

§ 660.17

50 CFR Ch. VI (10–1–14 Edition)

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

issuance, a catch monitor must keep their certification valid by meeting all of the following requirements specified below:

<i>West Coast Groundfish Fishery</i>	Regulation section
(1) Shorebased IFQ Program—Trawl Fishery	§ 660.140, subpart D.
(2) MS Coop Program—Whiting At-sea Trawl Fishery.	§ 660.150, subpart D.
(3) C/P Coop Program—Whiting At-sea Trawl Fishery.	§ 660.160, subpart D.
(4) Fixed Gear Fisheries	§ 660.216, subpart E.
(5) Open Access Fisheries	§ 660.316, subpart F.

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

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

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

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

(v) Successful completion of a briefing by a catch monitor consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other briefing requirements established by the catch monitor program.

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

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

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

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

(2) Have successfully completed NMFS-approved training.

(i) Successful completion of training by an applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards

[75 FR 78376, Dec. 15, 2010]

§ 660.17 Catch monitors and catch monitor service providers.

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

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

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

(3) *Maintaining the validity of a catch monitor certification.* After initial

Fishery Conservation and Management

§ 660.17

issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by NMFS.

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

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

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

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

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

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

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

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

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

(1) *Applications.* Persons seeking to provide catch monitor services must

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

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

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

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

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

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

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

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

§ 660.17

50 CFR Ch. VI (10–1–14 Edition)

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

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

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

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

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

(C) Absence of a conflict of interest.

(D) Absence of relevant criminal convictions.

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

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

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

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

(ii) Be at least 18 years of age;

(iii) Have a high school diploma and;

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

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

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

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

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

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

(A) Physical fitness exams shall be conducted by a medical doctor who has been provided with a description of the job duties and work conditions and who provides a written conclusion regarding the candidate's fitness relative to the required duties and work conditions. A signed and dated statement from a licensed physician that he or she has physically examined a catch monitor or catch monitor candidate. The statement must confirm that, based on that physical examination, the catch monitor or catch monitor candidate does not have any health problems or conditions that would jeopardize that individual's safety or the safety of others while deployed, or prevent the catch monitor or catch monitor candidate from performing his or her duties satisfactorily. The physician's statement must be submitted to the catch monitor program office prior

Fishery Conservation and Management

§ 660.17

to certification of a catch monitor. The physical exam must have occurred during the 12 months prior to the catch monitor's or catch monitor candidate's deployment. The physician's statement will expire 12 months after the physical exam occurred. A new physical exam must be performed, and accompanying statement submitted, prior to any deployment occurring after the expiration of the statement.

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

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

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

(2) States Worker's Compensation as required.

(3) Commercial General Liability.

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

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

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

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

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

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

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

(i) Must have a valid catch monitor certification;

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

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

(5) *Respond to industry requests for catch monitors.* A catch monitor provider must provide a catch monitor for assignment pursuant to the terms of the contractual relationship with the first receiver to fulfill first receiver requirements for catch monitor coverage under § 660.140(i)(1). An alternate catch monitor must be supplied in each case where injury or illness prevents the catch monitor from performing his or her duties or where the catch monitor resigns prior to completion of his or her duties. If the catch monitor provider is unable to respond to an industry request for catch monitor coverage from a first receiver for whom the provider is in a contractual relationship due to the lack of available catch monitors, the provider must report it to NMFS at least 4 hours prior to the expected assignment time.

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

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

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

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

(8) *Provide catch monitor assignment logistics.*

§ 660.17

50 CFR Ch. VI (10–1–14 Edition)

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

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

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

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

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

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

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

(ii) [Reserved]

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

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

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

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

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

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

(A) Training registration materials consist of the following:

(1) Date of requested training;

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

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

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

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

(B) Briefing registration materials consist of the following:

(1) Date and type of requested briefing session;

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

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

Fishery Conservation and Management

§ 660.17

monitor's name and length of observer contract.

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

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

(2) [Reserved]

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

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

(B) Catch monitors.

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

this section within 30 days of the effective date of such change.

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

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

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

(A) Any information regarding possible catch monitor harassment;

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

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

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

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

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

§ 660.18

50 CFR Ch. VI (10–1–14 Edition)

provider company to whom the catch monitor was contracted except with written permission of the catch monitor.

[75 FR 78377, Dec. 15, 2010, as amended at 76 FR 53835, Aug. 30, 2011; 76 FR 74734, Dec. 1, 2011]

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

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

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

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

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

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

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

(i) Any ownership, mortgage holder, or other secured interest in a vessel, 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) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS or has interests that may be substantially affected by the performance or nonperformance of the catch monitor's official duties.

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

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

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

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

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

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

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

(e) *Decertification.* (1) *Decertification review official.*—The Regional Administrator (or a designee) will designate a decertification review official(s), who will have the authority to review certifications and issue IADs of decertification.