) The observer provider receives a hard copy of the USCG documentation of the decal issuance from the vessel owner or operator.

(x) *Maintain communications with observers.* An observer provider must have an employee responsible for observer activities on call 24 hours a day to handle emergencies involving observers or problems concerning observer logistics, whenever observers are at sea, in transit, or in port awaiting vessel reassignment.

(xi) *Maintain communications with the Observer Program Office.* An observer provider must provide all of the following information by electronic transmission (e-mail), fax, or other method specified by NMFS.

(A) *Observer training and briefing.* Observer training and briefing registration materials must be submitted to the Observer Program Office at least 5 business days prior to the beginning of a scheduled observer at-sea hake training or briefing session. Registration materials consist of the following: The date of requested training or briefing with a list of observers including each observer's full name (i.e., first, middle and last names).

(B) *Projected observer assignments.* Prior to the observer's completion of the training or briefing session, the observer provider must submit to the Observer Program Office a statement of projected observer assignments that include the observer's name; vessel, gear type, and vessel/processor code; port of embarkation; and area of fishing.

(C) *Observer debriefing registration.* The observer provider must contact the At-Sea Hake Observer Program within 5 business days after the completion of an observer's deployment to schedule a date, time and location for debriefing. Observer debriefing registration information must be provided at the time of debriefing scheduling and must include the observer's name, cruise number, vessel name(s) and code(s), and requested debriefing date.

(D) *Observer provider contracts.* If requested, observer providers must submit to the Observer Program Office a completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services under paragraph (g)(1) of this section. Observer providers must also submit to the Observer Program Office upon request, a completed and unaltered copy of the current or most recent signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract and any agreements or policies with regard to observer compensation or salary levels) between the observer provider and the particular entity identified by the Observer Program or with specific observers. The copies must be submitted to the Observer Program Office via fax or mail within 5 business days of the request. Signed and valid contracts include the contracts an observer provider has with:

(*1*) Vessels required to have observer coverage as specified at paragraph (g)(1) of this section; and

(*2*) Observers.

(E) *Change in observer provider management and contact information.* Observer providers must submit notification of any other change to provider contact information, including but not limited to, changes in contact name, phone number, e-mail address, and address.

(F) *Other reports.* Reports of the following must be submitted in writing to the At-Sea Hake Observer Program Office by the observer provider via fax or e-mail address designated by the Observer Program Office within 24 hours after the observer provider becomes aware of the information:

(*1*) Any information regarding possible observer harassment;

(*2*) Any information regarding any action prohibited under §§ 660.112 or 600.725(o), (t) and (u);

(*3*) Any concerns about vessel safety or marine casualty under 46 CFR 4.05–1(a)(1) through (7);

(*4*) Any observer illness or injury that prevents the observer from completing any of his or her duties described in the observer manual; and

(*5*) Any information, allegations or reports regarding observer conflict of interest or breach of the standards of behavior described in observer provider policy.

(xii) *Replace lost or damaged gear.* An observer provider must replace all lost or damaged gear and equipment issued by NMFS to an observer under contract

to that provider. All replacements must be in accordance with requirements and procedures identified in writing by the Observer Program Office.

(xiii) *Maintain confidentiality of information.* An observer provider must ensure that all records on individual observer performance received from NMFS under the routine use provision of the Privacy Act or other applicable law remain confidential and are not further released to anyone outside the employ of the observer provider company to whom the observer was contracted except with written permission of the observer.

(xiv) *Limitations on conflict of interest.* An observer provider must meet limitations on conflict of interest. Observer providers:

(A) Must not have a direct financial interest, other than the provision of observer services, in a fishery managed under an FMP for the waters off the coasts of Alaska, Washington, Oregon, and California, including, but not limited to:

(*1*) Any ownership, mortgage holder, or other secured interest in a vessel or shoreside processor facility involved in the catching, taking, harvesting or processing of fish,

(*2*) Any business involved with selling supplies or services to any vessel or shoreside processors participating in a fishery managed pursuant to an FMP in the waters off the coasts of Alaska, California, Oregon, and Washington, or

(*3*) Any business involved with purchasing raw or processed products from any vessel or shoreside processor participating in a fishery managed pursuant to an FMP in the waters off the coasts of Alaska, California, Oregon, and Washington.

(B) Must assign observers without regard to any preference by representatives of vessels other than when an observer will be deployed.

(C) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value except for compensation for providing observer services from anyone who conducts fishing or fish processing activities that are regulated by NMFS in the Pacific coast or North Pacific regions, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of observer providers.

(xv) *Observer conduct and behavior.* An observer provider must develop and maintain a policy addressing observer conduct and behavior for their employees that serve as observers. The policy shall address the following behavior and conduct:

(A) Observer use of alcohol;

(B) Observer use, possession, or distribution of illegal drugs; and

(C) Sexual contact with personnel of the vessel or processing facility to which the observer is assigned, or with any vessel or processing plant personnel who may be substantially affected by the performance or non-performance of the observer's official duties.

(D) An observer provider shall provide a copy of its conduct and behavior policy by February 1 of each year, to observers, observer candidates, and the Observer Program Office.

(xvi) *Refusal to deploy an observer.* Observer providers may refuse to deploy an observer on a requesting vessel if the observer provider has determined that the requesting vessel is inadequate or unsafe pursuant to those regulations described at § 600.746 or U.S. Coast Guard and other applicable rules, regulations, statutes, or guidelines pertaining to safe operation of the vessel.

(6) *Observer certification and responsibilities*—(i) *Applicability.* Observer certification authorizes an individual to fulfill duties as specified in writing by the NMFS Observer Program Office while under the employ of a NMFS-permitted observer provider and according to certification endorsements as designated under paragraph (g)(6)(iii) of this section.

(ii) *Observer certification official.* The Regional Administrator will designate a NMFS observer certification official who will make decisions for the Observer Program Office on whether to issue or deny observer certification.

(iii) *Certification requirements*—(A) *Initial certification.* NMFS may certify individuals who, in addition to any other relevant considerations:

(*1*) Are employed by an observer provider company holding a valid North Pacific Groundfish Observer Program permit at the time of the issuance of the certification to the observer;

(*2*) Have provided, through their observer provider:

(*i*) Information set forth at § 679.50 regarding an observer candidate's health and physical fitness for the job;

(*ii*) Meet all observer education and health standards as specified in § 679.50; and

(*iii*) Have successfully completed NMFS-approved training as prescribed by the At-Sea Hake Observer Program and/or the West Coast Groundfish Observer Program. Successful completion of training by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Observer Program.

(*iv*) Have not been decertified under paragraph (g)(6)(ix) of this section, or pursuant to § 679.50.

(B) [Reserved]

(iv) *Denial of a certification.* The NMFS observer certification official will issue a written determination denying observer certification if the candidate fails to successfully complete training, or does not meet the qualifications for certification for any other relevant reason.

(v) *Issuance of an observer certification.* An observer certification may be issued upon determination by the observer certification official that the candidate has successfully met all requirements for certification as specified in paragraph (g)(6)(iii) of this section. The following endorsements must be obtained, in addition to observer certification, in order for an observer to deploy.

(A) *North Pacific Groundfish Observer Program certification training endorsement.* A certification training endorsement signifies the successful completion of the training course required to obtain observer certification. This endorsement expires when the observer has not been deployed and performed sampling duties as required by the Observer Program Office for a period of time, specified by the Observer Program, after his or her most recent debriefing. The observer can renew the endorsement by successfully completing certification training once more.

(B) *North Pacific Groundfish Observer Program annual general endorsements.* Each observer must obtain an annual general endorsement to their certification prior to his or her first deployment within any calendar year subsequent to a year in which a certification training endorsement is obtained. To obtain an annual general endorsement, an observer must successfully complete the annual briefing, as specified by the Observer Program. All briefing attendance, performance, and conduct standards required by the Observer Program must be met.

(C) *North Pacific Groundfish Observer Program deployment endorsements.* Each observer who has completed an initial deployment after certification or annual briefing must receive a deployment endorsement to their certification prior to any subsequent deployments for the remainder of that year. An observer may obtain a deployment endorsement by

successfully completing all pre-cruise briefing requirements. The type of briefing the observer must attend and successfully complete will be specified in writing by the Observer Program during the observer's most recent debriefing.

(D) *At-Sea Hake Observer Program endorsements.* A Pacific hake fishery endorsement is required for purposes of performing observer duties aboard vessels that process groundfish at sea in the Pacific whiting fishery. A Pacific whiting fishery endorsement to an observer's certification may be obtained by meeting the following requirements:

(*1*) Be a prior NMFS-certified observer in the groundfish fisheries off Alaska, unless an individual with this qualification is not available;

(*2*) 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;

(*3*) Successfully complete a NMFS-approved observer training and/or Pacific whiting briefing as prescribed by the Observer Program; and

(*4*) Comply with all of the other requirements of this section.

(vi) *Maintaining the validity of an observer certification.* After initial issuance, an observer must keep their certification valid by meeting all of the following requirements specified below:

(A) Successfully perform their assigned duties as described in the Observer Manual or other written instructions from the Observer Program Office including calling into the NMFS deployment hotline upon departing and arriving into port each trip to leave the following information: Observer name, phone number, vessel name departing on, date and time of departure and date and time of expected return.

(B) Accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.

(C) Not disclose collected data and observations made on board the vessel or in the processing facility to any person except the owner or operator of the observed vessel or an authorized officer or NMFS.

(D) Successfully complete NMFS-approved annual briefings as prescribed by the At-Sea Hake Observer Program.

(E) Successful completion of briefing by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other briefing requirements established by the Observer Program.

(F) Successfully meet all expectations in all debriefings including reporting for assigned debriefings.

(G) Submit all data and information required by the observer program within the program's stated guidelines.

(vii) *Limitations on conflict of interest.* Observers:

(A) Must not have a direct financial interest, other than the provision of observer services, in a fishery managed pursuant to an FMP for the waters off the coast of Alaska, or in a Pacific Coast fishery managed by either the state or Federal Governments in waters off Washington, Oregon, or California, including but not limited to:

(*1*) Any ownership, mortgage holder, or other secured interest in a vessel, shore-based or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish,

(*2*) Any business involved with selling supplies or services to any vessel, shore-based or floating stationary processing facility; or

(*3*) Any business involved with purchasing raw or processed products from any vessel, shore-based or floating stationary processing facilities.

(B) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS in the Pacific coast or North Pacific regions or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(C) May not serve as observers on any vessel or at any shore-based owned or operated by a person who employed the observer in the last two years.

(D) May not solicit or accept employment as a crew member or an employee of a vessel or shore-based processor while employed by an observer provider.

(E) Provisions for remuneration of observers under this section do not constitute a conflict of interest.

(viii) *Standards of behavior.* Observers must:

(A) Perform their assigned duties as described in the Observer Manual or other written instructions from the Observer Program Office.

(B) Immediately report to the observer program office and the NOAA Office of Law Enforcement any time they refuse to board a vessel.

(C) Accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.

(D) Not disclose collected data and observations made on board the vessel to any person except the owner or operator of the observed vessel, an authorized officer, or NMFS.

(ix) *Suspension and decertification*—(A) *Suspension and decertification review official.* The Regional Administrator (or a designee) will designate an observer suspension and decertification review official(s), who will have the authority to review observer certifications and issue initial administrative determinations of observer certification suspension and/or decertification.

(B) *Causes for suspension or decertification.* The suspension/decertification official may initiate suspension or decertification proceedings against an observer:

(*1*) When it is alleged that the observer has committed any acts or omissions of any of the following: Failed to satisfactorily perform the duties of observers as specified in writing by the NMFS Observer Program; or failed to abide by the standards of conduct for observers (including conflicts of interest);

(*2*) Upon conviction of a crime or upon entry of a civil judgment for: Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties as specified in writing by the NMFS Observer Program; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or commission of any other offense indicating a lack of integrity or honesty that seriously and directly affects the fitness of observers.

(C) *Issuance of initial administrative determination.* Upon determination that suspension or decertification is warranted, the suspension/decertification official will issue a written IAD to the observer via certified mail at the observer's most current address provided to NMFS. The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken. 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 the observer certification may appeal the determination within 30 calendar days after the date on the IAD to the Office of Administrative Appeals pursuant to § 679.43.

(h) *C/P coop failure*—(1) The Regional Administrator will determine that a permitted C/P coop is considered to have failed if any one of the following occurs:

(i) Any current C/P-endorsed limited entry trawl permit is not identified as a C/P coop member in the coop agreement submitted to NMFS during the C/P coop permit application process;

(ii) Any current C/P-endorsed permit withdraws from the C/P coop agreement;

(iii) The coop members voluntarily dissolve the coop; or

(iv) The coop agreement is no longer valid.

(2) If the permitted C/P coop dissolves, the designated coop manager must notify NMFS SFD in writing of the dissolution of the coop.

(3) The Regional Administrator may make an independent determination of a coop failure based on factual information collected by or provided to NMFS.

(4) In the event of a NMFS-determined coop failure, or reported failure, the designated coop manager will be notified in writing about NMFS' determination.

(i) Upon notification of a coop failure, the C/P coop permit will no longer be in effect.

(ii) The C/P sector will convert to an IFQ-based fishery beginning the following calendar year after a coop failure, or a soon as practicable thereafter. NMFS will develop additional regulations, as necessary to implement an IFQ fishery for the C/P sector. Each C/P-endorsed permit would receive an equal distribution of QS from the total IFQ for the catcher/processor sector allocation.

■ 27. In § 660.212, the introductory text, and paragraphs (a)(2) and (c)(1), are revised to read as follows:

§ 660.212 Fixed gear fishery—prohibitions.

These prohibitions are specific to the limited entry fixed gear fisheries and to the limited entry trawl fishery Shorebased IFQ Program under gear switching. General groundfish prohibitions are found at § 660.12, subpart C. In addition to the general groundfish prohibitions specified in § 660.12, subpart C, it is unlawful for any person to:

(a) * * *

(2) Take, retain, possess, or land more than a single cumulative limit of a particular species, per vessel, per applicable cumulative limit period, except for sablefish taken in the limited entry, fixed gear sablefish primary season from a vessel authorized to fish in that season, as described at § 660.231, subpart E and except for IFQ species taken in the Shorebased IFQ Program from a vessel authorized under gear switching provisions as described at § 660.140.

* * * * *

(c) *Fishing in conservation areas*—(1) Operate a vessel registered to a limited entry permit with a longline, trap (pot), or trawl endorsement and longline and/or trap gear onboard in an applicable GCA (as defined at § 660.230(d)), except for purposes of continuous transiting, with all groundfish longline and/or trap gear stowed in accordance with § 660.212(a) or except as authorized in the groundfish management measures at § 660.230.

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