

Compliance Guide for Observer and Catch Monitor Provider Permitting Process in the Pacific Coast Groundfish Fishery April 2015

WHO:

Any person who wants to provide observers and/or catch monitors for the Pacific Coast Groundfish Fishery's Trawl Rationalization Program, as well as processing vessels in the limited entry fixed gear and open access fisheries.

WHAT:

NMFS has developed a new permitting system for observer and catch monitor providers. Beginning in May 2015, this system will replace the certification system that was previously in place. Persons wanting to become observer and/or catch monitor provider will be required to submit an annual application for a provider permit, which includes a request for either an observer provider and/or catch monitor provider endorsement. Applications are available at <http://www.westcoast.fisheries.noaa.gov/> Click on "fisheries", then "groundfish", then "groundfish permits".

WHEN:

Applications for a provider permit can be submitted any time during the calendar year. Applications received after October 31 may not be processed until the following calendar year. Permits are good from the day they are granted through December 31 of that year. For 2015, any person who provided observers or catch monitors in the past 12 months will automatically be issued a provider permit for 2015, but will have to apply for a permit for 2016 and beyond. Each year, NMFS will mail provider permit applications to existing permit holders on or about September 15.

WHY:

To expedite implementation of the Groundfish Trawl Rationalization Program in 2011, it was necessary to pattern the Pacific Coast observer and catch monitor provider regulations after the North Pacific Groundfish observer provider regulations. However, those regulations were too prescriptive for the Pacific Coast. Therefore, at the April 2012 Pacific Fishery Management Council meeting, the Council recommended expanding those regulations to allow for the entry of new observer and catch monitor providers separate from those that provide observers in the North Pacific groundfish fisheries.

Are you qualified to be an observer or catch monitor provider? (Hint: You are if you can answer yes to the following questions!)

1. Can you demonstrate that you understand the scope of the regulations you will need to follow?
2. Do you have the business infrastructure to carry out the job?
3. Can you document how you'll comply with the regulations?
4. Are you free from any conflict of interest?
5. Are you free from past performance problems on federal contracts?
6. Are you free from criminal convictions that could impact your ability to be a successful applicant?



This small entity compliance guide was prepared pursuant to section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 104-121. The statements in this document are intended solely as guidance. This document is intended to provide a plain-language summary of how small businesses can comply with new regulations for the observer and catch monitor programs in the Pacific Coast groundfish fishery (80 FR 22270, April 21, 2015). Any discrepancies between this guide and the *Federal Register* will be resolved in favor of the *Federal Register*.

Definitions:

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

Catch monitor provider means any person that is granted a permit by NMFS to provide certified catch monitors as required in 50 CFR § 660.140.

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

Observer provider means any person that is granted a permit by NMFS to provide certified observers as required at 50 CFR § 660.140, 660.150, 660.160, 660.216 or 660.316.

Person, as it applies to limited entry and open access fisheries conducted under, subparts C through F of this part means any individual, corporation, partnership, association or other entity (whether or not organized or existing under the laws of any state), and any Federal, state, or local government, or any entity of any such government that is eligible to own a documented vessel under the terms of 46 U.S.C. 12103(b).

Frequently Asked Questions:

Q: How do the conflict of interest limitations work?

A: The conflict of interest limitations for observers, catch monitors, and providers were intended to apply to commercial fishing activity, including commercial activity in recreational fisheries (i.e. charters). The following lists provide conflict of interest restrictions for catch monitors and providers. Conflict of interest restrictions for observers are not included here. Instead they are outlined at a national level. For further information on conflict of interest restrictions for each of these groups please see 50 CFR §660.17 (catch monitors), §660.18 (providers), and NMFS Policy Directive 04-109-01, *National Minimum Eligibility Requirements for Marine Fisheries Observers* (observers).

Observers and Catch Monitors:

- May not have direct financial interest, other than the provision of observer or catch monitor services, in a North Pacific fishery managed pursuant to a 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:
 - 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;
 - Any business involved with selling supplies or services to any vessel, first receiver, shorebased or floating stationary processing facility; or
 - Any business involved with purchasing raw or processed products from any vessel, first receiver, shorebased or floating stationary processing facilities/
- Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from any person who either conducts activities that are regulated by NMFS or has interests that may be substantially affected by the performance or non-performance of the catch monitor's official duties.
- May not serve as a catch monitor at any shoreside or floating processing facility owned or operated where a person was previously employed in the last two years.
- 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.

Providers:

- Must not have a direct financial interest, other than the provision of observer, catch monitor, or other biological sampling services, in any federal or state managed fisheries, including but not limited to:
 - 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,
 - Any business involved with selling supplies or services to any vessel, first receiver, shorebased or floating processor facility; or
 - Any business involved with purchasing raw or processed products from any vessel, first receiver, shorebased or floating stationary processing facilities.
- Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from any person who conducts fishing or fish processing activities that regulated by NMFS, or who has interests that may be substantially affected by the performance or non-performance of the official duties of the provider.

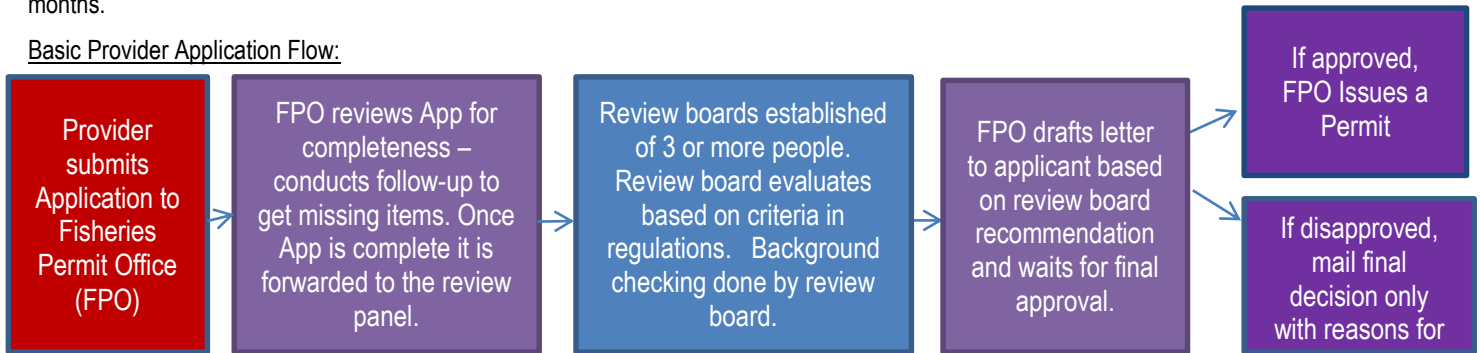
For more information on this issue or any other groundfish related issues, please see:
www.westcoast.fisheries.noaa.gov/groundfish or call 206-526-6140

Frequently Asked Questions, Continued:

Q: Why is NMFS requiring permits? How do I obtain or renew a permit? Does it cost money to obtain a permit? How long does it take to get a permit?

A: Previously, companies that supplied observers in the Pacific had undergone the permit processes used for North Pacific Fisheries. This rulemaking has created a new permitting process for Pacific groundfish fisheries. In addition, businesses that supply catch monitors were previously required to undergo a certification process. However, with this rulemaking they will also be required to undergo the same permit process. The permitting process will require businesses to annually submit applications to obtain a provider permit. By requiring providers to apply for permits annually, NMFS will be able to ensure that providers meet all regulatory requirements to be a provider. NMFS estimates that fees to obtain a permit will be about \$165 for renewals and \$550 for new permits. Once a complete application is received, NMFS' review process would begin and take at least a month. A provider permit expires if not renewed annually or if services have not been provided for 12 consecutive months.

Basic Provider Application Flow:



Q: When can I apply for a provider permit? Generally, what is required in the application? What if I'm denied a permit, can I apply again? Is there an appeals process? Do existing providers need to apply?

A: Applications for a provider permit can be submitted any time during the calendar year. Applications received after October 31 may not be processed until the following calendar year. Permits are good from the day they are granted through December 31 of that year. For 2015, any person who provided observers or catch monitors in the past 12 months will automatically be issued a provider permit for 2015, but will have to apply for a permit for 2016 and beyond. Each year, NMFS will mail provider permit applications to existing permit holders on or about September 15. Requirements for a complete application are listed in regulations and generally include: contact information, description of the management, organization structure, and ownership structure of the applicant's business, a narrative statement describing experience and qualifications, and a signed statement regarding any conflict of interest issues, criminal convictions, any previous decertifications.

If an applicant is denied a provider permit, they can appeal the decision using the appeals process laid out in section 50 CFR §660.19. If an applicant has been denied a provider permit or lost their certification, they may reapply for a permit once the reason for their denial or loss of certification has been resolved.

Q: If I'm currently an observer provider, do I need to submit an application for a provider permit?

A: If you are currently an observer provider, or have provided observers at some point in the 12 months prior to implementation of this rule, you will not be required to submit an application to maintain your status as a provider for the 2015 calendar year. However, if you would like to continue to be an observer provider beyond 2015, you will be required to annually submit an application with the observer endorsement (and the catch monitoring endorsement if you would like to qualify as a catch monitor provider). Applications can be submitted at any time throughout the year. However, applications submitted after October 31 may not be processed until the following year. If you are at any time a provider for either catch monitors or observers, and you would like to be a provider for both, you can either submit an application for the endorsement you do not hold (either catch monitor or observer provider), or you can wait until the application must be renewed and apply for both the catch monitor provider endorsement and the observer provider endorsement through one permit application.

Q: Can a fishing community, environmental group, or state institutions become a provider?

A: The regulations will allow any "person" that meets the qualifying criteria to be permitted as a provider. The term "person" is defined in regulation at 50 CFR §660.11 and includes, "any federal, state, or local government." Any public agency, including harbor districts, coastal towns, states and similar entities, who meet the qualifying criteria would be allowed to become a provider.

Q: Are the education standards and eligibility requirements the same for observers and catch monitors?

A: No. Catch monitor requirements are less restrictive than requirements for at-sea observers. Catch monitors have been required since 2011 to obtain a certification from NMFS which authorizes the individual to fulfill duties as specified by NMFS. The certification signifies the successful completion of the training course. The certification expires when the catch monitor has not been deployed and performed sampling duties as required by the catch monitor program office. More information on certification requirements for catch monitors can be found in regulations at §660.17.