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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

**[Docket No. 151116999-6759-01]**

**RIN 0648-BF52**

**Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Electronic Monitoring Program**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes approval of, and regulations to implement, measures in a regulatory amendment to the Pacific Coast Groundfish Fishery Management Plan (FMP). The regulatory amendment was developed by the Pacific Fishery Management Council (Council) to implement an electronic monitoring (EM) program for two sectors of the limited entry trawl fishery. The regulatory amendment proposes to allow catcher vessels in the Pacific whiting fishery and fixed gear vessels in the shorebased Individual Fishing Quota (IFQ) fishery to use EM in place of observers to meet the requirements of the Trawl Rationalization Program for 100-percent at-sea observer coverage. This action is intended to increase operational flexibility and reduce monitoring costs for vessels in the trawl fishery by providing an alternative to observers. Data from the EM program would be used to debit discards of IFQ species from IFQs and mothership cooperative allocations. The regulatory amendment would establish an application process for interested vessel owners, performance standards for EM systems, requirements for

vessel operators, and a permitting process and standards for EM service providers. The regulatory amendment would also establish requirements for processors (first receivers) for receiving and disposing of prohibited and protected species from EM trips.

**DATES:** Comments must be received by [*insert date 30 days from date of publication in the FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2016-0115, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2016-0115*, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to Barry Thom, Acting Regional Administrator, West Coast Region, NMFS, 7600 Sandpoint Way NE, Seattle, WA 98115-0070; Attn: Melissa Hooper.
- **Fax:** 206-526-4461; Attn: Melissa Hooper.

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

Copies of the regulatory amendment and draft analysis prepared by the Council are available from Chuck Tracy, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384. The Regulatory Impact Review (RIR), draft environmental assessment (EA), and Initial Regulatory Flexibility Analysis (IRFA) prepared for this action are accessible via the Internet at [http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish\\_catch\\_shares/electronic\\_monitoring.html](http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish_catch_shares/electronic_monitoring.html). The IRFA assessing the impacts of the proposed measures on small entities and describing steps taken to minimize any significant economic impact on such entities is summarized in the Classification section of this proposed rule. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule should be submitted to the Acting Regional Administrator at the address above and to the Office of Management and Budget (OMB) by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to (202) 395-7285.

**FOR FURTHER INFORMATION CONTACT:** Melissa Hooper, Fishery Policy Analyst, phone: 206-526-4357, fax: 206-526-4461.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Pacific Coast Groundfish FMP specifies management measures for over 90 different species of rockfish, flatfish, roundfish, sharks, skates, and other species, in Federal waters off the West Coast states. Target species in the commercial fishery include Pacific hake (whiting), sablefish, dover sole, and rockfish, which are harvested by vessels using primarily midwater and bottom trawl gear, but also fish pots and hook and line. The trawl fishery is managed under a catch share program called the Trawl Rationalization Program, which was implemented through

Amendment 20 to the FMP in January 2011. The Program consists of an IFQ program for the shorebased trawl fleet (including whiting and non-whiting sectors), and cooperatives for the at-sea mothership and catcher/processor trawl fleets (whiting only). Concurrently, Amendment 21 established long-term allocations of certain groundfish species for the limited entry trawl sectors, which are used to determine what proportion of each species individual cooperatives and vessels can harvest. Annual catch limits are set on a two-year cycle through the biennial harvest specifications process. The 2017-2019 harvest specifications are under development by the Council and NMFS and intended to take effect January 1, 2017.

As part of the catch share program, Amendment 20 implemented requirements for 100 percent monitoring at-sea and dockside in order to ensure accountability for all landings and discards of allocated species. Catcher processors and motherships are required to carry two observers at all times, depending on the length of the vessel, and catcher vessels are required to carry one observer, including while in port until all fish are offloaded. In addition, first receivers, which are processors that are licensed to receive IFQ landings, are required to have catch monitors to monitor 100-percent of IFQ offloads. Vessel owners and first receivers are responsible for obtaining and funding catch share observers and catch monitors as a necessary condition of their participation in the program. However, NMFS subsidized the cost of observers for the first 5 years of the program to assist the industry in transitioning to the catch share program. The amount of the subsidy declined each year and ended in September 2015.

Faced with the costs of 100-percent monitoring, the industry raised concerns about their ability to support these costs and the need for an alternative to meet the monitoring requirements of the program. EM uses cameras and associated sensors to passively record and monitor fishing activities. The video can be reviewed by an analyst onshore at a later time to collect catch and

effort information. EM has the potential to reduce monitoring costs because it does not require deploying a person on the vessel and the logistical and travel expenses that generates. EM was tested by the whiting fishery through Exempted Fishing Permits (EFPs) from 2004 to 2011 and by the Pacific States Marine Fisheries Commission (PSMFC) in the whiting fishery and with other gear types in 2012-2014. EM has been successfully deployed in British Columbia, Canada, to monitor fishing operations, and more recently in the U.S. Atlantic highly migratory species (HMS) fishery.

In response to industry's concerns, the Council initiated development of a regulatory amendment in November 2012 to implement an EM program for the shorebased and mothership sectors that would allow catcher vessels to use EM in place of observers to meet the at-sea monitoring requirements of the catch share program. Prior to Amendment 20, the Council had been developing an EM program for the Pacific whiting fishery in Amendment 10, but had set the action aside to prioritize work on the catch share program. The Council incorporated the Amendment 10 program in Amendment 20, making the whiting fishery a maximized retention fishery (all catch, with few exceptions, must be landed), and allowing for EM to be used in place of observers. However, the requirements of the EM program were not sufficiently developed to be implemented with the rest of the catch share program at that time. This regulatory amendment would specify the detailed requirements necessary to implement this provision of Amendment 20 for two components of the trawl fishery—catcher vessels using midwater trawl gear to target whiting in the mothership and shorebased sectors and trawl-permitted vessels using fixed gear to target other species in the shorebased sector. The regulatory amendment originally contemplated measures for all gear types, but the Council chose to postpone measures for bottom

trawl and non-whiting midwater trawl vessels to a subsequent action to allow more time for development and analysis.

The Council had completed development of these measures in 2014, but postponed final action and instead approved four EFPs to test the proposed measures in the fishery. These EFPs would be used to provide data to analyze the effectiveness of the measures and to develop detailed requirements and procedures that would be necessary to implement the program. NMFS approved and issued the EFPs in May, 2015. A total of 34 vessels using a range of gear types participated in 2015, and 47 signed up in 2016. The Council reviewed the results of the 2015 EFPs at their meetings during the fall 2015-spring 2016 and took final action on the measures for whiting and fixed gear vessels at their April, 2016 meeting. Implementation of this action is targeted for November, 2016, with the intent for vessels to begin fishing with EM under the regulations in January, 2017.

### **Proposed Measures**

The measures proposed by the regulatory amendment are described below. To implement these measures NMFS is proposing to revise the trawl fishery regulations in §§ 660.13, 660.19, 660.130, 660.140, and 660.150, to allow for vessel owners to use EM in place of an observer and establishes new regulations in §§ 660.600-660.604 governing its use. The proposed regulations were deemed by the Council to be consistent with the regulatory amendment and necessary to implement such provisions pursuant to section 303(c) of the Magnuson-Stevens Act through an August 16, 2016, letter from the Council Chairman to the NMFS Regional Administrator.

#### *1. Overview of the EM Program*

The regulatory amendment proposes to implement an EM program for Pacific whiting catcher vessels in the shorebased and mothership sectors and fixed gear vessels in the shorebased sector of the groundfish fishery. Vessel owners would be able to apply to NMFS to receive an exemption from the 100-percent observer coverage requirement, provided that they use an EM system and follow the catch handling, reporting, and other requirements of the EM program. Vessel owners authorized to use EM would be required to obtain an EM system from a NMFS-permitted service provider, as well as services to install and maintain the EM system, and to process, store, and report EM data to NMFS. Vessel operators would be required to submit a logbook reporting their discards of IFQ species. NMFS would use the logbook data to debit discards of IFQ species from IFQs and cooperative allocations, and use the EM data to audit the logbook data. EM data would also be used to monitor compliance with the requirements of the catch share program. NMFS's incremental costs to administer the EM program would be recoverable through Trawl Program cost recovery fees. The requirements of the program for vessel owners, operators, first receivers, and service providers, are described in more detail in the following sections.

As proposed in the Council's regulatory amendment, vessel owners would be responsible for the costs of procuring EM equipment and services from NMFS-permitted EM service providers. However, NMFS is still developing the standards and protocols that it would use to oversee service providers processing the EM data to ensure adequate data quality. Therefore, NMFS intends to conduct the data processing itself during 2017-2019 through PSMFC, contingent on available appropriations. Provided NMFS has sufficient funding, during 2017-2019 vessel operators would be responsible for procuring EM equipment and maintenance services from EM service providers. The requirement for vessel owners to obtain and fund data

processing, storage, and reporting services would take effect January 1, 2020. This phased approach is reflected in the proposed regulations. In addition, because NMFS's ability to fund the video review is contingent upon appropriations which are not guaranteed, NMFS retains the ability in the regulations to implement the requirement for vessel owners to obtain data services earlier. In such a case, NMFS would provide at least six months prior notice to service providers and vessel owners before implementing the requirements.

In the proposed EM program, vessel operators would submit logbook reports which would be used initially to debit discards from IFQ vessel accounts and cooperative allocations. The video would later be reviewed by an analyst to determine an estimate of discards to use to audit the logbook reports. The Council also considered using EM discard estimates as the primary source for debiting discards in the whiting fishery, because it was thought that logbooks would be an unnecessary burden to vessels operators in the whiting fishery where estimating discards from the video is relatively quick. In addition, whiting industry representatives supported reviewing 100-percent of the video, and logbooks are primarily employed to allow a subsample of video to be reviewed in an audit model. However, through the 2015 EFPs, the Council and NMFS realized the value of the logbooks for communication between the vessel operator and the video reviewer about system malfunctions, for data quality assurance, and for aligning discard estimates. Therefore, the Council proposed a logbook audit model for both fixed gear and whiting vessels.

The Council proposes that initially 100 percent of the video be reviewed to audit the logbooks, but that NMFS may modify this percentage over time based on performance and in consultation with the Council. The Council also considered requiring 100 percent of the video to always be reviewed, because it would provide more certainty for discard estimates than



extrapolating total discards from a subsample. However, reviewing 100 percent of the video is generally more costly than reviewing a subsample and erodes the potential savings that EM can provide relative to observers. For this reason, other EM programs implemented to date, such as the U.S. Atlantic HMS, British Columbia groundfish, and Australian programs, review a percentage of the video to audit vessel reports. Because an objective of the regulatory amendment was to reduce monitoring costs for the fleet, the Council also selected an audit approach for the west coast EM program. However, the Council also tied the level of review to program performance to ensure that data quality for catch accounting is maintained.

Discards estimated by the EM program, from logbook or EM data, would be debited from IFQs and cooperative allocations. The Council considered other alternatives for whiting trips that would have deducted small amounts of discards from ACLs, sector-wide, or cooperative allocations, preseason using estimates developed from historical observer data. It was believed that allowing video reviewers to ignore many small events during the video review might expedite the video review and reduce data processing costs. However, through the 2015 EFPs, the Council and NMFS learned that whiting hauls can be reviewed very quickly and that eliminating these discard events from review would not result in much cost savings. Therefore, the Council proposed debiting all discards from IFQs and cooperative allocations to provide the strongest incentive to minimize bycatch and discards.

Under the proposed EM program, Pacific halibut discards would be debited using discard mortality rates rather than viability assessments. Currently, observers on IFQ trips conduct viability assessments of all or a subsample of discarded halibut, which are a bycatch species in the groundfish fishery. Observers assign a score to the discarded halibut based on the results of the viability assessment which are used as an indication of whether the halibut is likely to survive

after release. Based on the score given, a portion of the halibut's weight, rather than the total weight, may be deducted from a vessel's halibut Individual Bycatch Quota (IBQ). Observers will no longer be present to conduct viability assessments on EM trips, so NMFS would instead use discard mortality rates developed by the International Pacific Halibut Commission (IPHC) to deduct halibut IBQ from vessel accounts (18 percent for pots, 16 percent for longline, and 100 percent for midwater trawl). The West Coast Groundfish Observer Program (WCGOP) currently uses these rates to estimate mortality of halibut caught as bycatch in other west coast fisheries that have less than 100-percent observer coverage. PSMFC is currently conducting a study on bottom trawl trips to determine if viability can be estimated from information that can be collected from EM and logbooks. NMFS may revise the discard mortality rates at a future time to incorporate the results of this project or other new information, in consultation with the IPHC, to continue to use the best scientific information available to estimate halibut mortality.

Although vessel owners would be exempt from the requirement to obtain a catch share observer while using EM, vessel owners would still be required to carry an observer if requested by NMFS. Prior to the catch share program, NMFS deployed WCGOP observers on a percentage of trips in the trawl fishery to collect information for estimating mortality and bycatch, and to collect biological samples and other information. When the catch share program was implemented with a requirement for 100-percent industry-funded observer coverage, NMFS suspended its WCGOP coverage and reallocated these resources to monitor other fisheries; the catch share observers were able to serve dual purposes, collecting the information necessary to monitor compliance with the catch share program as well as other information such as biological samples and bycatch data. With the implementation of EM, NMFS is reinstating the WCGOP coverage in the trawl fishery for EM trips. The EM program is intended to monitor discards of

IFQ species for catch accounting, as well as compliance with the regulations. The EM program is not intended to collect all the other information that an observer collects, such as biological samples and bycatch information. Therefore, NMFS would use WCGOP coverage to continue to collect such information from the trawl fishery for use in groundfish mortality and bycatch estimates, stock assessments, and the standardized bycatch reporting methodology (SBRM). At this time, NMFS intends to deploy WCGOP observers on fixed gear trips, but not whiting trips because bycatch rates in the whiting fishery are low and nearly all catch is delivered and sampled by port samplers and mothership observers. However, NMFS would retain the authority in the regulations to deploy observers on whiting trips in a future fishing year with prior notice, if it was determined to be necessary.

## *2. Measures for Which NMFS is Specifically Requesting Comments*

### Catch Retention Requirements

Under the proposed EM program, whiting vessels would continue to fish under the maximized retention requirements implemented in Amendment 20. However, NMFS is proposing to clarify the existing definition of “maximized retention” for the purposes of the EM program to make clear what types of discards are allowed (see proposed 50 CFR 660.604(p)(1)). The following discards would be permitted on whiting trips as “minor operational discards”: Mutilated fish, large animals (longer than 6 feet (1.8 meters) in length), fish spilled from the codend during transfer to the mothership, fish picked from the gear or washed from the deck during cleaning, and fish vented from an overfull codend. Discards of invertebrates, trash, and debris, and discard events outside the control of the vessel operator would also be allowed. Minor operational discards would not include discards as a result from taking more catch than is necessary to fill the hold (a.k.a. “topping off”), which would continue to be prohibited. Minor

operational discards would also not include discards of fish from a tow that was not delivered. This occurs when there is not enough catch worth delivering to a mothership, or not of the desired species composition, sometimes called “test tows” or “water tows.” These discards are currently allowed if first sampled by an observer, but in an EM program, an observer would no longer be onboard to sample the catch before discarding. In addition, as no catch from the haul would be delivered to either a mothership or a plant, there would be no species composition to extrapolate to the discarded weight. Because these tows can sometimes include overfished or endangered species, these discards will be prohibited under the EM program. All discards, regardless of the source, would be required to be reported in a discard logbook and included in mortality estimates or debited from allocations (for IFQ species).

This revised definition was not included in the version of the regulations that the Council deemed, because the need for clarification was not clear to NMFS until after the April Council meeting. Therefore, NMFS is proposing to revise the definitions here using its authority under section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), which allows the Secretary of Commerce to implement regulations necessary to ensure that fishery management plans or amendments are carried out consistent with the Magnuson-Stevens Act. NMFS is specifically requesting comment on this proposed definition.

NMFS is also requesting comment on catch retention rules for fixed gear vessels. The Council’s regulatory amendment proposed “optimized retention” for fixed gear vessels, in which vessels would be able to discard any species that could be differentiated on camera. The measure provided for the list of allowable discard species to be revised as technology and methods improve through the “routine process” under the FMP (see § 660.60(c)). At the time of

the Council's final action, NMFS only had data from the 2015 EFPs in which fixed gear vessels tested maximized retention, retaining all catch until landing. NMFS was proposing to allow fixed gear vessels to test optimized retention in 2016, but the results were not yet available. As a result, the proposed regulations reflect the more conservative, and restrictive, maximized retention rules that were based on 2015 EFP results and that were deemed by the Council (see proposed § 660.604(p)(2)). Under the maximized retention option, fixed gear vessels would be required to retain IFQ species salmon, and non-IFQ rockfish, flatfish, and roundfish.

However, NMFS is also considering the optimized retention option and seeks public comment on both options. Under the optimized retention option, fixed gear vessels may discard all fish, except salmon. NMFS will select a final option, based on public comment and the results of the 2016 EFPs, in the final rule, if the proposed measures are approved. Under either option, fixed gear vessels would be required to retain salmon in order to ensure complete accounting for the incidental take statement (ITS), although fixed gear vessels rarely catch salmon.

#### Switching Between Observers and EM

The Council proposed a limit on the number of times a vessel may switch between using observers and using EM in the same year. Observer providers and the WCGOP expressed concerns during the development of the regulatory amendment that some vessels may try to maximize their flexibility by using an observer on some trips and EM on others. It may be advantageous for a captain to use an observer where they have higher bycatch of a species they would like to discard, and EM on other trips with lower bycatch. Observer providers and WCGOP try to match the number of trained observers and their distribution across ports to the needs of the fleet. Frequent switching would disrupt deployment planning for observers and

potentially result in observers not being available when needed in a particular port. Although it is in a vessel owner's interest to plan ahead with their provider in order to ensure an observer is available to meet their needs, this does not always occur. The Council considered alternatives for limiting switching in order to minimize disruption.

During the Council's consideration of final action for fixed gear, NMFS proposed that vessel owners submit a tentative fishing plan each year that would describe their intentions to use EM or observers for the upcoming fishing year. The WCGOP and observer providers could then use this information for planning purposes. The fishing plan would not be binding on vessel owners, maintaining their operational flexibility, but would provide the information needed for planning observer demand. The Council supported this idea and, therefore, recommended no limit on switching for fixed gear vessels. However, the Council did not make this change to the whiting alternatives and, as a result, the proposed regulations include a limit on switching for whiting vessels (see proposed § 660.604(m)). Whiting industry members did not anticipate switching between observers and EM and so did not oppose this measure at the April meeting.

NMFS believes the proposed limit on switching for whiting may be ineffective at preventing disruptions to observer planning, because it would still allow for last-minute switching. NMFS believes requiring whiting vessel owners to submit a tentative fishing plan as for fixed gear vessels would provide the information NMFS needs and with more notice. NMFS believes not revising this alternative for whiting was an oversight by the Council and is concerned there is not a clear rationale for why this limit should be implemented for whiting, but not fixed gear vessels. Therefore, NMFS is specifically requesting comments on having a limit on switching for the whiting fishery and, if there is a limit, whether twice a year is an appropriate limit (with additional exceptions for EM system malfunctions).

## Video Data Retention

As part of the data services provided to vessel owners by EM service providers beginning in 2020, EM service providers would be required to maintain records and EM data for a minimum of three years (see proposed § 660.603(m)(6)). Vessel owners would be responsible for the costs of this data storage, along with the other services rendered by the EM provider, as a condition of their participation in the program. This measure was discussed at the November 2015 and April 2016 Council meetings. NMFS initially recommended a five year retention period, based on the five year statute of limitations for violations of the Magnuson-Stevens Act, to provide NMFS and law enforcement personnel sufficient time to review discard data reported by vessels and service providers, detect compliance issues, and to determine if any of the video should be retained for additional time and uses. Some industry members are concerned about the costs of storing such a large amount of video data, as well as the potential for enforcement personnel or other entities to access it for other purposes. They would prefer the video data be destroyed after one year, and only the reports resulting from the video review be retained. As a compromise, NMFS proposed and the Council supported a three year retention period in the draft regulations. However, the Council also recommended that NMFS review this requirement before 2020 to determine if it can be reduced. NMFS is specifically requesting comment on whether a one, three, or five year, retention period is appropriate for video data.

### *3. Vessel Owner Responsibilities*

Vessel owners interested in using EM would be required to obtain authorization from NMFS. There would be a two-step application process, starting with an initial application that NMFS would use to assess a vessel owner's eligibility (see proposed § 660.604(e)). After reviewing the application, NMFS would notify the vessel owner of their eligibility to use EM

and to submit a final application. The final application would include a form signed by a representative of the EM service provider certifying that the EM system was installed according to the performance standards in the regulations (see proposed §§ 660.604(e)(3)(i) and 660.604(j)). The final application would also include a tentative fishing plan (see proposed § 660.604(e)(3)(ii)), which would be used by NMFS to plan WCGOP sampling and observer deployments, and a vessel monitoring plan (VMP), which would document the configuration of equipment and catch handling protocols on that particular vessel (see § proposed 660.604(e)(3)(iii)). NMFS would notify the vessel owner of its final decision after reviewing the final application and, if approved, issue the vessel an EM authorization. If an initial or final application is denied, a vessel owner would be able to appeal NMFS's decision following the permits appeals process at § 660.25(g). The EM authorization would be effective until a change in vessel ownership, until NMFS notifies the owner that they are no longer eligible for it, or if the vessel owner fails to renew it. The EM authorization would be automatically renewed provided a vessel owner submits a renewal form verifying their vessel monitoring plan and providing an updated fishing plan. If a renewal form is not submitted, the authorization would expire on December 31 of that year.

NMFS is proposing that vessel owners that participated in the EM EFPs only be required to complete a renewal form, because NMFS already has vessel monitoring plans and a performance history for these vessels, making a complete application process unnecessary. If approved, NMFS would mail renewal forms to EFP vessel owners upon publication of the final rule. New vessel owners interested in using EM in 2017 would be required to submit an application after publication of the final rule. Draft application materials may be viewed on the West Coast Region's website:



[http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish\\_catch\\_shares/electronic\\_monitoring.html](http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish_catch_shares/electronic_monitoring.html).

NMFS would develop and maintain EM Program Guidelines, which would document best practices and other information that NMFS would use to evaluate vessel monitoring plans submitted by vessel owners (see proposed § 660.600(b)). New applicants for an EM authorization this fall may view draft EM Program Guidelines on the West Coast Region's website:

[http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish\\_catch\\_shares/electronic\\_monitoring.html](http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish_catch_shares/electronic_monitoring.html). The draft guidelines provide guidance and a template for developing individual vessel monitoring plans.

Vessel owners would be able to make changes to the vessel monitoring plan at any time by submitting an amendment to NMFS (see proposed § 660.604(f)). The vessel monitoring plan is intended to be a living document and would be modified over time to reflect changes to the vessel's equipment and operations, provided that NMFS has accepted the amendments in writing.

#### *4. Vessel Operator Responsibilities*

An operator of a vessel with EM would be required to attend a mandatory training on EM requirements prior to beginning fishing with EM (see proposed § 660.604(b)(5)). NMFS may waive this requirement on a case-by-case basis, such as for those captains that successfully participated in the EM EFP. Vessel operators would also be required to maintain the EM system in good working order, including ensuring the EM system is powered and functioning throughout the trip, keeping cameras clean and unobstructed, and ensuring the system is not tampered with (see proposed § 660.604(l)(1)). The vessel operator would be required to declare their intent to

use EM to the Office of Law Enforcement (OLE) via the existing declaration process at § 660.13(d)(5) (also see proposed § 660.604(m)). The vessel operator would also be required to notify WCGOP 48-hours before each EM trip for purposes of planning observer coverage (see proposed § 660.604(n)). If selected to carry an observer, the vessel operator would not be able to depart on the trip without the observer, and would be required to accommodate the observer on that trip. The vessel operator would also be required to conduct a system functionality test before each trip to ensure the EM system is working properly before departing (see proposed § 660.604(1)(2)). If the EM system malfunctions, a vessel operator may be prevented from fishing or required to return to port until the EM system is repaired, depending on the nature of the malfunction (see proposed § 660.604(1)(3)). An EM vessel would not be allowed to fish with an EM system that is not able to record fishing activity, unless an observer is onboard. A vessel operator would always be allowed to obtain an observer at their own expense to continue fishing while the EM system is repaired. The vessel operator would also be responsible for ensuring the crew follow the catch handling instructions in the VMP (see proposed § 660.604(r)), for completing a logbook for each trip and submitting logbooks and hard drives to PSMFC according to the deadlines in the regulations (see proposed § 660.604(s)), and maintaining records for a minimum of three years (see proposed § 660.604(t)).

##### *5. First Receiver Responsibilities*

First receivers would be required to sort and dispose of any prohibited or protected species retained by EM vessels (see proposed § 660.604(u)). First receivers already have such disposition requirements for landings from Pacific whiting maximized retention trips. This action would expand the existing whiting sorting and disposition requirements to landings from all EM trips, including fixed gear trips. The first receiver would be required to do the following:

- Record all prohibited species on the electronic fish ticket and provide them to the catch monitor for recording.
- Dispose of prohibited and protected species in a manner that ensures it will not enter a commercial market.
- Sort eulachon and green sturgeon to species and report them on the electronic fish ticket. Whole green sturgeon would be required to be transferred to the NMFS Southwest Fisheries Science Center within 72-hours.
- Report and surrender albatross to the U.S. Fish and Wildlife Service (FWS).
- Report and surrender marine mammals and sea turtles to NMFS.

Neither prohibited nor protected species would be allowed to be retained for personal use, including by a vessel owner or crew member, or first receiver or processing crew member. Prohibited species suitable for human consumption may be donated if appropriate to a surplus food collection and distribution system or nonprofit charitable organization for the purpose of reducing hunger and meeting nutritional needs.

#### *6. EM Service Provider Responsibilities*

EM service providers interested in supplying EM equipment and services to the fishery would be able to apply to receive a permit from NMFS. A service provider would be able to apply to NMFS by submitting an application package that contains, among other things, information about the company's organizational structure, prior experience, criminal convictions, conflicts of interest, and an EM service plan describing how the EM service provider proposes provide services to the fishery to meet the requirements of the program (see proposed § 660.603(b)). The EM service plan contains a number of components (see proposed § 660.603(b)(1)(vii)), including a description of the applicant's plan for provision of services,

communications, procedures for hiring and training staff, and procedures for tracking hard drives, data processing, reporting, archiving EM data. The EM Service Plan would also include detailed descriptions of the EM system to be deployed and software to be used for analysis. An applicant may be required to provide NMFS with copies of the equipment and software for testing and evaluation (see proposed § 660.603(b)(1)(viii)). NMFS would evaluate the application against the regulations and, if approved, issue the provider a permit. If denied, the provider may appeal NMFS's decision using the provider permit appeal process described at § 660.19. The provider permit would be effective until the company changes ownership, NMFS notifies the provider that the permit is no longer valid, or if the provider fails to renew it. A provider's permit would be automatically renewed provided it submits a complete renewal form attesting to the accuracy of the current EM service plan and other information. The EM service provider would be able to modify its service plan by submitting an amendment to NMFS (see proposed § 660.603(c)). The EM service plan is intended to be a living document and would be updated over time to reflect changes to the provider's operations. NMFS would maintain EM Program Guidelines for the EM service plan on its website to assist providers in developing their plans (see proposed § 660.600(b)). NMFS has posted draft application materials and EM Program Guidelines on its website:

*[http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish\\_catch\\_shares/electronic\\_monitoring.html](http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish_catch_shares/electronic_monitoring.html)*.

As with observer and catch monitor providers, an EM service provider would be required to be free of any conflicts of interest and to have insurance coverage for their employees that provide services on the vessels (see proposed § 660.603(h)).

EM service providers would be required to provide field and technical support services to vessels with which they have a contract, including installing equipment to meet NMFS's performance standards and providing technical assistance and repair services (see proposed § 660.603(k)). The EM service provider would also be required to provide support to NMFS, including assistance in diagnosing and resolving technical issues and litigation support, free of charge to NMFS (see proposed § 660.603(l)).

Beginning in 2020, or when NMFS transitions video review responsibilities to third party providers, the EM service provider would be responsible for processing EM datasets; submitting reports to NMFS of catch data, compliance issues, and technical issues; communicating feedback to vessel operators to improve data quality; maintaining EM program records, including raw video and processed EM datasets; and maintaining the confidentiality and security of EM data (see proposed § 660.603(m)). EM data would be confidential, as are observer data, consistent with Magnuson-Stevens Act requirements. The service provider would be responsible for ensuring its staff are fully trained to successfully execute these duties.

### **Classification**

Except for those measures identified above where NMFS is requesting specific comment, NMFS has made a preliminary determination that the measures this proposed rule would implement are consistent with the Pacific Coast Groundfish FMP, Magnuson-Stevens Act and other applicable laws. In making the final determination, NMFS will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

This proposed rule does not contain policies with Federalism or “takings” implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA, which includes this section of the preamble to this rule and analyses contained in its accompanying EA and RIR/IRFA, describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble.

*Description and Estimate of Number of Small Entities to Which the Rule Will Apply*

This regulatory amendment impacts mainly commercial harvesting entities engaged in the groundfish limited entry trawl fishery. Although this action proposes an EM program for only two components of the limited entry trawl fishery—the Pacific whiting fishery and the fixed gear shorebased IFQ fishery—any limited entry trawl vessel may participate in these components, provided they comply with its requirements, and therefore may be eligible to use EM. In addition, vessels deploying EM are likely to be a subset of the overall trawl fleet, as some vessels would likely choose to continue to use observers. However, as all trawl vessels could potentially use EM in the future, this IRFA analyzes impacts to the entire trawl fleet.

A general description of the limited entry trawl fishery and catch share program is contained in the preamble to this section. Most recent permit information indicates that there are approximately 175 limited entry trawl permits. According to information from the Northwest Fishery Science Center Economic Data Collection Program, in 2014, the fourth year of the catch share program, there were 102 catcher vessels that participated in the West Coast Groundfish Trawl Catch Share program. Catcher vessels generated \$85 million in income and 954 jobs from

deliveries of fish caught in the catch share program. Catcher vessels spent an average of 62 days fishing in the catch share program and spent an average of 80 additional days fishing in non-catch share fisheries. West Coast catcher vessels deliver to ports in Washington, Oregon, California, and at-sea; the two ports with the highest landings in 2014 were Astoria and Newport, both in Oregon. An average of 2.4 crew members worked aboard each West Coast catcher vessel, each earning an average compensation of \$54,500. In 2014, 31 percent of vessels were owner-operated at least part of the year. The average ex-vessel revenue per vessel from participation in the catch share program was \$646,000. Average variable cost net revenue (ex-vessel revenue minus variable costs) per vessel was \$256,000 from participation in the catch share program, and the fleet-wide variable cost net revenue was \$26.2 million. Average total cost net revenue (ex-vessel revenue minus variable costs and fixed costs) per vessel was \$127,000 and the fleet-wide total cost net revenue was \$12.9 million (NWFSC, 2014; [http://www.pcouncil.org/wp-content/uploads/2016/06/G5b\\_NMFS\\_Rpt4\\_MS\\_ElecVer\\_JUN2016BB.pdf](http://www.pcouncil.org/wp-content/uploads/2016/06/G5b_NMFS_Rpt4_MS_ElecVer_JUN2016BB.pdf)). These are preliminary results and it should be noted that some industry members have questioned the results of EDC data which is based on cost-earnings surveys where all participants are required to respond to. Via the Pacific Fishery Management Council's Five Year IFQ Trawl Program Review, the NWFSC economists will be meeting with the industry to further validate their results with the industry.

With respect to monitoring costs, the NWFSC 2014 EDC report states the following: "One other change resulting from the implementation of the catch share program was a shift to 100% observer coverage with partial industry funding. Prior to catch shares, there was approximately 20% observer coverage, paid for by NMFS. In order to lessen the cost of

transitioning to the required 100 percent observer coverage, catcher vessels received a maximum subsidy of \$328.50 per day in 2011 and 2012. This subsidy decreased in 2013 to \$256 per day and in 2014 to \$216 per day. Catcher vessels spent on average \$14,400 on observer coverage (excluding the NMFS subsidy payments) while operating in the catch share program in 2014. In 2011, observer costs represented 0.6% of total costs, and increased to 2.8 percent in 2014. Note that as observer subsidies have decreased over time, the average expenses per vessel have increased. For this reason, the average 2014 costs reported will not reflect the costs currently incurred by the fleet.” It should be noted that the 2015 observer subsidy was about \$108 per day. The subsidy program ended in September 2015. Currently the industry is paying about \$500 per day for observers.

This rule would apply to those entities that elect to use EM in lieu of observers. In 2015, a total of 36 vessels participated in the EM program. This total includes 20 vessels that participated in the Pacific whiting fishery (11 that participated in both the shorebased and mothership sectors, 9 that fished only in mothership) and 7 fixed gear vessels. This is likely an underestimate of the number of vessels that would use EM in the future. For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. For for-hire fishing and fish processing entities, the Small Business Administration (SBA) defines a small business as one that is: independently owned and operated; not dominant in its field of operation; has annual receipts not in excess of \$7.0 million



in the case of for-hire fishing entities; or if it has fewer than 500 employees in the case of fish processors, or 100 employees in the case of fish dealers. When applying for their permits, entities were asked to classify themselves as a small business based on the finfish standard of \$20.5 million. Only 5 indicated that they were “large” businesses and thus would continue to be large businesses under the \$11.0 million standard. In 2015, ex-vessel revenues for all west coast fisheries for the remaining vessels ranged from \$1,000 to \$1.4 million. In 2014, “other fisheries revenue” collected on these vessels ranged from \$0 to \$5.0 million. Based on these ranges, NMFS concludes that the remaining vessels would be considered “small” even after factoring in the possibility of the vessels participating in Alaska fisheries.

#### *Impacts of the Action on Small Entities*

This action contains two major alternatives—the Council’s preferred alternative and proposed action, to allow vessels in the groundfish fishery to use EM in place of observers, and the no action alternative, which would not create an EM option. The regulatory amendment also considered several sub-options for design elements within the preferred alternative, which are described in the accompanying EA and summarized in the preamble. This rule proposes to implement the Council’s preferred alternative.

The proposed action is presenting a choice to fishermen—they can either continue to pay for 100-percent observer coverage or elect to pay for EM (i.e., equipment, maintenance, and video review). Using 2015 EFP cost estimates developed jointly by PSMFC and NMFS, NMFS developed a model for assessing the vessel, fleet, and government costs from the preferred alternative. The results indicate economic impacts on small entities from the preferred alternative would be positive as these entities would have a choice of between hiring an observer and using EM. The current cost of an observer is approximately \$500 per day. Presumably,

vessel owners would choose between using an observer or EM based on relative costs and operational flexibility. NMFS estimates indicate fixed gear vessels will save approximately \$98 per day, mothership catcher vessels \$159 per day, and shoreside vessels \$330, using EM. Vessels that participated in the EFPs already own EM systems (most whiting vessels and approximately half of the fixed gear vessels), so they may see a greater cost savings compared to new entrants, until such time that the cameras need to be replaced. Annual vessel estimates show fixed gear and mothership catcher vessels saving \$3,000 to \$4,000 and shoreside whiting vessels saving \$24,000 per year, relative to the cost of observers. Annual fleet estimates show similar results.

In addition to the direct costs of the program, vessel owners would be responsible for reimbursing NMFS for its incremental costs for administering the EM program. NMFS collects cost recovery fees to cover the incremental costs of management, data collection, and enforcement of the trawl rationalization program. Fees are limited to a maximum of 3 percent of ex-vessel revenues. NMFS's incremental costs for administering the shorebased sector already exceed 3 percent, so the shorebased sector would not be likely to see an increase in fees from the preferred alternative in the short term. The mothership sector fees are currently 1.25 percent of ex-vessel revenue, so NMFS would be able to recover this sector's portion of EM program costs by increasing the fees.

As mentioned in the preamble to this proposed rule, NMFS intends to conduct the video review itself for 2017-2019, contingent on available funding, while the standards and protocols that would be used to certify and oversee third party service providers are developed. The requirement for industry to fund the video review would take effect in 2020, or earlier if NMFS does not have funding to process the data itself. When video review responsibilities shift to third

party providers, NMFS's and PSMFC's responsibilities would be reduced to oversight and quality assurance, which may include auditing the service providers' video review results. To conservatively estimate government costs and corresponding fee increases, NMFS assumes that service providers would review 100 percent of the video and that NMFS would audit 50 percent of the video. Government costs include video review and storage costs, as well as program management costs, statistician costs, database management, and overhead. With the full transition in 2020, NMFS estimates the government costs would be approximately \$286,000 per year. Under current fee rates, only the portion of the costs related to the mothership catcher vessel fleet would be recouped by the cost recovery fee, which would result in an increase of 0.02 percent. NMFS estimates that compared to the costs of observers, the preferred alternative would still present a lower cost option for whiting and fixed gear vessels.

Under Alternative 2, seven sub-options were developed to address various aspects of program design. These sub-options are summarized in the preamble to this proposed rule. Generally speaking, the Council's sub-options would either have no effect on the overall cost of the program (sub-options A2, D1, E1), reduce the cost of the program (sub-options E1, B1), or provide industry additional flexibility (sub-options C2, F1, G1-Fixed Gear, G2-Whiting).

#### *Measures Proposed to Mitigate Adverse Economic Impacts of the Proposed Action*

There are no significant alternatives to the proposed action that would accomplish the stated objectives and that minimize any significant economic impact of the proposed rule on small entities. Alternatives that were considered and rejected, and the reason the Council or NMFS rejected them, are summarized in Section 3.3 of the EA. The other sub-options considered, and the reasons the Council and NMFS did not propose them, are summarized in the preamble to this proposed rule. As fishermen would be given a choice between two alternative

monitoring systems (observers versus EM), this rule is likely to have positive effects on small entities. NMFS believes that the preferred alternative for this rule would not have a significant impact when comparing small versus large businesses in terms of disproportionality and profitability given available information. These regulations are likely to reduce fishing costs for both small and large businesses. Nonetheless, NMFS has prepared this IRFA. Through this proposed rule, NMFS is requesting comments on this conclusion. The proposed action and alternatives are described in detail in the Council's regulatory amendment and the accompanying EA and RIR/IRFA (SEE ADDRESSES).

*Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements*

The proposed action contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement will be submitted to OMB for approval. The proposed action does not duplicate, overlap, or conflict with any other Federal rules.

This action proposes to adjust notification requirements for groundfish vessels using EM and first receivers receiving catch from EM trips. Vessels would now be required to declare the type of monitoring they will use on a given trip – observer or EM. This change is necessary to provide vessels the flexibility to switch between different types of monitoring, depending on what is most cost effective and efficient for their operation at that time, while allowing NMFS to track which fleets vessels are participating in. The proposed change would only add additional potential answers to an existing question and not affect the number of entities required to comply with the declaration requirement (OMB Control Number 0648-0573). Therefore, the proposed change would not be expected to increase the time or cost burden associated with this requirement. Similarly, the requirement for EM vessels to notify the observer program before

each trip would be in place of the existing notification to an individual vessel's observer provider when using a catch share observer, and would not be expected to increase the time or cost burden associated with the existing notification requirements approved under OMB Control Number 0648-0593. The requirement for first receivers to report protected and prohibited species landings was previously approved under OMB Control Number 0648-0619 and this action would not be expected to change the time or cost burden or number of entities associated with this requirement.

This action proposes to require vessel owners to submit an application to NMFS to be approved to use EM in place of an observer. This application would include an application form, the purchase or lease and installation of an EM system, a VMP, and attendance of a mandatory training session. The time burden associated with these requirements is estimated to be approximately 10 hours per vessel owner to prepare and submit the application package, install the EM system, and attend training. The training would be given via webinar to maximize convenience and minimize travel costs for vessel captains. Based on comments from industry participants during the development of the regulations, NMFS is proposing that vessel owners and captains that participated in the EFPs complete an abbreviated application process for 2017 to reduce the time burden to them. The cost of an EM system and installation is estimated at \$12,000 per vessel. Approximately half the active vessels in the fleet have already received EM units through their participation in the EFPs and would not need to purchase a new unit to participate in the program. Vessel owners would likely have to purchase new EM units every 5-10 years, depending on the life of the equipment. Vessel owners would also be responsible for maintaining the EM units in good working order, likely through a service contract with a NMFS-permitted EM service provider. NMFS estimates the annual average cost burden per vessel from

this requirement to be approximately \$5,600.

If denied an EM Authorization, vessel owners would be able to appeal NMFS's decision through the existing appeal process at § 660.25(g). NMFS estimates the time burden associated with preparing and submitting an appeal to be approximately 4 hours per entity, with a cost of \$3.00 for copies and postage. Vessel owners would be able to make modifications to their VMPs during the year by submitting a request and amended VMP to NMFS. These requests would be made electronically via email and, therefore, would not be expected to have a cost burden associated with them. NMFS estimates the time burden associated with this requirement from preparing and submitting the request to be 0.5 hours per request per entity.

Vessel owners would be required to renew their EM authorization annually. This is necessary to ensure that the vessel owners' contact information, VMPs, and fishing plans remain up to date. Industry participants raised concerns with the time burden associated with having to complete the application process each year, as was proposed in an earlier draft of the regulations. To address these concerns, NMFS is proposing to instead provide vessel owners with pre-filled renewal forms and their current VMPs to review and certify as correct in a simplified renewal process. NMFS estimates a time burden of approximately 0.5 hours per entity to review and return the pre-filled package.

Vessel operators would be required to complete and submit a logbook for each trip, with an estimated time burden of 10 minutes per submission. The logbooks are provided by NMFS and state agencies, so the cost of requirement mainly derives from postage at \$0.46 per submission. To eliminate duplication, NMFS would allow vessel operators to submit a state logbook that contains all the required information. Vessel operators would also be required to submit the hard drive containing video data to NMFS (in 2017-2019) or the EM service provider

(2020-beyond) using a method that provides a return receipt. This is necessary for NMFS and vessel operators to be able to track submissions. This requirement has an average cost of \$15.00 per submission and a time burden of 10 min to retrieve and package the hard drive for mailing.

EM service providers would be required to apply to receive a permit from NMFS to provide EM services in the fishery. EM service providers would be required to submit an application to NMFS that includes an application form, an EM Service Plan that describes how they plan to provide services to the fishery, and statements of prior experience and qualifications. If requested, the EM service provider may also be required to provide NMFS copies of contracts with vessel owners and standard operating procedures and manuals describing their operations in more detail. In an earlier draft of the regulations, NMFS proposed requirements very similar to those for observer service providers, with minimal requirements for the provider and NMFS training and certifying individual observers. However, at the November 2015 Council meeting EM service providers commented that different service providers may have different models and that this model is not appropriate for EM services providers. Some EM service providers may employ less highly trained analysts to initially review video and a biologist to verify species identification. Whereas another service provider may employ highly trained biologists to do it all. They recommended that the regulations provide more flexibility for different business models. This proposed rule contains an expanded application process, incorporating an EM Service Plan, to provide the flexibility that service providers seek. The addition of an EM Service Plan allows NMFS to consider different business models proposed by different providers as meeting the EM program requirements. However, this requires EM service providers prepare and submit a detailed service plan and other documents, in order to provide NMFS with sufficient information to evaluate them. NMFS estimates the time and cost burden associated

with preparing and submitting the permit application to be 47 hours and \$30 (for copies and postage). Most likely much of this information would be submitted electronically. If requested by NMFS, EM service providers would be required to provide NMFS two EM units and two copies of any software for EM data analysis for a minimum of 90 days for evaluation. Due to their use by NMFS, the value of the EM units may depreciate and the EM service providers may not be able to resell the EM units for their full value. NMFS estimates the EM providers would be able to recoup 50 percent of the EM unit value at approximately \$5,000 per unit. This results in a total cost associated with this requirement at \$10,215 per provider (including \$215 in materials and postage to send the equipment to NMFS).

An EM service provider would be able to appeal a permit decision to NMFS following the procedures at § 660.19. NMFS estimates the time and cost burden of preparing and submitting an appeal to be 4 hours and \$5 per entity. EM service providers would be able to make modifications to their EM Service Plans during the year by submitting a request and amended EM Service Plan to NMFS via email (2 hours per submission). EM service providers would be required to renew their permits annually. At the April 2016 Council meeting, EM service providers requested a longer effective period to provide more stability for planning for future fishing years. Therefore, in this proposed rule NMFS is proposing an abbreviated renewal process in which NMFS would provide pre-filled renewal forms and the current EM Service Plan for the EM service provider to review and certify. This would reduce the time burden for EM service providers, while ensuring NMFS has up-to-date information. NMFS estimates the annual time and cost burden of the renewal to be 1 hour and \$5 per entity.

In 2017-2019, EM service providers would be responsible for providing technical assistance and maintenance services to EM vessels. EM service providers would be required to



provide technical support to vessels at sea, with an annual time burden of approximately 7 hours per entity. EM service providers and their employees would also be required to report instances of non-compliance by vessel owners and intimidation or harassment of EM technicians to NMFS. The estimated burden for reporting these events is 30 minutes per report (18 hours per entity per year). Employees of EM service providers may be debriefed by NMFS or OLE on technical or compliance issues with an estimated burden of 1 hour per trip (350 hours per entity per year).

Beginning in 2020, EM service providers would also be responsible for reviewing video from trips, preparing and submitting catch data and compliance reports to NMFS, and providing feedback to vessel operators on their catch handling, camera views, etc. NMFS would prepare burden estimates for these requirements for OMB approval and public comment through a **Federal Register** notice in 2019 or earlier.

Public reporting burden for these requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

#### **List of Subjects in 50 CFR Part 660**

Fisheries, Fishing, and Indian Fisheries.

Dated: August 26, 2016

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons stated in the preamble, NMFS proposes to amend 50 CFR part 660 as follows:

**PART 660--FISHERIES OFF WEST COAST STATES**

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.13, revise paragraphs (d)(5)(ii) through (iv) to read as follows:

**§ 660.13 Recordkeeping and reporting.**

\* \* \* \* \*

(d) \* \* \*

(5) \* \* \*

(ii) The vessel operator must send a new declaration report, consistent with paragraph (d)(5)(iv) before leaving port on a trip in which a gear type and monitoring type, if applicable, that is different from the gear type and monitoring type most recently declared for the vessel will be used. A declaration report will be valid until another declaration report revising the existing gear and monitoring declaration is received by NMFS OLE.

(iii) During the period of time that a vessel has a valid declaration report on file with NMFS OLE, it cannot fish with a gear and monitoring type other than a gear type and monitoring type declared by the vessel.

(iv) Declaration reports will include: The vessel name and/or identification number, gear type, and monitoring type where applicable, (as defined in paragraph (d)(5)(iv)(A) of this section). Upon receipt of a declaration report, NMFS will provide a confirmation code or receipt to confirm that a valid declaration report was received for the vessel. Retention of the confirmation code or receipt to verify that a valid declaration report was filed and the declaration

requirement was met is the responsibility of the vessel owner or operator. Vessels using nontrawl gear may declare more than one gear type with the exception of vessels participating in the Shorebased IFQ Program (i.e. gear switching), however, vessels using trawl gear may only declare one of the trawl gear types listed in paragraph (d)(5)(iv)(A) of this section on any trip and may not declare nontrawl gear on the same trip in which trawl gear is declared.

(A) One of the following gear types or sectors, and monitoring type where applicable, must be declared:

- (1) Limited entry fixed gear, not including shorebased IFQ,
- (2) Limited entry groundfish non-trawl, shorebased IFQ, observer,
- (3) Limited entry groundfish non-trawl, shorebased IFQ, electronic monitoring,
- (4) Limited entry midwater trawl, non-whiting shorebased IFQ,
- (5) Limited entry midwater trawl, Pacific whiting shorebased IFQ, observer,
- (6) Limited entry midwater trawl, Pacific whiting shorebased IFQ, electronic monitoring,
- (7) Limited entry midwater trawl, Pacific whiting catcher/processor sector,
- (8) Limited entry midwater trawl, Pacific whiting mothership sector (catcher vessel or mothership), observer,
- (9) Limited entry midwater trawl, Pacific whiting mothership sector (catcher vessel),  
electronic monitoring,
- (10) Limited entry bottom trawl, shorebased IFQ, not including demersal trawl,
- (11) Limited entry demersal trawl, shorebased IFQ,
- (12) Non-groundfish trawl gear for pink shrimp,
- (13) Non-groundfish trawl gear for ridgeback prawn,
- (14) Non-groundfish trawl gear for California halibut,

- (15) Non-groundfish trawl gear for sea cucumber,
- (16) Open access longline gear for groundfish,
- (17) Open access Pacific halibut longline gear,
- (18) Open access groundfish trap or pot gear,
- (19) Open access Dungeness crab trap or pot gear,
- (20) Open access prawn trap or pot gear,
- (21) Open access sheephead trap or pot gear,
- (22) Open access line gear for groundfish,
- (23) Open access HMS line gear,
- (24) Open access salmon troll gear,
- (25) Open access California Halibut line gear,
- (26) Open access Coastal Pelagic Species net gear,
- (27) Other gear,
- (28) Tribal trawl, or
- (29) Open access California gillnet complex gear.

\* \* \* \* \*

3. In § 660.19, revise paragraph (a) introductory text to read as follows:

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

(a) *Allowed appeals.* This section describes the procedure for appealing IADs described at §§660.17(g), 660.18(d) and (f), 660.140(h), 660.150(j), 660.160(g), 660.603(b)(3) for catch monitor decertification, observer decertification, provider permit expirations due to inactivity, and EM service provider permit denials. Any person whose interest is directly and adversely

affected by an IAD may file a written appeal. For purposes of this section, such person will be referred to as the “applicant.”

\* \* \* \* \*

4. In § 660.130, revise paragraphs (d)(2)(ii) and (d)(3)(ii) to read as follows:

**§ 660.130 Trawl fishery—management measures.**

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(ii) *Catcher vessels*. All catch must be sorted to the species groups specified in paragraph (d)(1) of this section for vessels with limited entry permits, except those engaged in maximized retention while declared into a Pacific whiting IFQ trip. The catch must not be discarded from the vessel and the vessel must not mix catch from hauls until the observer has sampled the catch, unless otherwise allowed under the EM Program requirements at § 660.604 of subpart J. Prohibited species must be sorted according to the following species groups: Dungeness crab, Pacific halibut, Chinook salmon, other salmon. Non-groundfish species must be sorted as required by the state of landing.

(3) \* \* \*

(ii) If sorting occurs on a catcher vessel in the MS Coop Program, the catch must not be discarded from the vessel and the vessel must not mix catch from hauls until the observer has sampled the catch, or unless otherwise allowed under the EM Program requirements at § 660.604 of subpart J.

\* \* \* \* \*

5. In § 660.140, revise paragraph (g)(1) introductory text and add paragraph (h)(1)(i)(A)(4) to read as follows:

**§ 660.140 Shorebased IFQ Program.**

\* \* \* \* \*

(g) \* \* \*

(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 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.

\* \* \* \* \*

(h) \* \* \*

(1) \* \* \*

(i) \* \* \*

(A) \* \* \*

(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.

\* \* \* \* \*

6. In § 660.150, revise paragraphs (i) and (j)(1)(i)(B) to read as follows:

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

\* \* \* \* \*

(i) *Retention requirements.* Catcher vessels participating in the MS Coop Program may discard minor operational amounts of catch at sea if the observer or EMS has accounted for the discard (i.e., a maximized retention fishery).

(j) \* \* \*

(1) \* \* \*

(i) \* \* \*

(A) \* \* \*

(B) *Catcher vessels.* Any vessel delivering catch to any MS vessel must carry one certified observer each day that the vessel is used to take groundfish, unless the catcher vessel has a valid EM Authorization and is fishing with EM under § 660.604 of subpart J.

\* \* \* \* \*

7. Add subpart J to read as follows:

**Subpart J--West Coast Groundfish Electronic Monitoring Program.**

Sec.

660.600 Applicability.

660.601 Definitions.

660.602 Prohibitions.

660.603 Electronic monitoring provider permits and responsibilities.

660.604 Vessel and first receiver responsibilities.

660.600 Applicability.

## Subpart J--West Coast Groundfish Electronic Monitoring Program

(a) *General.* This subpart contains requirements for vessels using EM in lieu of observers, as authorized under § 660.140(h)(1)(i) (Shorebased IFQ Program) and § 660.150(j)(1)(i) (MS Coop Program), and requirements for EM service providers. Vessel owners, operators, and managers are jointly and severally liable for a vessel's compliance with EM requirements under this subpart. This subpart also contains requirements for a first receiver receiving catch from a trip monitored by EM (*see* § 660.604(u)). The table below provides references to the sections that contain vessel owner, operator, first receiver, and service provider responsibilities. Certain requirements for vessel owners and operators and EM service providers will be different in 2020 and beyond.

West Coast Groundfish Fishery	Section
(1) Limited entry trawl fishery	
(i) Vessel owners	§ 660.604
(ii) Vessel operators	§ 660.604
(iii) First receivers	§ 660.604
(iv) Service providers	§ 660.603
(2) [Reserved]	

(b) *EM program guidelines.* NMFS will develop EM Program Guidelines, which will document best practices and other information that NMFS will use to evaluate proposed service and vessel monitoring plans submitted by EM service providers and vessel owners under this subpart. NMFS will develop the EM Program Guidelines in consultation with the Council and publish notice of their availability in the *Federal Register*. NMFS will maintain the EM Program Guidelines on its website and make them available to vessel owners and operators and EM service providers to assist in developing service plans and vessel monitoring plans that comply with the requirements of this subpart.



## **§ 660.601 Definitions.**

These definitions are specific to this subpart. General groundfish definitions are found at § 660.11, subpart C, and trawl fishery definitions are found at § 660.111, subpart D.

*Active sampling unit* means the portion of the groundfish fleet in which an observer coverage plan is being applied.

*Discard control point* means the location on the vessel designated by a vessel operator where allowable discarding may occur.

*Discard event* means a single occurrence of discarding of fish or other species.

*Electronic Monitoring* or *EM* consists of the use of an electronic monitoring system (EMS) to passively monitor fishing operations through observing or tracking.

*Electronic Monitoring Authorization* means the official document provided by NMFS that allows a vessel with a limited entry trawl permit to use electronic monitoring under the provisions of this subpart.

*Electronic Monitoring System Certification Form* means the official document provided by NMFS, signed by a representative of a NMFS-permitted electronic monitoring service provider that attest that an EM system and associated equipment meets the performance standards defined at § 660.604(j) of this subpart, as required by § 660.604(e)(3)(i).

*EM data processing* means the review, interpretation, and analysis of EM data (i.e., video and sensor data).

*EM Program* means the Electronic Monitoring Program of the West Coast Region, National Marine Fisheries Service.

*EM Program Manager* means the Chief of the Permits and Monitoring Branch of the West Coast Region, National Marine Fisheries Service, or his designee.

*EM Service Plan* means the document that describes in detail how the EM service provider will provide EM services to the fishery to successfully achieve the purpose of the EM Program.

*EM service provider* means any person, including their employees or agents, that is granted a permit by NMFS to provide EM services as required under § 660.603 and § 660.604.

*Electronic Monitoring System* or *EMS* means a data collection tool that uses a software operating system connected to an assortment of electronic components, including video recorders, to create a collection of data on vessel activities.

*EM technician* means an employee of the EM service provider that provides support for EM systems and technical assistance to vessels and NMFS.

*EM trip* means any fishing trip for which electronic monitoring is the declared monitoring type.

*Initial Administrative Determination (IAD)* means a formal, written determination made by NMFS on an application or permit request that is subject to an appeal within NMFS.

*Non-trawl shorebased IFQ vessel* means a vessel on a declared limited entry groundfish non-trawl, shorebased IFQ trip.

*Pacific whiting fishery* refers to the Pacific whiting primary season fisheries described at § 660.131. The Pacific whiting fishery is composed of vessels participating in the C/P Coop Program, the MS Coop Program, or the Pacific whiting IFQ fishery.

*Pacific whiting IFQ fishery* is composed of vessels on Pacific whiting IFQ trips.

*Pacific whiting IFQ trip* means a trip in which a vessel uses midwater groundfish trawl gear during the dates of the Pacific whiting primary season to target Pacific whiting, and Pacific whiting constitutes 50 percent or more of the catch by weight at landing as reported on the state

landing receipt. Vessels on Pacific whiting IFQ trips must have a valid declaration for limited entry midwater trawl, Pacific whiting shorebased IFQ.

*Shorebased IFQ Program* or *Shorebased IFQ sector*, refers to the fishery described at § 660.140, subpart D, and includes all vessels on IFQ trips.

*Vessel Monitoring Plan (VMP)* means the document that describes how fishing operations on the vessel will be conducted and how the EM system and associated equipment will be configured to meet the performance standards and purpose of the EM Program.

### **§ 660.602 Prohibitions.**

In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to:

(a) *Electronic monitoring program*.—(1) Make a false statement on an application for issuance, renewal, or changes to an EM Authorization or NMFS-accepted VMP.

(2) Fish for or land fish from a trip without electronic monitoring or observer coverage when a vessel is required to carry electronic monitoring or an observer under §§ 660.140(h) or 660.150(j).

(3) Fish for or land fish from a trip taken under electronic monitoring without a valid EM Authorization and NMFS-accepted vessel monitoring plan onboard, and a valid gear and monitoring declaration with NMFS OLE as required by § 660.604(c)(1) and § 660.604(m).

(4) Fail to comply with a NMFS-accepted VMP.

(5) Fail to notify the West Coast Groundfish Observer Program at least 48-hours prior to departing port of the vessel operator's intent to take a trip under EM, as required by § 660.604(n).

(6) Fail to conduct a pre-departure test prior to departing port as required by § 660.604(1)(2).

(7) Fish on an EM trip without a fully functional EM system, unless authorized by a NMFS-accepted VMP as required by § 660.604(1)(3).

(8) Fail to make the EM system, associated equipment, logbooks and other records available for inspection immediately upon request by NMFS OLE personnel or other authorized officers, as required by §§ 660.604(o) and 660.604(t).

(9) Discard species other than those allowed to be discarded as specified at § 660.604(p).

(10) Fail to handle fish and other marine organisms in a manner that enables the EM system to record it as required by § 660.604(r).

(11) Fail to submit complete and accurate logbook(s) and hard drive(s) for each EM trip as specified at § 660.604(s),

(12) Tamper with, disconnect, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate any component of the EM system or associated equipment.

(13) Assault, resist, oppose, impede, intimidate, harass, sexually harass, bribe, or interfere with an EM service provider, EM field services staff, or EM data processing staff.

(14) Interfere with or bias the sampling procedure employed by EM data processing staff including either mechanically or manually sorting or discarding catch outside of camera view or inconsistent with the NMFS-accepted VMP.

(15) Fail to meet the vessel owner or operator responsibilities specified in section 660.604.

(16) Fail to meet the first receiver responsibilities specified at § 660.604(u).

(17) Fail to meet the EM service provider responsibilities specified in section 660.603.

(18) Fish when a vessel is required to carry an observer under subpart J of this part if:

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

(ii) The vessel does not maintain safe conditions for an observer as specified at § 660.604(n);

(iii) NMFS, the observer provider, or the observer determines the vessel is inadequate or unsafe pursuant to vessel responsibilities to maintain safe conditions as specified at § 660.604(n);

(19) Fail to meet the vessel responsibilities and observer coverage requirements specified at § 660.604(n).

(b) [Reserved]

### **§ 660.603 Electronic monitoring provider permits and responsibilities.**

(a) *General.* This section contains requirements for EM service providers providing EM services to vessels operating in the Shorebased IFQ Program (§ 660.140) or the MS Coop Program (§ 660.150) and using EM under this subpart. A person must obtain a permit and endorsement as provided under § 660.603(b) in order to be an EM service provider. An EM service provider must:

(1) Operate under a NMFS-accepted EM Service Plan (*see* § 660.603(b)(3)(vii)).

(2) Provide and manage EM systems, field services, and technical assistance as required under § 660.603(k);

(3) Provide technical and litigation support to NMFS or its agent (*see* § 660.603(l)).

(4) Provide technical support to fishing vessels 24-hours per day, seven days per week, and year-round as provided under § 660.603(k)(4);

(5) Beginning on January 1, 2020, or earlier if notified by NMFS, provide EM data processing, reporting, and record retention services to vessels using EM (*see* § 660.603(m)).

(6) Comply with data integrity and security requirements, including requirements pertaining to hard drives containing EM data, (*see* § 660.603(n)).

(b) *Provider permits.* To be an EM service provider, a person must obtain an EM service provider permit and endorsement by submitting an application to the NMFS West Coast Region Fisheries Permit Office. A person may meet some requirements of this section through a partnership or subcontract with another entity, in which case the application for an EM service provider permit must include information about the partnership. An applicant may submit an application at any time. If a new EM service provider, or an existing EM service provider seeking to deploy a new EMS or software version, submits an application by June 1, NMFS will issue a new permit by January 1 of the following calendar year. Applications submitted after June 1 will be processed as soon as practicable. NMFS will only process complete applications. Additional endorsements to provide observer or catch monitor services may be obtained under § 660.18.

(1) *Contents of provider application.* To be considered for an EM service provider permit and endorsement, the service provider must submit a complete application that includes the following information. The same information must be included for any partners or subcontractors if the applicant intends to satisfy any of the EM service provider requirements through a partnership or contractual relationship with another entity.

(i) Certify that the applicant meets the following eligibility criteria:

(A) The EM service provider and its employees do not have a conflict of interest as defined at § 660.603(h), and,

(B) The EM service provider is willing and able to comply with all applicable requirements of this section and to operate under a NMFS-accepted EM Service Plan.

(ii) Applicant's contact information.

(iii) Legal name of applicant organization. If the applicant organization is United States business entity, include the state registration number.

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

(v) A narrative statement describing prior relevant experience in providing EM services, technical support, or fishery data analysis services, including recruiting, hiring, training, deploying, and managing of individuals in marine work environments and of individuals working with fishery data, in the groundfish fishery or other fisheries of similar scale.

(vi) A statement signed under penalty of perjury by an authorized agent of the applicant about each owner, or owners, board members, and officers if a corporation, authorized agents, and employees, regarding:

(A) Conflict of interest as described in § 660.603(h),

(B) Criminal convictions,

(C) Federal contracts they have had and the performance rating they received on each contract, and

(D) Any previous history of decertification or permit sanction action while working as an observer, catch monitor, observer provider, catch monitor provider, or electronic monitoring provider.

(vii) *EM Service Plan*. An EM Service Plan that describes in detail how the applicant will provide EM services to the fishery sufficient to provide NMFS with the best scientific information available to determine individual accountability for catch, including discards, of IFQ species and compliance with requirements of the Shorebased IFQ Program (§ 660.140) and MS Coop Program (§ 660.150). NMFS will develop EM Program Guidelines containing best practices and templates and make them available on NMFS's website to assist EM service providers in developing EM Service Plans (*see* § 660.600(b)). The EM Service Plan must include descriptions of the following (using pictures and diagrams where appropriate):

(A) Contact information for a primary point of contact for program operations inseason;

(B) A plan for provision of services including communications, service locations, response timelines, and procedures for services, repairs, technical support, and other program services;

(C) Procedures for hiring and training of competent program staff to carryout EM field services and data services, including procedures to maintain the skills of EM data processing staff in:

(1) Use of data processing software;

(2) Species identification;

(3) Fate determination and metadata reporting requirements;

(4) Data processing procedures;

(5) Data tracking; and,



(6) Reporting and data upload procedures.

(D) Procedures for tracking hard drives throughout their use cycle, including procedures to ensure the integrity and security of hard drives in transit, and for removing confidential data from hard drives before returning them to the field;

(E) Procedures for data processing, including tracking of EM datasets throughout their processing cycle and documenting any access and modifications;

(F) Procedures for correction and resubmission of EM datasets that NMFS has determined are not sufficient, as described at § 660.603(m)(5), and to ensure that future datasets are sufficient for use by NMFS.

(G) Policies on data access, handling, and release to maintain the confidentiality of the EM Program data;

(H) Procedures for archiving of EM datasets and raw video, sensor and GPS data, etc., after reports have been submitted to NMFS;

(I) Identifying characteristics of the EMS to be deployed and the video review software to be used in the fishery, including but not limited to: manufacturer, brand name, model name, model number, software version and date, firmware version number and date, hardware version number and date, monitor/terminal number and date, pressure sensor model number and date, drum rotation sensor model number and date, and GPS model number and date.

(J) EM system and software specifications, including a narrative statement describing how the EM system and associated equipment meets the performance standards at § 660.604(j).

(K) EM video review software specifications, including a narrative statement describing how the software is sufficient to provide NMFS with the best available information to determine

individual accountability for catch, including discards, of IFQ species and compliance with requirements of the Shorebased IFQ Program (§ 660.140) and MS Coop Program (§ 660.150).

(viii) Provide NMFS the following, if requested:

(A) Two EM system units loaded with software for a minimum of 90 calendar days for testing and evaluation.

(B) Thorough documentation for the EM system, including: user manuals, any necessary interfacing software, performance specifications, technical support information, and tamperproof or tamper evident features.

(C) The results of at-sea trials of the EM system.

(D) Two copies of video review and analysis software for a minimum of 90 calendar days for testing and evaluation.

(E) Thorough documentation for the video review and analysis software, including: user manuals, performance specifications, and technical support information.

(F) Descriptions of database models and analysis procedures for program and fishery data to produce required reports.

(2) *Application evaluation.* NMFS may request additional information or revisions from the applicant until NMFS is satisfied that the application is complete. Complete applications will be forwarded to the EM Program for review and evaluation by the EM provider permit review board. If the applicant is an entity, the review board also will evaluate the application criteria for each owner, board member, officer, authorized agent, and employee. NMFS will evaluate the application based on the EM Program Guidelines (*see* § 660.600(b)) and the following criteria:

(i) The applicant's relevant experience and qualifications;

(ii) Review of any conflict of interest as described in § 660.603(h);

(iii) Review of any criminal convictions;

(iv) Review of the proposed EM Service Plan, including evaluation of EM equipment and software;

(v) Satisfactory performance ratings on any federal contracts held by the applicant;

(vi) Review of any history of decertification or permit sanction as an observer, catch monitor, observer provider, catch monitor provider, or EM service provider; and,

(vii) Review of any performance history as an EM service provider.

(3) *Agency determination on an application.* Based on a complete application, if NMFS determines that the applicant has met the requirements of this section, NMFS will issue an initial administrative determination (IAD). If the application is approved, the IAD will serve as the EM service provider's permit and endorsement. If the application is denied, the IAD will provide an explanation of the denial in writing. The applicant may appeal NMFS's determination following the process at § 660.19.

(4) *Effective dates.* The provider permit is valid from the effective date until occurrence of any one or more of the following:

(i) The EM service provider changes ownership;

(ii) December 31 of that year if the EM service provider fails to submit a complete renewal form for the following year; or,

(iii) NMFS notifies the EM service provider that its permit is invalid. NMFS may invalidate an EM service provider permit if NMFS determines that the EM service provider no longer meets the eligibility criteria defined at paragraph (b)(1)(i). NMFS will first notify the EM service provider of the deficiencies in writing and the EM service provider must correct the deficiencies following the instructions provided. If the deficiencies are not resolved upon review

of the first trip following the notification, NMFS will notify the EM service provider in writing that the provider permit is invalid and that the EM service provider is no longer eligible to provide EM services to the fishery for the remainder of that calendar year. The EM service provider may reapply for an EM service provider permit and endorsement for the following calendar year.

(c) *Changes to a NMFS-accepted EM Service Plan.* An EM service provider may make changes to a NMFS-accepted EM Service Plan by submitting a revised plan or plan addendum to NMFS in writing. NMFS will review and accept the change if it meets all the requirements of this section. A plan addendum must contain:

(1) The date and the name and signature of an authorized agent of the EM service provider;

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

(3) A complete description of the proposed EM Service Plan change.

(d) *Change of provider permit ownership and transfer restrictions.* If an EM service provider changes ownership during the term of an EM service provider permit, the new owner must apply for a new provider permit.

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

(f) *Renewing a provider permit.* NMFS will mail renewal forms to existing EM service providers each year on or about April 15. If an EM service provider submits the completed renewal form by June 1, the EM service provider's permit and endorsement will be automatically renewed for the following calendar year.

(g) *Fees.* NMFS may charge a fee to cover administrative expenses related to issuance of permits including initial issuance, renewal, replacement, and appeals.

(h) *Limitations on conflict of interest for providers and employees.*—(1) EM service providers and their employees must not have a direct financial interest, other than the provision of observer, catch monitor, EM, or other biological sampling services, in any federal or state managed fisheries, including but not limited to:

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

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

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

(2) EM service providers and their employees must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, employment, or anything of monetary value 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 nonperformance of the official duties of the provider.

(3) The EM service provider may not employ any person to handle hard drives or EM data from a vessel by which the person was previously employed in the last two years.

(4) Provisions of contracts or agreements for remuneration of EM services under this section do not constitute a conflict of interest.

(i) *Insurance.* The EM service provider must maintain adequate insurance (copies of which shall be provided to the vessel owner, operator, or vessel manager, when requested) to cover injury, liability, and accidental death to cover vessel owner, and the EM service provider and its employees, including the following:

(1) Maritime Liability to cover “seamen’s” claims under the Merchant Marine Act (Jones Act) and General Maritime Law (\$1 million minimum).

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

(3) States Worker’s Compensation as required.

(4) Commercial General Liability.

(j) *Warranties.* None of the provisions of this section are intended to preclude any state or federal statutes or regulations governing warranties.

(k) *Field and technical support services.* The EM service provider must provide and manage EM systems, installation, maintenance and technical support, as described below, according to a NMFS-accepted EM Service Plan and such that the EM Program is sufficient to provide NMFS with the best scientific information available to determine individual accountability for catch, including discards, of IFQ species and compliance with requirements of the Shorebased IFQ Program (§ 660.140) and MS Coop Program (§ 660.150).

(1) At the time of installation, the EM service provider must:

(i) Install an EM system that meets the performance standards under § 660.604(j);

(ii) Ensure that the EM system is set up, wires run, system powered, and tested with the vessel in operation;

(iii) Brief the vessel operator on system operation, maintenance, and procedures to follow for technical support or field service;

(iv) Provide necessary information for the vessel operator to complete the VMP, such as images and diagrams of camera views and vessel layout, specific information about system settings, and designated discard control points; and,

(v) Complete an EM System Certification Form for the vessel owner.

(2) The EM service provider must communicate with vessel operators and NMFS to coordinate service needs, resolve specific program issues, and provide feedback on program operations.

(3) The EM service provider must provide maintenance and support services, including maintaining an EM equipment inventory, such that all deployed EM systems perform according to the performance standards at § 660.604(j) and that field service events are scheduled and carried out with minimal delays or disruptions to fishing activities.

(4) The EM service provider must provide technical assistance to vessels, upon request, in EM system operation, the diagnosis of the cause of malfunctions, and assistance in resolving any malfunctions. Technical support must be available 24-hours per day, seven days per week, and year-round.

(5) The EM service provider must submit to NMFS reports of requests for technical assistance from vessels, including when the call or visit was made, the nature of the issue, and how it was resolved.

(1) *Program and technical support for NMFS.* The EM service provider must provide the following to NMFS or its agent, upon request, free of charge unless otherwise specified by contract.

(1) Assistance in EM system operation, diagnosing and resolving technical issues, and recovering corrupted or lost data.

(2) Support for inquiries related to data summaries, analyses, reports, and operational issues with vessel representatives

(3) Litigation support to NMFS if the EM system/data is being admitted as evidence in a court of law. All technical aspects of a NMFS-approved EM system are subject to being admitted as evidence in a court of law, if needed. The reliability of all technologies utilized in the EM system may be analyzed in court for, inter alia, testing procedures, error rates, peer review, technical processes and general industry acceptance. The EM service provider must, as a requirement of the provider's permit, provide technical and expert support for litigation to substantiate the EM system capabilities or other relevant information to investigate or establish potential violations of this chapter or other applicable law, as needed, including:

(i) If the technologies have previously been subject to such scrutiny in a court of law, the EM service provider must provide NMFS with a brief summary of the litigation and any court findings on the reliability of the technology.

(ii) Sign a non-disclosure agreement limiting the release of certain information that might compromise the effectiveness of the EM system operations.

(4) Supply all software necessary for accessing, viewing, and interpreting the data generated by the EM system, including maintenance releases to correct errors in the software or enhance the functionality of the software.

(5) Notify NMFS within 24 hours after the EM service provider becomes aware of the following:

(i) Any information regarding possible harassment of EM provider staff;



- (ii) Any information regarding possible EM system tampering;
  - (iii) Any information regarding any action prohibited under §§ 660.12(f) or 660.602(a)(13); and,
  - (iv) Any information, allegations or reports regarding EM service provider staff conflicts of interest.
- (6) Notify NMFS of any change of management or contact information or a change to insurance coverage.
- (7) If requested, provide NMFS with the following:
- (i) A copy of any contract between the service provider and entities requiring EM services;
  - (ii) Proof of adequate insurance as defined in paragraph (i);
  - (iii) Copies of any information developed and used by the EM service provider and distributed to vessels, including, but not limited to, informational pamphlets, payment notifications, and description of EM service provider duties; and,
  - (iv) Access to and submit to NMFS raw EM imagery, sensor, GPS, or other data, processed data, copies of EM data, meta data, and other associated records.
  - (m) *Data services*. Beginning on January 1, 2020, or earlier if notified by NMFS in the **Federal Register** with six months prior notice, the EM service provider must provide and manage data processing, reporting, and record retention services, as described below, according to a NMFS-approved EM Service Plan and such that the EM Program is sufficient to provide NMFS with the best scientific information available to determine individual accountability for catch, including discards, of IFQ species and compliance with requirements of the Shorebased IFQ Program (§ 660.140) and MS Coop Program (§ 660.150).

(1) The EM service provider must process sensor and image datasets, interpret, and analyze EM data sets from EM trips. The EM provider must review EM data according to a prescribed coverage level or sampling scheme, as specified by NMFS, and determine an estimate of discards for each trip using standardized estimation methods specified by NMFS. NMFS will maintain manuals for EM data processing protocols on its website.

(2) The EM service provider must ensure that data processing staff are fully trained in:

- (i) Use of data processing software;
- (ii) Species identification;
- (iii) Fate determination and metadata reporting requirements;
- (iv) Data processing procedures;
- (v) Data tracking; and,
- (vi) Reporting and data upload procedures.

(3) The EM service provider must track hard drives and EM datasets throughout their cycles, including documenting any access and modifications. EM hard drives must be erased to remove confidential data before returning them to the field.

(4) The EM service provider must communicate with vessel operators and NMFS to coordinate data service needs, resolve specific program issues, and provide feedback on program operations. The EM service provider must provide feedback to vessel representatives, field services staff, and NMFS regarding:

- (i) Adjustments to system settings;
- (ii) Changes to camera positions;
- (iii) Advice to vessel personnel on duty of care responsibilities;
- (iv) Advice to vessel personnel on catch handling practices; and,

(v) Any other information that would improve the quality and effectiveness of data collection on the vessel.

(5) The EM service provider must submit to NMFS processed EM datasets and summaries, including discard estimates, fishing activity information, and meta data (e.g., image quality, reviewer name), and incident reports of compliance issues as instructed by NMFS. EM datasets and reports must be sufficient to provide NMFS with the best scientific information available to determine individual accountability for catch, including discards, of IFQ species and compliance with requirements of the Shorebased IFQ Program (§ 660.140) and MS Coop Program (§ 660.150). If NMFS determines that the information is not sufficient, NMFS may require the EM service provider to correct and resubmit the reports.

(6) *Retention of records.* Following an EM trip, the EM service provider must maintain all EM data and other records specified in this section, or used in the preparation of records or reports specified in this section or corrections to these reports, for a period of not less than three years after the date of landing for that trip. EM records must be stored such that the integrity and security of the records is maintained for the duration of the retention period. The EM service provider must produce EM records immediately upon request by the EM Program Manager or an authorized officer.

(n) *Data integrity and security.* The EM service provider must ensure the integrity and security of EM data and other records specified in this section.

(1) The EM service provider must not handle or transport hard drives containing EM data except to carry out EM services required by this section in accordance with a NMFS-accepted EM Service Plan.

(2) The EM service provider must not write to or modify any EM hard drive that contains raw EM data before it has been copied and catalogued.

(3) Consistent with the Magnuson-Stevens Act, an EM service provider and its employees must not disclose data and observations made on board a vessel to any person except the owner or operator of the observed vessel, an authorized state or an OLE agent or officer, NMFS or its designated agent.

**§ 660.604 Vessel and first receiver responsibilities.**

(a) *General.* This section lays out the requirements for catcher vessels to obtain an exemption to use electronic monitoring (EM) in place of 100-percent observer coverage required by the Shorebased IFQ Program (§ 660.140(h)(1)(i)) and MS Coop Program (§ 660.150(j)(1)(i)(B)). Requirements are also described for first receivers receiving landings from EM trips.

(b) *Vessel Owner Responsibilities.* To use EM under this section, vessel owners must:

(1) Obtain an EM Authorization from the NMFS West Coast Region Fisheries Permit Office (*see* § 660.604(e));

(2) Install an EM system using a NMFS-permitted EM service provider that meets performance standards under § 660.604(j);

(3) Have a signed EM system certification form (*see* § 660.604(e)(3)(i));

(4) Have a NMFS-accepted vessel monitoring plan (*see* § 660.604(e)(3)(iii));

(5) Ensure that the vessel operator attends a mandatory EM orientation session provided by the NMFS West Coast Region EM Program (NMFS may waive this requirement on a case-by-case basis, such as when the vessel operator has prior EM experience);

(6) Maintain logbooks and other records for three years and provide them to NMFS or authorized officers for inspection (*see* § 660.604(t)).

(7) Beginning January 1, 2020, or earlier if notified by NMFS, obtain EM data processing and recordkeeping services from a NMFS-permitted EM service provider (*see* § 660.604(k)).

(c) *Vessel Operator Responsibilities.* To use EM under this section, vessel operators must:

(1) Maintain a valid EM Authorization and NMFS-accepted vessel monitoring plan onboard the vessel at all times that the vessel is fishing on an EM trip or when fish harvested during an EM trip are onboard the vessel;

(2) Ensure that the EM system is installed, operated, and maintained consistent with performance standards (*see* § 660.604(l));

(3) Comply with a NMFS-accepted vessel monitoring plan (*see* § 660.604(e)(3)(iii));

(4) Make declaration reports to OLE prior to leaving port (*see* § 660.604(m));

(5) Provide advance notice to the Observer Program at least 48 hours prior to departing port (*see* § 660.604(n));

(6) Comply with observer requirements, if NMFS notifies the vessel owner, operator, or manager that the vessel is required to carry an observer (*see* § 660.604(n));

(7) Ensure retention and handling of all catch as provided under §§ 660.604(p) and 660.604(r);

(8) Comply with recordkeeping, reporting and inspection requirements (*see* §§ 660.604(o), (s) and (t)); and,

(d) *First receiver responsibilities.* First receivers receiving catch from trips taken under EM must follow special disposition and sorting requirements for prohibited and protected species (*see* §660.604(u)).

(e) *Electronic Monitoring Authorization.* To obtain an EM Authorization, a vessel owner must submit an initial application to the NMFS West Coast Region Fisheries Permit Office, then a final application that includes an EM system certification and a vessel monitoring plan (VMP). NMFS will only review complete applications. A vessel owner may submit an application at any time. Vessel owners that want to have their Authorizations effective for January 1 of the following calendar year must submit their complete application to NMFS by October 1. Vessel owners that want to have their Authorizations effective for May 15 must submit their complete application to NMFS by February 15 of the same year. Vessel owners that participated in the 2015 or 2016 EM Exempted Fishing Permit project may submit a completed renewal form to receive an EM Authorization for 2017, following the process at § 660.604(i).

(1) *Initial application.* To be considered for an EM Authorization, the vessel owner must submit a completed application form provided by NMFS, signed and dated by an authorized representative of the vessel, and meet the following eligibility criteria:

- (i) The applicant owns the vessel proposed to be used;
- (ii) The vessel has a valid Pacific Coast Groundfish limited entry, trawl-endorsed permit registered to it;
- (iii) If participating in the mothership sector, the vessel has a valid MS/CV endorsement;
- (iv) The vessel is participating in the Pacific whiting IFQ fishery, mothership sector, or the Shorebased IFQ sector using groundfish non-trawl gear;

(v) The vessel is able to accommodate the EM system, including providing sufficient uninterrupted electrical power, suitable camera mounts, adequate lighting, and fittings for hydraulic lines to enable connection of a pressure transducer;

(vi) The vessel owner and operator are willing and able to comply with all applicable requirements of this section and to operate under a NMFS-accepted vessel monitoring plan.

(2) *Review of initial application.* Based on a complete initial application, if NMFS determines that the applicant meets the eligibility criteria in paragraph (e)(1) of this section, NMFS will notify the applicant in writing that the initial application has been accepted for further consideration. An applicant who receives such notice may install an EM system on his or her vessel and proceed with submission of a final application as provided under paragraph (e)(3). If an initial application has not been accepted, NMFS will provide the applicant an explanation of the denial in writing. The applicant may appeal NMFS's determination following the process at § 660.25(g).

(3) *Final application.* A final application must be complete and must include:

(i) *EM system certification.* A certification form, provided by NMFS, signed by a representative of a NMFS-permitted EM service provider that attests that an EM system and associated equipment that meets the performance standards at paragraph (k) was installed on the vessel, that the system was tested while the vessel was underway, and that the vessel operator was briefed on the EM system operation and maintenance. NMFS will maintain a list of permitted EM service providers on its website.

(ii) *Tentative fishing plan.* A description of the vessel owner's fishing plans for the year, including which fishery the vessel owner plans to participate in, from what ports, and when the

vessel owner intends to use EM and observers. This information is for purposes of planning observer deployments and is not binding.

(iii) *Vessel monitoring plan*. A complete vessel monitoring plan for the vessel that accurately describes how fishing operations on the vessel will be conducted and how the EM system and associated equipment will be configured to meet the performance standards at paragraph (k). NMFS will develop EM Program Guidelines containing best practices and templates and make them available on NMFS's website to assist vessel owners in developing VMPs (*see* § 660.600(b)). An EM service provider may prepare and submit a VMP on behalf of the applicant. The VMP must include descriptions of the following (using pictures and diagrams where appropriate):

(A) General vessel information including the vessel name, hull number, gear type(s), home port, captain name, and target fishery or sector;

(B) The coordinates of the home port box, if a geo-referenced port box will be used to trigger data collection;

(C) A diagram of the vessel layout with measurements of the deck and denoting the location of any designated discard control points;

(D) The number and location of cameras and with images of corresponding views;

(E) The location of lighting, control center, GPS, sensors, monitor, and other EM equipment;

(F) Frame rates, image resolution, frequency of data logging, sensor trigger threshold values, and other EM system specifications;



(G) The location and procedures for any catch handling, including designated discard control points within camera view, procedures for sorting and measuring discards, the number of crew sorting catch, and what steps will be taken to ensure that all catch remains in camera view;

(H) The measurements of all bins, baskets and compartments that will be used to calculate volumetric estimates of weight;

(I) The detailed steps that will be taken to minimize the potential for EM system malfunctions and the steps will be taken, when malfunctions occur, to ensure the adequate monitoring of catch;

(J) The name, address, phone number, and email address of a primary point of contact for vessel operations;

(K) The name, address, and phone number of the vessel's EM service provider, and contact information for a primary point of contact at the EM service provider;

(L) The name, address, phone number, and signature of the applicant, and the date of the application; and,

(M) Any other information required by the EM Program Manager.

(iv) Any updates to information submitted in the initial application, including updates to proposed, self-enforcing agreements, if applicable (*see* paragraph (e)(5)).

(4) *Review of final application.* NMFS may request additional information or revisions from the applicant until NMFS is satisfied that the application is complete. Based on a complete application, if NMFS determines that the applicant has met the requirements of this section, NMFS will issue an IAD and an EM Authorization. If the application is denied, the IAD will provide an explanation of the denial in writing. The applicant may appeal NMFS's determination

following the process at § 660.25(g). NMFS will evaluate an application based on the EM Program Guidelines (*see* § 660.600(b)) and the following criteria, at a minimum:

(i) Review of the vessel owner's and operator's eligibility based on the eligibility criteria at paragraph (e)(1);

(ii) Review of the proposed vessel monitoring plan; and,

(iii) Review of the proposed self-enforcing agreement, if applicable.

(5) *Self-enforcing agreement.* In the future, through a proposed and final rulemaking, NMFS may allow for and provide requirements related to the use of voluntary self-enforcing agreements. This agreement would allow a group of eligible vessels to encourage compliance with the requirements of this section through private, contractual arrangements. If such arrangements are used, participating vessel owners must submit the proposed agreement to NMFS for review and acceptance as part of the application process as provided under paragraphs (e)(1) and (3). The existence of a self-enforcing agreement among EM vessels does not foreclose the possibility of independent enforcement action by NMFS OLE or authorized officers.

(f) *Changes to a NMFS-accepted VMP.* A vessel owner may make changes to a NMFS-accepted VMP by submitting a revised plan or plan addendum to NMFS in writing. NMFS will review and accept the change if it meets all the requirements of this section. A vessel monitoring plan addendum must contain:

(1) The date and the name and signature of the vessel owner;

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

(3) A complete description of the proposed VMP change.

(g) *Change in ownership of a vessel.* If a vessel changed ownership, the new owner must apply for a new EM Authorization.

(h) *Effective dates.* The EM Authorization is valid from the effective date until occurrence of one or more of the following:

(1) December 31 if the vessel owner fails to submit a complete renewal form for the following year;

(2) The vessel changes ownership; or,

(3) NMFS notifies the vessel owner that its EM Authorization is invalid. NMFS may invalidate an EM Authorization if NMFS determines that the vessel, vessel owner, and/or operator no longer meets the eligibility criteria specified at paragraph (e)(1). NMFS would first notify the vessel owner of the deficiencies in writing and the vessel owner must correct the deficiencies following the instructions provided. If the deficiencies are not resolved upon review of the first trip following the notification, NMFS will notify the vessel owner in writing that the EM Authorization is invalid and that the vessel is no longer exempt from observer coverage at §§ 660.140(h)(1)(i) and 660.150(j)(1)(i)(B) for that authorization period. The holder may reapply for an EM Authorization for the following authorization period.

(i) *Renewing an EM Authorization.* NMFS will mail EM Authorization renewal forms to existing EM Authorization holders each year on or about: September 1 for non-trawl shorebased IFQ vessels and January 1 for Pacific whiting IFQ and MS/CV vessels. If vessel owners submit completed renewal forms by October 15 for non-trawl shorebased IFQ vessels and February 15 for Pacific whiting IFQ and MS/CV vessels, their EM Authorization will be automatically renewed for the following authorization period.

(j) *EM System Performance Standards*. The specifications (e.g., image resolution, frame rate, user interface) and configuration of an EM system and associated equipment (e.g., number and placement of cameras, lighting) used to meet the requirements of this section must be sufficient to:

(1) Allow easy and complete viewing, identification, and quantification, of catch items discarded at sea, including during low light conditions;

(2) Continuously record vessel location (latitude/longitude coordinates), velocity, course, and sensor data (i.e, hydraulic and winch activity);

(3) Allow the identification of the time, date, and location of a haul/set or discard event;

(4) Record and store image data from all hauls/sets and the duration that fish are onboard the vessel until offloading begins;

(5) Continuously record and store raw sensor data (i.e., GPS and gear sensors) for the entire fishing trip;

(6) Prevent radio frequency interference (RFI) with vessel monitoring systems (VMS) and other equipment;

(7) Allow the vessel operator to test and monitor the functionality of the EM system prior to and during the fishing trip to ensure it is fully functional;

(8) Prevent tampering or, if tampering does occur, show evidence of tampering; and,

(9) Provide image and sensor data in a format that enables their integration for analysis.

(k) *EM data services*. Beginning January 1, 2020, or earlier if notified by NMFS in the **Federal Register** with six months prior notice, a vessel owner with a valid EM Authorization must obtain EM data processing, reporting, and record retention services from a NMFS-permitted EM service provider, as described at § 660.603(m). If the vessel owner changes EM

service providers, the vessel owner must ensure the continuity of EM data retention for the entire duration of the required retention period as specified § 660.603(m)(6). NMFS will maintain a list of permitted EM service providers on its website.

(1) *EM system operation and maintenance.* The EM system must be recording imagery and sensor data at all times that fish harvested during an EM trip are onboard the vessel until offloading begins. For the purposes of this section, a fully functional EM system is defined as an EM system and associated equipment that meets the performance standards listed in paragraph (k).

(1) *Duties of care.* The operator of a vessel with a valid EM Authorization must maintain the EM system in good working order, including:

(i) Ensuring the EM system is powered continuously during the fishing trip;

(ii) Ensuring the system is functioning for the entire fishing trip and that camera views are unobstructed and clear in quality, such that the performance standards listed in paragraph (j) are met; and,

(iii) Ensuring EM system components are not tampered with, disabled, destroyed, operated or maintained improperly.

(2) *Pre-departure test.* Prior to departing port, the operator of a vessel with a valid EM Authorization must turn the EM system on and conduct a system function test following the instructions from the EM service provider. The vessel operator must verify that the EM system has adequate memory to record the entire trip and that the vessel is carrying one or more spare hard drives with sufficient capacity to record the entire trip.

(3) *EM system malfunctions.* The operator of a vessel with a valid EM Authorization is prohibited from fishing on an EM trip without a fully functional EM system, unless an alternate

arrangement has been specified in the NMFS-accepted VMP. In the event of an EM system malfunction, the vessel operator may voluntarily obtain observer coverage and revise the vessel's declaration following the process at § 660.13(d)(5), in which case the vessel operator is no longer exempt from the observer requirements at §§ 660.140(h) and 660.150(j).

(m) *Declaration reports.* The operator of a vessel with a valid EM Authorization must make a declaration report to NMFS OLE prior to leaving port following the process described at § 660.13(d)(5). A declaration report will be valid until another declaration report revising the existing gear or monitoring declaration is received by NMFS OLE. A vessel operator declaring a limited entry midwater trawl, Pacific whiting shorebased IFQ trip or limited entry midwater trawl, Pacific whiting mothership sector (catcher vessel or mothership) trip may only revise the existing monitoring declaration twice during the same calendar year. NMFS may waive this limitation with prior notice if it is determined to be unnecessary for purposes of planning observer deployments. Additional revisions may be made if the EM system has malfunctioned and the vessel operator has chosen to carry an observer, as allowed under paragraph (m)(3); or subsequently, the EM system has been repaired; and upon expiration or invalidation of the vessel's EM Authorization.

(n) *Observer requirements.* The operator of a vessel with a valid EM Authorization must provide advanced notice to NMFS, at least 48 hours prior to departing port, of the vessel operator's intent to take a trip under EM, including: vessel name, permit number; contact name and telephone number for coordination of observer deployment; date, time, and port of departure; and the vessel's trip plan, including area to be fished and gear type to be used. NMFS may waive this requirement for vessels declared into the Pacific whiting IFQ fishery or mothership sector with prior notice. If NMFS notifies the vessel owner, operator, or manager of

any requirement to carry an observer, the vessel may not be used to fish for groundfish without carrying an observer. The vessel operator must comply with the following requirements on a trip that the vessel owner, operator, or manager has been notified is required to carry an observer.

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

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

(3) *Optional notice—back-to-back fishing trips.* A vessel operator that intends to make back-to-back fishing trips (i.e., trips with less than 24 hours between offloading from one trip and beginning another), may provide a notice of departure as described in paragraph (n)(1) for both trips, prior to making the first trip. A vessel operator that has given such notice is not required to give additional notice of the second trip.

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

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

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

(ii) 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.

(7) *Safe conditions.*—(i) The vessel operator must 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, and provisions at §§ 600.725 and 600.746 of this chapter. 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.

(ii) The vessel operator must 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.



(8) *Observer communications.* The vessel operator must facilitate observer communications by:

(i) Allowing observer(s) to use the vessel's communication equipment and personnel, on request, for the entry, transmission, and receipt of work related messages, at no cost to the observer(s) or the U.S. or designated agent; and

(ii) Ensuring that the vessel's communications equipment, used by observers to enter and transmit data, is fully functional and operational.

(9) *Vessel position.* The vessel operator must allow observer(s) access to the vessel's navigation equipment and personnel, on request, to determine the vessel's position.

(10) *Access.* The vessel operator must 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.

(11) *Prior notification.* The vessel operator must 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.

(12) *Records.* The vessel operator must allow observer(s) to inspect and copy any state or federal logbook maintained voluntarily or as required by regulation.

(13) *Assistance.* The vessel operator must provide all other reasonable assistance to enable observer(s) to carry out their duties, including, but not limited to:

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

(ii) Providing a designated safe working area on deck for the observer(s) to collect, sort and store catch samples.

(iii) Collecting samples of catch.

- (iv) Collecting and carrying baskets of fish.
- (v) Allowing the observer(s) to collect biological data and samples.
- (vi) Providing adequate space for storage of biological samples.
- (vii) Providing time between hauls to sample and record all catch.
- (viii) Sorting retained and discarded catch into quota pound groupings.
- (ix) Stowing all catch from a haul before the next haul is brought aboard.

(14) *Sampling station.* To allow the observer to carry out the required duties, the vessel operator must provide an observer sampling station that meets the following requirements so that the observer can carry out required duties.

(i) The observer sampling station must be available to the observer at all times.

(ii) The observer sampling station must be located within 4 m of the location from which the observer samples unsorted catch. Unobstructed passage must be provided between the observer sampling station and the location where the observer collects sample catch. 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.

(15) *Transfers at sea.* Observers may be transferred at-sea between a MS vessel and a catcher vessel. Transfers at-sea between catcher vessels is prohibited. For transfers, both vessels must:

(i) 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.

(ii) 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.

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

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

(16) *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.

(o) *Inspection.* The operator of a vessel with a valid EM Authorization must make the EM system and associated equipment available for inspection immediately upon request by NMFS OLE personnel, USCG personnel, state enforcement personnel, or any authorized officer.

(p) *Retention requirements.—(1) Pacific whiting IFQ and MS/CV vessels.* The operator of a vessel on a declared limited entry midwater trawl, Pacific whiting shorebased IFQ trip or limited entry midwater trawl, Pacific whiting mothership sector (catcher vessel or mothership) trip, EM trip must retain all fish until landing, with exceptions listed below.

(i) Minor operational discards are permitted. Minor operational discards include mutilated fish; fish vented from an overfull codend, fish spilled from the codend during preparation for transfer to the mothership; and fish removed from the deck and fishing gear during cleaning. Minor operational discards do not include discards that result when more catch is taken than is necessary to fill the hold or catch from a tow that is not delivered.

(ii) Large individual marine organisms (i.e., all marine mammals, sea turtles, and seabirds, and fish species longer than 6 ft (1.8 m) in length) may be discarded.

(iii) Crabs, starfish, coral, sponges, and other invertebrates may be discarded.

(iv) Trash, mud, rocks, and other inorganic debris may be discarded.

(iv) A discard that is the result of an event that is beyond the control of the vessel operator or crew, such as a safety issue or mechanical failure, is permitted.

(2) *Non-trawl shorebased IFQ.* A vessel operator on a declared limited entry groundfish non-trawl, shorebased IFQ trip must retain all IFQ species (as defined at § 660.140(c)), salmon, and non-IFQ rockfish, flatfish, and roundfish, with exceptions listed below. The operator of a non-trawl shorebased IFQ vessel must discard Pacific halibut, Dungeness crab caught seaward of Washington or Oregon, green sturgeon, eulachon, seabirds, sea turtles, and marine mammals.

(i) Mutilated and depredated fish may be discarded.

(ii) Crabs, starfish, coral, sponges, and other invertebrates may be discarded.

(iii) Trash, mud, rocks, and other inorganic debris may be discarded.

(iv) A discard that is the result of an event that is beyond the control of the vessel operator or crew, such as a safety issue or mechanical failure, is permitted.

(q) *Changes to retention requirements.* Retention requirements for non-trawl shorebased IFQ vessels have been designated as “routine,” which means that they can be changed after a single Council meeting following the procedures described at § 660.60(c).

(r) *Catch handling.* The vessel operator of a vessel on an EM trip must ensure that all catch is handled in a manner that enables the EM system to record it and that is consistent with the specific catch handling instructions in the NMFS-accepted VMP.

(s) *Reporting requirements.*—(1) *Discard logbook.* The operator of a vessel with a valid EM Authorization must complete, submit, and maintain onboard the vessel an accurate federal discard logbook for each EM trip on forms supplied by or approved by NMFS. If authorized in writing by the NMFS, a vessel owner or operator may submit reports electronically, for example by using a VMS or other media. A state logbook that contains all the required information may

be submitted in place of a federal discard logbook. If operating an MS/CV vessel, the vessel operator must provide logbook information to the mothership observer by transmitting the logbook information via radio or email to the mothership at the completion of each haul.

(2) *Submission of logbooks.* Vessel operators must submit copies of the federal discard logbook and state retained logbook to NMFS or its agent within 24-hours of the end of each EM trip.

(3) *Submission of hard drives.* Vessel operators must submit hard drives to NMFS or its agent using a method that requires a signature for delivery and provides a return receipt or delivery notification to the sender. Beginning January 1, 2020, or earlier if announced by NMFS in the *Federal Register* with six months prior notice, a vessel operator must submit hard drives to the vessel owner's contracted EM service provider. Deadlines for submission are as follows:

(i) *Pacific whiting IFQ vessels.* Hard drives containing data from an EM trip must be postmarked within 10 calendar days of the end of that EM trip.

(ii) *Mothership catcher vessels.* Hard drives containing data from an EM trip must be postmarked within 24-hours of the catcher vessel's return to port.

(iii) *Non-trawl shorebased IFQ vessels.* Hard drives containing data from an EM trip must be postmarked within 10 calendar days of the end of that EM trip.

(t) *Retention of records.* The operator of a vessel with a valid EM Authorization must maintain federal discard logbooks onboard the vessel until the end of the fishing year during which the EM trips were conducted, and make the report forms available to observers, NMFS staff, or authorized officers, immediately upon request. The vessel owner must maintain the federal discard logbooks and other records specified in this section, or used in the preparation of

records or reports specified in this section or corrections to these reports, for a period of not less than three years after the date of landing from an EM trip. The vessel owner must make such records available for inspection by NMFS staff or authorized officers, immediately upon request.

(u) *First receiver requirements. (1) 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 EM trip landings are the responsibility of the first receiver and must be consistent with the following requirements:

(i) Any prohibited species landed at first receivers must not be transferred, processed, or mixed with another landing 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.

(ii) 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.

(iii) 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.

(iv) 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 NMFS OLE immediately upon request.

(2) *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 (u)(2)(i) and (ii) 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.

(i) *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.

(ii) *Seabirds, marine mammals, and sea turtles.* Albatross must reported to the U.S. Fish and Wildlife Service 541-867-4558 extension 237 or 503-231-6179) as soon as possible and directions for surrendering must be followed. 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 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.

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