

## Fishery Conservation and Management

## § 660.140

seasons, or restrictions for catcher/processors or motherships while it operates as a waste-processing vessel. However, no vessel may operate as a waste-processing vessel 48 hours immediately before and after a primary season for whiting in which the vessel operates as a catcher/processor or mothership. A vessel must meet the following conditions to qualify as a waste-processing vessel:

(1) The vessel makes meal (ground dried fish), oil, or minced (ground flesh) product, but does not make, and does not have on board, surimi (fish paste with additives), fillets (meat from the side of the fish, behind the head and in front of the tail), or headed and gutted fish (head and viscera removed).

(2) The amount of whole whiting on board does not exceed the trip limit (if any) allowed under § 660.60(c), subpart C, or Tables 1 (North) or 1 (South) in subpart D.

(3) Any trawl net and doors on board are stowed in a secured and covered manner, and detached from all towing lines, so as to be rendered unusable for fishing.

(4) The vessel does not receive codends containing fish.

(5) The vessel's operations are consistent with applicable state and Federal law, including those governing disposal of fish waste at sea.

(h) *Reapportionment of Pacific whiting.*

(1) Upon receipt of written notice to the Regional Administrator from the tribe(s) participating in the fishery that they do not intend to use a portion of the tribal allocation, the Regional Administrator may, no earlier than 7 days following notice to other treaty tribes with rights to whiting, reapportion any remainder to the other sectors of the trawl fishery as soon as practicable after receiving such notice. If no such reapportionment has occurred prior to September 15 of the fishing year, the Regional Administrator will, based on discussions with representatives of the tribes participating in the Pacific whiting fishery for that fishing year, consider the tribal harvests to date and catch projections for the remainder of the year relative to the tribal allocation of Pacific whiting, as specified at § 660.50. That

portion of the tribal allocation that the Regional Administrator determines will not be used by the end of the fishing year may be reapportioned to the other sectors of the trawl fishery on September 15 or as soon as practicable thereafter. Subsequent reapportionments may be made based on subsequent determinations by the Regional Administrator based on the factors described above in order to ensure full utilization of the resource. However, no reapportionments will occur after December 1 of the fishing year.

(2) The reapportionment of surplus whiting will be made by actual notice under the automatic action authority provided at § 660.60(d)(1).

(3) The reapportionment of surplus whiting will be made effective immediately by actual notice under the automatic action authority provided at § 660.60(d)(1).

(4) Estimates of the portion of the tribal allocation that will not be used by the end of the fishing year will be based on the best information available to the Regional Administrator.

(i) *Salmon bycatch.* This fishery may be closed through automatic action at § 660.60(d)(1)(v) and (vi).

(ii) [Reserved]

(5) Prior to reapportionment, NMFS will consider Chinook salmon take numbers and bycatch rates in each sector of the Pacific whiting fishery, in order to prevent a reapportionment that would limit Pacific Coast treaty Indian Tribes' access to the tribal allocation by triggering inseason closure of the Pacific whiting fishery as described at § 660.60(d)(1)(v).

(i) *Salmon bycatch.* This fishery may be closed through automatic action at § 660.60(d)(1)(v) and (vi).

[75 FR 60897, Oct. 1, 2010, as amended at 75 FR 75421, Dec. 3, 2010; 75 FR 78390, Dec. 15, 2010; 76 FR 27546, May 11, 2011; 76 FR 53837, Aug. 30, 2011; 77 FR 28516, May 15, 2012; 80 FR 27600, May 14, 2015; 80 FR 19036, Apr. 9, 2015; 80 FR 77273, Dec. 14, 2015; 83 FR 64002, Dec. 12, 2018; 84 FR 63988, Nov. 19, 2019; 84 FR 65926, Dec. 2, 2019; 87 FR 77006, Dec. 16, 2022]

### § 660.140 Shorebased IFQ Program.

(a) *General.* The regulations in this section apply to the Shorebased IFQ Program. The Shorebased IFQ Program includes a system of transferable QS

for most groundfish species or species groups, IBQ for Pacific halibut, and trip limits or set-asides for the remaining groundfish species or species groups. NMFS will issue a QS permit to eligible participants and will establish a QS account for each QS permit owner to track the amount of QS or IBQ and QP or IBQ pounds owned by that owner. QS permit owners may own QS or IBQ for IFQ species, expressed as a percent of the allocation to the Shorebased IFQ Program for that species. NMFS will issue QP or IBQ pounds to QS permit owners, expressed in pounds, on an annual basis, to be deposited in the corresponding QS account. NMFS will establish a vessel account for each eligible vessel owner participating in the Shorebased IFQ Program, which is independent of the QS permit and QS account. In order to use QP or IBQ pounds, a QS permit owner must transfer the QP or IBQ pounds from the QS account into the vessel account for the vessel to which the QP or IBQ pounds is to be assigned. Harvests of IFQ species may only be delivered to an IFQ first receiver with a first receiver site license. In addition to the requirements of this section, the Shorebased IFQ Program is subject to the following groundfish regulations of subparts C and D:

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

(2) Regulations set out in the following sections of subpart D: § 660.111 Trawl fishery definitions, § 660.112 Trawl fishery prohibitions, § 660.113 Trawl fishery recordkeeping and reporting, § 660.115 Trawl fishery cost recovery program, § 660.120 Trawl fishery crossover provisions, § 660.130 Trawl fishery management measures, and § 660.131 Pacific whiting fishery management measures.

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

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

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

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

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

(v) A vessel account may not have QP or IBQ pounds (used and unused combined) in excess of the QP Vessel Limit in any year, and for species covered by Unused QP Vessel Limit, may not have

## Fishery Conservation and Management

## § 660.140

QP or IBQ pounds in excess of the Unused QP Vessel Limit at any time. These amounts are specified at paragraph (e)(4) of this section.

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

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

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

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

(x) Fish sellers must pay cost recovery program fees, as specified at §660.115.

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

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

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

(iii) Ensure that all catch is sorted, prior to first weighing, as specified at §660.130(d) and consistent with §660.140(j)(2)(viii).

(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.

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

(vi) Retain and make available to 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.

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

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

(ix) Collect and remit to NMFS cost recovery program fees, as specified at §660.115.

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

(1) *IFQ management areas.* IFQ management areas are as follows:

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

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

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

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

(2) *Moving pot or trap gear between multiple IFQ management areas.* A vessel using fixed gear declared into the limited entry groundfish non-trawl Shorebased IFQ fishery may deploy pot or trap gear in multiple IFQ management areas on a trip provided the vessel does not retrieve gear from more than one IFQ management area during a trip.

(3) *IFQ program allocations.* Allocations for the Shorebased IFQ Program are determined for IFQ species as follows:

(i) For Pacific whiting, the Shorebased IFQ Program allocation is specified at §660.55(i)(2), subpart C, 42 percent.

(ii) For Sablefish N. of 36° N. lat., the Shorebased IFQ Program allocation is the limited entry trawl allocation specified at §660.55(h), subpart C, minus any set-asides for the mothership and C/P sectors for that species.

(iii) For IFQ species listed in the trawl/non-trawl allocation table, specified at §660.55(c), subpart C, allocations are determined by applying the trawl

column percent to the fishery harvest guideline minus any set-asides for the mothership and C/P sectors for that species.

(iv) The remaining IFQ species (boccaccio, canary rockfish, cowcod, darkblotched rockfish, lingcod S of 40°10' N lat., minor shelf rockfish N of 40°10' N lat., minor shelf rockfish S of 40°10' N lat., and minor slope rockfish S of 40°10' N lat., POP, widow rockfish, and yelloweye rockfish) are allocated through the biennial specifications and management measures process minus any set-asides for the mothership and C/P sectors for that species.

(v) For Pacific halibut N. of 40°10' N. lat., the Shorebased IFQ Program allocation is specified at 660.55(m).

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

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

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

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

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

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

(3) *Area line movement.* When a management area boundary line is moved for an IFQ species, the QS or IBQ held by individuals in each area will be adjusted proportionally such that they each maintain their same share of the

trawl allocation on a coastwide basis (a fishing area may expand or decrease, but the individual's QP or IBQ pounds for both areas combined wouldn't change because of the change in areas). In order to achieve this end, the holders of QS or IBQ in the area being reduced will receive QS or IBQ for the area being expanded, such that the total QP or IBQ pounds they would be issued will not be reduced as a result of the area reduction. Those holding QS or IBQ in the area being expanded will have their QS or IBQ reduced such that the total QP or IBQ pounds they receive in the year of the line movement will not increase as a result of the expansion (nor will it be reduced).

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

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

(i) *Annual QS adjustments.* On or about January 1 each year, QS permit owners will be notified, via the IFQ Web site and their QS account, of any

adjustments to their QS and/or IBQ allocations, for each of the IFQ species. Updated QS and/or IBQ values, if applicable, will reflect the results of: any recalculation of initial allocation formulas resulting from changes in provisional OYs used in the allocation formulas or appeals, any redistribution of QS and IBQ (e.g., resulting from permanent revocation of applicable permits, subject to accumulation limits), and any transfers of QS and/or IBQ made during the prior year.

(ii) *Annual QP and IBQ pound allocations.* QP and IBQ pounds will be deposited into QS accounts annually. QS permit owners will be notified of QP deposits via the IFQ website and their QS account. QP and IBQ pounds will be issued to the nearest whole pound using standard rounding rules (*i.e.*, decimal amounts less than 0.5 round down and 0.5 and greater round up). NMFS will distribute such allocations to the maximum extent practicable, not to exceed the total allocation. QS permit owners must transfer their QP and IBQ pounds from their QS account to a vessel account in order for those QP and IBQ pounds to be fished. QP and IBQ pounds must be transferred in whole pounds (*i.e.*, no fraction of a QP or IBQ pound can be transferred). All QP and IBQ pounds in a QS account must be transferred to a vessel account between January 1 and December 31 of the year for which they were issued in order to be fished.

(A) *Non-whiting QP annual sub-allocations.* NMFS will issue QP for IFQ species other than Pacific whiting and Pacific halibut annually by multiplying the QS permit owner's QS for each such IFQ species by that year's shorebased trawl allocation for that IFQ species. Deposits to QS accounts for IFQ species other than Pacific whiting and Pacific halibut will be made on or about January 1 each year. Until the implementation of any regulatory changes developed pursuant to the first program review for the trawl rationalization program, the resulting AMP QP will be issued to all QS permit owners in proportion to their non-whiting QS.

(1) In years where the groundfish harvest specifications are known by January 1, deposits to QS accounts for IFQ

species will be made on or about January 1.

(2) In years where the groundfish harvest specifications are not known by January 1, NMFS will issue QP in two parts. On or about January 1, NMFS will deposit QP based on the shorebased trawl allocation multiplied by the lower end of the range of potential harvest specifications for that year. After the final harvest specifications are established later in the year, NMFS will deposit additional QP to the QS account.

(3) In years where the non-tribal deductions from the TAC, ACL, or ACT when specified, described at §660.55(b), were too high and would go unharvested, NMFS may increase the shorebased trawl allocation, consistent with §660.60(c), and issue additional QP to QS accounts.

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

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

(2) In years where the Pacific whiting harvest specification is not known by January 1, NMFS will issue Pacific whiting QP in two parts. On or about January 1, NMFS will deposit Pacific whiting QP based on the shorebased trawl allocation multiplied by the lower end of the range of potential harvest specifications for Pacific whiting for that year. After the final Pacific whiting harvest specifications are established later in the year, NMFS will deposit additional QP to QS accounts.

(3) In years where the non-tribal deductions from the TAC, ACL, or ACT when specified, described at §660.55(b), were too high and would go unharvested, NMFS may increase the shorebased trawl allocation, consistent with §660.60(c), and issue additional QP to QS accounts.

(4) In years where there is reapportionment of Pacific whiting, specified at §660.131(h), to the Shorebased IFQ Program, NMFS will increase the shorebased trawl allocation and issue

additional QP to QS accounts as described at paragraph (d)(3)(ii)(B)(3) of this section.

(C) *Pacific halibut IBQ pounds annual allocation.* NMFS will issue IBQ pounds for Pacific halibut annually by multiplying the QS permit owner’s IBQ percent by the Shorebased IFQ Program component of the trawl bycatch mortality limit for that year. Deposits to QS accounts for Pacific halibut IBQ pounds will be made on or about January 1 each year. Mortality of any size Pacific halibut count against IBQ pounds.

(1) In years where the Pacific halibut total constant exploitation yield is known by January 1, deposits to QS accounts will be made on or about January 1.

(2) In years where the Pacific halibut total constant exploitation yield is not known by January 1, NMFS will issue QP in two parts. On or about January 1, NMFS will deposit QP based on some portion of the International Pacific Halibut Commission’s staff recommended total constant exploitation yield from their interim meeting. After the final Pacific halibut total constant exploitation yield is established from the International Pacific Halibut Commission’s annual meeting, NMFS will deposit additional QP to the QS account.

(D) *Shorebased trawl allocations.* For the trawl fishery, NMFS will issue QP based on the following shorebased trawl allocations:

TABLE 1 TO PARAGRAPH (d)(1)(ii)(D)

IFQ species	Area	2023 shorebased trawl allocation (mt)	2024 shorebased trawl allocation (mt)
YELLOWEYE ROCKFISH	Coastwide	4.42	4.42
Arrowtooth flounder	Coastwide	15,640.17	11,408.87
Bocaccio	South of 40°10' N lat	700.33	694.87
Canary rockfish	Coastwide	842.50	830.22
Chilipepper	South of 40°10' N lat	1,563.80	1517.60
Cowcod	South of 40°10' N lat	24.80	24.42
Darkblotched rockfish	Coastwide	646.78	613.53
Dover sole	Coastwide	45,972.75	45,972.75
English sole	Coastwide	8,320.56	8,265.46
Lingcod	North of 40°10' N lat	1,829.27	1,593.47
Lingcod	South of 40°10' N lat	284.20	282.60
Longspine thornyhead	North of 34°27' N lat	2,129.23	2,002.88
Pacific cod	Coastwide	1,039.30	1,039.30
Pacific halibut (IBQ) <sup>a</sup>	North of 40°10' N lat	TBD	TBD
Pacific ocean perch	North of 40°10' N lat	2,956.14	2,832.64
Pacific whiting <sup>a</sup>	Coastwide	159,681.38	TBD
Petrale sole	Coastwide	3,063.76	2,863.76
Sablefish	North of 36° N lat	3,893.50	3,559.38
Sablefish	South of 36° N lat	970.00	889.00
Shortspine thornyhead	North of 34°27' N lat	1,146.67	1,117.22
Shortspine thornyhead	South of 34°27' N lat	50	50
Splitnose rockfish	South of 40°10' N lat	1,494.70	1,457.60
Starry flounder	Coastwide	171.86	171.86
Widow rockfish	Coastwide	11,509.68	10,367.68
Yellowtail rockfish	North of 40°10' N lat	3,761.84	3,668.56
Other Flatfish complex	Coastwide	4,142.09	4,152.89
Shelf Rockfish complex	North of 40°10' N lat	694.70	691.65
Shelf Rockfish complex	South of 40°10' N lat	163.02	163.02
Slope Rockfish complex	North of 40°10' N lat	894.43	874.99
Slope Rockfish complex	South of 40°10' N lat	417.1	414.58

<sup>a</sup> Managed through an international process. These allocations will be updated when announced.

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

(A) A United States citizen, that is eligible to own and control a U.S. fishing vessel with a fishery endorsement pursuant to 46 U.S.C. 12113 (general

fishery endorsement requirements and 75 percent citizenship requirement for entities);

(B) A permanent resident alien, that is eligible to own and control a U.S.

fishing vessel with a fishery endorsement pursuant to 46 U.S.C. 12113 (general fishery endorsement requirements and 75 percent citizenship requirement for entities); or

(C) A corporation, partnership, or other entity established under the laws of the United States or any State, that is eligible to own and control a U.S. fishing vessel with a fishery endorsement pursuant to 46 U.S.C. 12113 (general fishery endorsement requirements and 75 percent citizenship requirement for entities). However, there is an exception for any entity that owns a mothership that participated in the west coast groundfish fishery during the allocation period and is eligible to own or control that U.S. fishing vessel with a fishery endorsement pursuant to sections 203(g) and 213(g) of the AFA.

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

(iii) *QS permit application process.* NMFS will accept a QS permit application from January 1 to November 30 of each calendar year. QS permit applications received between December 1 and December 31 will be processed by NMFS in the following calendar year. NMFS will issue only one QS permit to each unique person, as defined at § 660.11 subject to the eligibility requirements at paragraph (d)(2)(i) of this section. Each applicant must submit a complete application. A complete application includes a QS permit appli-

cation form, payment of required fees, complete documentation of QS permit ownership on the Trawl Identification of Ownership Interest Form as required under paragraph (d)(4)(iv) of this section, and a complete economic data collection form as required under § 660.114. NMFS may require additional documentation as it deems necessary to make a determination on the application. The QS permit application will be considered incomplete until the required information is submitted.

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

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

(C) *Appeals.* If NMFS does not accept the QS permit application, the applicant may appeal the IAD consistent with the general permit appeals process defined at § 660.25(g).

(3) *Renewal, change of permit ownership, and transfers—(i) Renewal.* (A) QS permits expire at the end of each calendar year, and must be renewed between October 1 and November 30 of each year in order to remain in effect the following year. A complete QS permit renewal package must be received by NMFS no later than November 30 to be accepted by NMFS. A QS permit owner may submit a paper renewal package after January 1 of the following year as described in paragraph (d)(3)(i)(C) of this section.

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

(C) A complete QS permit renewal package must be received by November 30 of each calendar year. If a complete

QS permit renewal package is not received by November 30, NMFS will not renew the QS permit, the associated QS account will not be activated in the following calendar year, and QS may not be transferred. NMFS will not issue QP or IBQ pounds associated with the non-renewed QS permit for that year. Any QP or IBQ pounds derived from the QS or IBQ in the inactive QS account will be distributed to the active QS accounts in proportion to the QS or IBQ for each IFQ species given on the renewed QS permit. If a QS permit is not renewed during the October 1 through November 30 renewal period, the QS permit owner may renew after January 1 in the following year by submission of a paper renewal application, or may renew the QS permit during the next October 1 through November 30 renewal period. For renewals submitted after January 1, QPs allocated as specified at paragraph (d)(1) of this section will not be allocated to the QS account in that year. The QS permit owner will be able to transfer QS percentages from the time the QS account is activated until November 30 of that calendar year.

(D) QS permits will not be renewed until SFD has received a complete application for a QS permit renewal, which includes payment of required fees, complete documentation of QS permit ownership on the Trawl Identification of Ownership Interest Form as required under paragraph (d)(4)(iv) of this section, a complete economic data collection form as required under § 660.114. The QS permit renewal will be considered incomplete until the required information is submitted.

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

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

(ii) *Change of permit ownership and transfer restrictions—(A) Change in QS permit ownership.* Ownership of a QS permit cannot be registered to another individual or entity. The QS permit owner cannot change or add additional individuals or entities as owners of the permit (*i.e.*, cannot change the legal name of the permit owner(s) as given

on the permit). Any change in ownership of the QS permit requires the new owner(s) to apply for a QS permit, and is subject to accumulation limits and approval by NMFS.

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

(2) *Transfer of QS or IBQ between QS accounts.* QS permit owners may transfer QS or IBQ to another owner of a QS permit, subject to accumulation limits



and approval by NMFS. QS or IBQ is transferred as a percent, divisible to one-thousandth of a percent (*i.e.*, greater than or equal to 0.001 percent). QS or IBQ cannot be transferred to a vessel account. Owners of non-renewed QS permits may not transfer QS. QP in QS accounts cannot be transferred between QS accounts. NMFS will allocate QP based on the QS percentages as listed on a QS permit that was renewed during the previous October 1 through November 30 renewal period. QS transfers will be recorded in the QS account but will not become effective for purposes of allocating QPs until the following year. QS or IBQ may not be transferred between December 1 through December 31 each year. Any QS transaction that is pending as of December 1 will be administratively retracted. NMFS will allocate QP for the following year based on the QS percentages as of December 1 of each year.

(3) *Transfer of QP or IBQ pounds from a QS account to a vessel account.* QP or IBQ pounds must be transferred in whole pounds (*i.e.*, no fraction of a QP can be transferred). QP or IBQ pounds must be transferred to a vessel account in order to be used. Transfers of QP or IBQ pounds from a QS account to a vessel account are subject to annual vessel accumulation limits and NMFS' approval. Once QP or IBQ pounds are transferred from a QS account to a vessel account (accepted by the transferee/vessel owner), they cannot be transferred back to a QS account and may only be transferred to another vessel account. QP or IBQ pounds may not be transferred from one QS account to another QS account. All QP or IBQ pounds from a QS account must be transferred to one or more vessel accounts by December 31 each year in order to be fished. All QP or IBQ pounds expire at the end of the post-season transfer period of the year after which they were issued. If, in any year, the Regional Administrator makes a decision to reapportion Pacific whiting from the tribal to the non-tribal fishery or NMFS releases additional QP consistent with § 660.60(c) and paragraph (d)(1)(ii) of this section, NMFS will credit QS accounts with additional QP proportionally, based on the QS percent for a particular QS permit

owner and the increase in the shorebased trawl allocation specified at paragraph (d)(1)(ii)(D) of this section.

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

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

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

(4) *Accumulation limits*—(i) *QS and IBQ control limits.* QS and IBQ control limits are accumulation limits and are the amount of QS and IBQ that a person, individually or collectively, may own or control. QS and IBQ control limits are expressed as a percentage of the Shorebased IFQ Program's allocation.

(A) *Control limits for individual species.* No person may own or control, or have a controlling influence over, by any means whatsoever an amount of QS or IBQ for any individual species that exceeds the Shorebased IFQ Program accumulation limits.

(B) *Control limit for aggregate non-whiting QS holdings.* To determine how much aggregate nonwhiting QS a person holds, NMFS will convert the person's QS to pounds. This conversion will always be conducted using the trawl allocations applied to the 2010 OYs, until such time as the Council recommends otherwise. Specifically, NMFS will multiply each person's QS for each species by the shoreside trawl allocation for that species. The person's pounds for all nonwhiting species will be summed and divided by the shoreside trawl allocation of all nonwhiting species to calculate the person's share of the aggregate nonwhiting trawl quota. To determine the shoreside trawl allocation for the purpose of determining compliance with the aggregate nonwhiting control limit, for species that have specific trawl allocation percentages in Amendment 21, NMFS will apply the Amendment 21 trawl allocation percentages to (set forth at § 660.55) the 2010 OYs, and where applicable, will deduct the preliminary set-asides for the at-sea sectors from Amendment 21. For species

§ 660.140

50 CFR Ch. VI (10–1–23 Edition)

that do not have specific trawl allocation percentages in Amendment 21, NMFS will apply a percentage based on the Northwest Fishery Science Center final report on 2010 estimated total fishing mortality of groundfish by sector, or, if the final report for 2010 is not available, based on the most recent report available.

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

ACCUMULATION LIMITS	
Species category	QS and IBQ control limit (in percent)
Arrowtooth flounder	10
Bocaccio S. of 40°10' N. lat.	13.2
Canary rockfish	4.4
Chilipepper S. of 40°10' N. lat.	10
Cowcod S. of 40°10' N. lat.	17.7
Darkblotched rockfish	4.5
Dover sole	2.6
English sole	5
Lingcod:	
N. of 40°10' N. lat.	2.5
S. of 40°10' N. lat.	2.5
Longspine thornyhead:	
N. of 34°27' N. lat.	6
Minor rockfish complex N. of 40°10' N. lat.:	
Shelf species	5
Slope species	5
Minor rockfish complex S. of 40°10' N. lat.:	
Shelf species	9
Slope species	6
Other flatfish stock complex	10
Pacific cod	12
Pacific halibut (IBQ) N. of 40°10' N. lat.	5.4
Pacific ocean perch N. of 40°10' N. lat.	4
Pacific whiting (shoreside)	10
Petrale sole	3
Sablefish:	
N. of 36° N. lat. (Monterey north)	3
S. of 36° N. lat. (Conception area)	10
Shortspine thornyhead:	
N. of 34°27' N. lat.	6
S. of 34°27' N. lat.	6
Splitnose rockfish S. of 40°10' N. lat.	10
Starry flounder	10
Widow rockfish	5.1
Yelloweye rockfish	5.7
Yellowtail rockfish N. of 40°10' N. lat.	5
Non-whiting groundfish species	2.7

(ii) *Ownership—individual and collective rule.* The QS or IBQ that counts toward a person's accumulation limit will include:

(A) The QS or IBQ owned by that person, and

(B) That portion of the QS or IBQ owned by an entity in which that person has an economic or financial interest, where the person's share of interest in that entity will determine the portion of that entity's QS or IBQ that counts toward the person's limit.

(iii) *Control.* Control means, but is not limited to, the following:

(A) The person has the right to direct, or does direct, in whole or in part, the business of the entity to which the QS or IBQ are registered, with the exception of those activities allowed under paragraphs (d)(4)(iii)(C) and (G) of this section;

(B) The person has the right to limit the actions of or replace, or does limit the actions of or replace, the chief executive officer, a majority of the board of directors, any general partner, or any person serving in a management capacity of the entity to which the QS or IBQ are registered, with the exception of those activities allowed under paragraphs (d)(4)(iii)(C) and (G) of this section;

(C) The person, excluding banks and other financial institutions that rely on QS or IBQ as collateral for loans as described under paragraph (d)(4)(iii)(G) of this section, has the right to direct, or does direct, and/or the right to prevent or delay, or does prevent or delay, the transfer of QS or IBQ, or the resulting QP or IBQ pounds;

(D) The person, through loan covenants or any other means, has the right to restrict, or does restrict, and/or has a controlling influence over the day to day business activities or management policies of the entity to which the QS or IBQ are registered, with the exception of those activities allowed under paragraphs (d)(4)(iii)(C) and (G) of this section;

(E) The person, has the right to restrict, or does restrict, any activity related to QS or IBQ or QP or IBQ pounds, including, but not limited to, use of QS or IBQ, or the resulting QP or IBQ pounds, or disposition of fish harvested under the resulting QP or IBQ pounds, with the exception of those activities allowed under paragraphs (d)(4)(iii)(C) and (G) of this section;

(F) The person has the right to control, or does control, the management of, or to be a controlling factor in, the entity to which the QS or IBQ, or the resulting QP or IBQ pounds, are registered, with the exception of those activities allowed under paragraphs (d)(4)(iii)(C) and (G) of this section;

(G) The person, excluding banks and other financial institutions that rely

## Fishery Conservation and Management

## § 660.140

on QS or IBQ as collateral for loans, has the right to cause or prevent, or does cause or prevent, the sale, lease or other disposition of QS or IBQ, or the resulting QP or IBQ pounds; and

(1) To qualify for this exception, a bank or other financial institution must be regularly or primarily engaged in the business of lending and not engaged in or controlled by entities whose primary business is the harvesting, processing, or distribution of fish or fish products.

(2) Any state or federally chartered bank or financial institution that meets the requirement of paragraph (d)(4)(iii)(G)(1) of this section does not need to submit additional information to NMFS.

(3) Any entity that is not a state or federally chartered bank or financial institution, must submit a letter requesting the exception and disclose the identity and interest share of any shareholder with a 2% or more ownership interest in the lender through submission of the Trawl Identification of Ownership Interest Form (see paragraph (d)(4)(iv) of this section). The lender must make subsequent annual submissions of the letter and Trawl Identification of Ownership Interest Form to maintain the exception. Letters requesting the exception and complete Trawl Identification of Ownership Interest Forms may be submitted to NMFS, West Coast Region, Permits Office, ATTN: Fisheries Permit Office, Bldg. 1, 7600 Sand Point Way NE., Seattle, WA 98115. NMFS will only accept complete applications.

(H) The person has the ability through any means whatsoever to control or have a controlling influence over the entity to which QS or IBQ is registered, with the exception of those activities allowed under paragraphs (d)(4)(iii)(C) and (G) of this section.

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

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

(v) *Divestiture.* Accumulation limits will be calculated by first calculating the aggregate nonwhiting QS limit and then the individual species QS or IBQ control limits. For QS permit owners (including any person who has ownership interest in the owner named on the permit) that are found to exceed the accumulation limits during the reallocation of widow rockfish QS, an adjustment period will be provided during which they will have to completely divest their QS or IBQ in excess of the accumulation limits. If NMFS identifies that a QS permit owner exceeds the accumulation limits in 2016 or beyond, the QS permit owner must divest of the QS or IBQ in excess of the accumulation limits according to the procedure provided under paragraph (d)(4)(v)(A) or (B) of this section. Owners of QS or IBQ in excess of the control limits may receive and use the QP or IBQ pounds associated with that excess, up to the time their divestiture is completed.

(A) *Divestiture and redistribution process in 2016 and beyond.* Any person owning or controlling QS or IBQ must comply with the accumulation limits, even if that control is not reflected in the ownership records available to NMFS as specified under paragraphs (d)(4)(i) and (iii) of this section. If NMFS identifies that a QS permit owner exceeds

an accumulation limit in 2016 or beyond for a reason other than the reallocation of widow rockfish, NMFS will notify the QS permit owner that he or she has 90 days to divest of the excess QS or IBQ. In the case that a QS permit owner exceeds the control limit for aggregate nonwhiting QS holdings, the QS permit owner may abandon QS to NMFS within 60 days of the notification by NMFS, using the procedure provided under paragraph (d)(4)(v)(C) of this section. After the 90-day divestiture period, NMFS will revoke all QS or IBQ held by a person (including any person who has ownership interest in the owner names on the permit) in excess of the accumulation limits following the procedures specified under paragraphs (d)(4)(v)(D) through (G) of this section. All abandoned or revoked shares will be redistributed to all other QS permit owners in proportion to their QS or IBQ holdings on or about January 1 of the following calendar year, based on current ownership records, except that no person will be allocated an amount of QS or IBQ that would put that person over an accumulation limit.

(B) *Divestiture and redistribution process for the reallocation of widow rockfish.* Any person owning or controlling QS or IBQ must comply with the accumulation limits, even if that control is not reflected in the ownership records available to NMFS as specified under paragraphs (d)(4)(i) and (iii) of this section. If the reallocation of widow rockfish puts any QS permit owner over an accumulation limit, the QS permit owner will have until November 30 of the year widow rockfish becomes transferrable to divest of their excess widow rockfish QS. In the case that a QS permit owner exceeds the control limit for aggregate nonwhiting QS holdings as the result of the reallocation of widow rockfish, the permit owner may abandon QS to NMFS by November 15 of the year widow rockfish becomes transferrable, using the procedure provided under paragraph (d)(4)(v)(C) of this section. NMFS will

announce the QS transfer date for widow rockfish, the divestiture deadline, and the abandonment deadline after the widow reallocation IAD appeal deadline. After the widow rockfish reallocation divestiture period, NMFS will revoke all QS and IBQ held by a person (including any person who has ownership interest in the owner names on the permit) in excess of the accumulation limits following the procedures specified under paragraphs (d)(4)(v)(D) through (G) of this section. All abandoned or revoked shares will be redistributed to all other QS permit owners in proportion to their QS or IBQ holdings on or about January 1 of the following calendar year, based on current ownership records, except that no person will be allocated an amount of QS or IBQ that would put that person over an accumulation limit.

(C) *Abandonment of QS.* QS permit owners that are over the control limit for aggregate nonwhiting QS holdings may voluntarily abandon QS if they notify NMFS in writing by the applicable deadline specified under paragraph (d)(4)(v)(A) or (B) of this section. The written abandonment request must include the following information: QS permit number, IFQ species, and the QS percentage to be abandoned. Either the QS permit owner or an authorized representative of the QS permit owner must sign the request. QS permit owners choosing to utilize the abandonment option will permanently relinquish to NMFS any right to the abandoned QS, and the QS will be redistributed as described under paragraph (d)(4)(v)(A) or (B) of this section. No compensation will be due for any abandoned shares.

(D) *Revocation.* NMFS will revoke QS from any QS permit owner who exceeds an accumulation limit after the divestiture deadline specified under paragraph (d)(4)(v)(A) or (B) of this section. NMFS will follow the revocation approach summarized in the following table and explained under paragraphs (d)(4)(v)(E) through (G) of this section:

If, after the divestiture deadline, a QS permit owner exceeds	Then
An individual species control limit in one QS permit.	NMFS will revoke excess QS at the species level.

If, after the divestiture deadline, a QS permit owner exceeds	Then
An individual species control limit across multiple QS permits. The control limit for aggregate nonwhiting QS holdings.	NMFS will revoke QS at the species level in proportion to the amount the QS percentage from each permit contributes to the total QS percentage owned. NMFS will revoke QS at the species level in proportion to the amount of the aggregate overage divided by the aggregate total owned.

(E) *Revocation of excess QS or IBQ from one QS permit.* In cases where a person has not divested to the control limits for individual species in one QS permit by the deadline specified under paragraph (d)(4)(v)(A) or (B) of this section, NMFS will revoke excess QS at the species level in order to get that person to the limits. NMFS will redistribute the revoked QS following the process specified in paragraph (d)(4)(v)(A) or (B) of this section. No compensation will be due for any revoked shares.

(F) *Revocation of excess QS or IBQ from multiple QS permits.* In cases where a person has not divested to the control limits for individual species across QS permits by the deadline specified under paragraph (d)(4)(v)(A) or (B) of this section, NMFS will revoke QS at the species level in proportion to the amount the QS percentage from each permit contributes to the total QS percentage owned. NMFS will redistribute the revoked QS following the process specified in paragraph (d)(4)(v)(A) or (B) of this section. No compensation will be due for any revoked shares.

(G) *Revocation of QS in excess of the control limit for aggregate nonwhiting QS holdings.* In cases where a QS permit owner has not divested to the control limit for aggregate nonwhiting QS holdings by the deadline specified under paragraph (d)(4)(v)(A) or (B) of this section, NMFS will revoke QS at the species level in proportion to the amount of the aggregate overage divided by the aggregate total owned. NMFS will redistribute the revoked QS following the process in paragraph (d)(4)(v)(A) or (B) of this section. No compensation will be due for any revoked shares.

(5) *Appeals.* An appeal to a QS permit or QS account action follows the same process as the general permit appeals process as defined at §660.25(g), subpart C.

(6) *Fees.* The Regional Administrator is authorized to charge fees for administrative costs associated with the issuance of a QS permit consistent with the provisions given at §660.25(f), subpart C.

(7) [Reserved]

(8) *Application requirements and initial issuance for QS permit and QS/IBQ—(i) Additional definitions.* The following definitions are applicable to paragraph (d)(8) of this section and apply to terms used for the purposes of application requirements and initial issuance of QS permits and QS/IBQ:

(A) *Nonwhiting trip* means a fishing trip where less than 50 percent by weight of all fish reported on the state landing receipt is whiting.

(B) *PacFIN* means the Pacific Fisheries Information Network of the Pacific States Marine Fisheries Commission.

(C) *Relative history* means the landings history of a permit for a species, year, and area subdivision, divided by the total fleet history of the sector for that species, year, and area subdivision, as appropriate, or, in the case of shoreside processors, the annual sum of the shoreside processor's whiting receipts divided by the aggregate annual sum of whiting received by all shoreside processors in that year. Relative history is expressed as a percent.

(D) *Shoreside processor* means an operation, working on U.S. soil, that takes delivery of trawl caught groundfish that has not been processed; and that thereafter engages that fish in shoreside processing. Entities that received fish that have not undergone at-sea processing or shoreside processing and sell that fish directly to consumers shall not be considered a processor for purposes of QS allocations. Shoreside processing is defined as either of the following:

(1) Any activity that takes place shoreside; and that involves: Cutting groundfish into smaller portions; or

freezing, cooking, smoking, drying groundfish; or packaging that groundfish for resale into 100 pound units or smaller for sale or distribution into a wholesale or retail market.

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

(E) *Whiting trip* means a fishing trip where greater than or equal to 50 percent by weight of all fish reported on the state landing receipt is whiting.

(ii) *Eligibility criteria for QS permit and QS/IBQ*. Only the following persons are eligible to receive a QS permit or QS/IBQ:

(A) The owner of a valid trawl limited entry permit is eligible to receive a QS permit and its associated QS or IBQ amount. Any past landings history associated with the current limited entry trawl permit accrues to the current permit owner. NMFS will not recognize any person as the limited entry permit owner other than the person listed as limited entry permit owner in NMFS permit database. If a limited entry permit has history on state landing receipts and has been combined with a permit that has received or will receive a C/P endorsement, the trawl limited entry permit does not qualify for QS or IBQ.

(B) Shoreside processors that meet the recent participation requirement of having received deliveries of 1 mt or more of whiting from whiting trips in each of any two years from 1998 through 2004 are eligible for an initial issuance of whiting QS. NMFS will initially identify shoreside processors by reference to Pacific whiting shoreside first receivers recorded on fish tickets in the relevant PacFIN dataset on July 1, 2010, subject to correction as described in paragraph (d)(8)(iv)(G) of this section.

(iii) *Steps for QS and IBQ allocation formulas*. The QS and IBQ allocation formulas are applied in the following steps:

(A) First, for each limited entry trawl permit owner, NMFS will determine a preliminary QS allocation for non-whiting trips.

(B) Second, for each limited entry trawl permit owner, NMFS will deter-

mine a preliminary QS allocation for whiting trips.

(C) Third, for each limited entry trawl permit owner, NMFS will combine the amounts resulting from paragraphs (d)(8)(iii)(A) and (B) of this section.

(D) Fourth, NMFS will reduce the results for limited entry trawl permit owners by 10 percent of non-whiting species as a set aside for Adaptive Management Program (AMP) and by 20 percent of whiting for the initial issuance of QS allocated to qualifying shoreside processors.

(E) Fifth, NMFS will determine the whiting QS allocation for qualifying shoreside processors from the 20 percent of whiting QS allocated to qualifying shoreside processors at initial issuance of QS.

(F) Sixth, for each limited entry trawl permit owner, NMFS will determine the Pacific halibut IBQ allocation.

(G) Seventh, for limited entry trawl permits transferred after November 8, 2008, or if transferred earlier, not registered with NMFS by November 30, 2008, for which NMFS determines the owners of such permits would exceed the accumulation limits specified at paragraph (d)(4) of this section based on the previous steps, NMFS will redistribute the excess QS or IBQ to other qualified QS permit owners within the accumulation limits.

(iv) *Allocation formula for specific QS and IBQ amounts*—(A) *Allocation formula rules*. Unless otherwise specified, the following rules will be applied to data for the purpose of calculating an initial allocation of QS and IBQ:

(1) For limited entry trawl permit owners, a permit will be assigned catch history or relative history based on the landing history of the vessel(s) associated with the permit at the time the landings were made.

(2) The relevant PacFIN dataset includes species compositions based on port sampled data and applied to data at the vessel level.

(3) Only landings of IFQ species which are caught in the exclusive economic zone or adjacent state waters off Washington, Oregon and California will be used for calculation of allocation formulas. For the purpose of allocation

**Fishery Conservation and Management**

**§ 660.140**

of IFQ species for which the QS or IBQ will be subdivided by area, catch areas have been assigned to landings of IFQ species reported on state landing receipts based on port of landing.

(4) History from limited entry permits that have been combined with a permit that may qualify for a C/P endorsement and which has shorebased permit history will not be included in the preliminary QS and IBQ allocation formula, other than in the determination of fleet history used in the calculation of relative history for permits that do not have a C/P endorsement.

(5) History of illegal landings and landings made under non-whiting EFPs that are in excess of the cumulative limits in place for the non-EFP fishery will not count toward the allocation of QS or IBQ.

(6) The limited entry permit's landings history includes the landings history of permits that have been previously combined with that permit.

(7) If two or more limited entry trawl permits have been simultaneously registered to the same vessel, NMFS will split the landing history evenly between all such limited entry trawl-endorsed permits during the time they were simultaneously registered to the vessel.

(8) Unless otherwise noted, the calculation for QS or IBQ allocation under

paragraph (d)(8) of this section will be based on state landing receipts (fish tickets) as recorded in the relevant PacFIN dataset on July 1, 2010.

(9) For limited entry trawl permits, landings under provisional "A" permits that did not become "A" permits and "B" permits will not count toward the allocation of QS or IBQ, other than in the determination of fleet history used in the calculation of relative history for permits that do not have a C/P endorsement.

(10) For limited entry trawl permits, NMFS will calculate initial issuance of QS separately based on whiting trips and non-whiting trips, and will weigh each calculation according to initial issuance allocations between whiting trips and non-whiting trips, which are one-time allocations necessary for the formulas used during the initial issuance of QS to create a single Shorebased IFQ Program. The initial issuance allocations between whiting and non-whiting trips for canary rockfish, bocaccio, cowcod, yelloweye rockfish, minor shelf rockfish N. of 40°10', minor shelf rockfish S. of 40°10', and minor slope rockfish S. of 40°10' will be determined through the biennial specifications process. The initial issuance allocations for the remaining IFQ species are as follows:

Species	Initial issuance allocation percentage	
	Non-whiting	Whiting
Lingcod .....	99.7% .....	0.3%
Pacific Cod .....	99.9% .....	0.1%
Pacific Whiting .....	0.1% .....	99.9%
Sablefish N. of 36° N. lat. ....	98.2% .....	1.8%
Sablefish S. of 36° N. lat. ....	100.0% .....	0.0%
PACIFIC OCEAN PERCH .....	remaining .....	17% or 30 mt, whichever is greater, to shorebased + at-sea whiting. If under rebuilding, 52% to shorebased + at-sea whiting.
WIDOW .....	remaining .....	If stock rebuilt, 10% or 500 mt, whichever is greater, to shorebased + at-sea whiting.
Chilipepper S. of 40°10' N. lat. ....	100.0% .....	0.0%
Splitnose S. of 40°10' N. lat. ....	100.0% .....	0.0%
Yellowtail N. of 40°10' N. lat. ....	remaining .....	300 mt.
Shortspine N. of 34°27' N. lat. ....	99.9% .....	0.1%
Shortspine S. of 34°27' N. lat. ....	100.0% .....	0.0%
Longspine N. of 34°27' N. lat. ....	100.0% .....	0.0%
DARKBLOTCHED .....	remaining .....	9% or 25 mt, whichever is greater, to shorebased + at-sea whiting.
Minor Slope Rockfish N. of 40°10' N. lat. ....	98.6% .....	1.4%
Dover Sole .....	100.0% .....	0.0%
English Sole .....	99.9% .....	0.1%
Petrale Sole .....	100.0% .....	0.0%
Arrowtooth Flounder .....	100.0% .....	0.0%
Starry Flounder .....	100.0% .....	0.0%
Other Flatfish .....	99.9% .....	0.1%

(B) *Preliminary QS allocation for non-whiting trips.* NMFS will calculate the non-whiting preliminary QS allocation differently for different species groups, Groups 1 through 3.

(1) *Allocation formula species groups.* For the purposes of preliminary QS allocation, IFQ species will be grouped as follows:

(i) Group 1 includes lingcod, Pacific cod, Pacific whiting, sablefish north of 36° N. lat., sablefish south of 36° N. lat., Dover sole, English sole, petrale sole, arrowtooth flounder, starry flounder, other flatfish stock complex, chilipepper rockfish, splitnose rockfish, yellowtail rockfish, shortspine thornyhead north of 34°27' N. lat., shortspine thornyhead south of 34°27' N. lat., longspine thornyhead north of 34°27' N. lat., minor rockfish north slope species complex, minor rockfish south slope species complex, minor rockfish north shelf species complex, and minor rockfish south shelf species complex.

(ii) Group 2 includes bocaccio, cowcod, darkblotched rockfish, Pacific ocean perch, widow rockfish, and yelloweye rockfish.

(iii) Group 3 includes canary rockfish.

(2) *Group 1 species:* The preliminary QS allocation process indicated in paragraph (d)(8)(iii)(A) of this section for Group 1 species follows a two-step process, one to allocate a pool of QS equally among all eligible limited entry permits and the other to allocate the remainder of the preliminary QS based on permit history. Through these two processes, preliminary QS totaling 100 percent for each Group 1 species will be allocated. In later steps this amount will be adjusted and reduced as indicated in paragraph (d)(8)(iii)(C) and (D), to determine the QS allocation.

(i) *QS to be allocated equally.* The pool of QS for equal allocation will be determined using the landings history from Federal limited entry groundfish permits that were retired through the Federal buyback program (*i.e.*, buyback permit) (70 FR 45695, August 8, 2005). The QS pool associated with the buyback permits will be the buyback permit history as a percent of the total fleet history for the allocation period. The calculation will be based on total absolute pounds with no dropped years

and no other adjustments. The QS pool will be divided equally among qualifying limited entry permits for all QS species/species groups and areas in Group 1.

(ii) *QS to be allocated based on each permit's history.* The pool for QS allocation based on limited entry trawl permit history will be the QS remaining after subtracting out the QS allocated equally. This pool will be allocated to each qualifying limited entry trawl permit based on the permit's relative history from 1994 through 2003. For each limited entry trawl permit, NMFS will calculate a set of relative histories using the following methodology. First, NMFS will sum the permit's landings by each year for each Group 1 species/species group and area subdivision. Second, NMFS will divide each permit's annual sum for a particular species/species group and area subdivision by the shoreside limited entry trawl fleet's annual sum for the same species/species group and area subdivision. NMFS will then calculate a total relative history for each permit by species/species group and area subdivision by adding all relative histories for the permit together and subtracting the three years with the lowest relative history for the permit. The result for each permit by species/species group and areas subdivision will be divided by the aggregate sum of all total relative histories of all qualifying limited entry trawl permits for that species/species group and area subdivision. NMFS will then multiply the result from this calculation by the amount of QS in the pool to be allocated based on each permit's history.

(3) *Group 2 species:* The preliminary QS allocation step indicated in paragraph (d)(8)(iii)(A) of this section will be calculated for each limited entry trawl permit using a formula based on QS allocations for each limited entry trawl permit for 11 target species, areas of distribution of fishing effort as determined from 2003–2006 target species catch data from the PacFIN Coastwide Trawl Logbook Database, average bycatch ratios for each area as derived from West Coast Groundfish Observer Program (WCGOP) data from 2003 through 2006, and the non-whiting



initial issuance allocation of the limited entry trawl allocation amounts for 2011 for each of the 11 target species. These data are used in a series of sequential steps to estimate the allocation of Group 2 species to each limited entry trawl permit. Paragraphs (d)(8)(iv)(B)(3)(iii) to (vi) of this section estimate the permit's total 2003–2006 target species by area. Paragraphs (d)(8)(iv)(B)(3)(vii) to (xii) of this section project Group 2 species bycatch amounts using 2003–2006 WCGOP observer ratios and the initial issuance allocation applied to the 2011 limited entry trawl allocation. Paragraphs (d)(8)(iv)(B)(3)(xiv) to (xvii) of this section convert these amounts into QS. As with Group 1 species, preliminary QS totaling 100 percent for each Group 2 species unit will be allocated and the amount of the allocations will be adjusted and reduced as indicated in paragraph (d)(8)(iii)(C) and (D) of this section to determine the QS allocation.

(i) The 11 target species are arrowtooth flounder, starry flounder, other flatfish, Dover sole, English sole, petrale sole, minor slope rockfish, shortspine thornyheads, longspine thornyheads, sablefish, and Pacific cod.

(ii) The 8 areas of distribution of fishing effort are defined latitudinally and by depth. The latitudinal areas are (a) north of 47°40' N. lat.; (b) between 47°40' N. lat. and 43°55' N. lat.; (c) 43°55' N. lat. and 40°10' N. lat.; and (d) south of 40°10' N. lat. Each latitudinal area is further divided by depth into areas shoreward and seaward of the trawl Rockfish Conservation Area as defined at § 660.130(e)(4) of this subpart.

(iii) For each limited entry trawl permit, NMFS will review the permit logbook data for that permit and sum target species catch recorded for the years 2003–2006, resulting in total target species catch in each area for each permit for the years 2003 through 2006 for all 11 target species in aggregate.

(iv) For each limited entry trawl permit, NMFS will also sum target species catch by area into total coastwide target species catch for each permit for the years 2003 through 2006 for all 11 target species in aggregate. For practicability, seaward or shoreward of the RCA as identified in the logbook data is defined as being deeper than or

shallower than 115 fathoms, respectively.

(v) For each limited entry trawl permit, NMFS will divide logbook aggregate target species catch in each area (paragraph (d)(8)(iv)(B)(3)(iii) of this section) by the permit's total coastwide target species catch (paragraph (d)(8)(iv)(B)(3)(iv) of this section) to create a set of 8 area catch ratios for each permit. (Note: The sum of all area catch ratios equals 1 for each permit).

(vi) For limited entry trawl permits where the vessel registered to the permit did not submit logbooks showing any catch of the 11 target species for any of the years 2003 through 2006, NMFS will use the following formula to calculate area target catch ratios: (a) NMFS will sum by area all limited entry trawl permits' total logbook area target catches from paragraph (d)(8)(iv)(B)(3)(iii) of this section, (b) NMFS will sum coastwide all limited entry trawl permits' total logbook target catches across all areas from paragraph (d)(8)(iv)(B)(3)(iv) of this section, and (c) NMFS will divide these sums (*i.e.*, a/b) to create average permit logbook area target catch ratios.

(vii) NMFS will calculate the 2011 non-whiting short term allocation amount for each of the 11 target species by multiplying the limited entry trawl allocation amounts for 2011 for each by the corresponding initial issuance allocation percentage for the non-whiting sector given in paragraph (d)(8)(iii)(A)(10) of this section or determined through the biennial specifications process, as applicable.

(viii) For each limited entry trawl permit, NMFS will obtain the percentage of the limited entry trawl permit initial QS allocation for each of the 11 target species resulting from paragraph (d)(8)(iv)(B)(2) of this section.

(ix) NMFS will calculate each limited entry trawl permit's projected non-whiting sector quota pounds for 2011 by multiplying the 2011 non-whiting sector initial issuance allocation amounts for each of the 11 target species from paragraph (d)(8)(iv)(B)(3)(vii) of this section by each permit's target species QS allocation percentage from paragraph (d)(8)(iv)(B)(3)(viii) of this section.

§ 660.140

50 CFR Ch. VI (10–1–23 Edition)

(x) For each limited entry trawl permit, NMFS will sum the projected quota pounds for the 11 target species from paragraph (d)(8)(iv)(B)(3)(ix) of this section to get a total projected weight of all 11 target species for the limited entry trawl permit.

(xi) For each limited entry trawl permit, NMFS will estimate the permit's total incidental catch of Group 2 species by area by multiplying the projected 2011 total weight of all 11 target species by the applicable area catch ratio for each area as calculated in either paragraph (d)(8)(iv)(B)(3)(v) of this section (permits with logbook data) or paragraph (d)(8)(iv)(B)(3)(vi) of this section (permits without logbook data).

(xii) NMFS will apply WCGOP average bycatch ratios for each Group 2 species (observed Group 2 species catch/total target species catch) by area. The WCGOP average bycatch ratios are as follows:

Area	Shoreward	Seaward
<b>Bocaccio</b>		
N. of 47°40' N. lat. ....	.....	.....
43°55' N. lat. to 47°40' N. lat. ....	.....	.....
40°10' N. lat. to 43°55' N. lat. ....	.....	.....
S. of 40°10' N. lat. ....	0.019013759	0.001794203
<b>Cowcod</b>		
N. of 47°40' N. lat. ....	.....	.....
43°55' N. lat. to 47°40' N. lat. ....	.....	.....
40°10' N. lat. to 43°55' N. lat. ....	.....	.....
S. of 40°10' N. lat. ....	0.001285088	0.000050510
<b>Darkblotched</b>		
N. of 47°40' N. lat. ....	0.001560461	0.009950330
43°55' N. lat. to 47°40' N. lat. ....	0.002238054	0.018835786
40°10' N. lat. to 43°55' N. lat. ....	0.002184788	0.015025697
S. of 40°10' N. lat. ....	0.000006951	0.004783988
<b>Pacific ocean perch</b>		
N. of 47°40' N. lat. ....	0.001069954	0.019848047
43°55' N. lat. to 47°40' N. lat. ....	0.000110802	0.015831815
40°10' N. lat. to 43°55' N. lat. ....	0.000148715	0.001367645
S. of 40°10' N. lat. ....	.....	.....
<b>Widow</b>		
N. of 47°40' N. lat. ....	0.000132332	0.000065291
43°55' N. lat. to 47°40' N. lat. ....	0.000387346	0.000755163
40°10' N. lat. to 43°55' N. lat. ....	0.000175128	0.000008118
S. of 40°10' N. lat. ....	0.001049485	0.000676828
<b>Yelloweye</b>		
N. of 47°40' N. lat. ....	0.000334697	0.000006363
43°55' N. lat. to 47°40' N. lat. ....	0.000083951	0.000010980
40°10' N. lat. to 43°55' N. lat. ....	0.000128942	0.000006300
S. of 40°10' N. lat. ....	0.000094029	.....

(xiii) For each limited entry trawl permit, NMFS will calculate projected Group 2 species amounts by area by multiplying the limited entry trawl permit's projected 2011 total weight of all target species by area from paragraph (d)(8)(iv)(B)(3)(xi) of this section by the applicable average bycatch ratio for each Group 2 species and corresponding area of paragraph (d)(8)(iv)(B)(3)(xii) of this section.

(xiv) For each limited entry trawl permit, NMFS will sum all area amounts for each Group 2 species from paragraph (d)(8)(iv)(B)(3)(xiii) of this section to calculate the total projected amounts of each Group 2 species for each limited entry trawl permit.

(xv) NMFS will sum all limited entry trawl permits' projected Group 2 species amounts from paragraph (d)(8)(iv)(B)(3)(xiv) of this section to calculate coastwide total projected amounts for each Group 2 species.

(xvi) NMFS will estimate preliminary QS for each limited entry trawl permit for each Group 2 species by dividing each limited entry trawl permit's total projected amount of each Group 2 species from paragraph (d)(8)(iv)(B)(3)(xiv) of this section by the coastwide total projected amount for that species from paragraph (d)(8)(iv)(B)(3)(xv) of this section.

(4) *Group 3 Species:* (i) The preliminary QS allocation step indicated in paragraph (d)(8)(iii)(A) of this section will be performed in two calculations that result in the division of preliminary QS allocation into two pools, one to allocate QS equally among all eligible limited entry permits, using the approach identified for Group 1 species in paragraph (d)(8)(iv)(B)(2)(i) of this section, and the other to allocate QS using a formula based on QS allocations for target species and areas fished, using the approach identified for Group 2 species in paragraph (d)(8)(iv)(B)(3) of this section, using the following WCGOP average bycatch rates:

CANARY

Area	Shoreward	Seaward
N. of 47°40' N. lat. ....	0.008041898	0.000030522
43°55' N. lat. to 47°40' N. lat. ....	0.003081830	0.000142136
40°10' N. lat. to 43°55' N. lat. ....	0.008716148	0.000021431
S. of 40°10' N. lat. ....	0.001581194	0.000009132

(ii) Through these two processes, preliminary QS totaling 100 percent for each species will be allocated. In later steps, this amount will be adjusted and reduced as indicated in paragraphs (d)(8)(iii)(C) and (D) of this section to determine the QS allocation. In combining the two QS pools for each permit, the equal allocation portion is weighted according to the process in paragraph (d)(8)(iv)(B)(2)(i) of this section, and the portion calculated based on allocations for target species and areas fished is weighted according to the process in (d)(8)(iv)(B)(2)(ii) of this section.

(C) *Preliminary QS allocation for whiting trips.* The preliminary QS allocation based on whiting trips as indicated in paragraph (d)(8)(iii)(B) of this section for limited entry trawl permits follows a two step process, one to allocate a pool of QS equally among all eligible limited entry permits and the other to allocate the remainder of the preliminary QS based on permit history. Through these two processes, preliminary QS totaling 100 percent for each species will be allocated. In later steps, this amount will be adjusted and reduced, as indicated in paragraphs (d)(8)(iii)(C) and (D) of this section, to determine the QS allocation.

(1) *QS to be allocated equally.* The pool of QS for equal allocation will be determined using the whiting trip landings history from Federal limited entry groundfish permits that were retired through the Federal buyback program (i.e., buyback permit) (70 FR 45695, August 8, 2005). For each species, the whiting trip QS pool associated with the buyback permits will be the buyback permit history as a percent of the total fleet history for the allocation period. The calculation will be based on total absolute pounds with no dropped years and no other adjustments. The whiting trip QS pool associated with the buyback permits will be divided equally among all qualifying limited entry permits for each species.

(2) *QS to be allocated based on each permit's history.* The pool for QS allocation based on each limited entry trawl permit's history will be the QS remaining after subtracting out the QS associated with the buyback permits allocated equally.

(i) *Whiting QS allocated based on each permit's history.* Whiting QS based on each limited entry trawl permit's history will be allocated based on the permit's relative history from 1994 through 2003. For each limited entry trawl permit, NMFS will calculate a whiting relative history for each qualifying year, as follows. First, NMFS will sum the permit's history of landings of whiting from whiting trips for each year. Second, NMFS will divide each permit's annual sum of whiting from whiting trips by the shoreside limited entry trawl fleet's annual sum of whiting. NMFS will then calculate a total relative history for each permit by adding all relative histories for the permit together and subtracting the two years with the lowest relative history. NMFS will then divide the result for each permit by the total relative history for whiting of all qualifying limited entry trawl permits. The result from this calculation will then be multiplied by the amount of whiting QS in the pool to be allocated based on each permit's history.

(ii) *Other incidentally caught species QS allocation for eligible limited entry trawl permit owners.* Other incidentally caught species from the QS remaining after subtracting out the QS associated with the buyback permits will be allocated pro-rata based on each limited entry trawl permit's whiting QS from whiting trips. Pro-rata means a percent that is equal to the percent of whiting QS.

(D) *QS from limited entry permits calculated separately for non-whiting trips and whiting trips.* NMFS will calculate the portion of QS for each species which a permit receives based on non-whiting trips and whiting trips separately and will weight each preliminary QS in proportion to the initial issuance allocation percentage between whiting trips and non-whiting trips for that species in paragraph (d)(8)(iv)(A)(10) of this section or determined through the biennial specifications process, as applicable.

(1) *Nonwhiting trips.* To determine the amount of QS of each species for non-whiting trips for each limited entry trawl permit, NMFS will multiply the preliminary QS for the permit from paragraph (d)(8)(iii)(A) of this section

for each species by the initial issuance allocation percentage for that species for non-whiting trips.

(2) *Whiting trips.* To determine the amount of QS of each species for whiting trips for each limited entry trawl permit, NMFS will multiply the preliminary QS from paragraph (d)(8)(iii)(B) of this section for each species by the initial issuance allocation percentage for that species for whiting trips.

(E) *QS for each limited entry trawl permit.* For each limited entry trawl permit, NMFS will add the results for the permit from paragraphs (d)(8)(iv)(D)(1) and (D)(2) of this section in order to determine the total QS for each species on that permit.

(F) *Adjustment for AMP set-aside and shoreside processor initial issuance allocations.* NMFS will reduce the non-whiting QS allocation to each limited entry trawl permit by 10 percent, for a QS set-aside to AMP. NMFS will reduce the whiting QS allocation to each limited entry trawl permit by 20 percent for the initial QS allocation to shoreside processors.

(G) *Allocation of initial issuance of whiting QS for shoreside processors.* NMFS will calculate the amount of whiting QS available to shoreside processors from the 20 percent adjustment of whiting QS allocations in paragraph (d)(8)(iv)(F) of this section. For each eligible shoreside processor, whiting QS will be allocated based on the eligible shoreside processor's relative history from 1998 through 2004. Only the deliveries for which the shoreside processor is the first processor of the fish will be used in the calculation of whiting relative history.

(1) For each shoreside processor which has received deliveries of at least 1 mt of whiting from whiting trips in each of any two years from 1998 through 2004, NMFS will calculate a whiting relative history for each qualifying year, as follows. First, NMFS will sum the shoreside processor's receipts of whiting for each year. Second, NMFS will calculate the relative history for each year by dividing each shoreside processor's annual sum of whiting receipts by the aggregate annual sum of whiting received by all shoreside processors in that year.

NMFS will then calculate a total relative history for each shoreside processor by adding all relative histories for the shoreside processor together and subtracting the two years with the lowest relative history. NMFS will then divide the result for each shoreside processor by the aggregate sum of all total relative histories for whiting by all qualifying shoreside processors. The result from this calculation will then be multiplied by 20 percent to determine the shoreside processor's whiting QS.

(2) For purposes of making an initial issuance of whiting QS to a shoreside processor, NMFS will attribute landing history to the Pacific whiting shoreside first receiver reported on the landing receipt (the entity responsible for filling out the state landing receipt) as recorded in the relevant PacFIN dataset on July 1, 2010. History may be reassigned to a shoreside processor not on the state landings receipt as described at paragraph (d)(8)(vi)(B) of this section.

(H) *Allocation of Pacific halibut IBQ for each limited entry trawl permit.* For each eligible limited entry trawl permit owner, NMFS will calculate Pacific halibut individual bycatch quota (IBQ) for the area north of 40°10' N. lat. using a formula based on (a) QS allocations for each limited entry trawl permit for two target species, (b) areas of distribution of fishing effort as determined from 2003–2006 target species catch data from the PacFIN Coastwide Trawl Logbook Database, (c) average bycatch ratios for each area as derived from WCGOP data from 2003 through 2006, and (d) the non-whiting initial issuance allocation of the limited entry trawl allocation amounts for 2011 for arrowtooth and petrale sole. These data are used in a series of sequential steps to determine the allocation of IBQ to each limited entry trawl permit. Paragraphs (d)(8)(iv)(H)(3) to (6) of this section estimate the permit's total 2003–2006 target species by area. Paragraphs (d)(8)(iv)(H)(7) to (13) of this section project Pacific halibut bycatch amounts using 2003–2006 WCGOP observer ratios and the 2011 non-whiting initial issuance allocation of the limited entry trawl allocation amounts. Paragraphs (d)(8)(iv)(H)(14) to (16) of

this section convert these amounts into QS.

(1) The target species are arrowtooth flounder and petrale sole.

(2) The four bycatch areas are defined latitudinally and by depth. The latitudinal areas are (a) north of 47°30' N. lat., and (b) between 40°10' N. lat. and 47°30' N. lat. Each latitudinal area is further divided by depth into areas shoreward and seaward of the trawl Rockfish Conservation Area as defined at § 660.130(e)(4), subpart D.

(3) For each limited entry trawl permit, NMFS will review the permit logbook data for that permit and sum target species catch recorded for the years 2003-2006, resulting in total target species catch in each of the four areas for each permit for the years 2003 through 2006 for both target species in aggregate. For practicability, seaward or shoreward of the RCA as identified in the logbook data is defined as being deeper than or shallower than 115 fathoms, respectively.

(4) For each limited entry trawl permit, NMFS will also sum the target species catch by area into total aggregate target species catch for each permit for the years 2003 through 2006.

(5) For each limited entry trawl permit, NMFS will divide logbook aggregate target species catch in each area (paragraph (d)(8)(iv)(H)(3) of this section) by the sum of the permit's catch of each target species in all four bycatch areas (paragraph (d)(8)(iv)(H)(4) of this section) to create a set of area catch ratios for each permit. (Note: The sum of all four area catch ratios in aggregate equals 1 for each permit).

(6) For limited entry trawl permits where the vessel registered to the permit did not submit logbooks showing any catch of either of the two target species for any of the years 2003 through 2006, NMFS will use the following formula to calculate area target catch ratios: NMFS will sum by area all limited entry trawl permits' total logbook area target catches from paragraph (d)(8)(iv)(H)(3) of this section, and sum all limited entry trawl permits' total logbook target catches across all four areas from paragraph (d)(8)(iv)(H)(4) of this section; and divide these sums to create average permit logbook area target catch ratios.

(7) NMFS will calculate the 2011 non-whiting initial issuance allocation amount for each of the two target species by multiplying the limited entry trawl allocation amounts for 2011 for each by the corresponding initial issuance allocation percentage for the non-whiting sector given in paragraph (d)(8)(iv)(A)(10) of this section.

(8) For each limited entry trawl permit, NMFS will obtain the non-whiting portion of each limited entry trawl permit's initial QS allocations for each of the two target species resulting from paragraph (d)(8)(iv)(B)(2) of this section.

(9) NMFS will calculate each limited entry trawl permit's projected non-whiting sector quota pounds for the two target species for 2011 by multiplying the 2011 non-whiting sector short term allocation amounts for each of the target species by the permit's QS allocation percentage for the species from paragraph (d)(8)(iv)(H)(8) of this section.

(10) For each limited entry trawl permit, NMFS will sum the projected quota pounds for the two target species from paragraph (d)(8)(iv)(H)(9) of this section to get a total projected weight of the two target species for the limited entry trawl permit.

(11) For each limited entry trawl permit, NMFS will multiply the projected 2011 total weight of the two target species by the applicable area catch ratio for each area as calculated in either paragraph (d)(8)(iv)(H)(5) of this section (permits with logbook data) or paragraph (d)(8)(iv)(H)(6) of this section (permits without logbook data).

(12) NMFS will apply WCGOP average halibut bycatch ratios (observed halibut catch/total of two target species catch) by area. The WCGOP average halibut bycatch ratios are as follows:

PACIFIC HALIBUT		
Area	Shoreward	Seaward
N. of 47°30' N. lat. ....	0.225737162	0.084214162
40°10' N. lat. to 47°30' N. lat.	0.086250913	0.033887839

(13) For each limited entry trawl permit, NMFS will calculate projected Pacific halibut amounts by area by multiplying the limited entry trawl permit's projected 2011 total weight of the two target species by area from paragraph

(d)(8)(iv)(H)(11) of this section by the average bycatch ratio for the corresponding area of paragraph (d)(8)(iv)(H)(12) of this section.

(14) For each limited entry trawl permit, NMFS will sum all area amounts from paragraph (d)(8)(iv)(H)(13) of this section to calculate the total projected Pacific halibut amount for each limited entry trawl permit.

(15) NMFS will sum all limited entry trawl permits' projected Pacific halibut amounts from paragraph (d)(8)(iv)(H)(14) of this section to calculate aggregate total amounts of Pacific halibut.

(16) NMFS will estimate preliminary Pacific halibut IBQ for each limited entry trawl permit by dividing each limited entry trawl permit's total projected Pacific halibut amount from paragraph (d)(8)(iv)(H)(14) of this section by the aggregate total amounts of Pacific halibut from paragraph (d)(8)(iv)(H)(15) of this section.

(I) *Redistribution of QS and IBQ.* For each limited entry trawl permit transferred after November 8, 2008, or if transferred earlier, not registered with NMFS by November 30, 2008, for which NMFS determines that the owner of such permit would exceed the accumulation limits specified at paragraph (d)(4)(i) of this section based on calculation of the preceding allocation formulas for all limited entry trawl permits owned by such owner using the individual and collective rule described at § 660.140(d)(4)(ii), NMFS will redistribute the excess QS or IBQ to other qualified QS permit owners within the accumulation limits.

(v) *QS application.* Persons may apply for an initial issuance of QS and IBQ and a QS permit in one of two ways: Complete and submit a prequalified application received from NMFS, or complete and submit an application package. The completed application must be either postmarked or hand-delivered within normal business hours no later than November 1, 2010. If an applicant fails to submit a completed application by the deadline date, they forgo the opportunity to receive consideration for initial issuance of QS and IBQ and a QS permit.

(A) *Prequalified application.* A “prequalified application” is a par-

tially pre-filled application where NMFS has preliminarily determined the landings history that may qualify the applicant for an initial issuance of QS and IBQ. The application package will include a prequalified application (with landings history), a Trawl Identification of Ownership Interest form, and any other documents NMFS believes are necessary to aid the limited entry permit owner in completing the QS application.

(1) For current trawl limited entry permit owners, NMFS will mail a prequalified application to all owners, as listed in the NMFS permit database at the time applications are mailed, that NMFS determines may qualify for QS or IBQ. NMFS will mail the application by certified mail to the current address of record in the NMFS permit database. The application will contain the basis of NMFS' calculation of the permit owner's QS and IBQ for each species/species group or area.

(2) For shoreside processors, NMFS will mail a prequalified application to those Pacific whiting shoreside first receivers with receipts of 1 mt or more of whiting from whiting trips in each of any two years from 1998 through 2004, as documented on fish tickets in the relevant PacFIN dataset on July 1, 2010. NMFS will mail the prequalified application by certified mail to the current address of record given by the state in which the entity is registered. For all qualified entities who meet the eligibility requirement at paragraph (d)(8)(ii)(B) of this section, the application will provide the basis of NMFS' calculation of the initial issuance of Pacific whiting QS.

(B) *Request for an application.* An owner of a current limited entry trawl permit or a Pacific whiting first receiver or shoreside processor that believes it is qualified for an initial issuance of QS and IBQ and does not receive a prequalified application, must complete an application package and submit the completed application to NMFS by the application deadline. Application packages are available on NMFS' Web site (<http://www.nwr.noaa.gov/Groundfish-Halibut/>)

*Groundfish-Permits/index.cfm*) or by contacting SFD. An application must include valid PacFIN data or other credible information that substantiates the applicant's qualification for an initial issuance of QS and IBQ.

(vi) *Corrections to the application.* If an applicant does not accept NMFS' calculation in the prequalified application either in part or whole, the applicant must identify in writing to NMFS which parts the applicant believes to be inaccurate, and must provide specific credible information to substantiate any requested corrections. The completed application and specific credible information must be provided to NMFS in writing by the application deadline. Written communication must either be post-marked or hand-delivered within normal business hours no later than November 1, 2010. Requests for corrections may only be granted for the following reasons:

(A) Errors in NMFS' use or application of data, including:

(1) Errors in NMFS' use or application of landings data from PacFIN;

(2) Errors in NMFS' use or application of state logbook data from PacFIN;

(3) Errors in NMFS' application of the QS or IBQ allocation formula;

(4) Errors in identification of the permit owner, permit combinations, or vessel registration as listed in NMFS permit database;

(5) Errors in identification of ownership information for the first receiver or the processor that first processed the fish; and

(6) Errors in NMFS' use or application of ownership interest information.

(B) *Reassignment of Pacific whiting landings history for shoreside processors.*

For shoreside processors, the landing history may be reassigned from the Pacific whiting shoreside first receiver identified in the relevant PacFIN database to a shoreside processor that was in fact the first processor of the fish. In order for an applicant to request that landing history be reassigned, an authorized representative for the Pacific whiting shoreside first receiver identified on the state landing receipt must submit, by the application deadline date specified in paragraph (d)(8)(vii)(B) of this section for initial

issuance of QS, a written request that the whiting landings history from the qualifying years be conveyed to a shoreside processor. The letter must be signed and dated by the authorized representative of the Pacific whiting shoreside first receiver named on the state landing receipt and signed and dated by the authorized representative of the shoreside processor to which the Pacific whiting landing history is requested to be reassigned. The letter must identify the dates of the landings history and the associated amounts that are requested to be reassigned, and include the legal name of the shoreside processor to which the Pacific whiting landing history is requested to be reassigned, their date of birth or tax identification number, business address, business phone number, fax number, and e-mail address. If any document exists that demonstrates that the shoreside processor to which the Pacific whiting landing history is requested to be reassigned was in fact the first processor of the fish, such documentation must be provided to NMFS. NMFS will review the information submitted and will make a determination as part of the IAD.

(vii) *Submission of the application and application deadline—(A) Submission of the application.* Submission of the complete, certified application includes, but is not limited to, the following:

(1) The applicant is required to sign and date the application and have the document notarized by a licensed Notary Public.

(2) The applicant must certify that they qualify to own QS and IBQ.

(3) The applicant must indicate they accept NMFS' calculation of initial issuance of QS and IBQ provided in the prequalified application, or provide credible information that demonstrates their qualification for QS and IBQ.

(4) The applicant is required to provide a complete Trawl Identification of Ownership Interest Form as specified at paragraph (d)(4)(iv) of this section.

(5) Business entities may be required to submit a corporate resolution or other credible documentation as proof that the representative of the entity is authorized to act on behalf of the entity; and

(6) NMFS may request additional information of the applicant as necessary to make an IAD on initial issuance of QS or IBQ.

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

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

(ix) *Initial Administrative Determination (IAD).* NMFS will issue an IAD for all complete, certified applications received by the application deadline date. If NMFS approves an application for initial issuance of QS and IBQ, the applicant will receive a QS permit specifying the amounts of QS and IBQ for which the applicant has qualified and the applicant will be registered to a QS account. If NMFS disapproves or partially disapproves an application, the IAD will provide the reasons. As part of the IAD, NMFS will indicate whether the QS permit owner qualifies for QS or IBQ in amounts that exceed the accumulation limits and are subject to divestiture provisions given at paragraph (d)(4)(v) of this section, or whether the QS permit owner qualifies for QS or IBQ that exceed the accumulation limits and does not qualify to receive the excess under paragraph (d)(4)(v) of this section. If the applicant does not appeal the IAD within 60 calendar days of the date on the IAD, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(x) *Appeals.* For QS permits and QS/IBQ issued under this section, the ap-

peals process and timelines are specified at § 660.25(g), subpart C. For the initial issuance of QS/IBQ and the QS permits, the bases for appeal are described in paragraph (d)(8)(vi) of this section. An additional basis for appeal for whiting QS based on shoreside processing is an allegation that the shoreside processor or Pacific whiting shoreside first receiver to which a QS permit and whiting QS have been assigned was not in fact the first processor of the fish included in the qualifying landings history. The appellant must submit credible information supporting the allegation that they were in fact the first shoreside processor for the fish in question. Items not subject to appeal include, but are not limited to, the accuracy of permit landings data or Pacific whiting shoreside first receiver landings data in the relevant PacFIN dataset on July 1, 2010.

(9) *Reallocation of widow rockfish QS—*  
(i) *Additional definitions.* The following definitions are applicable to paragraph (d)(9) of this section and apply only to terms used for the purposes of reallocation of widow rockfish QS:

(A) *Nonwhiting trip* means a fishing trip where less than 50 percent by weight of all fish reported on the state landing receipt is whiting.

(B) *PacFIN* means the Pacific Fisheries Information Network of the Pacific States Marine Fisheries Commission.

(C) *Relative history* means the landings history of a limited entry trawl permit for a species, year, and area subdivision, divided by the total fleet history of the sector for that species, year, and area subdivision, as appropriate.

(D) *Whiting trip* means a fishing trip where greater than or equal to 50 percent by weight of all fish reported on the state landing receipt is whiting.

(ii) *Eligibility criteria for receiving reallocated widow rockfish QS.* Only the owner of an original QS permit (non-shoreside processor) to which QS was initially allocated in 2011 is eligible to receive reallocated widow rockfish QS based on the history of the limited entry trawl permit(s) that accrued to that QS permit, regardless of current limited entry permit ownership. For those new QS permits to which widow



rockfish was administratively transferred by NMFS under U.S. court order, NMFS will reallocate widow rockfish QS directly to the new QS permit. Any limited entry trawl permit owners who did not submit an initial application for a QS permit will not be eligible to receive reallocated widow rockfish QS.

(iii) *Steps for widow rockfish QS reallocation formula.* The widow rockfish QS reallocation formula is applied in the following steps:

(A) First, for each limited entry trawl permit, NMFS will determine a preliminary QS allocation for non-whiting trips.

(B) Second, for each limited entry trawl permit, NMFS will determine a preliminary QS allocation for whiting trips.

(C) Third, for each limited entry trawl permit, NMFS will combine the amounts resulting from paragraphs (d)(9)(iii)(A) and (B) of this section.

(D) Fourth, NMFS will reduce the total widow rockfish QS reallocated to QS permit owners by 10 percent as a set aside for AMP.

(iv) *Reallocation formula for specific widow rockfish QS amounts—(A) Reallocation formula rules.* The following rules will be applied to data for the purpose of calculating the initial reallocation of widow rockfish QS:

(1) Limited entry trawl permits will be assigned catch history or relative history based on the landing history of the vessel(s) associated with the permit at the time the landings were made.

(2) The relevant PacFIN dataset includes species compositions based on port sampled data and applied to data at the vessel level.

(3) Only landings of widow rockfish that were caught in the exclusive economic zone or adjacent state waters off Washington, Oregon, and California will be used for calculating the reallocation of widow rockfish QS.

(4) History from limited entry trawl permits that have been combined with a limited entry trawl permit that qualified for a C/P endorsement and which has shorebased permit history will not be included in the preliminary QS and IBQ allocation formula, other than in the determination of fleet history used in the calculation of relative

history for limited entry trawl permits that do not have a C/P endorsement.

(5) History of illegal landings and landings made under nonwhiting EFPs that are in excess of the cumulative limits in place for the non-EFP fishery will not count toward the allocation of QS.

(6) The limited entry trawl permit's landings history includes the landings history of limited entry trawl permits that have been previously combined with that limited entry trawl permit.

(7) If two or more limited entry trawl permits have been simultaneously registered to the same vessel, NMFS will split the landing history evenly between all such limited entry trawl permits during the time they were simultaneously registered to the vessel.

(8) Unless otherwise noted, the calculation for the reallocation of widow rockfish QS under paragraph (d)(9) will be based on state landing receipts (fish tickets) as recorded in the relevant PacFIN dataset on July 27, 2016.

(9) For limited entry trawl permits, landings under provisional "A" permits that did not become "A" permits and "B" permits will not count toward the reallocation of widow rockfish QS, other than in the determination of fleet history used in the calculation of relative history for permits that do not have a C/P endorsement.

(10) For limited entry trawl permits, NMFS will calculate the reallocation of widow rockfish QS separately based on whiting trips and nonwhiting trips, and will weigh each calculation according to a split between whiting trips and nonwhiting trips of 10.833 percent for whiting trips and 89.167 percent for nonwhiting trips, which is a one-time proportion necessary for the reallocation formula.

(B) *Preliminary widow rockfish QS reallocation for nonwhiting trips.* The preliminary reallocation process in paragraph (d)(9)(iii)(A) of this section follows a two-step process, one to allocate a pool of QS equally among all eligible limited entry permits and the other to allocate the remainder of the preliminary QS based on limited entry trawl permit history. Through these two processes, preliminary QS totaling 100 percent will be allocated. In later steps, this will be adjusted and reduced

as indicated in paragraph (d)(9)(iii)(C) and (D) to determine the QS allocation.

(1) *QS to be allocated equally.* The pool of QS for equal allocation will be determined using the nonwhiting trip landings history from Federal limited entry groundfish permits that were retired through the Federal buyback program (*i.e.*, buyback program) (68 FR 42613, July 18, 2003). The nonwhiting trip QS pool associated with the buyback permits will be the buyback permit history as a percent of the total fleet history for the 1994 to 2003 nonwhiting trip reallocation period. The calculation will be based on total absolute pounds with no dropped years and no other adjustments. The QS pool associated with the buyback permits will be divided equally among all qualifying limited entry permits.

(2) *QS to be allocated based on each permit's history.* The pool of QS for allocation based on limited entry trawl permit nonwhiting trip history will be the QS remaining after subtracting out the QS allocated equally. This pool will be allocated to each qualifying limited entry trawl permit based on the permit's relative nonwhiting trip history from 1994 through 2002, dropping the three lowest years. For each limited entry trawl permit, NMFS will calculate relative history using the following methodology. First, NMFS will sum the permit's widow rockfish landings on nonwhiting trips for each year in the reallocation period. Second, NMFS will divide each permit's annual sum by the shoreside limited entry trawl fleet's annual sum. NMFS will then calculate a total relative history for each permit by adding all relative histories for the permit together and subtracting the three years with the lowest relative history for the permit. The result for each permit will be divided by the aggregate sum of all total relative histories of all qualifying limited entry trawl permits. NMFS will then multiply the result from this calculation by the amount of QS in the pool to be allocated based on each permit's history.

(C) *Preliminary widow rockfish QS reallocation for whiting trips.* The preliminary reallocation process in paragraph (d)(9)(iii)(B) of this section follows a two-step process, one to allocate a pool

of QS equally among all eligible limited entry permits and the other to allocate the remainder of the preliminary QS based on permit history. Through these two processes, preliminary QS totaling 100 percent will be allocated. In later steps, this will be adjusted and reduced as indicated in paragraph (d)(9)(iii)(C) and (D) to determine the QS allocation.

(1) *QS to be allocated equally.* The pool of QS for equal allocation will be determined using whiting trip landings history from Federal limited entry groundfish permits that were retired through the Federal buyback program (*i.e.*, buyback program) (68 FR 42613, July 18, 2003). The whiting trip QS pool associated with the buyback permits will be the buyback permit history as a percent of the total fleet history for the 1994 to 2003 whiting trip reallocation period. The calculation will be based on total absolute pounds with no dropped years and no other adjustments. The QS pool associated with the buyback permits will be divided equally among all qualifying limited entry permits.

(2) *QS to be allocated based on each permit's history.* The pool of QS for allocation based on each limited entry trawl permit's whiting trip history will be the QS remaining after subtracting out the QS allocated equally. Widow rockfish QS for this pool will be allocated pro-rata based on each limited entry trawl permit's whiting QS from whiting trips that was established in 2010 and used to allocate the whiting trip portion of whiting QS at the time of initial implementation in 2011. Pro-rata means a percent that is equal to the percent of whiting QS from whiting trips.

(D) *QS from limited entry permits calculated separately for nonwhiting trips and whiting trips.* NMFS will calculate the portion of widow QS a limited entry trawl permit receives based on nonwhiting trips and whiting trips separately, and will weight each preliminary QS in proportion to the one-time reallocation percentage between whiting trips and nonwhiting trips of 10.833 percent and 89.167 percent, respectively.

(1) *Nonwhiting trips.* To determine the amount of widow QS for nonwhiting

trips for each limited entry trawl permit, NMFS will multiply the preliminary QS for the permit from paragraph (d)(9)(iii)(A) of this section by the one-time reallocation percentage of 89.167 percent for nonwhiting trips.

(2) *Whiting trips.* To determine the amount of widow QS for whiting trips for each limited entry trawl permit, NMFS will multiply the preliminary QS for the permit from paragraph (d)(9)(iii)(B) of this section by the one-time reallocation percentage of 10.833 percent for whiting trips.

(E) *QS for each limited entry trawl permit.* For each limited entry trawl permit, NMFS will add the results for the permit from paragraphs (d)(9)(iv)(D)(1) and (D)(2) of this section in order to determine the total QS widow for that permit.

(F) *Adjustment for AMP set-aside.* NMFS will reduce the widow QS reallocated to each permit owner by a proportional amount that is equivalent to a reduction of 10 percent across all widow reallocation recipients' holdings as a set aside for AMP.

(v) *Widow rockfish QS reallocation application.* Persons may apply for issuance of reallocated widow rockfish QS by completing and submitting a prequalified application. A "prequalified application" is a partially pre-filled application where NMFS has preliminarily determined the landings history for each limited entry trawl permit that qualifies the applicant for a reallocation of widow QS. The application package will include a prequalified application with landings history. The completed application must be either postmarked or hand-delivered to NMFS within normal business hours no later than December 26, 2017. If an applicant fails to submit a completed application by the deadline date, they forgo the opportunity to receive reallocated widow rockfish QS and their percentage will be redistributed to other QS permit owners who submitted complete widow rockfish reallocation applications in proportion to their reallocated widow QS amount.

(vi) *Corrections to the application.* If an applicant does not accept NMFS's calculation in the prequalified application either in part or whole, the applicant must identify in writing to NMFS

which parts the applicant believes to be inaccurate, and must provide specific credible information to substantiate any requested corrections. The completed application and specific credible information must be provided to NMFS in writing by the application deadline. Written communication must either be post-marked or hand-delivered to NMFS within normal business hours no later than December 26, 2017. Requests for corrections may only be granted for the following reasons:

(A) Errors in NMFS's use or application of data, including:

(1) Errors in NMFS's use or application of landings data from PacFIN;

(2) Errors in NMFS's application of the reallocation formula; and

(3) Errors in identification of the QS permit owner, permit combinations, or vessel registration as listed in NMFS permit database.

(B) [Reserved]

(vii) *Submission of the application and application deadline—(A) Submission of the application.* Submission of the complete, certified application includes, but is not limited to, the following:

(1) The applicant is required to sign and date the application and declare that the contents are true, correct and complete.

(2) The applicant must certify that they qualify to own reallocated widow rockfish QS.

(3) The applicant must indicate they accept NMFS's calculation of reallocated widow rockfish QS provided in the prequalified application, or provide a written statement and credible information if they do not accept NMFS's calculation.

(4) NMFS may request additional information of the applicant as necessary to make an IAD on reallocated widow rockfish QS.

(B) *Application deadline.* A complete, certified application must be either postmarked or hand-delivered within normal business hours to NMFS, West Coast Region, Permits Office, Bldg. 1, 7600 Sand Point Way NE., Seattle, WA 98115, no later than December 26, 2017. NMFS will not accept or review any applications received or postmarked after the application deadline. There are no hardship exemptions for this deadline.

(viii) *Initial Administrative Determination (IAD)*. NMFS will issue an IAD for all complete, certified applications received by the application deadline date. If NMFS approves an application for reallocated widow rockfish QS, the IAD will say so, and the applicant will receive a 2018 QS permit specifying the reallocated amount of widow rockfish QS the applicant has qualified for. If NMFS disapproves or partially disapproves an application, the IAD will provide the reasons. As part of the IAD, NMFS will indicate to the best of its knowledge whether the QS permit owner qualifies for QS or IBQ in amounts that exceed the accumulation limits and are subject to divestiture provisions given at paragraph (d)(4)(v) of this section. If the applicant does not appeal the IAD within 60 calendar days of the date on the IAD, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(ix) *Appeals*. For reallocated widow rockfish QS issued under this section, the appeals process and timelines are specified at § 660.25(g), subpart C. For the reallocation of widow rockfish QS, the bases for appeal are described in paragraph (d)(9)(vi) of this section. Items not subject to appeal include, but are not limited to, the accuracy of permit landings data in the relevant PacFIN dataset on July 27, 2016.

(e) *Vessel accounts*—(1) *General*. In order to participate in the Shorebased IFQ Program, a vessel must be registered to an eligible limited entry trawl permit. A vessel account will be established on request for an owner of a vessel registered to an eligible limited entry trawl permit in order to track QP and IBQ pounds. QP or IBQ pounds will have the same species/species groups and area designations as the QS or IBQ from which it was issued. Annually, QS or IBQ (expressed as a percent) are converted to QP or IBQ pounds (expressed as a weight) in a QS account. QP or IBQ pounds may be transferred from a QS account to a vessel account or from one vessel account to another vessel account. QP or IBQ pounds are required to cover catch (landings and discards) by limited entry trawl vessels of all IFQ species/species groups, except for:

(i) *Gear exception*. Vessels registered to a limited entry trawl permit using the following gears would not be required to cover groundfish catch with QP or Pacific halibut catch with IBQ pounds: Non-groundfish trawl, gear types defined in the coastal pelagic species FMP, gear types defined in the highly migratory species FMP, salmon troll, crab pot, and limited entry fixed gear when the vessel also has a limited entry permit endorsed for fixed gear and has declared that it is fishing in the limited entry fixed gear fishery. Vessels using gears falling under this exception are subject to the open access fishery restrictions and limits when declared in to an open access fishery.

(ii) *Species exception*. QP are not required for the following species: Longspine thornyheads south of 34°27' N. lat., minor nearshore rockfish (north and south), black rockfish (coastwide), California scorpionfish, cabezon, kelp greenling, shortbelly rockfish, and “other fish” (as defined at § 660.11, subpart C, under the definition of “groundfish”). For these species, trip limits remain in place as specified in the trip limit tables at Table 1 (North) and Table 1 (South) of this subpart.

(2) *Eligibility and registration*—(i) *Eligibility*. To establish a registered vessel account, a person must own a vessel and that vessel must be registered to a groundfish limited entry permit endorsed for trawl gear.

(ii) *Registration*. A vessel account must be registered with the NMFS SFD Permits Office. A vessel account may be established at any time during the year. An eligible vessel owner must submit a request in writing to NMFS to establish a vessel account. The request must include the vessel name; USCG vessel registration number (as given on USCG Form 1270) or state registration number, if no USCG documentation; all vessel owner names (as given on USCG Form 1270, or on state registration, as applicable); and business contact information, including: Address, phone number, fax number, and email. Requests for a vessel account must also include the following information: A complete economic data collection form as required under

§660.113(b), (c) and (d), and a complete Trawl Identification of Ownership Interest Form as required under paragraph (e)(4)(ii) of this section. The request for a vessel account will be considered incomplete until the required information is submitted. Any change specified at paragraph (e)(3)(ii) of this section, including a change in the legal name of the vessel owner(s), will require the new owner to register with NMFS for a vessel account. A participant must have access to a computer with Internet access and must set up online access to their vessel account to participate. The computer must have Internet browser software installed (e.g., Internet Explorer, Netscape, Mozilla Firefox); as well as the Adobe Flash Player software version 9.0 or greater. NMFS will mail vessel account owners instructions to set up online access to their vessel account. NMFS will use the vessel account to send messages to vessel owners in the Shorebased IFQ Program; it is important for vessel owners to monitor their online vessel account and all associated messages.

*(3) Renewal, change of account ownership, and transfer of QP or IBQ pounds—*

(i) *Renewal.* (A) Vessel accounts expire at the end of each calendar year, and must be renewed between October 1 and November 30 of each year in order to ensure the vessel account is active on January 1 of the following year. A complete vessel account renewal package must be received by SFD no later than November 30 to be accepted by NMFS.

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

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

may be renewed in a subsequent year by submission of a complete vessel account renewal package.

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

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

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

(ii) *Change in vessel account ownership.* Vessel accounts are non-transferable and ownership of a vessel account cannot change (*i.e.*, cannot change the legal name of the owner(s) as given on the vessel account). If the ownership of a vessel changes (as given on a USCG or state vessel registration documentation), then a new vessel account must be opened by the new owner in order for the vessel to participate in the Shorebased IFQ Program.

(iii) *Transfer of QP or IBQ pounds—(A) General.* QP or IBQ pounds may only be transferred from a QS account to a vessel account or between vessel accounts. QP or IBQ pounds cannot be transferred from a vessel account to a QS account. Transfers of QP or IBQ pounds are subject to annual vessel accumulation limits. QP or IBQ pounds must be transferred in whole pounds (*i.e.*, no fraction of a QP or IBQ pound can be transferred). During the year there may be situations where NMFS deems it necessary to prohibit transfers (*i.e.*, account reconciliation, system maintenance, or for emergency fishery management reasons).

(B) *Transfer procedures.* QP or IBQ pound transfers from one vessel account to another vessel account must be accomplished via the online vessel account. To make a transfer, a vessel account owner must initiate a transfer

request by logging onto the online vessel account. Following the instructions provided on the website, the vessel account owner must enter pertinent information regarding the transfer request including, but not limited to: IFQ species, amount of QP or IBQ pounds to be transferred for each IFQ species (in whole pound increments); name and any other identifier of the eligible transferee (e.g., USCG documentation number or state registration number, as applicable) of the eligible vessel account receiving the transfer; and the value of the transferred QP or IBQ pounds. The online system will verify whether all information has been entered and whether the transfer complies with vessel limits, as applicable. If the information is not accepted, an electronic message will record as much in the transferor's vessel account explaining the reason(s). If the information is accepted, the online system will record the pending transfer in both the transferor's and the transferee's vessel accounts. The transferee must approve the transfer by electronic signature. If the transferee accepts the

transfer, the online system will record the transfer and confirm the transaction in both accounts through a transaction confirmation notice. Once the transferee accepts the transaction, the transaction is final and permanent. QP or IBQ pounds may be transferred between vessel accounts at any time during January 1 through December 31 each year unless otherwise notified by NMFS. Unused QP from the previous fishing year (base year) may be transferred for the purpose of covering end-of-the-year vessel account deficits through the end of the post-season transfer period described at paragraph (e)(5)(iv) of this section.

(4) *Accumulation limits*—(i) *Vessel limits*. For each IFQ species or species group specified in this paragraph, vessel accounts may not have QP or IBQ pounds in excess of the annual QP vessel limit in any year, except as allowed by paragraph (e)(5)(iii) of this section. The annual QP vessel limit is calculated as all QPs transferred in minus all QPs transferred out of the vessel account.

Species category	Annual QP vessel limit (in percent)
Arrowtooth flounder .....	20
Bocaccio S of 40°10' N lat .....	15.4
Canary rockfish .....	10
Chilipepper S of 40°10' N lat .....	15
Cowcod S of 40°10' N lat .....	17.7
Darkblotched rockfish .....	6.8
Dover sole .....	3.9
English sole .....	7.5
Lingcod:	
N of 40°10' N lat .....	5.3
S of 40°10' N lat .....	13.3
Longspine thornyhead:	
N of 34°27' N lat .....	9
Minor rockfish complex N of 40°10' N lat.:	
Shelf species .....	7.5
Slope species .....	7.5
Minor rockfish complex S of 40°10' N lat.:	
Shelf species .....	13.5
Slope species .....	9
Other Flatfish complex .....	15
Pacific cod .....	20
Pacific halibut (IBQ) N of 40°10' N lat .....	14.4
Pacific ocean perch N of 40°10' N lat .....	6
Pacific whiting (shoreside) .....	15
Petrale sole .....	4.5
Sablefish:	
N of 36° N lat. (Monterey north) .....	4.5
S of 36° N lat. (Conception area) .....	15
Shortspine thornyhead:	
N of 34°27' N lat .....	9
S of 34°27' N lat .....	9
Splitnose rockfish S of 40°10' N lat .....	15
Starry flounder .....	20
Widow rockfish .....	8.5
Yelloweye rockfish .....	11.4

Species category	Annual QP vessel limit (in percent)
Yellowtail rockfish N of 40°10' N lat .....	7.5
Non-whiting groundfish species .....	3.2

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

(5) *Carryover of Surplus and Deficit QP or IBQ.* The carryover provision allows a limited amount of surplus QP or IBQ pounds in a vessel account to be carried over from one year (the base year) to the next immediately following year or allows a deficit in a vessel account from fishing during the base year to be covered in the immediately following year with QP or IBQ pounds from the base year or the a immediately following year, up to a carryover limit without violating the provisions of this section.

(i) *Surplus QP or IBQ pounds.* A vessel account with a surplus of QP or IBQ (unused QP or IBQ pounds) for any IFQ species following the post-season transfer period specified at paragraph (e)(5)(iv) of this section, may carryover for use in the year immediately following the base year amounts of unused QP or IBQ pounds up to its carryover limit specified at (e)(5)(ii) of this section, and subject to the limitations of this paragraph. After the post-season transfer period is concluded, NMFS will complete determination of surplus QP or IBQ pound amounts that may be carried over into the following year up to the surplus carryover limit specified at paragraph (e)(5)(ii) of this section. The amount of surplus QP or IBQ pounds issued as carryover will be re-

duced in proportion to any reduction in the ACL-between the base year and the immediately following year. At the end of the post-season transfer period, any base year QP or IBQ pounds remaining in vessel accounts will be suspended from use while NMFS calculates annual surplus carryover amounts. NMFS will consult with the Council in making its final determination of the IFQ species and total QP or IBQ amounts to be issued as annual surplus carryover. After NMFS completes determination of the annual surplus carryover amounts for each vessel account, suspended QP or IBQ pounds in excess of the annual surplus carryover amount will expire. NMFS will subsequently release any remaining suspended QP or IBQ pounds for issuance as surplus carryover to vessel accounts from which they were suspended, and notify vessel account owners of the issuance. Surplus carryover QP or IBQ pounds are valid for the year in which they are issued (*i.e.*, the year immediately following the base year). Surplus carryover amounts that would place a vessel above the annual QP vessel limits for the immediately following year (specified at paragraph (e)(4) of this section) will not be issued. Amounts issued as surplus QP or IBQ pounds do not change the shorebased trawl allocation in the year in which the carryover was issued. Surplus QP or IBQ pounds may not be carried over for more than one year.

(ii) *Surplus Carryover Limit.* The limit for the surplus carryover is calculated by multiplying 10 percent by the cumulative total QP or IBQ pounds (used and unused) transferred into a vessel account for the base year, less any transfers out of the vessel account, QP resulting from reapportionment of whiting specified at §660.60(d), additional QP issued to the account during the year (as specified at §660.60(c)(3)(ii)), and previous carryover amounts. The percentage used for the carryover surplus limit may be

changed by Council recommendation during the biennial specifications and management measures process or by routine management measures as specified in § 660.60(c).

(iii) *Deficit QP or IBQ pounds.* After the end of the base year, a vessel account may cover the full amount of any deficit (negative balance) of QP or IBQ pounds using QP or IBQ from the following year, base year QP or IBQ pounds, through the post-season transfer period, or a combination, without restriction by annual QP vessel limits. A vessel account acquiring QP or IBQ after the base year to cover a deficit resulting from catch in excess of the base year annual QP vessel limits may still be in violation of annual vessel QP limit provisions specified at paragraph (e)(4)(i) of this section, or other provisions of this section, if the deficit exceeds the deficit carryover limit specified at paragraph (e)(5)(iii)(B) of this section. If an IFQ species is reallocated between the base year and the following year due to changes in management areas or subdivision of a species group as specified at paragraph (c)(3)(vii) of this section, a vessel account will not carryover the deficit for that IFQ species into the following year. A vessel account with a deficit for any IFQ species in the base year may cover that deficit during the post-season transfer period or with QP or IBQ pounds from the following year without violating the provisions of this section if all of the following conditions are met:

(A) The vessel account owner declares out of the Shorebased IFQ Program for the remainder of the year in which the deficit occurred. The vessel account owner must submit a signed, dated, and notarized letter to OLE, declaring out of the Shorebased IFQ Program for the remainder of the year and invoking the carryover provision to cover the deficit. Signed, dated, and notarized letters may be submitted to NMFS, West Coast Region, Office of Law Enforcement, ATTN VMS, Bldg. 1, 7600 Sand Point Way NE, Seattle, WA 98115. If the vessel account owner covers the deficit later within the same calendar year, the vessel may re-enter the Shorebased IFQ Program. If the deficit is documented less than 30 days

before the end of the calendar year, exiting out of the Shorebased IFQ Program for the remainder of the year is not required.

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

(C) Sufficient QP or IBQ pounds are transferred into the vessel account to cure the deficit within 30 days of NMFS' issuance of QP or IBQ pounds to QS accounts in the following year or the date the deficit is documented (whichever is later) but not later than the end of the post-season transfer period; and

(D) The total QP required to cover the vessel's total catch from the base year is not greater than the annual QP vessel limit for the base year.

(iv) *Post-Season QP or IBQ transfers.* A vessel account with a deficit (negative balance) of QP or IBQ pounds after December 31 for any IFQ species may conduct post-season transfers to cure the deficit by obtaining available unused QP or IBQ pounds remaining in other vessel accounts from the base fishing year. Vessel account owners may conduct post-season transfers of QP and IBQ pounds according to transfer procedures specified in paragraph (e)(3)(iii) of this section, and subject to the following conditions:

(A) Post-season transfers may be conducted during a period starting January 1 and ending 14 calendar days after NMFS has completed its determination of the total base year IFQ catch for all vessels for end-of-the-year account reconciliation. NMFS will issue a public notice when end-of-the-year account reconciliation has been completed, on or about March 1 of each year.

(B) QP or IBQ pounds from the base fishing year transferred during the post-season transfer period may not be fished in any way, and may only be transferred for the purpose of covering deficits carried into the immediately



following fishing year from the base fishing year.

(C) After the post-season transfer period, remaining QP and IBQ pounds surplus and deficits from the base fishing year are subject to carryover provisions specified at paragraphs (e)(5)(ii) and (e)(5)(iii) of this section.

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

(7) *Fees.* The Regional Administrator is authorized to charge fees for administrative costs associated with the vessel accounts consistent with the provisions given at § 660.25(f), subpart C.

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

(f) *First receiver site license*—(1) *General.* The first receiver site license authorizes the holder to receive, purchase, or take custody, control, or possession of an IFQ landing at a specific physical site onshore directly from a vessel. Each buyer of groundfish from a vessel making an IFQ landing must have a first receiver site license for each physical location where the IFQ landing is offloaded.

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

(ii) An IFQ first receiver must have a separate first receiver site license for each unique physical location where the IFQ first receiver will receive, purchase or take custody, control, or take possession of an IFQ landing from a vessel.

(iii) An IFQ first receiver may apply for a first receiver site license at any time during the calendar year.

(iv) IFQ first receivers must reapply for a first receiver site license as specified at paragraphs (f)(6) and (7) of this section:

(3) *Application process.* Persons interested in being licensed as an IFQ first receiver for a specific physical location must submit a complete application for a first receiver site license to NMFS, West Coast Region, ATTN: Fisheries Permit Office, Bldg. 1, 7600 Sand Point

Way NE., Seattle, WA 98115. NMFS will only consider complete applications for approval. A complete application includes:

(i) *State license.* The license owner must provide a copy of a valid license issued by the state in which they operate that allows the person to receive fish from a catcher vessel.

(ii) *Application form.* A completed IFQ first receiver application form provided by NMFS, signed and dated by an authorized representative of the first receiver. To be considered complete, the form must also be notarized.

(iii) *A catch monitoring plan.* All IFQ first receivers must prepare and operate under a NMFS-accepted catch monitoring plan for each specific physical location. A proposed catch monitoring plan detailing how the IFQ first receiver will meet each of the performance standards in paragraph (f)(3)(iii)(C) of this section must be included with the application. NMFS will not issue a first receiver site license to a person that does not have a current, NMFS-accepted catch monitoring plan.

(A) *Catch monitoring plan review process.* NMFS will accept a catch monitoring plan if it includes all the required elements specified in paragraph (f)(3)(iii)(C) of this section and conforms with the actual operations and layout at the site. A site inspection is required for new first receiver site licenses. For re-registration of an existing first receiver site license, the site must be inspected at least once every three years or more frequently, as deemed necessary by NMFS, or by a NMFS designated representative. If NMFS does not accept a catch monitoring plan for any reason, a new or revised catch monitoring plan may be required of the first receiver.

(B) *Arranging a site inspection.* After receiving a complete application for a first receiver site license, if a site inspection is required, NMFS will contact the applicant to schedule a site inspection. A complete application for a first receiver site license must include the proposed catch monitoring plan. NMFS may request a representative of the first receiver to be at the site at the time of inspection. If the requested representative of the first receiver is not made available for the inspection,

the site inspection may be postponed until the requested representative of the first receiver is made available.

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

(1) *Catch sorting.* Describe the amount and location of all space used for sorting catch, the number of staff assigned to catch sorting, and the maximum rate that catch will flow through the sorting area.

(2) *Monitoring for complete sorting.* Detail how IFQ first receiver staff will ensure that sorting is complete; what steps will be taken to prevent unsorted catch from entering the factory or other areas beyond the location where catch sorting and weighing can be monitored from the observation area; and what steps will be taken if unsorted catch enters the factory or other areas beyond the location where catch sorting and weighing can be monitored from the observation area.

(3) *Scales used for weighing IFQ landings.* Identify each scale that will be used to weigh IFQ landings by the type and capacity and describe where it is located and what it will be used for. Each scale must be appropriate for its intended use.

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

(5) *Weight monitoring.* Detail how the IFQ first receiver will ensure that all catch is weighed and the process used to meet the catch weighing requirements specified at paragraph (j) of this section. If a catch monitoring plan proposes the use of totes in which IFQ species will be weighed, or a deduction for the weight of ice, the catch monitoring plan must detail how the process will accurately account for the weight of ice and/or totes.

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

the delivery point will be the location where the pump first discharges the catch. If catch is removed from a vessel by brailing, the delivery point normally will be the bin or belt where the brailer discharges the catch.

(7) *Observation area.* Designate and describe the observation area. The observation area is a location where a catch monitor may monitor the flow of fish during a delivery, including: Access to the observation area, the flow of fish, and lighting used during periods of limited visibility. Standards for the observation area are specified at paragraph (i)(4)(ii) of this section.

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

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

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

- (i) The delivery point(s);
- (ii) The observation area;
- (iii) The lockable cabinet;
- (iv) The location of each scale used to weigh catch; and
- (v) Each location where catch is sorted.

(11) *Electronic fish ticket submittal.* Describe how the electronic fish ticket submittal requirements specified at § 660.113(b)(4)(ii) will be met.

(12) *Applicant contact.* Print the name of the first receiver, physical location of the first receiver, name and phone number of the applicant, and the date of the application. The applicant must sign the catch monitoring plan.

(D) *Catch monitoring plan acceptance period and changes.* NMFS will accept a catch monitoring plan if it includes the required elements specified in paragraph (f)(3)(iii)(C) of this section and conforms with the actual operations and layout at the site. For the first receiver site license to remain in effect, the owner or manager must notify NMFS in writing of any and all

changes made in IFQ first receiver operations or layout that do not conform to the catch monitoring plan.

(E) *Changing a NMFS-accepted catch monitoring plan.* An owner and manager may change an accepted catch monitoring plan by submitting a plan addendum to NMFS. NMFS will accept the modified catch monitoring plan if it continues to meet the performance standards specified in paragraph (f)(3)(iii)(C) of this section. Depending on the nature and magnitude of the change requested, NMFS may require an additional catch monitoring plan inspection. A catch monitoring plan addendum must contain:

(1) Name and signature of the person submitting the addendum;

(2) Address, telephone number, fax number and email address (if available) of the person submitting the addendum;

(3) A complete description of the proposed catch monitoring plan change.

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

(4) *Initial administrative determination.* For all complete applications, NMFS will issue an IAD that either approves or disapproves the application. If approved, the IAD will include a first receiver site license. If disapproved, the IAD will provide the reasons for this determination. NMFS will not reissue a first receiver site license until the required cost recovery program fees, as specified at § 660.115, have been paid. The IAD, appeals, and final decision process for the cost recovery program is specified at § 660.115(d)(3)(ii).

(5) *Effective dates.* The first receiver site license is valid from the effective date identified on the license until June 30, or until the state license required by paragraph (f)(2)(i) of this section is no longer effective, whichever occurs first. A first receiver site license may not be valid for more than 365 days.

(6) *Re-registration of FRSL in subsequent years.* Existing first receiver site license holders must reapply annually

by following the application process specified in paragraph (f)(3) of this section. If the existing license holder fails to reapply, the first receiver site license will expire as specified in paragraph (f)(5) of this section. NMFS will not reissue a first receiver site license until all required cost recovery program fees, as specified at § 660.115, associated with that license have been paid. For existing first receiver site license holders to continue to receive IFQ landings without a lapse in the effectiveness of their first receiver site license, the following re-registration deadlines apply:

(i) NMFS will mail a first receiver site license application to existing license holders on or about February 1 each year.

(ii) Applicants who want to have their new license effective for July 1 must submit their complete re-registration application to NMFS by April 15. For those first receiver site license holders who do not submit a complete re-registration application by April 15, NMFS may not be able to issue the new license by July 1 of that calendar year, and will issue the new license as soon as practicable.

(7) *Change in ownership of an IFQ first receiver.* If there are any changes to the owner of a first receiver registered to a first receiver site license during a calendar year, the first receiver site license is void. The new owner of the first receiver must apply to NMFS for a first receiver site license. A first receiver site license may not be registered to any other person.

(8) *Fees.* The Regional Administrator is authorized to charge fees for administrative costs associated with processing the application consistent with the provisions given at § 660.25(f), subpart C.

(9) *Appeals.* If NMFS does not accept the first receiver site license application through an IAD, the applicant may appeal the IAD consistent with the general permit appeals process defined at § 660.25(g), subpart C.

(10) *Cost recovery.* The first receiver site license holder is considered the fish buyer as defined at § 660.111, and must comply with the cost recovery program specified at § 660.115.

(g) *Retention and disposition requirements*—(1) *General*. Shorebased IFQ Program vessels may discard IFQ species/species groups, provided such discards are accounted for and deducted from QP in the vessel account. With the exception of vessels on a declared Pacific whiting IFQ trip and engaged in maximized retention, and vessels fishing under a valid EM Authorization in accordance with § 660.604 of subpart J, prohibited and protected species (except short-tailed albatross as directed by § 660.21(c)(1)(v)) must be discarded at sea; Pacific halibut must be discarded as soon as practicable and the discard mortality must be accounted for and deducted from IBQ pounds in the vessel account. Non-IFQ species and non-groundfish species may be discarded at sea, unless otherwise required by EM Program requirements at § 660.604 of subpart J. The sorting of catch, the weighing and discarding of any IBQ and IFQ species, and the retention of IFQ species must be monitored by the observer or EM system.

(2) *Maximized retention for Pacific whiting IFQ trips*. Vessels on Pacific whiting IFQ trips may engage in maximized retention. Maximized retention allows for the discard minor operational amounts of catch at sea if the observer has accounted for the discard. Vessels engaged in maximized retention must retain prohibited species until landing. Protected species may be retained until landing except as provided under paragraph (g)(3) of this section. Pacific halibut must be accounted for and deducted from IBQ pounds in the vessel account.

(3) *Disposition of prohibited species and protected species in maximized retention landings*—(i) *Prohibited species handling and disposition*. To ensure compliance with fishery regulations at 50 CFR part 300, subparts E and F, and part 600, subpart H; with the Pacific Salmon Fishery Management Plan; and with the Pacific Halibut Catch Share Plan; the handling and disposition of all prohibited species in maximized retention landings are the responsibility of the first receiver and must be consistent with the following requirements:

(A) Any prohibited species landed at first receivers must not be transferred, processed, or mixed with another land-

ing until the catch monitor has: recorded the number and weight of salmon by species; inspected all prohibited species for tags or marks; and, collected biological data, specimens, and genetic samples.

(B) No part of any prohibited species may be retained for personal use by a vessel owner or crew member, or by a first receiver or processing crew member. No part of any prohibited species may be allowed to reach commercial markets.

(C) Prohibited species suitable for human consumption at landing must be handled and stored to preserve the quality. Priority in disposition must be given to the donation to surplus food collection and distribution system operated and established to assist in bringing donated food to nonprofit charitable organizations and individuals for the purpose of reducing hunger and meeting nutritional needs.

(D) The first receiver must report all prohibited species landings on the electronic fish ticket and is responsible for maintaining records verifying the disposition of prohibited species. Records on catch disposition may include, but are not limited to: Receipts from charitable organizations that include the organization's name and amount of catch donated; cargo manifests setting forth the origin, weight, and destination of all prohibited species; or disposal receipts identifying the recipient organization and amount disposed. Any such records must be maintained for a period not less than three years after the date of disposal and such records must be provided to OLE upon request.

(ii) *Protected Species handling and disposition*. All protected species must be abandoned to NMFS or the US Fish and Wildlife Service or disposed of consistent with paragraphs (g)(3)(ii)(A) and (B) of this section. No part of any protected species may be retained for personal use by a vessel owner or crew member, or by a first receiver or processing crew member. No part of any protected species may be allowed to reach commercial markets.

(A) *Eulachon and green sturgeon*. Must be sorted and reported by species on electronic fish tickets and state landing receipts and may not be reported in unspecified categories. Whole body

specimens of green sturgeon must be retained, frozen, stored separately by delivery, and labeled with the vessel name, electronic fish ticket number, and date of landing. Arrangements for transferring the specimens must be made by contacting NMFS Southwest Fisheries Science Center at 831-420-3903 within 72 hours after the completion of the offload.

(B) *Seabirds, marine mammals, and sea turtles.* Short-tailed albatross must be reported as soon as possible and directions for surrendering must be followed as directed by § 660.21(c)(1)(v). Marine mammals and sea turtles must be reported to NMFS as soon as possible (206-526-6550) and directions for surrendering or disposal must be followed. Whole body specimens must be labeled with the vessel name, electronic fish ticket number, and date of landing. Whole body specimens must be kept frozen or on ice until arrangements for surrendering or disposing are completed. Unless directed otherwise, after reporting is completed, seabirds, marine mammals, and sea turtles may be disposed by incinerating, rendering, composting, or returning the carcasses to sea.

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

(A) 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 this paragraph (h) 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 any overfished species listed under a rebuilding plan at § 660.40 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).

(4) Is exempt from the requirement to carry an observer if the vessel has a valid EM Authorization and is fishing with EM under § 660.604 of subpart J.

(5) Is exempt from the requirement to maintain observer coverage as specified in this paragraph (h) while gear testing as defined in § 660.11. The vessel operator must submit a valid declaration for gear/equipment testing, as required by § 660.13(d)(4)(iv)(A), and must notify the Observer Program of the gear testing activity at least 48 hours prior to departing on a trip to test gear/equipment.

(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.* 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. An observer must not be deployed for more than 22 calendar days in a calendar month, except for when a waiver has been issued by the Observer Program. The Observer Program may issue waivers to the observer provider to allow observers to work more than 22 calendar days per month in the following circumstances:

(A) When it's anticipated that one trip will last over 20 days.

(B) When a replacement observer is not available due to injury or illness.

(C) When the Observer Program has predetermined that the extended deployment is not likely to result in data delays or otherwise impact the overall duties and obligations of 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) *Vessel responsibilities.* As specified at § 660.140(h)(1)(ii), 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. An operator and/or crew of a vessel required to carry an observer must provide:

(i) *Accommodations and food.* (A) Accommodations and food for trips less than 24 hours must be equivalent to those provided for the crew.

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

(ii) *Safe conditions.* (A) Maintain safe conditions on the vessel for the protection of observers including adherence to all U.S. Coast Guard and other applicable rules, regulations, statutes, and guidelines pertaining to safe operation of the vessel, including, but not limited to rules of the road, vessel stability, emergency drills, emergency equipment, vessel maintenance, vessel general condition and port bar crossings. An observer may refuse boarding or reboarding a vessel and may request a vessel to return to port if operated in an unsafe manner or if unsafe conditions are identified.

(B) Have on board a valid Commercial Fishing Vessel Safety Decal that certifies compliance with regulations found in 33 CFR chapter I and 46 CFR chapter I, a certificate of compliance issued pursuant to 46 CFR 28.710 or a valid certificate of inspection pursuant to 46 U.S.C. 3311. 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.* [Reserved]

(iv) *Vessel position.* Allow observer(s) access to the vessel's navigation equip-

ment and personnel, on request, to determine the vessel's position.

(v) *Access.* Allow observer(s) free and unobstructed access to the vessel's bridge, trawl or working deck, holding bins, sorting areas, cargo hold, and any other space that may be used to hold, process, weigh, or store fish at any time.

(vi) *Prior notification.* Notify observer(s) at least 15 minutes before fish are brought on board to allow sampling the catch.

(vii) *Records.* Allow observer(s) to inspect and copy any state or Federal logbook maintained voluntarily or as required by regulation.

(viii) [Reserved]

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

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

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

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

(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

## Fishery Conservation and Management

## § 660.140

observer provided by an observer provider.

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

(5) *Observer provider responsibilities.*

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

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

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

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

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

(ii) *Hiring an observer candidate—*(A) The observer provider must provide the candidate a copy of NMFS-provided pamphlets, information and other literature describing observer duties, for example, the West Coast Groundfish Observer Program's sampling manual. Observer job information is available from the Observer Program Office's web site at <http://www.nwfsc.noaa.gov/research/divisions/fram/observer/index.cfm>.

(B) *Observer contracts.* The observer provider must have a written contract or a written contract addendum signed by the observer and observer provider prior to the observer's deployment with the following clauses:

(1) That 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; and

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

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

(A) Submit to NMFS all data, logbooks and reports and biological samples as required under the observer program policy deadlines.

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

(C) Return all sampling and safety gear to the Observer Program Office at the termination of their contract.

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

(iv) *Observers provided to vessel.* (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

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

(v) *Respond to industry requests for observers.* An observer provider must provide an observer for deployment pursuant to the terms of the contractual relationship with the vessel to fulfill vessel requirements for observer coverage under paragraphs (h)(5)(xi)(D) of this section. An alternate observer must be supplied in each case where injury or illness prevents 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 four hours prior to the vessel's estimated embarking time, unless the vessel provides less than four hour notice to the provider, in which case the provider is to notify NMFS as soon as practical after the situation arises.

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

(vii) *Provide observer deployment logistics.* (A) An observer provider must ensure each of its observers under contract:

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

(2) 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.

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

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

(ix) *Verify vessel's 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.

(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) *Observer training, briefing, and debriefing registration materials.* This information must be submitted to the Observer Program Office at least 10 business days prior to the beginning of a scheduled West Coast groundfish observer certification training or briefing session. Submissions received less than 10 business days prior to a West Coast groundfish observer certification training or briefing session will be approved by the Observer Program on a case-by-case basis.

(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. The physician's statement expires 12 months after the physical exam occurred and a new physical exam must be performed, and accompanying statement submitted, prior to any deployment occurring after the expiration of the statement.

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

(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 any person outside the employ of the observer provider company to whom the observer was contracted except with written permission of the observer.

(xiv) *Limitations on conflict of interest.* Observer providers:

(A) Must not have a direct financial interest, other than the provision of observer, catch monitor or other biological sampling services, in any federal or state managed fisheries, including, but not limited to:

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

(2) Any business involved with selling supplies or services to any vessel or shoreside processors participating in a fishery managed pursuant to an FMP in the waters off the coasts of Alaska, California, Oregon, and Washington, or

## Fishery Conservation and Management

## § 660.140

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

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

(C) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value except for compensation for providing observer services from any person who conducts fishing or fish processing activities that are regulated by NMFS, 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.

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

(6) *Observer certification and responsibilities—(i) Applicability.* Observer cer-

tification 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.

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

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

(1) Are employed by an 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.

(B) [Reserved]

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

(v) *Issuance of an observer certification.* An observer certification may be issued upon determination by the observer certification official that the candidate has successfully met all requirements

for certification as specified at paragraph (h)(6)(iii) of this section. The following endorsements 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 a Red Cross (or equivalent) basic cardiopulmonary resuscitation/first aid certification.

(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 45 days every 12 months. On a case-by case basis, the Observer Program may consider waiving the 45 day requirement.

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

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

(1) Any ownership, mortgage holder, or other secured interest in a vessel, shore-based or floating stationary

processor facility involved in the catching, taking, harvesting or processing of fish,

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

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

(B) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from any person who either conducts activities that are regulated by NMFS in the Pacific coast or North Pacific regions or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

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

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

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

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

(A) Perform their 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) *Catch monitor requirements for IFQ first receivers*—(1) *Catch monitor coverage*

*requirements.* A catch monitor is required be present at each IFQ first receiver whenever an IFQ landing is received, unless the first receiver has been granted a written waiver from the catch monitor requirements by NMFS.

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

(3) *Catch monitor safety.* (i) Each IFQ first receiver must adhere to all applicable rules, regulations, or statutes pertaining to safe operation and maintenance of a processing and/or receiving facility.

(ii) Unless alternative arrangements are approved by the Catch Monitor Program Office, 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 a calendar day. Following a monitoring shift of more than 10 hours, each catch monitor must be provided with a minimum 8 hours break before they may resume monitoring.

(4) *Catch monitor access.* (i) Each IFQ first receiver must allow catch monitors free and unobstructed access to the catch throughout the sorting process and the weighing process.

(ii) The IFQ first receiver must ensure that there is an observation area available to the catch monitor that meets the following standards:

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

(B) *Monitoring the flow of fish.* The catch monitor must have an unobstructed view or otherwise be able to monitor the entire flow of fish between the delivery point and a location where all sorting has takes place and each species has been weighed.

(C) *Adequate lighting.* Adequate lighting must be provided during periods of limited visibility.

(iii) Each IFQ first receiver must allow catch monitors free and unobstructed access to any documentation

required by regulation including fish tickets, scale printouts and scale test results.

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

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

(i) Orienting new catch monitors to the facility;

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

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

(7) *Reasonable assistance.* Each IFQ first receiver must provide reasonable assistance to the catch monitors to enable each catch monitor to carry out his or her duties. Reasonable assistance includes, but is not limited to: informing the monitor when bycatch species will be weighed, and providing a secure place to store equipment and gear.

(j) *Catch weighing requirements—(1) Catch monitoring plan.* All IFQ first receivers must operate under a NMFS-accepted catch monitoring plan for each specific physical location where IFQ landings will be received, purchased, or taken custody, control, or possession of.

(2) *Sorting and weighing IFQ landings—(i) Approved scales.* The IFQ first receiver must ensure that all IFQ species received from a vessel making an IFQ landing are weighed on a scale(s) that meets the requirements specified at § 660.15(c).

(ii) *Printed record.* All scales identified in the catch monitoring plan accepted by NMFS during the first receiver site license application process, must produce a printed record 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:

## Fishery Conservation and Management

## § 660.140

(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).

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

(vi) *Catch sorting.* All fish delivered to the plant must be sorted and weighed by species as specified at §660.130(d).

(vii) *Complete sorting.* Sorting and weighing must be completed prior to catch leaving the area that can be monitored from the catch monitor's observation area.

(viii) *Pacific whiting IFQ trips.* Immediately following weighing of the total catch and prior to processing or transport away from the point of landing, the catch must be sorted to the species groups specified at §660.130(d) and all catch other than the target species (groundfish and non groundfish species) must be accurately weighed and the weight of non-target species deducted from the total catch weight to derive the weight of a single predominant species. Catch from a Pacific whiting IFQ trip may be sorted after weighing and the weight of a single predominant species determined by deducting the weight of all other species from the total weight of the landing, provided that:

(A) The unsorted catch is weighed on a bulk weighing scale in compliance with equipment requirements at §660.15(c);

(B) All catch (groundfish and non-groundfish species) in the landing other than the single predominant species is reweighed on a scale in compliance with equipment requirements at §660.15(c) and the reweighed catch is deducted from the total weight of the landing;

(C) The catch is sorted to the species groups specified at §660.130(d) prior to processing or transport away from the point of landing; and

(D) Prohibited species are sorted by species, counted, and weighed.

(ix) For all other IFQ landings the following weighing standards apply:

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

(B) An in-line conveyor or automatic hopper scale may be used to weigh the single predominant species after catch has been sorted. Other species must be weighed in a manner that facilitates tracking of the weights of those species.

(C) IFQ species or species group may be weighed in totes on a platform scale capable of printing a label or tag and recording the label or tag information to memory for printing a report as specified at §660.15. The label or tag must remain affixed to the tote until the tote is emptied. The label or tag must show the following information:

- (1) The species or species group;
- (2) The weight of the fish in the tote;
- (3) The date the label or tag was printed; and
- (4) The vessel name.

(D) *Totes and ice.* If a catch monitoring plan proposes the use of totes in which fish will be weighed, or a deduction for the weight of ice, the deduction must be accurately accounted for. No deduction may be made for the weight of water or slime. This standard may be met by:

- (1) Taring the empty or pre-iced tote on the scale prior to filling with fish;
- (2) Labeling each tote with an individual tare weight. This weight must be accurate within 500 grams (1 pound if scale is denominated in pounds) for any given tote and the average error for all totes may not exceed 200 grams (8 ounces for scales denominated in pounds);

(3) An alternate approach accepted by NMFS. NMFS will only accept approaches that do not involve the estimation of the weight of ice or the weight of totes and allow NMFS staff or an authorized officer to verify that

§ 660.140

50 CFR Ch. VI (10–1–23 Edition)

the deduction or tare weight is accurate.

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

(3) *IFQ first receiver responsibilities relative to catch weighing and monitoring of catch weighing.* The IFQ first receiver must:

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

(ii) *Catch monitors, NMFS staff, and authorized officers.* (A) Have a catch monitor on site the entire time an IFQ landing is being offloaded, sorted, or weighed.

(B) Notify the catch monitor of the offloading schedule.

(C) Provide catch monitors, NMFS staff, or an authorized officer with unobstructed access to any areas where IFQ species are or may be sorted or weighed at any time IFQ species are being landed or processed.

(D) Ensure that catch monitors, NMFS staff, or an authorized officer are able to simultaneously observe the weighing of catch on the scale and read the scale display at any time.

(E) Ensure that printouts of the scale weight of each delivery or offload are made available to catch monitors, NMFS staff, or an authorized officer at the time printouts are generated.

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

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

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

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

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

not be combined with any other designation).

(iv) The vessel must comply with prohibitions applicable to the limited entry fixed gear fishery as specified at § 660.212, gear restrictions applicable to limited entry fixed gear as specified in §§ 660.219 and 660.230(b), and management measures specified in § 660.230(d), including restrictions on the fixed gear allowed onboard, its usage, and applicable fixed gear groundfish conservation area restrictions, except that the vessel will not be subject to limited entry fixed gear trip limits when fishing in the Shorebased IFQ Program. Vessels using bottom longline and snap gears as defined at § 660.11 are subject to the requirements of the Seabird Avoidance Program described in § 660.21.

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

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

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

(2) [Reserved]

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

(i) Community stability;

(ii) Processor stability;

(iii) Conservation;

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

(v) Facilitating new entrants.

(2) *AMP QP pass through.* The 10 percent of non-whiting QS will be reserved for the AMP, but the resulting AMP QP will be issued to all QS permit owners in proportion to their non-whiting QS until an alternative use of AMP QP is implemented.

[75 FR 60897, Oct. 1, 2010]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 660.140, see the List of CFR Sections Affected, which appears in the



## Fishery Conservation and Management

## § 660.150

Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

### § 660.150 Mothership (MS) Co-op Program.

(a) *General.* The MS Coop Program is a general term to describe the limited access program that applies to eligible harvesters and processors in the mothership sector of the Pacific whiting at-sea trawl fishery. Eligible harvesters and processors, including coop and non-coop fishery participants, must meet the requirements set forth in this section of the Pacific Coast groundfish regulations. Each year a vessel registered to an MS/CV-endorsed permit may fish in either the coop or non-coop portion of the MS Coop Program, but not both. In addition to the requirements of this section, the MS Coop Program is subject to the following groundfish regulations of subparts C and D of this part:

(1) Pacific whiting seasons § 660.131(b), subpart D.

(2) Area restrictions specified for midwater trawl gear used to harvest Pacific whiting fishery specified at § 660.131(c), Subpart D for GCAs, RCAs, Salmon Conservation Zones, BRAs, and EFHCAs.

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

(4) Regulations set out in the following sections of subpart D: § 660.111 Trawl fishery definitions, § 660.112 Trawl fishery prohibitions, § 660.113 Trawl fishery recordkeeping and reporting, § 660.115 Trawl fishery cost recovery program, § 660.120 Trawl fishery crossover provisions, § 660.130 Trawl fishery management measures, and § 660.131 Pacific whiting fishery management measures.

(5) The MS Coop Program may be restricted or closed as a result of projected overages within the MS Coop

Program, the C/P Coop Program, or the Shorebased IFQ Program. As determined necessary by the Regional Administrator, area restrictions, season closures, or other measures will be used to prevent the trawl sectors in aggregate or the individual trawl sector (Shorebased IFQ, MS Coop, or C/P Coop) from exceeding an ACL, ACT, or formal allocation specified in the PCGFMP or regulation at § 660.55, subpart C, or §§ 660.140, 660.150, or 660.160, subpart D.

(b) *Participation requirements and responsibilities—(1) Mothership vessels—(i) Mothership vessel participation requirements.* A vessel is eligible to receive and process catch as a mothership in the MS Coop Program if:

(A) The vessel is registered to an MS permit; and

(B) The vessel is not used to fish as a catcher vessel in the mothership sector of the Pacific whiting fishery in the same calendar year.

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

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

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

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

(1) Ensure that all catch is weighed in its round form on a NMFS-approved scale that meets the requirements described in section § 660.15(b);

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

(D) *Cost recovery program.* Collect and remit to NMFS cost recovery program fees as specified at § 660.115.

(2) *Mothership catcher vessels—(i) Mothership catcher vessel participation requirements—(A)* A vessel is eligible to