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50 CFR Part 660

Fisheries off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Trawl Rationalization Program; Catch Monitor Program; Observer Program; Proposed Rule

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 660**

[Docket No. 130503447-4051-01]

RIN 0648-BD30

Fisheries off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Trawl Rationalization Program; Catch Monitor Program; Observer Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: This action would revise Pacific Coast Groundfish Fishery regulations pertaining to certified catch monitors and certified observers required for vessels in the Shorebased Individual Fishery Quota Program, the Mothership Coop Program, the Catcher/Processor Coop Program, and for processing vessels in the fixed gear or open access fisheries. This action also specifies permitting requirements for persons interested in providing certified observers and certified catch monitor services; updates observer provider and vessels responsibilities relative to observer safety; makes minor revisions relative to administration of the programs, and proposes numerous housekeeping measures. This action affects individuals serving as certified catch monitors and observers, persons that provide certified catch monitors and observers, vessels that are required to carry certified observers, and persons that are required to employ the services of certified catch monitors.

DATES: Submit comments on or before March 21, 2014.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2012-0218, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov.

- *Fax:* 206-526-6736; Attn: Becky Renko.

- *Mail:* William W. Stelle, Jr., Regional Administrator, West Coast

Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070; Attn: Becky Renko.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to William W. Stelle Jr., Regional Administrator, West Coast Region NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070 and to the Office of Management and Budget (OMB) by email to OIRA_Submission@omb.eop.gov or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: Becky Renko, 206-526-6110; (fax) 206-526-6736; Becky.Renko@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery under the Pacific Coast Groundfish Fishery Management Plan. The Pacific Coast groundfish regulations establish frameworks for certified observers and certified catch monitors. The framework for the certified observers includes: Observer coverage requirements for vessels fishing or processing in the shorebased Individual Fishery Quota (IFQ) program, Mothership (MS) Coop Program, Catcher/processor (C/P Coop Program); requirements for vessels to obtain observers from permitted observer providers; certification eligibility and decertification requirements for observers; and program related responsibilities for vessels, certified observers, and permitted observer providers. Certified observer coverage requirements are also specified for vessels processing in the limited entry fixed gear and open access fisheries. The framework for the certified-catch monitors includes: Catch monitor coverage requirements for first receivers accepting shorebased IFQ landings; requirements for first receivers to obtain catch monitors from certified observer providers; certification and

decertification procedures for catch monitors and catch monitor providers; and program-related responsibilities for first receivers, certified catch monitors, and catch monitor providers. The regulations at 50 CFR 660.17 include an application and approval process for catch monitor provider certification. The catch monitor provider certification process is comparable to the permitting process for observer providers in the North Pacific Groundfish Observer Program.

This rule would remove the existing regulations requiring vessels to obtain certified observers from permitted providers for the North Pacific Groundfish Observer Program, and would establish provider permitting requirements specific to the Pacific Coast groundfish fishery. In addition, regulations specifying certification procedures for catch monitor providers would be converted to permitting procedures. Because some provider businesses in the Pacific Coast groundfish fishery provide both observers and catch monitors, a combined permitting process for observer and catch monitor providers would be implemented at 50 CFR 660.18. For clarity, and to allow for a common permitting process for providers, new definitions would be added, existing definitions would be refined and observer program and catch monitor program terminology would be consistently applied. A new section would be added at 50 CFR 660.19 to consolidate the appeals process for certified catch monitors, certified observers and permitted providers. The appeals process would be available to them when they receive an adverse certification or permit determination. In the current regulations, there are separate appeals processes applicable to the observer program and the catch monitor program.

This action would also revise regulatory text pertaining to observer safety. Fishing vessel responsibilities relative to safety would be revised to more closely align with the National Observer Program provisions at 50 CFR 600.725 and 600.746, and the prohibitions at 50 CFR 660.12(e) would be revised to clarify that a vessel required to carry an observer is prohibited from fishing (including processing) if NMFS, the observer provider, or the observer determines that the vessel is inadequate or unsafe. In addition, the observer provider responsibilities would require the use of the current Vessel Safety checklists for pre-cruise checks and that any safety-related findings be submitted to the Observer Program. Minor regulatory

changes in program administration and numerous housekeeping measures are also proposed in this action.

Observer Provider and Catch Monitor Provider Permitting

Under current regulations, persons seeking to provide observer services must have an observer provider permit issued under regulations at 50 CFR 679.52 for the North Pacific groundfish fishery. Only those persons that were permitted for the North Pacific groundfish fishery in 2010 may provide observers in the Pacific Coast Groundfish fishery. To expedite implementation of the trawl rationalization program on January 1, 2011, it was necessary to pattern the Pacific Coast observer provider regulations from the North Pacific groundfish regulations. At that time, it was NMFS' intent that a process to issue permits for new observer providers for the Pacific Coast groundfish fishery would be implemented in a trailing rulemaking. With fewer than three persons qualified to provide observers for the Pacific Coast groundfish fishery in 2013, the current regulations should be revised so that new, additional observer providers can receive permits and provide services in the Pacific Coast groundfish fisheries.

At the Pacific Fishery Management Council's (Council) April 2012 meeting, the Council recommended draft regulations for certification and decertification of observer providers establishing a process similar to that currently in place for catch monitor providers. Establishing regulations for the Pacific Coast groundfish fishery was considered necessary to allow for the entry of new observer providers separate from those that provide observers in the Alaska groundfish fisheries. During the development of this rulemaking, NMFS gave further consideration to the North Pacific Groundfish Observer Program framework that requires observer providers obtain permits, rather than certifications. Prior to 2003, the North Pacific groundfish fishery's observer framework required that observer providers obtain certifications. However, in 2002 the North Pacific groundfish fishery observer regulations were revised and the certification process was replaced with a permitting process (67 FR 72596; December 6, 2002).

Provider permits authorize persons to provide observer services and are more business-oriented, granting permission to perform specific activities. This is in contrast to a certification which is generally used to grant permission to the holder to perform tasks providing

some minimum training. NMFS believes that the proposed process for evaluation of observer provider applications and issuance of permits has clear application requirements and evaluation criteria while providing NMFS with flexibility and discretion in its decision whether to issue the permit.

Under current regulations, persons who wish to provide catch monitor services must obtain certification under regulations at 50 CFR 660.17. Regulations at § 660.17 contain certification procedures and regulations at § 660.18 contain decertification procedures for catch monitor providers. This action would replace the catch monitor certification process with a permitting process, which is primarily a nomenclature change. Although current regulations establish certification and decertification procedures for catch monitor providers, to date, all catch monitor providers have been permitted as observer providers for the North Pacific Groundfish Observer Program. Existing certified catch monitor providers would be "grandfathered"; issued permits in place of the current certification.

This action proposes a single, combined permit application process for catch monitor and observer providers. The permit application procedures would be similar to those used in the North Pacific Groundfish Fishery Observer Program. New provider permits would be obtained through an application process. Both new and grandfathered permits would be renewed annually to ensure that the business information was current and the permit holder continues to meet eligibility criteria.

There are two types of endorsements that would be attached to a provider permit; an observer endorsement and a catch monitor endorsement. During the application process, new providers would specify which endorsement(s) they are seeking. Provider permits must have at least one endorsement and it must be appropriate for the services being provided. A provider permit expires if it is not renewed or when services have not been provided for a period of 12 months. Providing a single application process reduces duplication for persons that provide both observers and catch monitors.

Observer and catch monitor providers contribute an important service to NMFS by recruiting, hiring, and deploying motivated individuals to serve as observers and catch monitors. NMFS must ensure that observer providers meet minimum requirements so that this important service is consistently maintained. NMFS would,

in its discretion, issue permits to applicants who: Demonstrate that they understand the scope of the regulations they will be held to; document how they will comply with those regulations; demonstrate that they have the business infrastructure necessary to carry out the job; are free from conflict of interest; do not have past performance problems on a Federal contract or any history of decertification as either an observer or observer provider; and are free from criminal convictions for certain serious offenses that could reflect on their ability to carry out the role of application. Upon issuance of an observer provider permit, an observer provider permit holder would be held accountable for all applicable regulations promulgated by NMFS.

Provider applications may be submitted at any time during the year. Once a complete application is received, NMFS' review process would begin and take at least a month. Therefore, applicants would need to plan accordingly. Applications submitted in the fourth quarter of any given calendar year (October 1 to December 31) may not be processed until the following year. The application process would be described in regulation and include an application review by a board appointed by NMFS, as well as permit eligibility standards. If necessary, the review board would contact the applicant for further information. If the applicant fails to meet the permitting criteria, a decision to deny an application would be made and written notification provided to the applicant. The written notice would describe why the application was denied. The denial of an observer or catch monitor provider permit application would constitute final agency action and an appeal for further NMFS' review would not be available. However, an applicant who is denied a permit may correct the original application's deficiencies and submit a new application. NMFS would have discretion to either grant or deny an issuance of a catch monitor or observer provider permit.

Persons that provided observers and catch monitors in the 12 months prior to the effective date of this rule will be issued a provider permit without needing to submit an application. The existing record regarding performance and the ability to provide observer or catch monitor services would be adequate documentation. Existing providers would not be required to submit a new application unless they were seeking additional endorsements.

A permit issued to a catch monitor or observer provider would remain effective until the expiration date on the

permit, December 31 of that year, unless: An ownership change occurs that requires application for a new permit; the permitted provider ceases to deploy observers to groundfish fisheries during a period of 12 continuous months; or the permit issued to an observer provider is suspended, revoked, or voided. To remain in effect in the subsequent years, provider permits must be renewed prior to the December 31 permit expiration date. If an existing provider fails to renew the provider permit, the provider permit will expire on the permit expiration date. NMFS will send a renewal form on or about October 1. The provider must verify that all information is current and return the form by November 30, to be assured that there is no lapse in the permit. The purpose of the annual renewal is to verify that the management, organizational, and ownership structure is unchanged; to update provider contact information; and to assure there are no new conflict of interests or state or federal criminal convictions that could affect the wellbeing of observers or catch monitors.

If a permit lapses after a period of 12 months of inactivity as described above, NMFS would issue an Initial Administrative Decision (IAD) to the permit holder stating that NMFS records indicate that the permit had lapsed and that the permit holder has the opportunity to appeal the determination. The IAD would also describe the appeals process available to the permit holder. Permit for holders who appeal this IAD would remain valid while during the appeal process.

Potential violations regarding observer or catch monitor providers, including those serious enough to warrant possible suspension or revocation of a provider's permit, would be forwarded to NMFS Office for Law Enforcement (OLE) for investigation. Procedures governing sanctions of permits are found at subpart D of 15 CFR Part 904.

Observer Safety

Under the Magnuson-Stevens Act National Standard 10, conservation and management measures must promote the safety of human life at sea. Consistent with that standard, NMFS has promulgated numerous regulatory provisions designed to promote not just vessel safety, but observer safety, as well. Current Pacific Coast groundfish regulations and National Observer Program regulations at 50 CFR 600.746 require that vessels carrying observers in the Pacific Coast groundfish fishery have a valid Commercial Fishing Vessel

Safety Decal certifying compliance with regulations found in 33 CFR Chapter I and 46 CFR Chapter I, or in mitigating circumstances a certificate of compliance issued pursuant to 46 CFR 28.710 or a valid certificate of inspection pursuant to 46 U.S.C. 3311.

On December 20, 2012 the Coast Guard and Maritime Act of 2012 was signed. The Act requires significant changes in safety and survival equipment requirements for commercial fishing industry vessels including, fishing vessels and fish processing vessels. In anticipation of regulatory changes at 46 CFR Chapter I, part 28, NMFS reviewed the Pacific Coast groundfish regulations pertaining to observer safety. The review found that safety related cross references were not consistent throughout the regulations; that the observer provider responsibilities did not clearly state that the most current observer vessel safety checklist must be completed prior to an observer's first cruise or that the checklist needed to be provided to the Observer Program; nor did the regulations clearly state that a vessel is prohibited from fishing if NMFS, the observer provider or the observer determine that a vessel is unsafe or inadequate for an observer. This action proposes to revise regulatory language pertaining to observer safety found under the observer provider responsibilities (50 CFR 660.140(h)(2)(ix), 660.150(j)(5)(ix), 660.160 (g)(5)(ix)), vessel responsibilities (§§ 660.140(h)(2)(ii)(B), 660.150(j)(2)(ii)(B), 660.160(g)(2)(ii)(B), 660.216(e)(2), 660.316(e)(2)), and prohibitions (§§ 660.12(e) and 660.112).

Limited Entry Fixed Gear and Open Access Observer Requirements

Observer requirements in §§ 660.216 and 660.316 would be amended by this action. Regulation implementing the trawl rationalization program (75 FR 32994, June 10, 2010) moved the observer regulations from a general observer section that applied to all sectors of the fishery to newly created sections for each fishing sector. The reorganization resulted in unintended changes to the observer requirements for the limited entry fixed gear and open access sectors. Subsequent regulations reinstated coverage provisions for processing vessels that had inadvertently been removed. However, revisions are necessary to clarify which observer provisions apply to harvesting vessels and which apply to processing vessels; for processing vessels, the regulations would clearly state who had to be contacted to obtain a certified observer. Safety provisions would be

updated to be consistent with the requirements described in the previous section.

Minor Regulatory Changes and Housekeeping Measures

Numerous minor non-substantive and housekeeping changes are being proposed for improved Observer Program and Catch Monitor Program administration. The changes involve removing outdated regulatory text, adding clarification to existing text without changing the intended meaning, and revising to ensure consistent use of terms throughout the entire chapter. The proposed minor and housekeeping changes are summarized below:

- Proposed revisions to the Observer Program regulations at § 660.140 (Shorebased IFQ Program), § 660.150 (MS Coop Program), and § 660.160 (C/P Coop Program) are intended to clarify the existing policies and practices. These changes include: (1) Revising communication requirements to reflect current practices; (2) removing outdated reporting requirements; (3) adding descriptions of transportation requirements for deployed observers; (4) revising timelines on the issuance of an observer certification; (5) adding components to observers certification requiring annual safety training and fish identification testing; (6) broadening the statement describing the required briefings so fishery specific briefings such the briefing for the Pacific whiting fishery are explicitly required by regulation; and (7) removing unnecessary requirements of the physician statement for certified observers.

- In the general prohibitions at § 660.12, incorrect references regarding cease fishing reports would be moved to the trawl prohibitions at § 660.112, and the remaining prohibitions would be consolidated.

- At § 660.60, cross references are updated.

- At § 660.112, a prohibition relative to observer coverage while a vessel is in port is simplified and linking text at § 660.140(h) is revised for clarity.

- In § 660.16, a table displaying current observer coverage requirements would be revised to show the Observer Program office overseeing the observers.

- Proposed revisions to the Catch Monitor Program regulations at § 660.17 are intended to more clearly state the current policies and practices. These changes include: (1) Revising communication requirements to reflect current practices; (2) revising language pertaining to the disclosure of catch monitor data to align requirements other similar text in other paragraphs and

sections; (3) removing unnecessary requirements of the physician statement; (4) adding text to explain that a catch monitor certification expires if the individual is not deployed for 12 months; and (5) clarifying the provider policies regarding standards of conduct consistent with those specified for observer providers.

- In § 660.16, paragraphs (d) and (e) are added, and in § 660.17, paragraphs (a) to (c) are added to make Observer Program regulations Catch Monitor Program regulations consistent.

Physical fitness examinations and requirements of the physician statements are currently being reviewed by the National Observer Program. Modifications to the groundfish regulations being proposed at §§ 660.17(e)(1)(vii)(A), 660.140(h)(5)(xi)(B), and 660.150(j)(5)(xi)(B)(2) may be withdrawn or further modified in the final rule pending the outcome of the review.

NMFS believes that the limitations on the conflict of interests for observer and catch monitor providers are too narrow and increase the risk that professional judgment or actions related to the interest of observers or catch monitors would be unduly influenced by a secondary interest in a fishing related business. Current regulations limit only those businesses with a direct financial interest 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 from being observer or catch monitor providers. The only exception to these standards would be an allowance to provide observer and catch monitor services. NMFS is considering whether to use its authority under section 305(d) of the Magnuson Stevens Act (MSA) to broaden the limitations to restrict providers from having a direct financial interest in any federal or state managed fisheries with the exception of an allowance to provide observers, catch monitor or other biological sampling services. NMFS invites comments from the public on this issue.

Classifications

Pursuant to section 304(b)(1)(A) and 305(d) of the MSA, the NMFS has determined that this proposed rule is consistent with the Groundfish FMP, the MSA, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

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

The Small Business Administration (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 \$19 million for all its affiliated operations worldwide. The SBA recently revised the small business size standards for some fishery related businesses (78 FR 37398, June 20, 2013). The rule increased the size standard for Finfish Fishing from \$4.0 to 19.0 million, Shellfish Fishing from \$4.0 to 5.0 million, and Other Marine Fishing from \$4.0 to 7.0 million, *Id.* at 37400 (Table 1). 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. Prior to SBA's recent changes to the size standards for commercial harvesters, a business involved in both the harvesting and processing of seafood products, also referred to as a catcher/processor (CP), was considered a small business if it met the \$4.0 million criterion for commercial fish harvesting operations. In light of the new size standards for commercial harvesters, NMFS is reviewing the size standard for CPs. However, for purposes of this rulemaking, NMFS is applying the \$19 million standard because whiting CPs are involved in the commercial harvest of finfish. 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. There are no specific SBA defined size criteria for observer providers. For this sector, NMFS Alaska Region has employed the \$7.0 million in gross annual receipts size standard based on SBA standards associated with firms engaged in placing technical employees. (See: http://alaskafisheries.noaa.gov/analyses/observer/ririrfa_soc_observer_0209.pdf)

This proposed rule affects current and future businesses that supply observers for monitoring fishing and processing activities on a vessel at-sea and catch monitors who observe and document offloads at first receiver/processing plants on shore. The actions listed above are intended to establish permitting requirements for businesses providing certified observers and catch monitors; make regulations consistent with The Coast Guard and Maritime Act of 2012; and make minor administrative and housekeeping changes.

Currently, companies that supply observers have undergone the permit processes used for North Pacific Fisheries. This proposed rulemaking would create a new permitting process for Pacific groundfish fisheries. Currently, businesses supplying catch monitors undergo a certification process. This proposed rulemaking would convert this process into a permitting process. Under the current process of certification, potential providers submit an application and receive a letter of approval or denial from NMFS. Under the proposed permit process, potential providers will submit a similar application, but will either receive a permit or a letter of denial. Providers that existed during the 12 months prior to the rule will be grandfathered into the new system. Rather than create two different permits, one for supplying observers and one for supplying catch monitors, under the proposed regulations there will only be one permit process. Under this process, a company can request to have an observer endorsement or a catch monitor endorsement or both. NMFS NWR currently has permitted five observer provider companies: Alaskan Observers, Inc.; NWO, Inc.; Saltwater Observers, Inc.; TechSea International; and MRAG Americas, Inc. The principal activity of most of these companies has been to provide observers for Alaska groundfish fisheries the North Pacific, but they also provide observers for other fisheries such as the Pacific Groundfish fishery. Regulations require observers in all sectors and catch monitors at first landings/processing sites. Therefore, this proposed rule

indirectly affects participants in the following: IFQ Program, Mothership Coop Program, and Catcher/Processor Coop Program. Two companies, Alaskan Observers, Inc. and Saltwater Observers, Inc., are providing observers and monitors for the IFQ Program. The other sectors may be using the other companies as they typically also fish off Alaska. There are 144 shoreside vessel accounts, 36 mothership endorsed limited entry permits, 6 mothership permits, 10 catcher/processor permits, and 51 shorebased first receiver site licenses. Taking into account cross participation, multiple accounts, and affiliation between entities, NMFS estimates that there are 145 fishery related entities indirectly affected by these proposed regulations as they need to acquire observers for their vessels and monitors for their shoreside processing plants. Of these entities, 102 are "small" businesses. This rule directly affects the five providers currently permitted to operate in the fishery. NMFS considers these all small businesses (75 FR 69016 November 10, 2010).

The benefits from these regulations are largely administrative in nature and minor in the context of the entire program. In terms of economic effects, the main impact is requiring observer providers to obtain a Pacific Groundfish Provider permit. These regulations will allow for entry of new providers, separate from the five that have provided observers in the Alaska groundfish fisheries. There will be an administrative fee charged for issuing permits. NMFS projects these fees to be about \$165 for renewals and \$550 for new permits.

Based on the discussion above, this proposed rule would not have a significant economic effect on a substantial number of small entities. This rulemaking is largely administrative in nature. There are no significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes, and that minimize the impact of the proposed rule on small entities. The benefits of these regulations include more understandable and less complex regulations and the potential for increased provider companies in the fishery. Additional companies may lower costs to fishing vessels and processors and alleviate logistical/scheduling issues with providing observers and monitors to the various ports. Nonetheless, for transparency purposes, NMFS has prepared this IRFA. Through the rulemaking process associated with this action, we are requesting comments on this conclusion.

This proposed rule contains a new collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval as revisions to OMB collection 0648–0619 and 0648–0500. The estimated public reporting burden for OMB collection 0648–0619, provider permit applications, is an average of 10 hours per response, annual renewal of provider permits is estimated to average 2 hours per response, and appeals of permits that have been expire after a period of 12 continuous months during which no observers or catch monitors are deployed average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. NMFS estimates the public reporting burden for OMB collection 0648–0500, the submission of vessel safety checklists, averages 5 minutes per response.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to West Coast Region at the **ADDRESSES** above, and by email 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.

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the PCGFMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. The proposed regulations do not require the tribes to change from their current practices.

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 Fishery Management Plan (PCGFMP) 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 PCGFMP for the Pacific Coast groundfish fishery is 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 issued a Supplemental Biological Opinion on March 11, 2006 concluding that neither the higher observed bycatch of Chinook in the 2005 whiting fishery nor new data regarding salmon bycatch in the groundfish bottom trawl fishery required a reconsideration of its prior "no jeopardy" conclusion. NMFS also reaffirmed its prior determination that implementation of the Groundfish PCGFMP is not likely to jeopardize the continued existence of any of the affected ESUs. Lower Columbia River coho (70 FR 37160, June 28, 2005) 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.

On December 7, 2012, NMFS completed a biological opinion concluding that the groundfish fishery is not likely to jeopardize non-salmonid marine species including listed eulachon, green sturgeon, humpback whales, Steller sea lions, and leatherback sea turtles. The opinion also concludes that the fishery is not likely to adversely modify critical habitat for green sturgeon and leatherback sea

turtles. An analysis included in the same document as the opinion concludes that the fishery is not likely to adversely affect green sea turtles, olive ridley sea turtles, loggerhead sea turtles, sei whales, North Pacific right whales, blue whales, fin whales, sperm whales, Southern Resident killer whales, Guadalupe fur seals, or the critical habitat for Steller sea lions.

As Steller sea lions and humpback whales are also protected under the Marine Mammal Protection Act (MMPA), incidental take of these species from the groundfish fishery must be addressed under MMPA section 101(a)(5)(E). On February 27, 2012, NMFS published notice that the incidental taking of Steller sea lions in the West Coast groundfish fisheries is addressed in NMFS' December 29, 2010 Negligible Impact Determination and this fishery has been added to the list of fisheries authorized to take Steller sea lions (77 FR 11493, Feb. 27, 2012). NMFS is currently developing MMPA authorization for the incidental take of humpback whales in the fishery.

On November 21, 2012, the U.S. Fish and Wildlife Service (FWS) issued a biological opinion concluding that the groundfish fishery will not jeopardize the continued existence of the short-tailed albatross. The FWS also concurred that the fishery is not likely to adversely affect the marbled murrelet, California least tern, southern sea otter, bull trout, nor bull trout critical habitat.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: February 3, 2014.

Samuel D. Rauch III,

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

For the reasons stated in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. 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.*

■ 2. In § 660.11:

■ a. Add definitions, in alphabetical order, for “Catch Monitor Program or Catch Monitor Program Office”, “Catch monitor provider”, and “Observer provider”;

■ b. Revise the definitions for “Observer Program or Observer Program Office” and “Sustainable Fisheries Division or SFD” to read as follows:

§ 660.11 General definitions.

* * * * *

Catch Monitor Program or Catch Monitor Program Office means the Catch Monitor Program Office of the West Coast Region, National Marine Fisheries Service.

Catch monitor provider means any person or commercial enterprise that is granted a permit by NMFS to provide certified catch monitors as required in § 660.140.

* * * * *

Observer Program or Observer Program Office means the Observer Program Office of the Northwest Fisheries Science Center, National Marine Fisheries Service, Seattle, Washington. Branch offices within the Observer Program include the West Coast Groundfish Observer Program and the At-Sea Hake Observer Program.

Observer provider means any person or commercial enterprise that is granted a permit by NMFS to provide certified observers as required at §§ 660.140, 660.150, 660.160, 660.216 or 660.316.

* * * * *

Sustainable Fisheries Division or SFD means the Assistant Regional Administrator of the Sustainable Fisheries Division, West Coast Region, NMFS, or a designee.

* * * * *

■ 3. In § 660.12, revise paragraphs (e)(5) through (9) to read as follows:

§ 660.12 General groundfish prohibitions.

* * * * *

(e) * * *

(5) Fish for, land, or process fish without observer coverage when a

vessel is required to carry an observer under subparts C through G of this part.

(6) Fish when a vessel is required to carry an observer under subparts C through G of this part if:

(i) The vessel is inadequate for observer deployment as specified at § 600.746 of this chapter;

(ii) The vessel does not maintain safe conditions for an observer as specified at §§ 660.140(h), 660.150(j), and 660.160(g); or

(iii) NMFS, the observer provider, or the observer determines the vessel is inadequate or unsafe pursuant to vessel responsibilities to maintain safe conditions as specified at §§ 660.140(h), 660.150(j), and 660.160(g).

(7) Require, pressure, coerce, or threaten an observer to perform duties normally performed by crew members, including, but not limited to, cooking, washing dishes, standing watch, vessel maintenance, assisting with the setting or retrieval of gear, or any duties associated with the processing of fish, from sorting the catch to the storage of the finished product.

(8) Fail to meet the vessel responsibilities and observer coverage requirements specified at §§ 660.140(h), 660.150(j), 660.160(g), 660.216, or 660.316.

(9) Fail to meet the observer provider responsibilities specified at §§ 660.140(h), 660.150(j), 660.160(g), 660.216, or 660.316.

* * * * *

■ 4. In § 660.16, revise paragraph (a) and the table in paragraph (c) and add paragraphs (d) and (e) 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, 660.216, or 660.316.

* * * * *

(c) * * *

West Coast groundfish fishery	Regulation section	Observer program branch office
(1) Shorebased IFQ Program—Trawl Fishery	§ 660.140(h)	West Coast Groundfish.
(2) MS Coop Program—Whiting At-sea Trawl Fishery	§ 660.150(j).	
A) Motherships .....	.....	A) At-Sea Hake.
B) Catcher Vessels .....	.....	B) West Coast Groundfish.
(3) C/P Coop Program—Whiting At-sea Trawl Fishery	§ 660.160(g)	At-Sea Hake.
(4) Fixed Gear Fisheries	§ 660.216.	
A) Harvester vessels .....	.....	A) West Coast Groundfish.
B) Processing vessels .....	.....	B) West Coast Groundfish.
(5) Open Access Fisheries	§ 660.316.	
A) Harvester vessels .....	.....	A) West Coast Groundfish.
B) Processing vessels .....	.....	B) West Coast Groundfish.

(d) *Observer certifications and responsibilities.* For the Shorebased IFQ Program see § 660.140(h), for the MS Coop Program see § 660.150(j), and, for the C/P Coop Program see § 660.160(g).

(e) *Application process to become an observer provider.* See § 660.18.

■ 5. In § 660.17:

- a. Revise the section heading;
- b. Remove paragraphs (b) and (d);
- c. Redesignate paragraph (a) as (d), paragraph (c) as (e), and paragraph (e) as (f).
- d. Revise newly redesignated paragraphs (d), (e), (f)(1)(vii), (f)(2), (f)(4) through (6), (f)(8)(i)(B), (C), and (F), (f)(9)(ii), and (f)(11) through (13);
- e. Add paragraphs (a) through (c) and (g) to read as follows.

§ 660.17 Catch monitor program.

(a) *General.* The first receiver site license holder, the first receiver site license authorized representative, facility operators and managers are jointly and severally responsible for the first receiver being in compliance with catch monitor requirements specified in this section and at § 660.140 (i).

(b) *Purpose.* The purpose of the Catch Monitor Program is to, among other related matters, confirm that the IFQ landings are accurately sorted, weighed and reported on electronic fish tickets.

(c) *Catch monitor coverage requirements.* Catch monitor coverage requirements for the Shorebased IFQ Program are specified at § 660.140(i).

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

(1) *Catch monitor training certification.* A training certification signifies the successful completion of the training course required to obtain catch monitor certification. This certification 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 certification is renewed by successful completion of the training course.

(2) *Catch Monitor Program annual briefing.* Each catch monitor must attend a 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 a certification, a catch monitor must successfully complete any required briefing specified by the Catch Monitor Program. All briefing attendance, performance, and conduct standards

required by the Catch Monitor Program must be met prior to any deployment.

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

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

(ii) Have successfully completed catch monitor certification training.

(A) Successful completion of training by an applicant consists of meeting all attendance and conduct standards; meeting all performance standards for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Catch Monitor Program.

(B) 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.

(iii) Have not been decertified as an observer or catch monitor under provisions in §§ 660.17(g), and 660.140(h)(6), 660.150(j)(5), 660.160(g)(5) or 679.53(c).

(4) *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:

(i) Successfully perform their assigned duties as described in the Catch Monitor Manual or other written instructions from the Catch Monitor Program.

(ii) 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.

(iii) Consistent with NOAA data confidentiality guidance, not disclose data and observations made on board a vessel to any person except the owner or operator of the observed vessel, an authorized state or OLE officer, NMFS or the Catch Monitor Program; and, not disclose data and observations made at a first receiver to any person other than the first receiver site license holder, the first receiver site license authorized representative, facility operators and managers, an authorized state or OLE officer, NMFS or the Catch Monitor Program.

(iv) Successfully complete any required briefings as prescribed by the Catch Monitor Program.

(v) 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.

(vi) Successfully meet all debriefing expectations including catch monitor performance standards and reporting for assigned debriefings.

(vii) Submit all data and information required by the Catch Monitor Program within the program's stated guidelines.

(viii) Have been deployed as a catch monitor within the 12 months prior to any required briefing, unless otherwise authorized by the Catch Monitor Program.

(e) *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 the Catch Monitor Program.

(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) Returns phone calls, emails, text messages, or other forms of communication within the time specified by the Catch Monitor Program.

(5) Not disclose data and observations made on board a vessel to any person except the owner or operator of the observed vessel, an authorized officer, NMFS or the Catch Monitor Program; and, not disclose data and observations made at a first receiver to any person other than the first receiver site license holder, the first receiver site license authorized representative, facility operators and managers an authorized officer, NMFS or the Catch Monitor Program.

(f) * * *

(1) * * *

(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.

(B) Copies of "certificates of insurance," that names the Catch Monitor Program Coordinator 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.

* * * * *

(2) *Catch Monitor conduct and behavior.* A catch monitor provider must develop and maintain a policy addressing conduct and behavior for their employees that serve as catch monitors.

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

(A) Catch monitor use of alcohol;

(B) Catch monitor, possession, or distribution of illegal drugs; and

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

(ii) A catch monitor provider shall provide a copy of its conduct and behavior policy to each observer candidate and to the Catch Monitor Program by February 1 of each year.

* * * * *

(4) *Catch monitors provided to a first receiver.* (i) Must have a valid catch monitor certification;

(ii) Must not have informed the catch monitor 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 (f)(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 Catch Monitor Program 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 § 660.140(i)(1). 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 catch monitor provider is in a contractual relationship due to the lack of available catch monitors, the catch monitor 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 catch monitor 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.

* * * * *

(8) * * *

(i) * * *

(B) Has Internet access for Catch Monitor Program communications and data submission;

(C) Remains available to OLE and the Catch Monitor Program until the completion of the catch monitors' debriefing.

* * * * *

(F) While under contract with a catch monitor provider, each 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.

* * * * *

(9) * * *

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

* * * * *

(11) *Maintain communications with the Catch Monitor Program office.* A catch monitor provider must provide all of the following information by electronic transmission (email), 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 10 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;

(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);

(C) The Catch Monitor Program will notify the catch monitor provider which catch monitors require debriefing and the specific time period the catch monitor 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). 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 email, 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); 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 as required at § 660.18(h).

(iv) *Catch monitor status report.* Each Tuesday, catch monitor providers must provide the Catch Monitor Program with an updated list of deployments per Catch Monitor Program protocol. Deployment information includes provider name, catch monitor last name, catch monitor first name, trip start date, trip end date, status of catch monitor, vessel name and vessel identification number, date monitored offload, and first receiver assignment.

(v) *Informational materials.* Catch monitor 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 email 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.* Lost or damaged gear issued to a catch monitor by NMFS must be replaced by the catch monitor provider. All replacements must be provided to NMFS and be in accordance with requirements and procedures identified in writing by the Catch Monitor Program.

(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 (5 U.S.C. 552a) 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.

(g) *Certification and decertification procedures for catch monitors.* (1) *Catch monitor certification official.* The Regional Administrator (or a designee) will designate a NMFS catch monitor certification official who will make decisions on whether to issue or deny catch monitor certification.

(2) *Agency determinations on catch monitor certifications.* (i) *Issuance of certifications.* Certification may be issued upon determination by the catch monitor certification official that the candidate has successfully met all requirements for certification as specified in § 660.17(d).

(ii) *Denial of a certification.* The catch monitor certification official will issue a written determination identifying the reasons for denial of a certification.

(3) *Limitations on conflict of interest for catch monitors.* (i) 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:

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

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

(C) Any business involved with purchasing raw or processed products from any vessel, first receiver,

shorebased or floating stationary processing facilities.

(ii) 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.

(iii) 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.

(iv) 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.

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

(4) *Catch monitor decertification.* (i) *Catch monitor decertification review official.* The Regional Administrator (or a designee) will designate a catch monitor decertification review official(s), who will have the authority to review certifications and issue IADs of decertification.

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

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

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

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

(1) 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;

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

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

(iii) *Issuance of IAD.* Upon determination that decertification is warranted, the catch monitor 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.

(iv) *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 § 660.19.

6. Revise § 660.18 to read as follows.

§ 660.18 Observer and catch monitor provider permits and endorsements.

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

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

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

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

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

partnership agreement must be provided.

(iii) *Provider contact information.* (A) Name of applicant organization. If the applicant organization is United States business entity, include the state registration number.

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

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

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

(B) For applicants seeking a catch monitor provider endorsement, a narrative statement should identify prior relevant experience in recruiting, hiring, deploying, and providing support for individuals in marine work environments in the groundfish fishery or other fisheries of similar scale.

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

(vi) A statement signed under penalty of perjury from each owner, or owners, board members, and officers if a corporation, that they have no conflict of interest as described in § 660.18(c)(3).

(vii) A statement signed under penalty of perjury from each owner, or owners, board members, and officers if a corporation, describing any criminal convictions, Federal contracts they have had and the performance rating they received on the contract, and previous decertification action while working as an observer, observer provider, or catch monitor provider.

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

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

(1) A provider permit application review board will be established and be comprised of at least three members. The review board will evaluate applications submitted under paragraph (a) of this section. If the applicant is a corporation, the review board also will

evaluate the application criteria for each owner, or owners, board members, and officers.

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

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

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

(iii) Absence of any conflict of interest as defined for providers.

(iv) Absence of any relevant criminal convictions related to:

(A) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, or

(B) The commission of any other crimes of dishonesty, as defined by state law or Federal law, that would seriously and directly affect the fitness of an applicant in providing observer services under this section;

(v) Absence of any history of decertification as an observer provider;

(3) *Limitations on conflict of interest for providers.* 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:

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

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

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

(4) *Existing providers.* Businesses that provided observers and/or catch monitors in the 12 months prior to [EFFECTIVE DATE OF FINAL RULE] will be issued a provider permit without submission of an application. This permit will be effective through December 31, 2014.

(i) Providers who deployed catch monitors in the Shorebased IFQ Program in the 12 months prior to [EFFECTIVE DATE OF FINAL RULE] will be issued a provider permit with a catch monitor provider endorsement

effective through December 31, 2014, except that a change in ownership of an existing catch monitor provider after January 1, 2014, requires a new permit application under this section.

(ii) Providers who deployed certified observers in the Pacific Coast groundfish fishery in the 12 months prior to [EFFECTIVE DATE OF FINAL RULE] will be issued a provider permit with an observer provider endorsement effective through December 31, 2014, except that a change in ownership of an existing observer provider after January 1, 2014, requires a new permit application under this section.

(iii) To receive a provider permit for 2015 and beyond, the existing providers must follow the provider permit renewal process set forth in this section.

(d) *Agency determination on an application.* NMFS will send a written determination to the applicant. If an application is approved, NMFS will issue a provider permit with the approved endorsements. If an application is denied, the basis for denial will be explained in the written determination.

(e) *Effective dates.* The provider permit will be valid from the effective date identified on the permit until the permit expiration date of December 31. The provider permit must be renewed prior to expiration to remain valid at the start of the following year.

(f) *Expiration of the provider permit.*

(1) *Expiration due to inactivity.* (i) A provider permit and endorsements will expire after a period of 12 continuous months during which no observers or catch monitors are deployed by the provider in the Pacific coast groundfish fishery.

(ii) For permits that are endorsed for both observers and catch monitors, the observer provider endorsement will expire after a period of 12 continuous months during which no observers are deployed by the provider and the catch monitor provider endorsement will expire after a period of 12 continuous months during which no catch monitors are deployed by the provider.

(iii) The Regional Administrator will provide written notice to a provider if NMFS' deployment records indicate that observer or catch monitors have not been deployed as described in paragraph (f)(1)(i) and (ii) of this section. If, after the provider has had an opportunity to respond to the notice, NMFS concludes that expiration criteria have been met, it will issue an IAD finding that the permit expired. A provider that receives an IAD of permit expiration may appeal under § 660.19. A provider that appeals an IAD will be issued an extension of the expiration

date of the permit until after the final resolution of the appeal.

(2) *Expiration due to failure to renew.* Provider permits must be renewed every calendar year. Failure to renew will result in expiration of the provider permit on December 31.

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

(g) *Provider permit renewal process.* To remain in effect in the following year, provider permits must be renewed prior to the permit expiration date.

(1) NMFS will mail a provider permit renewal form to existing permit holders on or about October 1 each year.

(2) Providers who want to have their permits effective for January 1 of the following calendar year must submit their complete renewal form to NMFS by November 30. For those permitted providers who do not submit a complete renewal form by November 30, NMFS may not be able to issue a new provider permit by January 1 of the following calendar year, and will issue the new provider permit as soon as practicable. If a provider fails to renew the provider permit, the provider permit will expire on December 31.

(3) Permitted providers as required under §§ 660.140, 660.150, and 660.160 for the trawl fisheries will be required to provide the following information relative to the 12 months prior to submission of a renewal: for catch monitor endorsed providers, the total number of individual catch monitors that attended training, attended briefings, and deployed to a first reviewer; and for observer endorsed providers, the total number of individual observers that attended training, attended briefings, and deployed to a vessel. The renewed permit will not be approved until NMFS has received all of the information described in paragraph (g) of this section.

(h) *Transferability.* Neither a provider permit nor the endorsements are transferable.

(1) *Change in ownership or provider contact information.* (i) Within 15 days of a change in the management, organizational structure, and ownership structure involving a person being added to the ownership-providers must notify NMFS SFD Permits Office and provide the identification by name and general function of all controlling 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 other employees. If the provider is a corporation, the articles of incorporation must be provided. If the provider is a partnership, the partnership agreement must be provided.

(ii) Within 30 days of a change in provider contact information the provider must notify NMFS SFD Permits Office and provide the new contact information.

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

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

■ 7. Add § 660.19 to read as follows:

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

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

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

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

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

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

holiday, the time period will extend to the close of business on the next business day.

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

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

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

■ 8. In § 660.60, revise paragraph (c)(1)(iv) to read as follows:

§ 660.60 Specifications and management measures.

* * * * *

- (c) * * *
- (1) * * *

(iv) *List of IFQ species documented on Observer Program reporting form.* As specified at § 660.140(h)(1)(i), to be exempt from observer coverage while docked in port depends on documentation of specified retained IFQ species on the Observer Program reporting form. The list of IFQ species documented on the Observer Program form may be modified on a biennial or more frequent basis under routine management measures at § 660.60(c)(1).

* * * * *

- 9. In § 660.112,
 - a. Add paragraph (a)(3)(iv);
 - b. Revise paragraph (a)(4);
 - c. Remove paragraph (b)(1)(xiii);
 - d. Redesignate paragraphs (b)(1)(xiv), (b)(1)(xv), (b)(1)(xvi), and (b)(1)(xvii) as (b)(1)(xiii), (b)(1)(xiv), (b)(1)(xv), and (b)(1)(xvi), respectively, and revise newly redesignated paragraphs (b)(1)(xiii) and (b)(1)(xiv); and
 - e. Revise paragraphs (d)(12), (d)(14), and (d)(15) to read as follows:

§ 660.112 Trawl fishery—prohibitions.

* * * * *

- (a) * * *
- (3) * * *
- (iv) Fail to submit cease fishing reports specified at §§ 660.113(c), 660.150(c), 660.160(c).

* * * * *

(4) *Observers.* * * * *

- (i) Fish in the Shorebased IFQ Program, the MS Coop Program, or the C/P Coop Program without observer coverage.
- (ii) Fish in the Shorebased IFQ Program, the MS Coop Program, or the C/P Coop Program if the vessel is inadequate or unsafe for observer deployment as described at § 660.12(e).
- (iii) Fail to maintain observer coverage in port as specified at § 660.140(h)(1)(i).

* * * * *

- (b) * * *
- (1) * * *

(xiii) Discard or attempt to discard IFQ species/species group at sea unless the observer has documented or estimated the discards.

(xiv) Begin a new fishing trip until all fish from an IFQ landing have been offloaded from the vessel, consistent with § 660.12(a)(11).

* * * * *

(d) * * *

(12) Sort or discard any portion of the catch taken by a catcher vessel in the MS Coop Program 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).

* * * * *

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

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

* * * * *

- 10. In § 660.140,
 - a. Revise paragraphs (b)(2)(iv), (b)(2)(vi), (b)(2)(vii);
 - b. Revise paragraphs (h)(1), (h)(2)(i)(B), (h)(2)(ii)(B), (h)(3) through (4), (h)(5)(ii)(B)(1) and (3), (h)(5)(iii)(D), (h)(5)(iv)(A) and (B), (h)(5)(v), (h)(5)(vii)(A)(2) through (5), (h)(5)(ix), (h)(5)(xi) through (xv), (h)(6)(i), (h)(6)(iii)(A), and (h)(6)(v) through (ix);
 - c. Add paragraph (h)(2)(xi); and
 - d. Revise paragraphs (i)(2), (i)(3)(ii), (j)(2)(ii) through (iv), (j)(3)(i), and (j)(4) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

- (b) * * *
- (2) * * *

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

* * * * *

(vi) Retain and make available to catch monitors, NMFS staff, NMFS-authorized personnel, or authorized officers, 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.

* * * * *

(viii) Ensure that sorting and weighing is completed prior to catch leaving the area that can be monitored from the observation area described in paragraph (i) of this section.

* * * * *

(h) * * * (1) *Observer coverage requirements.* (i) *Coverage.* The following observer coverage pertains to certified observers obtained from an observer provider permitted by NMFS. (A) Any vessel participating in the Shorebased IFQ Program:

(1) Must carry a certified observer on any fishing trip from the time the vessel leaves port and until the completion of landing (until all catch from that fishing trip has been offloaded—see landing at §§ 660.11 and 660.60(h)(2)).

(2) Must carry an observer at any time the vessel is underway in port, including transit between delivery points when fish is offloaded at more than one IFQ first receiver.

(3) Is exempt from the requirement to maintain observer coverage as specified in paragraph (h) of this section while remaining docked in port when the observer makes available to the catch monitor an Observer Program reporting form documenting the weight and number of bocaccio, yelloweye rockfish, canary rockfish, and cowcod retained during that trip and which documents any discrepancy the vessel operator and observer may have in the weights and number of the overfished species, unless modified inseason under routine management measures at § 660.60(c)(1).

(B) Any vessel 125 ft (38.1 m) LOA or longer that is engaged in at-sea processing must carry two certified observers, and any vessel shorter than 125 ft (38.1 m) LOA that is engaged in at-sea processing must carry one certified observer, each day that the

vessel is used to take, retain, receive, land, process, or transport groundfish.

(ii) *Observer deployment limitations and workload.* An observer must not be deployed for more than 22 calendar days in a calendar month. The Observer Program may issue waivers to allow observers to work more than 22 calendar days per month when it's anticipated one trip will last over 20 days or for issues with observer availability due to illness or injury of other observers. 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 immediately reported to the Observer Program and OLE by the observer provider. The observer must be available for an interview with the Observer Program or OLE if necessary.

(2) * * *

(i) * * *

(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 designee.

(ii) * * *

(B) Have on board a valid Commercial Fishing Vessel Safety Decal that certifies compliance with regulations found in 33 CFR chapter I and 46 CFR chapter I, a certificate of compliance issued pursuant to 46 CFR 28.710 or a valid certificate of inspection pursuant to 46 U.S.C. 3311. Maintain safe conditions on the vessel for the protection of observer(s) including adherence to all USCG and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel, and provisions at §§ 600.725 and 600.746 of this chapter.

* * * * *

(xi) *Housing on vessel in port.* During all periods an observer is housed on a vessel, the vessel operator must ensure that at least one crew member is aboard.

(3) *Procurement of observer services.* Owners of vessels required to carry observers under paragraph (h)(1) of this section must arrange for observer services from an observer provider, except that:

(i) Vessels are required to procure observer services directly from the Observer Program when NMFS has

determined and given notification that the vessel must carry NMFS staff or an individual authorized by NMFS in lieu of an observer provided by an observer provider.

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

(4) *Application to become an observer provider.* See § 660.18.

* * * * *

(5) * * *

(ii) * * *

(B) * * *

(1) That the observer will return all phone calls, emails, text messages, or other forms of communication within the time specified by the Observer Program;

* * * * *

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

(iii) * * *

(D) Immediately report to the Observer Program Office and the OLE any refusal to board an assigned vessel.

(iv) * * * (A) Must have a valid West Coast Groundfish observer certification with the required endorsements;

(B) Must not have informed the observer provider prior to the time of embarkation that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement, 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

* * * * *

(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 an observer from performing his or her duties or where an observer resigns prior to completion of his or her duties. If the observer provider is unable to respond to an industry request for observer coverage from a vessel for whom the observer provider is in a contractual relationship due to the lack of available observers by the estimated embarking

time of the vessel, the observer provider must report it to NMFS at least 4 hours prior to the vessel's estimated embarking time.

* * * * *

(vii) * * *

(A) * * *

(2) Has a check-in system in which the observer is required to contact the observer provider each time they depart and return to port on a vessels.

(3) Remains available to OLE and the Observer Program until the conclusion of debriefing.

(4) Receives all necessary transportation, including arrangements and logistics to the initial location of deployment, to all subsequent vessel assignments during that deployment, and to and from the location designated for an observer to be interviewed by the Observer Program; and

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

(i) An observer under contract may be housed on a vessel to which he or she is assigned: Prior to their vessel's initial departure from port; for a period not to exceed 24 hours following the completion of an offload when the observer has duties and is scheduled to disembark; or for a period not to exceed 24 hours following the vessel's arrival in port when the observer is scheduled to disembark.

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

* * * * *

(ix) *Verify vessel's Commercial Fishing Vessel Safety Decal.* An observer provider must ensure that the observer completes a current observer vessel safety checklist, and verify that a vessel has a valid USCG Commercial Fishing Vessel Safety Decal as required under paragraph (h)(2)(ii)(B) of this section prior to the observer embarking on the first trip and before an observer may get underway aboard the vessel. The provider must submit all vessel

safety checklists to the Observer Program, as specified by Observer Program. 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.

* * * * *

(xi) *Maintain communications with the Observer Program Office.* An observer provider must provide all of the following information by electronic transmission (email), fax, or other method specified by NMFS.

(A) *Observer training, briefing, and debriefing registration materials.* This information must be submitted to the Observer Program Office at least 10 business days prior to the beginning of a scheduled West Coast groundfish observer certification training or briefing session.

(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) 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) Length of each observer's contract.

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

(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.

(C) *Certificates of insurance.* Copies of "certificates of insurance," that name the Northwest Fisheries Science Center Observer Program manager 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 email, 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 as required at § 660.18(h).

(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.* Observer providers must provide NMFS with an updated list of observer trips per Observer Program protocol. Trip information includes observer provider name, observer last name, observer first name, trip start date, trip end date, status of observer, vessel name, and vessel identification number.

(H) *Other information.* Observer 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 Observer Program Office by the observer provider via fax or email address designated by the Observer Program Office within 24 hours after the observer provider becomes aware of the information:

(1) Any information regarding possible observer harassment;

(2) Any information regarding any action prohibited under § 660.12(e); § 660.112(a)(4); or § 600.725(o), (t) and (u) of this chapter;

(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.* Lost or damaged gear issued to an

observer by NMFS must be replaced by the observer provider. All replacements must be provided to NMFS and be in accordance with requirements and procedures identified in writing by the Observer Program Office.

(xiii) *Maintain confidentiality of information.* An observer provider must ensure that all records on individual observer performance received from NMFS under the routine use provision of the Privacy Act (U.S.C. 552a) 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 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 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 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 in violation of applicable law; 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 by February 1 of each year, to: observers, observer candidates and the Observer Program Office.

* * * * *

(6) * * * (i) *Applicability.* Observer certification authorizes an individual to fulfill duties as specified in writing by the Observer Program Office while under the employ of an observer provider and according to certification requirements as designated under paragraph (h)(6)(iii) of this section.

* * * * *

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

(1) Are employed by an permitted observer provider at the time of the of the certification is issued;

(2) Have provided, through their observer provider:

(i) Information identified by NMFS at § 679.52(b) of this chapter regarding an observer candidate's health and physical fitness for the job;

(ii) Meet all observer candidate education and health standards as specified in § 679.52(b) of this chapter; and

(iii) Have successfully completed NMFS-approved training as prescribed by the Observer Program. Successful completion of training by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Observer Program.

(iv) Have not been decertified under paragraph (h)(6)(ix) of this section, or pursuant to § 679.53(c) of this chapter.

* * * * *

(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 as prescribed by the Observer Program must be obtained in addition to observer certification.

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

(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 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, as defined by the Observer Program, after receiving a training endorsement or annual general endorsement, must complete all applicable debriefing requirements specified by the Observer Program. A deployment endorsement is issued to observers who meet the performance standards specified by the Observer Program. A deployment endorsement must be obtained prior to any subsequent deployments for the remainder of that calendar year. If a deployment endorsement is not issued, certification training must be repeated.

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

(A) Successfully perform their assigned duties as described in the observer manual or other written instructions from the Observer Program.

(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 any required trainings or briefings as prescribed by the 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 briefing 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 Observer Program performance standards reporting for assigned debriefings or interviews.

(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 or catch monitor services, in a North Pacific fishery managed pursuant to an FMP for the waters off the coast of Alaska, Alaska state waters, or in a Pacific Coast fishery managed by either the state or Federal Governments in waters off Washington, Oregon, or California, including but not limited to:

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

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

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

(B) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from 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 or floating stationary processor owned or operated by a person who employed the observer in the last two years.

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

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

(viii) *Standards of behavior.* Observers must:

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

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

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

(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 IAD of observer certification suspension and/or decertification.

(B) *Causes for suspension or decertification.* In addition to any other supported basis connected to an observer's job performance, 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 an IAD.* Upon determination that suspension or decertification is warranted, the suspension/decertification official will issue a written IAD to the observer via certified mail at the observer's most current address provided to NMFS. The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken. Decertification is effective 30 calendar days after the date on the IAD, unless there is an appeal.

(D) *Appeals.* A certified observer who receives an IAD that suspends or revokes his or her observer certification may appeal the determination within 30 calendar days after the date on the IAD to the Office of Administrative Appeals pursuant to § 660.19.

(i) * * *

(2) *Procurement of catch monitor services.* Owners or managers of each IFQ first receiver must arrange for catch monitor services from a catch monitor provider prior to accepting IFQ landings.

* * * * *

(3) * * *

(ii) The working hours of each individual catch monitor will be limited as follows: the time required for a catch monitor to conduct monitoring duties must not exceed 14 consecutive hours in any 24-hour period with a maximum of 12 hours being work other than the summary and submission of catch monitor data. In the same 24-hour period a catch monitor must have a break that is a minimum of 8 consecutive hours.

* * * * *

(j) * * *

(2) * * *

(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 as specified at § 660.15(c).

(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 consistent with § 660.113(a)(2).

* * * * *

(3) * * *

(i) *General.* Ensure that all IFQ landings are sorted and weighed as specified at § 660.130(d) and in accordance with an approved catch monitoring plan.

* * * * *

(4) *Scale tests.* All testing must meet the scale test standards specified at § 660.15(c).

* * * * *

■ 11. In § 660.150,

■ a. Revise paragraphs (b)(1)(ii), (j)(1)(i), (j)(1)(ii)(A), (j)(1)(iii), (j)(2)(i)(A), (j)(2)(i)(B)(2), (j)(2)(ii) introductory text, (j)(2)(ii)(B), (j)(2)(iii), (j)(2)(ix)(A) introductory text, (j)(2)(x) introductory text, (j)(3), (j)(4), and (j)(5);

■ b. Add paragraph (j)(2)(xi) to read as follows:

§ 660.150 **Mothership (MS) Coop Program.**

* * * * *

(b) * * * (1) * * *

(ii) *MS vessel responsibilities.* The owner and operator of a MS vessel must:

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

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

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

* * * * *

(j) * * * (1) * * * (i) *Coverage.* The following observer coverage pertains to certified observers obtained from an observer provider permitted by NMFS.

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

(B) *Catcher vessels.* Any vessel delivering catch to any MS vessel must carry one certified observer each day that the vessel is used to take groundfish.

(ii) * * * (A) *MS vessels.* 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 OLE by the observer provider. The observer must be available for an interview with the Observer Program or OLE if necessary.

* * * * *

(2) * * *

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

(B) * * *

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

* * * * *

(ii) *Safe conditions.* MS vessels and catcher vessels must:

* * * * *

(B) Have on board a valid Commercial Fishing Vessel Safety Decal that certifies compliance with regulations found in 33 CFR chapter I and 46 CFR chapter I, a certificate of compliance issued pursuant to 46 CFR 28.710 or a valid certificate of inspection pursuant to 46 U.S.C. 3311. Maintain safe conditions on the vessel for the protection of observer(s) including adherence to all USCG and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel, and provisions at §§ 600.725 and 600.746 of this chapter.

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

(A) Provide hardware and software pursuant to regulations at §§ 679.51(e)(iii)(B) of the chapter.

(B) Provide the observer(s) access to a computer required under paragraph (j)(2)(iii)(A) of this section, and that is connected to a communication device

that provides a point-to-point connection to the NMFS host computer.

(C) Ensure that the MS vessel has installed the most recent release of NMFS data entry software or other approved software prior to the vessel receiving, catching or processing IFQ species.

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

* * * * *

(ix) * * * (A) *MS vessels.* To allow the observer to carry out required duties, the vessel owner must provide an observer sampling station that meets the following requirements:

* * * * *

(x) *Transfer at sea.* Observers may be transferred at-sea between MS vessels, between MS vessels and C/P vessels, or between a MS vessel and a catcher vessel. Transfers at-sea between catcher vessels is prohibited. For transfers, both vessels must:

* * * * *

(xi) *Housing on vessel in port.* During all periods an observer is housed on a vessel, the vessel operator must ensure that at least one crew member is aboard.

* * * * *

(3) *Procurement of observer services.* (i) *MS vessels.* Owners of vessels required to carry observers under paragraph (j)(1)(i) of this section must arrange for observer services from an observer provider, except that:

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

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

(ii) *Catcher vessels.* Owners of vessels required to carry observers under paragraph (j)(1)(i) of this section must arrange for observer services from an observer provider, except that:

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

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

(4) *Observer provider responsibilities.* (i) Provide qualified candidates to serve as observers. Observer providers must provide qualified candidates to serve as observers. To be qualified, a candidate must have:

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

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

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

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

(ii) *Hiring an observer candidate.* (A) *MS vessels.* (1) The observer provider must provide the candidate a copy of NMFS-provided pamphlets, information and other literature describing observer duties (i.e. the At-Sea Hake Observer Program's Observer Manual) prior to hiring the candidate. Observer job information is available from the Observer Program Office's Web site at <http://www.nwfsc.noaa.gov/research/divisions/fram/observer/index.cfm>.

(2) The observer provider must have a written contract or a written contract addendum that is signed by the observer and observer provider prior to the observer's deployment with the following clauses:

(i) That the observer will return all phone calls, emails, text messages, or other forms of communication within the time specified by the Observer Program;

(ii) That the observer inform the observer provider prior to the time of embarkation if he or she is experiencing any new mental illness or physical ailments or injury since submission of the physician's statement as required as

a qualified observer candidate that would prevent him or her from performing their assigned duties.

(B) *Catcher vessels.* (1) Provide the candidate a copy of NMFS-provided pamphlets, information and other literature describing observer duties, for example, the West Coast Groundfish Observer Program's sampling manual. Observer job information is available from the Observer Program Office's Web site at <http://www.nwfsc.noaa.gov/research/divisions/fram/observer/index.cfm>.

(2) The observer provider must have a written contract or a written contract addendum that is signed by the observer and observer provider prior to the observer's deployment with the following clauses:

(i) That the observer will return all phone calls, emails, text messages, or other forms of communication within the time specified by the Observer Program;

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

(iii) That the observer completes a basic cardiopulmonary resuscitation/first aid course prior to the end of the Observer Program Training class.

(iii) *Ensure that observers complete duties in a timely manner.* (A) *MS vessels.* An observer provider must ensure that observers employed by that observer provider do the following in a complete and timely manner:

(1) Submit to NMFS all data, logbooks, and reports as required by the observer manual;

(2) Report for his or her scheduled debriefing and complete all debriefing responsibilities;

(3) Return all sampling and safety gear to the Observer Program Office;

(4) Submit all biological samples from the observer's deployment by the completion of the electronic vessel and/or processor survey(s); and

(5) Immediately report to the Observer Program Office and the OLE any refusal to board an assigned vessel.

(B) *Catcher vessels.* An observer provider must ensure that observers employed by that observer provider do the following in a complete and timely manner:

(1) Submit to NMFS all data, logbooks, and reports and biological samples as required under the Observer Program policy deadlines;

(2) Report for his or her scheduled debriefing and complete all debriefing responsibilities;

(3) Return all sampling and safety gear to the Observer Program Office; and

(4) Immediately report to the Observer Program Office and the OLE any refusal to board an assigned vessel.

(iv) *Observers provided to vessel.* (A) *MS vessels.* Observers provided to MS vessels:

(1) Must have a valid North Pacific groundfish observer certification with required endorsements and an At-Sea Hake Observer Program endorsement;

(2) Must not have informed the observer provider prior to the time of embarkation that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement that would prevent him or her from performing his or her assigned duties; and

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

(B) *Catcher vessels.* Observers provided to catcher vessels:

(1) Must have a valid West Coast Groundfish observer certification with the required endorsements;

(2) Must have not informed the observer provider prior to the time of embarkation that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement (required in paragraph (j)(4)(xi)(B)(2) of this section) that would prevent him or her from performing his or her assigned duties; and,

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

(v) *Respond to industry requests for observers.* An observer provider must provide an observer for deployment pursuant to the terms of the contractual relationship with the vessel to fulfill vessel requirements for observer coverage specified at paragraph (j)(1)(i) of this section. An alternate observer must be supplied in each case where injury or illness prevents an observer from performing his or her duties or where the observer resigns prior to completion of his or her duties. If the observer provider is unable to respond to an industry request for observer coverage from a vessel for whom the observer provider is in a contractual relationship due to lack of available observers by the estimated embarking time of the vessel, the observer provider must report it to the Observer Program at least 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) *MS vessels.* An observer provider must provide to each of its observers under contract:

(1) All necessary transportation, including arrangements and logistics, to the initial location of deployment, to all subsequent vessel assignments during that deployment, and to and from the location designated for an observer to be interviewed by the Observer Program; and

(2) Lodging, per diem, and any other services necessary to observers assigned to fishing vessels.

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

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

(ii) For a period not to exceed 24 hours following the completion of an offload when the observer has duties and is scheduled to disembark; or

(iii) For a period not to exceed 24 hours following the vessel's arrival in port when the observer is scheduled to disembark.

(iv) An observer under contract who is between vessel assignments must be provided with shoreside accommodations pursuant to the terms of the contract between the observer provider and the observers. If the observer provider is responsible for providing accommodations under the contract with the observer, the accommodations must be at a licensed hotel, motel, bed and breakfast, or other shoreside accommodations for the duration of each period between vessel or shoreside assignments. Such accommodations must include an assigned bed for each observer and no other person may be assigned that bed for the duration of that observer's stay. Additionally, no more than four beds may be in any room housing observers at accommodations meeting the requirements of this section.

(B) *Catcher vessels.* An observer provider must ensure each of its observers under contract:

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

(2) Has a check-in system in which the observer is required to contact the

observer provider each time they depart and return to port on a vessel.

(3) Remains available to OLE and the Observer Program until the conclusion of debriefing.

(4) Receives all necessary transportation, including arrangements and logistics to the initial location of deployment, to all subsequent vessel assignments during that deployment, and to and from the location designated for an observer to be interviewed by the Observer Program; and

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

(i) An observer under contract may be housed on a vessel to which he or she is assigned: Prior to their vessel's initial departure from port; for a period not to exceed 24 hours following the completion of an offload when the observer has duties and is scheduled to disembark; or for a period not to exceed 24 hours following the vessel's arrival in port when the observer is scheduled to disembark.

(ii) Otherwise, each observer between vessels, while still under contract with an observer provider, shall be provided with accommodations in accordance with the contract between the observer and the observer provider. If the observer provider is responsible for providing accommodations under the contract with the observer, the accommodations must be at a licensed hotel, motel, bed and breakfast, or other shoreside accommodations that has an assigned bed for each observer that no other person may be assigned to for the duration of that observer's stay. Additionally, no more than four beds may be in any room housing observers at accommodations meeting the requirements of this section.

(viii) *Observer deployment limitations.* (A) *MS vessels.* Unless alternative arrangements are approved by the Observer Program Office, an observer provider must not:

(1) Deploy an observer on the same vessel more than 90 days in a 12-month period;

(2) Deploy an observer for more than 90 days in a single deployment;

(3) Include more than four vessels assignments in a single deployment, or

(4) Disembark an observer from a vessel before that observer has completed his or her sampling or data transmission duties.

(B) *Catcher vessels.* Unless alternative arrangements are approved by the Observer Program Office, an observer provider must not deploy an observer on the same vessel more than 90 calendar days in a 12-month period.

(ix) *Verify vessel's Commercial Fishing Vessel Safety Decal.* An observer provider must ensure that the observer completes an observer vessel safety checklist, and verify that a vessel has a valid USCG Commercial Fishing Vessel Safety Decal as required under paragraph (j)(2)(ii)(B) of this section prior to the observer embarking on the first trip and before an observer may get underway aboard the vessel. The provider must submit all vessel safety checklists to the Observer Program, as specified by Observer Program policy. One of the following acceptable means of verification must be used to verify the decal validity:

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

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

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

(xi) *Maintain communications with the Observer Program Office.* An observer provider must provide all of the following information by electronic transmission (email), fax, or other method specified by NMFS.

(A) *Motherships.* (1) *Training and briefing registration materials.* The observer provider must submit training and briefing registration materials to the Observer Program Office at least 5 business days prior to the beginning of a scheduled observer at-sea hake training or briefing session.

(i) *Registration materials.* Registration materials consist of the date of requested training or briefing with a list of observers including each observer's full name (i.e., first, middle and last names).

(ii) *Projected observer assignments.* Prior to the observer's completion of the training or briefing session, the observer provider must submit to the Observer Program Office a statement of projected observer assignments that include the observer's name; vessel, gear type, and vessel/processor code; port of embarkation; and area of fishing.

(2) *Observer debriefing registration.* The observer provider must contact the At-Sea Hake Observer Program within 5 business days after the completion of an

observer's deployment to schedule a date, time and location for debriefing. Observer debriefing registration information must be provided at the time of debriefing scheduling and must include the observer's name, cruise number, vessel name(s) and code(s), and requested debriefing date.

(3) *Observer provider contracts.* If requested, observer providers must submit to the Observer Program Office a completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services under paragraph (j)(1)(i) of this section. Observer providers must also submit to the Observer Program Office upon request, a completed and unaltered copy of the current or most recent signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract and any agreements or policies with regard to observer compensation or salary levels) between the observer provider and the particular entity identified by the Observer Program or with specific observers. The copies must be submitted to the Observer Program Office via fax or mail within 5 business days of the request. Signed and valid contracts include the contracts an observer provider has with:

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

(ii) Observers.

(4) *Change in observer provider management and contact information.* Observer providers must submit notification of any other change to provider contact information, including but not limited to, changes in contact name, phone number, email address, and address.

(5) *Other reports.* Reports of the following must be submitted in writing to the At-Sea Hake Observer Program Office by the observer provider via fax or email address designated by the Observer Program Office within 24 hours after the observer provider becomes aware of the information:

(i) Any information regarding possible observer harassment;

(ii) Any information regarding any action prohibited under § 660.12(e); § 660.112(a)(4); or § 600.725(o), (t) and (u) of this chapter;

(iii) Any concerns about vessel safety or marine casualty under 46 CFR 4.05–1(a)(1) through (7);

(iv) Any observer illness or injury that prevents the observer from completing

any of his or her duties described in the observer manual; and

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

(B) *Catcher vessels.* An observer provider must provide all of the following information by electronic transmission (email), fax, or other method specified by NMFS.

(1) *Observer training, briefing, and debriefing registration materials.* This information must be submitted to the Observer Program Office at least 10 business days prior to the beginning of a scheduled West Coast groundfish observer certification training or briefing session.

(i) Training registration materials consist of the following: Date of requested training; a list of observer candidates that includes each candidate's full name (i.e., first, middle and last names), date of birth, and gender; a copy of each candidate's academic transcripts and resume; a statement signed by the candidate under penalty of perjury which discloses the candidate's criminal convictions; and length of observer contract.

(ii) Briefing registration materials consist of the following: Date and type of requested briefing session; list of observers to attend the briefing session, that includes each observer's full name (first, middle, and last names); and length of observer contract.

(iii) The Observer Program will notify the observer provider which observers require debriefing and the specific time period the observer provider has to schedule a date, time, and location for debriefing. The observer provider must contact the Observer Program within 5 business days by telephone to schedule debriefings. Observer providers must immediately notify the Observer Program when observers end their contract earlier than anticipated.

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

of the work by reading the NMFS-prepared information. The physician's statement must be submitted to the Observer Program Office prior to certification of an observer. The physical exam must have occurred during the 12 months prior to the observer's or observer candidate's deployment.

(3) *Certificates of insurance.* Copies of "certificates of insurance," that names the Northwest Fisheries Science Center Observer Program manager 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 as required at § 660.18(f).

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

(7) *Observer status report.* Observer providers must provide NMFS with an updated list of observer trip per Observer Program protocol. Trip information includes observer provider name, observer last name, observer first name, trip start date, trip end date, status of observer, vessel name, and vessel identification number.

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

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

(i) Any information regarding possible observer harassment;

(ii) Any information regarding any action prohibited under § 660.12(e); § 660.112(a)(4); or § 600.725(o), (t) and (u) of this chapter;

(iii) Any concerns about vessel safety or marine casualty under 46 CFR 4.05–1(a)(1) through (7);

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

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

(xii) *Replace lost or damaged gear.* Lost or damaged gear issued to an observer by NMFS must be replaced by the observer provider. All replacements must be provided to NMFS and be in accordance with requirements and procedures identified in writing by the Observer Program Office.

(xiii) *Maintain confidentiality of information.* An observer provider must ensure that all records on individual observer performance received from NMFS under the routine use provision of the Privacy Act under 5 U.S.C. 552a or as otherwise required by law remain confidential and are not further released to 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 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, 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 regarding:

(A) Observer use of alcohol;

(B) Observer use, possession, or distribution of illegal drugs in violation of applicable law; and

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

(D) An observer provider shall provide a copy of its conduct and

behavior policy by February 1 of each year, to: Observers, observer candidates and the Observer Program Office.

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

(5) *Observer certification and responsibilities.* (i) *Applicability.* Observer certification authorizes an individual to fulfill duties as specified in writing by the NMFS Observer Program Office while under the employ of a NMFS-permitted observer provider and according to certification endorsements as designated under paragraph (j)(6)(iii) of this section.

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

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

(1) Are employed by an observer provider company permitted pursuant to § 660.16 at the time of the issuance of the certification;

(2) Have provided, through their observer provider:

(i) Information identified by NMFS at § 679.52(b) of this chapter regarding an observer candidate's health and physical fitness for the job;

(ii) Meet all observer education and health standards as specified in § 679.52(b) of this chapter and

(iii) Have successfully completed NMFS-approved training as prescribed by the Observer Program. Successful completion of training by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Observer Program.

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

(B) [Reserved]

(iv) *Denial of a certification.* The NMFS observer certification official will issue a written determination denying observer certification if the candidate

fails to successfully complete training, or does not meet the qualifications for certification for any other relevant reason.

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

(A) *MS vessels. (1) North Pacific Groundfish Observer Program certification training endorsement.* A certification training endorsement signifies the successful completion of the training course required to obtain observer certification. This endorsement expires when the observer has not been deployed and performed sampling duties as required by the Observer Program Office for a period of time, specified by the Observer Program, after his or her most recent debriefing. The observer can renew the endorsement by successfully completing certification training once more.

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

(3) *North Pacific Groundfish Observer Program deployment endorsements.* Each observer who has completed an initial deployment after certification or annual briefing must receive a deployment endorsement to their certification prior to any subsequent deployments for the remainder of that year. An observer may obtain a deployment endorsement by successfully completing all pre-cruise briefing requirements. The type of briefing the observer must attend and successfully complete will be specified in writing by the Observer Program during the observer's most recent debriefing.

(4) *At-Sea Hake Observer Program endorsements.* A Pacific whiting fishery endorsement is required for purposes of performing observer duties aboard vessels that process groundfish at sea in

the Pacific whiting fishery. A Pacific whiting fishery endorsement to an observer's certification may be obtained by meeting the following requirements:

(i) Have a valid North Pacific groundfish observer certification;

(ii) Receive an evaluation by NMFS for his or her most recent deployment that indicated that the observer's performance met Observer Program expectations for that deployment; successfully complete any required briefings as prescribed by the Observer Program; and comply with all of the other requirements of this section.

(B) *Catcher vessels.* The following endorsements as prescribed by the Observer Program must be obtained in addition to observer certification, in order for an observer to deploy.

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

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

(3) *West Coast Groundfish Observer Program deployment endorsement.* Each observer who has completed an initial deployment, as defined by the Observer Program, after receiving a training endorsement or annual general endorsement, must complete all applicable debriefing requirements specified by the Observer Program. A deployment endorsement is issued to observers who meet the performance standards specified by the Observer Program. A deployment endorsement must be obtained prior to any subsequent deployments for the remainder of that calendar year. If a deployment endorsement is not issued, certification training must be repeated.

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

(A) *MS vessels. (1)* Successfully perform their assigned duties as described in the observer manual or other written instructions from the Observer Program.

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

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

(4) Successfully complete any required briefings as prescribed by the At-Sea Hake Observer Program.

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

(6) Successfully meet all debriefing expectations including meeting Observer Program performance standards reporting for assigned debriefings or interviews.

(7) Submit all data and information required by the Observer Program within the program's stated guidelines.

(B) *Catcher vessels.* After initial issuance, an observer must keep their certification valid by meeting all of the following requirements specified below:

(1) Successfully perform their assigned duties as described in the observer manual or other written instructions from the Observer Program.

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

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

(4) Successfully complete any required trainings or briefings as prescribed by the Observer Program.

(5) Successful completion of briefing by an observer applicant consists of meeting all attendance and conduct

standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other briefing requirements established by the Observer Program.

(6) Hold current 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 or interviews and meeting program standards.

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

(9) Meet the minimum annual deployment period of 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 or catch monitor services, in a North Pacific fishery managed pursuant to an FMP for the waters off the coast of Alaska, Alaska state waters, or in a Pacific Coast fishery managed by either the state or Federal Governments in waters off Washington, Oregon, or California, including but not limited to:

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

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

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

(B) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from 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 or floating stationary processor owned or operated by a person who employed the observer in the last two years.

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

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

(viii) *Standards of behavior.* Observers must:

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

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

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

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

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

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

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

(i) Failed to satisfactorily perform duties of observers as specified in writing by the NMFS Observer Program; or

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

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

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

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

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

(C) *Issuance of an IAD.* Upon determination that suspension or decertification is warranted, the

suspension/decertification official will issue a written IAD to the observer via certified mail at the observer's most current address provided to NMFS. The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken. Decertification is effective 30 calendar days after the date on the IAD, unless there is an appeal.

(D) *Appeals.* A certified observer who receives an IAD that suspends or revokes his or her observer certification may appeal the determination within 30 calendar days after the date on the IAD to the Office of Administrative Appeals pursuant to § 660.19.

* * * * *

■ 12. In § 660.160,

■ a. Revise paragraphs (b)(1)(ii) introductory text, (b)(1)(ii)(C), (g)(1), (g)(2)(ii)(B), (g)(2)(iii), (g)(2)(ix) introductory text, and (g)(3);

■ b. Add paragraph (g)(2)(xi);

■ c. Remove paragraph (g)(4);

■ d. Redesignate paragraphs (g)(5) and (g)(6) as (g)(4) and (g)(5);

■ e. Revise newly redesignated paragraphs (g)(4)(ii), (g)(4)(iii)(A) and (E), (g)(4)(iv) and (v), (g)(4)(vii), (g)(4)(ix), (g)(4)(xi) through (xvi), (g)(5)(i) and (ii), (g)(5)(iii)(A)(2), (g)(5)(v)(D), (g)(5)(vi), (g)(5)(vii)(A), and (g)(5)(viii) and (ix) to read as follows:

§ 660.160 Catcher/processor (C/P) Coop Program.

* * * * *

(b) * * *

(1) * * *

(ii) *C/P vessel responsibilities.* The owner and operator of a C/P vessel must:

* * * * *

(C) *Catch weighing requirements.* The owner and operator of a C/P vessel must ensure that all catch is weighed in its round form on a NMFS-approved scale that meets the requirements described in § 660.15(b).

* * * * *

(g) * * * (1) *Observer coverage requirements.* (i) *Coverage.* The following observer coverage pertains to certified observers obtained from an observer provider permitted by NMFS. 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 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 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 OLE by the observer provider. The observer must be available for an interview with the Observer Program or OLE if necessary.

(2) * * *

(ii) * * *

(B) Have on board a valid Commercial Fishing Vessel Safety Decal that certifies compliance with regulations found in 33 CFR chapter I and 46 CFR chapter I, a certificate of compliance issued pursuant to 46 CFR 28.710 or a valid certificate of inspection pursuant to 46 U.S.C. 3311. Maintain safe conditions on the vessel for the protection of observer(s) including adherence to all USCG and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel, and provisions at §§ 600.725 and 600.746 of this chapter.

(iii) *Computer hardware and software.* C/P vessels must:

(A) Provide hardware and software pursuant to regulations at § 679.51(e)(iii)(B) of this chapter.

(B) Provide the observer(s) access to a computer required under paragraph (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 C/P vessel has installed the most recent release of NMFS data entry software, or other approved software prior to the vessel receiving, catching or processing IFQ species.

(D) Ensure that the communication equipment required in paragraph (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.

* * * * *

(ix) *Sampling station and operational requirements for C/P vessels.* This paragraph (g)(2)(ix) 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:

* * * * *

(xi) *Housing on vessel in port.* During all periods an observer is housed on a

vessel, the vessel operator must ensure that at least one crew member is aboard.

* * * * *

(3) *Procurement of observer services.* Owners of vessels required to carry observers under paragraph (g)(1) of this section must arrange for observer services from an observer provider permitted by NMFS, except that:

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

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

* * * * *

(4) * * *

(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 <http://www.nwfsc.noaa.gov/research/divisions/fram/observer/index.cfm>.

(B) 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 the observer will return all phone calls, emails, text messages, or other forms of communication within the time specified by the Observer Program;

(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) * * *

(A) Submit to NMFS all data, logbooks and reports as required by the observer manual;

* * * * *

(E) Immediately report to the Observer Program Office and the OLE any refusal to board an assigned vessel.

(iv) *Observers provided to vessel.*

Observers provided to C/P vessels:

(A) Must have a valid North Pacific groundfish observer certification with required endorsements and an At-Sea Hake Observer Program endorsement;

(B) Must not have informed the observer provider prior to the time of embarkation that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement that would prevent him or her from performing his or her assigned duties; and

(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 observer provider is in a contractual relationship due to lack of available observers by the estimated embarking time of the vessel, the observer provider must report it to the Observer Program at least 4 hours prior to the vessel's estimated embarking time.

* * * * *

(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, to the initial location of deployment, to all subsequent vessel assignments during that deployment, and to and from the location designated for an observer to be interviewed by the Observer Program; and

(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 24 hours following the vessel's arrival in

port when the observer is scheduled to disembark.

(2) [Reserved]

(C) 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 observer 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.

* * * * *

(ix) *Verify vessel's Commercial Fishing Vessel Safety Decal.* An observer provider must ensure that the observer completes an observer vessel safety checklist, and verify that a vessel has a valid USCG Commercial Fishing Vessel Safety decal as required under paragraph (h)(2)(ii)(B) of this section prior to the observer embarking on the first trip and before an observer may get underway aboard the vessel. The provider must submit all vessel safety checklists to the Observer Program, as specified by Observer Program policy. One of the following acceptable means of verification must be used to verify the decal validity:

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

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

* * * * *

(xi) *Maintain communications with the Observer Program Office.* An observer provider must provide all of the following information by electronic transmission (email), fax, or other method specified by NMFS.

(A) *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) *Observer debriefing registration.* The observer provider must contact the 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.

(C) *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.

(D) *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.

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

(1) Any information regarding possible observer harassment;

(2) Any information regarding any action prohibited under §§ 660.12(e), 660.112 or 600.725(o), (t) and (u) of this chapter;

(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.* Lost or damaged gear issued to an observer by NMFS must be replaced by the observer provider. All replacements must be provided to NMFS and be in accordance with requirements and procedures identified in writing by the Observer Program Office.

(xiii) *Maintain confidentiality of information.* An observer provider must ensure that all records on individual observer performance received from NMFS under the routine use provision of the Privacy Act (5 U.S.C. 552a) 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 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 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.* 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 in violation of applicable law; and

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

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

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

(5) * * * (i) *Applicability.* Observer certification authorizes an individual to fulfill duties as specified in writing by the Observer Program Office while under the employ of an observer provider and according to certification endorsements as designated under paragraph (g)(5)(iii) of this section.

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

(iii) * * *

(A) * * *

(2) Have provided, through their observer provider:

(j) Information set forth at § 679.52(b) of this chapter regarding an observer candidate's health and physical fitness for the job;

(ii) Meet all observer education and health standards as specified in § 679.52(b) of this chapter; and

(iii) Have successfully completed NMFS-approved training as prescribed by the Observer Program. Successful completion of training by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Observer Program.

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

* * * * *

(v) * * *

(D) *At-Sea Hake Observer Program endorsements.* A Pacific whiting fishery endorsement is required for purposes of performing observer duties aboard vessels that process groundfish at sea in the Pacific whiting fishery. A Pacific whiting fishery endorsement to an observer's certification may be obtained by meeting the following requirements:

(1) Have a valid North Pacific groundfish observer certification;

(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 any required briefings 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.

(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 any required 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 debriefing expectations including meeting Observer Program performance standards reporting for assigned debriefings or interviews.

(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 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.

* * * * *

(viii) *Standards of behavior.*

Observers must:

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

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

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

(ix) *Suspension and decertification.*

(A) *Suspension and decertification review official.* The Regional Administrator (or a designee) will designate an observer suspension and decertification review official(s), who will have the authority to review

observer certifications and issue IADs of observer certification suspension and/or decertification.

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

(1) When it is alleged that the observer has committed any acts or omissions of any of the following: Failed to satisfactorily perform the duties of observers as specified in writing by the 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 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 an IAD.* Upon determination that suspension or decertification is warranted, the suspension/decertification official will issue a written IAD to the observer via certified mail at the observer's most current address provided to NMFS. The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken. Decertification is effective 30 calendar days after the date on the IAD, unless there is an appeal.

(D) *Appeals.* A certified observer who receives an IAD that suspends or revokes 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 § 660.19.

* * * * *

■ 13. In § 660.216, revise paragraphs (a) through (d), (e)(2), (e)(3)(i), and (f) to read as follows:

§ 660.216 Fixed gear fishery—observer requirements.

(a) *Observer coverage requirements.*

(1) *Harvesting vessels.* When NMFS notifies the owner, operator, permit holder, or the manager of a harvesting vessel of any requirement to carry an observer, the harvesting vessel may not be used to fish for groundfish without carrying an observer.

(2) *Processing vessels.* Unless specified otherwise by the Observer

Program, any vessel 125 ft (38.1 m) LOA or longer that is engaged in at-sea processing must carry two certified observers procured from a permitted observer provider, and any vessel shorter than 125 ft (38.1 m) LOA that is engaged in at-sea processing must carry one certified observer procured from an permitted observer provider, each day that the vessel is used to take, retain, receive, land, process, or transport groundfish. Owners of vessels required to carry observers under this paragraph (a)(2) must arrange for observer services from a permitted observer provider except when the Observer Program has determined and given notification that the vessel must carry NMFS staff or an individual authorized by NMFS in addition to or in lieu of an observer provided by a permitted observer provider.

(b) *Notice of departure basic rule.* At least 24 hours (but not more than 36 hours) before departing on a fishing trip, a harvesting vessel that has been notified by NMFS that it is required to carry an observer, or that is operating in an active sampling unit, must notify NMFS (or its designated agent) of the vessel's intended time of departure.

(1) *Optional notice—weather delays.* A harvesting vessel that anticipates a delayed departure due to weather or sea conditions may advise NMFS of the anticipated delay when providing the basic notice described in paragraph (b) of this section. If departure is delayed beyond 36 hours from the time the original notice is given, the vessel must provide an additional notice of departure not less than 4 hours prior to departure, in order to enable NMFS to place an observer.

(2) *Optional notice—back-to-back fishing trips.* A harvesting vessel that intends to make back-to-back fishing trips (i.e., trips with less than 24 hours between offloading from one trip and beginning another), may provide the basic notice described in paragraph (b) of this section for both trips, prior to making the first trip. A vessel that has given such notice is not required to give additional notice of the second trip.

(c) *Cease fishing report.* Within 24 hours of ceasing the taking and retaining of groundfish, vessel owners, operators, or managers must notify NMFS or its designated agent that fishing has ceased. This requirement applies to any harvesting and processing vessel that is required to carry an observer, or that is operating in a segment of the fleet that NMFS has identified as an active sampling unit.

(d) *Waiver.* The West Coast Regional Administrator (or designee) may provide written notification to the

vessel owner stating that a determination has been made to temporarily waive coverage requirements because of circumstances that are deemed to be beyond the vessel's control.

(e) * * *

(2) *Safe conditions.* Maintain safe conditions on the vessel for the protection of observer(s) including adherence to all USCG and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel, and provisions at §§ 600.725 and 600.746 of this chapter. 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.

(3) *Observer communications.* Facilitate observer communications by:

(i) *Observer use of equipment.* Allowing observer(s) to use the vessel's communication equipment and personnel, on request, for the entry, transmission, and receipt of work-related messages, at no cost to the observer(s), the observer provider or NMFS.

* * * * *

(f) *Observer sampling station.* This paragraph (f) contains the requirements for observer sampling stations. The vessel owner must provide an observer sampling station that complies with this section so that the observer can carry out required duties.

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

■ 14. In § 660.316, revise paragraphs (a) through (d), (e)(2), (e)(3)(i), and (f) to read as follows:

§ 660.316 Open access fishery—observer requirements.

(a) *Observer coverage requirements.*

(1) *Harvesting vessels.* When NMFS notifies the owner, operator, permit holder, or the manager of a harvesting vessel of any requirement to carry an observer, the harvesting vessel may not be used to fish for groundfish without carrying an observer.

(2) *Processing vessels.* Unless specified otherwise by the Observer Program, any vessel 125 ft (38.1 m) LOA

or longer that is engaged in at-sea processing must carry two certified observers procured from a permitted observer provider, and any vessel shorter than 125 ft (38.1 m) LOA that is engaged in at-sea processing must carry one certified observer procured from a permitted observer provider, each day that the vessel is used to take, retain, receive, land, process, or transport groundfish. Owners of vessels required to carry observers under this paragraph (a)(2) must arrange for observer services from a permitted observer provider except when the Observer Program has determined and given notification that the vessel must carry NMFS staff or an individual authorized by NMFS in addition to or in lieu of an observer provided by a permitted observer provider.

(b) *Notice of departure—basic rule.* At least 24 hours (but not more than 36 hours) before departing on a fishing trip, a harvesting vessel that has been notified by NMFS that it is required to carry an observer, or that is operating in an active sampling unit, must notify NMFS (or its designated agent) of the vessel's intended time of departure. Notice will be given in a form to be specified by NMFS.

(1) *Optional notice—weather delays.* A harvesting vessel that anticipates a delayed departure due to weather or sea conditions may advise NMFS of the anticipated delay when providing the basic notice described in paragraph (b) of this section. If departure is delayed beyond 36 hours from the time the original notice is given, the vessel must

provide an additional notice of departure not less than 4 hours prior to departure, in order to enable NMFS to place an observer.

(2) *Optional notice—back-to-back fishing trips.* A harvesting vessel that intends to make back-to-back fishing trips (i.e., trips with less than 24 hours between offloading from one trip and beginning another), may provide the basic notice described in paragraph (b) of this section for both trips, prior to making the first trip. A vessel that has given such notice is not required to give additional notice of the second trip.

(c) *Cease fishing report.* Within 24 hours of ceasing the taking and retaining of groundfish, vessel owners, operators, or managers must notify NMFS or its designated agent that fishing has ceased. This requirement applies to any harvesting or processing vessel that is required to carry an observer, or that is operating in a segment of the fleet that NMFS has identified as an active sampling unit.

(d) *Waiver.* The West Coast Regional Administrator (or designate) may provide written notification to the vessel owner stating that a determination has been made to temporarily waive coverage requirements because of circumstances that are deemed to be beyond the vessel's control.

(e) * * * * *

(2) *Safe conditions.* Maintain safe conditions on the vessel for the protection of observer(s) including adherence to all USCG and other applicable rules, regulations, or statutes

pertaining to safe operation of the vessel, and provisions at §§ 600.725 and 600.746 of this chapter. 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.

(3) * * *

(i) *Observer use of equipment.* Allowing observer(s) to use the vessel's communication equipment and personnel, on request, for the entry, transmission, and receipt of work-related messages, at no cost to the observer(s), observer provider or NMFS.

* * * * *

(f) *Observer sampling station.* This paragraph (f) contains the requirements for observer sampling stations. The vessel owner must provide an observer sampling station that complies with this section so that the observer can carry out required duties.

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

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