

§ 660.160

to any person except the owner or operator of the observed vessel, an authorized officer, or NMFS.

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

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

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

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

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

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

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

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

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

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

(D) *Appeals*. A certified observer who receives an IAD that suspends or revokes his or her observer certification

50 CFR Ch. VI (10–1–23 Edition)

may appeal the determination within 30 calendar days after the date on the IAD to the Office of Administrative Appeals pursuant to § 660.19.

(k) *MS coop failure*—(1) The Regional Administrator will determine that a permitted MS coop is considered to have failed if:

(i) The coop members dissolve the coop, or

(ii) The coop membership falls below 20 percent of the MS/CV-endorsed limited entry permits, or

(iii) The coop agreement is no longer valid.

(2) If a permitted MS coop dissolves, the designated coop manager must notify NMFS SFD in writing of the dissolution of the coop.

(3) In the event of a NMFS determined coop failure, or reported failure, the designated coop manager will be notified in writing about NMFS' determination. Upon notification of a coop failure, fishing under the MS coop permit will no longer be allowed. Should a coop failure determination be made during the Pacific whiting primary season for the mothership sector, unused allocation associated with the catch history will not be available for harvest by the coop that failed, by any former members of the coop that failed, or any other MS coop for the remainder of that calendar year.

[75 FR 60897, Oct. 1, 2010, as amended at 75 FR 78406, Dec. 15, 2010; 76 FR 27547, May 11, 2011; 76 FR 53838, Aug. 30, 2011; 76 FR 74744, Dec. 1, 2011; 77 FR 45512, Aug. 1, 2012; 77 FR 55157, Sept. 7, 2012; 78 FR 18896, Mar. 28, 2013; 78 FR 68772, Nov. 15, 2013; 78 FR 75282, Dec. 11, 2013; 80 FR 22290, Apr. 21, 2015; 81 FR 27011, May 5, 2016; 83 FR 762, Jan. 8, 2018; 83 FR 64004, Dec. 12, 2018; 84 FR 31160, June 28, 2019; 84 FR 68810, Dec. 17, 2019; 85 FR 37029, June 19, 2020; 85 FR 35601, June 11, 2020; 86 FR 26443, May 14, 2021; 86 FR 58813, Oct. 25, 2021; 87 FR 54909, Sept. 8, 2022; 87 FR 77027, Dec. 16, 2022; 87 FR 77006, Dec. 16, 2022]

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

(a) *General*. The C/P Coop Program is a limited access program that applies to vessels in the C/P sector of the Pacific whiting at-sea trawl fishery and is a single voluntary coop. Eligible harvesters and processors must meet the requirements set forth in this section

Fishery Conservation and Management

§ 660.160

of the Pacific Coast groundfish regulations. In addition to the requirements of this section, the C/P Coop Program is subject to the following groundfish regulations:

(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 C/P 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) *C/P vessels*—(i) *C/P vessel participation requirements*. A vessel is eligible to fish as a catcher/processor in the C/P Coop Program if:

(A) The vessel is registered to a C/P-endorsed limited entry trawl permit.

(B) The vessel is not used to harvest fish as a catcher vessel in the mothership coop program in the same calendar year.

(ii) *Catcher/processor vessel responsibilities*. The owner and operator of a catcher/processor vessel must:

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

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

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

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

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

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

(2) *C/P coops*—(i) *C/P coop participation requirements*. For a C/P coop to participate in the catcher/processor sector of the Pacific whiting fishery, the C/P coop must:

(A) Be issued a C/P coop permit;

(B) Be composed of all C/P-endorsed limited entry permits and their owners;

(C) Be formed voluntarily;

(D) Be a legally recognized entity that represents its members; and

(E) Designate an individual as a coop manager.

(ii) *C/P coop responsibilities*. A C/P coop is responsible for:

(A) Applying for and being registered to a C/P coop permit;

(B) Organizing and coordinating harvest activities of vessels that fish for the coop;

(C) Allocating catch for use by specific coop members;

§ 660.160

50 CFR Ch. VI (10–1–23 Edition)

(D) Monitoring harvest activities and enforcing the catch limits of coop members;

(E) Submitting an annual report.

(F) Having a designated coop manager. The designated coop manager must:

(1) Serve as the contact person with NMFS and the Council;

(2) Be responsible for the annual distribution of catch and bycatch allocations among coop members;

(3) Prepare and submit an annual report on behalf of the coop; and

(4) Be authorized to receive or respond to any legal process in which the coop is involved; and

(5) Notify NMFS if the coop dissolves.

(iii) *C/P coop compliance and joint/several liability.* A C/P coop must comply with the provisions of this section. The C/P coop, member limited entry permit owners, and owners and operators of vessels registered to member limited entry permits, are jointly and severally responsible for compliance with the provisions of this section. Pursuant to 15 CFR part 904, each C/P coop, member permit owner, and owner and operator of a vessel registered to a coop member permit may be charged jointly and severally for violations of the provisions of this section. For purposes of enforcement, a C/P coop is a legal entity that can be subject to NOAA enforcement action for violations of the provisions of this section.

(c) *C/P Coop Program species and allocations*—(1) *C/P Coop Program species.* All species other than Pacific whiting are managed with set-asides for the MS and C/P Coop Programs.

(i) Species with formal allocations to the C/P Coop Program: Pacific whiting.

(ii) Species with set-asides for the MS and C/P Programs, as described in the biennial specifications.

(2) *C/P Coop Program annual allocations.* The C/P Coop Program allocation of Pacific whiting is equal to the catcher/processor sector allocation. Only a single coop may be formed in the catcher/processor sector with the one permitted coop receiving the catcher/processor sector allocation.

(i) In years where the Pacific whiting harvest specification is known by the start of the catcher/processor sector primary whiting season specified at

§ 660.131(b)(2)(iii)(A), allocation for Pacific whiting will be made by the start of the season.

(ii) In years where the Pacific whiting harvest specification is not known by the start of the catcher/processor sector primary whiting season specified at § 660.131(b)(2)(iii)(A), NMFS will issue Pacific whiting allocations in two parts. Before the start of the primary whiting season, NMFS will allocate Pacific whiting based on the C/P Coop Program allocation percent multiplied by the lower end of the range of potential harvest specifications for Pacific whiting for that year. After the final Pacific whiting harvest specifications are established, NMFS will allocate any additional amounts of Pacific whiting to the C/P Coop Program.

(3) *Non-whiting groundfish species*—(i) At-sea sector set-asides of non-whiting groundfish species will be managed on an annual basis unless there is a risk of a harvest specification being exceeded, unforeseen impact on other fisheries, or conservation concerns, in which case inseason action may be taken. Set asides may be adjusted through the biennial specifications and management measures process as necessary.

(ii) Groundfish species not addressed in paragraph (c)(3)(i) of this section, will be managed on an annual basis unless there is a risk of a harvest specification being exceeded, unforeseen impact on other fisheries, or conservation concerns, in which case inseason action may be taken.

(4) *Halibut set-asides.* Annually a specified amount of the Pacific halibut will be held in reserve as a shared set-aside for bycatch in the at-sea Pacific whiting fisheries and the shorebased trawl sector south of 40°10' N lat.

(5) [Reserved]

(6) *Reaching the catcher/processor sector allocation.* When the catcher/processor sector allocation of Pacific whiting is reached or is projected to be reached, further taking and retaining, receiving, or at-sea processing by a catcher/processor is prohibited. No additional unprocessed groundfish may be brought on board after at-sea processing is prohibited, but a catcher/processor may continue to process catch that was on board before at-sea processing was prohibited. The catcher/

processor sector will close when the allocation of any one species is reached or projected to be reached.

(7) *Announcements.* The Regional Administrator will announce in the FEDERAL REGISTER when the catcher/processor sector allocation of Pacific whiting is reached, or is projected to be reached, and specify the appropriate action. In order to prevent exceeding an allocation and to avoid underutilizing the resource, prohibitions against further taking and retaining, receiving, or at-sea processing of Pacific whiting may be made effective immediately by actual notice to fishers and processors, by email, internet, phone, fax, letter, press release, and/or USCG Notice to Mariners (monitor channel 16 VHF), followed by publication in the FEDERAL REGISTER, in which instance public comment will be sought for a reasonable period of time thereafter.

(d) *C/P coop permit and agreement—(1) Eligibility and registration—(i) Eligibility.* To be an eligible coop entity a group of C/P-endorsed permit owners (coop members) must be a recognized entity under the laws of the United States or the laws of a State and that represents all of the coop members.

(ii) *Annual registration and deadline.* Each year, the co-op entity must submit a complete application to NMFS for a C/P co-op permit. The application must be submitted to NMFS by between January 17 and March 17 of the year in which it intends to participate. NMFS will not consider any applications received after March 17. A C/P co-op permit expires on December 31 of the year in which it was issued.

(iii) *Application for a C/P coop permit.* The designated coop manager, on behalf of the coop entity, must submit a complete application form and include each of the items listed in paragraph (d)(1)(iii)(A) of this section. Only complete applications will be considered for issuance of a C/P coop permit. An application will not be considered complete if any required application fees and annual coop reports have not been received by NMFS. NMFS may request additional supplemental documentation as necessary to make a determination of whether to approve or disapprove the application. Application

forms and instruction are available on the NMFS NWR Web site (<http://www.nwr.noaa.gov>) or by request from NMFS. The designated coop manager must sign the application acknowledging the responsibilities of a designated coop manager defined in paragraph (b)(2) of this section.

(A) *Coop agreement.* Signed copies of the coop agreement must be submitted to NMFS before the coop is authorized to engage in fishing activities. A coop agreement must include all of the information listed in this paragraph to be considered a complete coop agreement. NMFS will only review complete coop agreements. A coop agreement will not be accepted unless it includes all of the required information; the descriptive items listed in this paragraph appear to meet the stated purpose; and information submitted is correct and accurate.

(1) *Coop agreement contents.* The coop agreement must be signed by the coop members (C/P-endorsed permit owners) and include the following information:

(i) A list of all vessels registered to C/P-endorsed permits that the member permit owners intend to use for fishing under the C/P coop permit.

(ii) All C/P-endorsed limited entry member permits identified by permit number.

(iii) A description of the coop's plan to adequately monitor and account for the catch of Pacific whiting and non-whiting groundfish, and to monitor and account for the catch of prohibited species.

(iv) A clause stating that if a permit is registered to a new permit owner during the effective period of the coop agreement, any new owners of that member permit would be coop members and are required to comply with membership restrictions in the coop agreement.

(v) A description of the coop's enforcement and penalty provisions adequate to maintain catch of Pacific whiting and non-whiting groundfish within the allocations.

(vi) A description of measures to reduce catch of overfished species.

(vii) A clause describing how the annual report will be produced to document the coop's catch, bycatch data,

and any other significant activities undertaken by the coop during the year, and the submission deadlines for that report.

(viii) Identification of the designated coop manager.

(2) [Reserved]

(B) *Acceptance of a coop agreement*—(1) If NMFS does not accept the coop agreement, the coop permit application will be returned to the applicant with a letter stating the reasons the coop agreement was not accepted by NMFS.

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

(3) An accepted coop agreement that was submitted with the C/P coop permit application and for which a C/P coop permit was issued will remain in place through the end of the calendar year. The designated coop manager must resubmit a complete coop agreement to NMFS consistent with the coop agreement contents described in this paragraph if there is a material change to the coop agreement.

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

(iv) *Effective date of C/P coop permit*. A C/P coop permit will be effective on the date approved by NMFS and will allow fishing from the start of the C/P sector primary whiting season until the end of the calendar year or until one or more of the following events occur, whichever comes first:

(A) NMFS closes the C/P sector fishing season for the year or the designated coop manager notifies NMFS

that the coop has completed fishing for the calendar year,

(B) The C/P coop has reached its Pacific whiting allocation,

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

(D) NMFS has determined that a coop failure occurred.

(2) *Initial administrative determination*. For all complete applications, NMFS will issue an IAD that either approves or disapproves the application. If approved, the IAD will include a C/P coop permit. If disapproved, the IAD will provide the reasons for this determination. The IAD for a C/P coop permit follows the same requirement as specified for limited entry permits at § 660.25(g)(4)(ii), if the applicant does not appeal the IAD within the 30 calendar days, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(3) *Appeals*. An appeal to a C/P coop permit action follows the same process as the general permit appeals process defined at § 660.25(g), subpart C.

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

(e) *C/P-endorsed permit*—(1) *General*. Any vessel participating in the C/P sector of the non-tribal primary Pacific whiting fishery must be registered to a valid limited entry permit with a C/P endorsement—subject to the limited entry permit provisions given at § 660.25(b).

(i) *Non-severable*. A C/P endorsement is not severable from the limited entry trawl permit, and therefore, the endorsement may not be registered to another permit owner or to another vessel separately from the limited entry trawl permit.

(ii) *Restriction on C/P vessel operating as a catcher vessel in the mothership sector*. A vessel registered to a C/P-endorsed permit cannot operate as a

catcher vessel delivering unprocessed Pacific whiting to a mothership processor during the same calendar year it participates in the C/P sector.

(iii) *Restriction on C/P vessel operating as mothership.* A vessel registered to a C/P-endorsed permit may operate as a mothership during the same calendar year it participates in the C/P sector but not on the same trip.

(iv) *Trawl identification of ownership interest form.* Any person that is applying for or renewing a C/P-endorsed permit shall document those persons that have an ownership interest in the permit greater than or equal to 2 percent. This ownership interest must be documented with the SFD via the Trawl Identification of Ownership Interest Form. SFD will not issue a C/P-endorsed permit unless the Trawl Identification of Ownership Interest Form has been completed.

(2) *Renewal, change in permit ownership, vessel registration, or combination—*
(i) *Renewal.* A C/P-endorsed permit must be renewed annually consistent with the limited entry permit regulations given at § 660.25(b)(4).

(ii) *Change of permit ownership.* A C/P-endorsed permit is subject to the limited entry permit change in permit ownership regulations given at § 660.25(b)(4), subpart C.

(iii) *Change of vessel registration.* A C/P-endorsed permit is subject to the limited entry permit change of vessel registration regulations given at § 660.25(b)(4), subpart C.

(iv) *Combination.* If two or more permits are combined, the resulting permit is one permit with an increased size endorsement. A C/P-endorsed permit that is combined with another limited entry trawl-endorsed permit that does not have a C/P endorsement will result in a single trawl limited entry permit with a C/P endorsement with a larger size endorsement. Any request to combine permits is subject to the provisions provided at § 660.25(b), including the combination formula for resulting size endorsements.

(3) *Appeals.* An appeal to a C/P-endorsed permit action follows the same process as the general permit appeals process defined at § 660.25(g), subpart C.

(4) *Fees.* The Regional Administrator is authorized to charge fees for the ad-

ministrative costs associated with review and issuance of a C/P endorsement consistent with the provisions at § 660.25(f), subpart C.

(5) *Cost recovery.* The owner of a vessel registered to a C/P-endorsed limited entry trawl permit, the operator of a vessel registered to a C/P-endorsed limited entry trawl permit, and the owner of the C/P-endorsed limited entry trawl permit registered to that vessel, are considered both the fish buyer and the fish seller as defined at § 660.111, and must comply with the cost recovery program specified at § 660.115.

(f) *Retention requirements.* [Reserved]

(g) *Observer requirements—*(1) *Observer coverage requirements—*(i) *Coverage.* The following observer coverage pertains to certified observers obtained from an observer provider permitted by NMFS. Any vessel registered to a C/P-endorsed limited entry trawl permit that is 125 ft (38.1 m) LOA or longer must carry two certified observers, and any vessel registered to a C/P-endorsed limited entry trawl permit that is shorter than 125 ft (38.1 m) LOA must carry one certified observer, each day that the vessel is used to take, retain, receive, land, process, or transport groundfish.

(ii) *Observer workload.* The time required for the observer to complete sampling duties must not exceed 12 consecutive hours in each 24-hour period.

(iii) *Refusal to board.* Any boarding refusal on the part of the observer or vessel must be reported to the Observer Program and OLE by the observer provider. The observer must be available for an interview with the Observer Program or OLE if necessary.

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

(v) *Certificates of insurance.* The observer provider must submit copies of "certificates of insurance" that name the Northwest Fisheries Science Center

§ 660.160

50 CFR Ch. VI (10–1–23 Edition)

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.

(2) *Vessel responsibilities.* An operator and/or crew of a vessel required to carry an observer must provide:

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

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

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

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

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

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

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

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

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

(iv) *Vessel position.* Allow observer(s) access to, the vessel’s navigation equipment and personnel, on request, to determine the vessel’s position.

(v) *Access.* Allow observer(s) free and unobstructed access to the vessel’s bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(vi) *Prior notification.* Notify observer(s) at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer.

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

(viii) *Assistance.* Provide all other reasonable assistance to enable observer(s) to carry out their duties, including, but not limited to:

(A) Measuring decks, codends, and holding bins.

(B) Providing the observer(s) with a safe work area.

(C) Collecting samples of catch.

(D) Collecting and carrying baskets of fish.

(E) Allowing the observer(s) to collect biological data and samples.

(F) Providing adequate space for storage of biological samples.

(ix) *Sampling station and operational requirements for C/P vessels.* This paragraph contains the requirements for observer sampling stations. To allow the observer to carry out the required duties, the vessel owner must provide an observer sampling station that meets the following requirements:

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

(B) *Location.* The observer sampling station must be located within 4 m of the location from which the observer samples unsorted catch.

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

(D) *Minimum work space.* The observer must have a working area of at least 4.5 square meters, including the observer's sampling table, for sampling and storage of fish to be sampled. The observer must be able to stand upright and have a work area at least 0.9 m deep in the area in front of the table and scale.

(E) *Table.* The observer sampling station must include a table at least 0.6 m deep, 1.2 m wide and 0.9 m high and no more than 1.1 m high. The entire surface area of the table must be available for use by the observer. Any area for the observer sampling scale is in addition to the minimum space requirements for the table. The observer's sampling table must be secured to the floor or wall.

(F) *Diverter board.* The conveyor belt conveying unsorted catch must have a removable board ("diverter board") to allow all fish to be diverted from the belt directly into the observer's sampling baskets. The diverter board must be located downstream of the scale used to weigh total catch. At least 1 m of accessible belt space, located downstream of the scale used to weight total catch, must be available for the observer's use when sampling.

(G) *Other requirements.* The sampling station must be in a well-drained area that includes floor grating (or other material that prevents slipping), lighting adequate for day or night sampling, and a hose that supplies fresh or sea water to the observer.

(H) *Observer sampling scale.* The observer sample station must include a NMFS-approved platform scale (pursuant to requirements at §679.28(d)(5)) with a capacity of at least 50 kg located within 1 m of the observer's sampling table. The scale must be mounted so that the weighing surface is no more than 0.7 m above the floor.

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

(A) Ensure that transfers of observers at sea via small boat under its own power are carried out during daylight hours, under safe conditions, and with the agreement of observers involved.

(B) Notify observers at least 3 hours before observers are transferred, such that the observers can finish any sampling work, collect personal belongings, equipment, and scientific samples.

(C) Provide a safe pilot ladder and conduct the transfer to ensure the safety of observers during transfers.

(D) Provide an experienced crew member to assist observers in the small boat in which any transfer is made.

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

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

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

(ii) Vessels are required to procure observer services directly from the Observer Program and an observer provider when NMFS has determined and given notification that the vessel must

carry NMFS staff and/or individuals authorized by NMFS, in addition to an observer provided by an observer provider.

(4) *Observer provider responsibilities—*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) *Observers provided to vessel.* Observers provided to C/P vessels:

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

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

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

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

the Observer Program at least four hours prior to the vessel's estimated embarking time.

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

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

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

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

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

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

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

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

(2) [Reserved]

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

(viii) *Observer deployment limitations.* An observer provider must not exceed

observer deployment limitations specified in this paragraph unless alternative arrangements are approved by the Observer Program Office. An observer provider must not:

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

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

(C) Include more than four vessel assignments in a single deployment, or

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

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

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

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

(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 and briefing.* Observer training and briefing registration materials must be submitted to the Observer Program Office at least 5 business days prior to the beginning of a scheduled observer at-sea hake training or briefing session. Registration materials consist of the following: The date of requested training or briefing with a list of observers including each observer's full name (*i.e.*, first, middle and last names).

(B) *Observer debriefing registration.* The observer provider must contact the Observer Program Office within 5 business days after the completion of an observer's deployment to schedule a date, time and location for debriefing. Observer debriefing registration information must be provided at the time of debriefing scheduling and must include the observer's name, cruise number, vessel name(s) and code(s), and requested debriefing date.

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

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

(2) Observers.

(D) *Change in observer provider management and contact information.* Ob-

server providers must submit notification of any other change to provider contact information, including but not limited to, changes in contact name, phone number, email address, and address.

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

(1) Any information regarding possible observer harassment;

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

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

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

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

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

(xiii) *Maintain confidentiality of information.* An observer provider must ensure that all records on individual observer performance received from NMFS under the routine use provision of the Privacy Act 5 U.S.C. 552a or other applicable law remain confidential and are not further released to 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.* An observer provider must meet limitations on conflict of interest. Observer providers:

(A) Must not have a direct financial interest, other than the provision of

observer, catch monitor or other biological sampling services, in any federal or state managed fisheries, including but not limited to:

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

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

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

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

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

(A) Observer use of alcohol;

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

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

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

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

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

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

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

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

(1) Are employed by an observer provider company holding a valid North Pacific Groundfish Observer Program permit at the time of the issuance of the certification to the observer;

(2) Have provided, through their observer provider:

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

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

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

other training requirements established by the Observer Program.

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

(B) [Reserved]

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

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

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

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

(C) *North Pacific Groundfish Observer Program deployment endorsements.* Each observer who has completed an initial deployment after certification or an-

nual briefing must receive a deployment endorsement to their certification prior to any subsequent deployments for the remainder of that year. An observer may obtain a deployment endorsement by successfully completing all pre-cruise briefing requirements. The type of briefing the observer must attend and successfully complete will be specified in writing by the Observer Program during the observer's most recent debriefing.

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

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

(2) Receive an evaluation by NMFS for his or her most recent deployment that indicated that the observer's performance met Observer Program expectations for that deployment;

(3) Successfully complete any required briefings as prescribed by the Observer Program; and

(4) Comply with all of the other requirements of this section.

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

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

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

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

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

Fishery Conservation and Management

§ 660.160

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ix) *Suspension and decertification—*

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

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

(1) When it is alleged that the observer has committed any acts or omissions of any of the following: Failed to satisfactorily perform the duties of observers as specified in writing by the Observer Program; or failed to abide by the standards of conduct for observers (including conflicts of interest);

(2) Upon conviction of a crime or upon entry of a civil judgment for: Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties as specified in writing by the Observer Program; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

commission of any other offense indicating a lack of integrity or honesty that seriously and directly affects the fitness of observers.

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

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

(h) *C/P coop failure—(1) Conditions for determination of coop failure.* The Regional Administrator will determine that a permitted C/P coop has failed if any one of the following occurs:

(i) Any current C/P-endorsed limited entry trawl permit is not identified as a C/P coop member in the coop agreement submitted to NMFS during the C/P coop permit application process;

(ii) Any current C/P-endorsed permit withdraws from the C/P coop agreement;

(iii) The coop members voluntarily dissolve the coop; or

(iv) The coop agreement is no longer valid.

(2) *Notification of coop failure.* If the permitted C/P coop dissolves, the designated coop manager must notify NMFS SFD in writing of the dissolution of the coop to allow the Regional Administrator to make a determination of coop failure. The Regional Administrator may also make an independent determination of a coop failure based on factual information collected by or provided to NMFS. NMFS will notify the designated coop manager in writing in the event the Regional Administrator determines the coop has failed.

(3) *Coop permit no longer in effect.* Upon determination of a coop failure,

the C/P coop permit will no longer be in effect.

(4) *Conversion to IFQ Fishery.* The C/P sector will convert to an IFQ-based fishery beginning the following calendar year after a determination of a coop failure, or as soon as practicable thereafter. NMFS will develop additional regulations, as necessary to implement an IFQ-based fishery for the C/P sector. Each C/P-endorsed permit will receive an equal amount of QS from the total C/P sector allocation. That QS will not be transferable separate from the C/P-endorsed permit until a determination is made to allow such transfers, necessary regulations are implemented, and public notice is provided. Any use of QP or IBQ pounds associated with C/P endorsed permits is prohibited until the regulations for a C/P sector IFQ system are implemented.

(5) *Accumulation limits.* C/P Sector accumulation limits will take effect in the event that the C/P coop fails and converts to an IFQ-based fishery. If an IFQ fishery is implemented, any individual or entity may own or control a maximum of five C/P endorsed permits and QS allocations associated with those permits, as described in paragraph (e)(5)(iv) of this section. C/P endorsed permit accumulation limits will only take effect after determination of a coop failure is made and the following administrative process occurs:

(i) *Divestiture Period.* Upon determination of a coop failure, a divestiture period will occur starting with the date that co-op failure has been determined and running through the date on which an IFQ program is implemented for the C/P sector or another date specified in the IFQ program implementing regulations. During the divestiture period, an individual or entity may not acquire ownership or control over a total of more than five C/P-endorsed permits. Any entity that already owns or controls more than five C/P-endorsed permits may not acquire additional permits. During the divestiture period any entity who owns or controls C/P-endorsed permits may sell or trade any permits it owns. C/P-endorsed permits may be voluntarily abandoned to NMFS using the procedures provided under paragraph (h)(5)(iii) of this section.

(ii) *Divestiture and redistribution process.* After conversion to an IFQ fishery and completion of the divestiture period, any person owning or controlling C/P-endorsed permits must be in compliance with accumulation limits, even if that ownership is not reflected in the ownership records available to NMFS as specified at § 660.140(e)(1)(iv). Permit owners found to exceed the five permit accumulation limit for C/P-endorsed permits after the divestiture period are in violation of the accumulation limits and required to completely divest of ownership or control of C/P-endorsed permits that exceed the accumulation limit. C/P-endorsed permits may be voluntarily abandoned to NMFS using the procedures provided under paragraph (h)(5)(iii) of this section. If NMFS finds that any entity owns or controls more than five C/P-endorsed permits, NMFS will make an Initial Administrative Determination (IAD) that the entity must divest of control or ownership of permits that exceed the accumulation limit within 30 days or NMFS will revoke the excess permits in accordance with § 660.25(h)(2)(ii). The permit owner will have the opportunity to appeal the IAD through the National Appeals Office under the provisions established at 15 CFR part 906. All QS associated with revoked permits will be redistributed to all other C/P-endorsed permit owners in proportion to their QS holdings, based on current ownership records, on or about January 1 of the calendar year following the year in which the permits are revoked. This redistribution process will not allow any entity to receive more than 50 percent of the total QS allocations for the C/P sector.

(iii) *Abandonment of C/P-endorsed permits.* C/P-endorsed permit owners that own or control more than the five permit accumulation limit may voluntarily abandon C/P-endorsed permits if they notify NMFS in writing during the divestiture period specified at paragraph (h)(5)(i) of this section or within 30 days of conversion to an IFQ fishery. The written abandonment request must include the C/P endorsed permit number and the associated QS allocation percentage that will be abandoned. Either the C/P-endorsed permit owner or an authorized representative of the

C/P-endorsed permit owner must sign the request. C/P-endorsed permit owners choosing to utilize the abandonment option will permanently relinquish to NMFS any right to the abandoned C/P-endorsed permit, and the QS associated with that permit will be redistributed as described under paragraph (h)(5)(ii) of this section. No compensation will be due for any abandoned permit, or associated QS or QP.

(iv) *Review of C/P-permit ownership interest and accumulation limits.* NMFS may request additional information from C/P-permit owners as necessary to verify compliance with accumulation limits in the event of C/P coop failure and conversion to IFQ fishery. If NMFS discovers through review of the Trawl Identification of Ownership Interest Form that a person is not in compliance with accumulation limits, the person will be subject to divestiture provisions specified in paragraph (h)(5)(ii) of this section.

(v) *Definition of Ownership or Control.* For the purpose of determining ownership or control a person or entity has over a C/P endorsed permit, all of the following criteria apply:

(A) The person or entity has the right to direct, or does direct, in whole or in part, the business of the entity to which the permits are registered, with the exception of those activities allowed under paragraphs (h)(5)(v)(C) and (G) of this section.

(B) The person or entity 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 C/P permits are registered, with the exception of those activities allowed under paragraphs (h)(5)(v)(C) and (G) of this section.

(C) With the exception of banks and other financial institutions that rely on permits as collateral for loans as described under paragraphs (h)(5)(v)(G) of this section, the person or entity has the right to direct, or does direct, and/or the right to prevent or delay, or does prevent or delay, the transfer of the C/P permit associated QS, or the resulting QP.

(D) The person or entity, 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 permits are registered, with the exception of those activities allowed under paragraphs (h)(5)(v)(C) and (G) of this section.

(E) The person or entity has the right to restrict, or does restrict, any activity related to the C/P permit, associated QS or the resulting QP, including, but not limited to, use of permits, or associated QS, or disposition of fish harvested and processed under the resulting QP, with the exception of those activities allowed under paragraphs (h)(5)(v)(C) and (G) of this section.

(F) The person or entity has the right to control, or does control, the management of, or to be a controlling factor in, the entity to which the C/P permit, associated QS, or the resulting QP, are registered, with the exception of those activities allowed under paragraphs (h)(5)(v)(C) and (G) of this section.

(G) With the exception of banks and other financial institutions that rely on permits as collateral for loans, the person or entity has the right to cause or prevent, or does cause or prevent, the sale, lease or other disposition of C/P permits, associated QS, or the resulting QP.

(I) To qualify for this exception for banks and other financial institutions that rely on permits as collateral for loans, a bank or other financial institution must be regularly or primarily engaged in the business of lending, and must not be engaged in business with, or be 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 (h)(5)(v)(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 percent or more ownership interest in the lender through submission of the Trawl Identification of Ownership Interest Form (see paragraph (e)(1)(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 or entity has the ability through any means whatsoever to control or have a controlling influence over the entity to which a permit associated QS is registered, with the exception of those activities allowed under paragraphs (h)(5)(v)(C) and (G) of this section.

[75 FR 60897, Oct. 1, 2010, as amended at 75 FR 78419, Dec. 15, 2010; 76 FR 27547, May 11, 2011; 76 FR 53838, Aug. 30, 2011; 76 FR 74746, Dec. 1, 2011; 77 FR 55158, Sept. 7, 2012; 78 FR 75282, Dec. 11, 2013; 80 FR 22297, Apr. 21, 2015; 81 FR 27011, May 5, 2016; 83 FR 763, Jan. 8, 2018; 83 FR 64004, Dec. 12, 2018; 84 FR 68812, Dec. 17, 2019; 85 FR 35601, June 11, 2020; 85 FR 37029, June 19, 2020; 86 FR 26443, May 14, 2021; 86 FR 58813, Oct. 25, 2021; 87 FR 54910, Sept. 8, 2022; 87 FR 77027, Dec. 16, 2022; 87 FR 77006, Dec. 16, 2022]