

REGULATORY DEEMING WORKGROUP REPORT ON REGULATORY DEEMING FOR
FISHERY MANAGEMENT PLAN (FMP) AMENDMENT 20 (TRAWL
RATIONALIZATION) AND AMENDMENT 21 (INTERSECTOR ALLOCATION)

The Regulatory Deeming Workgroup (RDW) met on Thursday June 10 and Friday June 11 to discuss the draft regulations for implementing FMP Amendments 20 and 21. The RDW reviewed draft regulations implementing observer requirements, mandatory economic data collection, and other components of the trawl rationalization program. Comments on particular items within those regulations are included as an attachment to this report (Attachment 2), as are the comments on particular items reviewed at the RDW's May 2010 meeting (Attachment 1). General comments upon those draft regulations are included below.

In general, the RDW did not identify any major inconsistencies with the Council's action on trawl rationalization. However, as several pieces of the regulations are still missing, it appears that a third meeting of the RDW will be needed. In order for the trawl rationalization program to remain on schedule, the Council may wish grant the Executive Director with the authority to deem the remainder of the regulations, pending the outcome of the third RDW meeting.

The RDW notes the significant amount of work accomplished by National Marine Fisheries Service (NMFS) staff and is grateful for receiving the draft regulations prior to the RDW meeting.

Observer Requirements

The committee discussed the requirement that observers be given a continuous 6 hour rest period. While committee members acknowledged the need for observers to have satisfactory amounts of rest in order to perform duties, members noted that this 6 hour period could limit the operations of fishing vessels under the rationalization program. The committee members indicated that observer rest periods would tend to coincide with rest periods taken by the crew of the fishing vessel and while this may not necessarily mean 6 continuous hours on a daily basis, it should be sufficient.

In May the RDW discussed the language which states an observer provider "must provide an observer for deployment as requested by vessels..." The committee reiterated its concern that this language would appear to have the effect of requiring any observer company to provide an observer to a catcher vessel upon request, or risk being fined. The committee reiterates its recommendation that this language be modified to indicate that an observer provider must provide an observer as requested by a vessel *per the terms of the contract between the observer provider and the catcher vessel*.

The committee also discussed limiting observer placement on mothership catcher vessels to 22 days in a month. NMFS staff indicated that the 22 day limit on catcher vessels was written in to the draft regulations because living conditions on board vessels can be somewhat marginal and lack facilities sufficient for long-term housing. Committee members familiar with the at-sea fishery noted that living conditions on catcher vessels in the mothership fishery are more akin to

catcher-processors and motherships (where the 22 day limit is not proposed) than they are to other shoreside vessels. These at-sea catcher vessels are large and have facilities for laundry, etc. Furthermore, limiting observers to 22 days on mothership catcher vessels could impose logistical difficulties and increase costs on catcher vessels in that sector. Therefore, the committee recommended eliminating the 22 day limit for catcher vessels in the mothership sector while retaining that limit in the shoreside fishery.

The RDW discussed the possibility of observers being transferred at sea from one vessel to another. Committee members noted the logistical benefits of allowing observers to be transferred from one vessel to another in cases where catcher vessels may serve a transportation role to and from the shore and fishing grounds. The committee recommends that observer transfers be allowed to occur between catcher vessels and motherships and between catcher vessels and catcher-processors.

Economic Data Collection (EDC)

The RDW spent considerable time discussing draft regulations indicating that all permits owned by a permit owner may be un-renewed in cases where an EDC report was not submitted by a vessel owner, charterer, or lessee. The committee noted that this proposed regulation would effectively penalize the permit owner for actions taken by another individual even though the permit owner may not have any control over the actions of that other individual. NMFS staff indicated that the regulation was set up as an administrative action rather than a violation. Committee members stressed the importance of placing the burden (and any penalty) upon the individual required to submit the report. The RDW recommends revising the EDC regulations so that the vessel owner, charter, or lessee would face a penalty for failure to submit an EDC, rather than the permit owner.

The RDW also expressed concerns that the proposed regulation could potentially result in non-renewal of all permits in which a person holds a direct or indirect interest, if an EDC report was not filed in connection with one vessel or entity operating under one of the permits in which that person held a direct or indirect interest. The RDW believed this would be an excessively punitive result, and strongly urges the agency to reconsider this approach.

In reviewing the draft components rule, the RDW notes that “Failure to submit a complete EDC questionnaire to NMFS” is listed as a specific prohibition in regulation. It is redundant and unnecessarily punitive to also include an “administrative remedy” that would deny permit renewal if EDC information is not provided. Therefore, the RDW specifically recommends use of the regulatory prohibition approach specified at 660.112 (3) (iii) and removal of the administrative remedy (that is, the fourth column) at 660.113 (a) (3).

The RDW also spent time discussing the universe of entities required to complete and submit a shoreside processing EDC report. Draft regulations would require the holder of a first receiver site license to fill out a shoreside processor survey, but those regulations would also require entities which process IFQ groundfish that do not have a first receiver site license to fill out the form. Committee members expressed concern over the apparent lack of clarity over who would be considered a “processor” in cases where they do not have a first receiver site license. Furthermore, committee members expressed concern that NMFS staff would not know who

those entities are even if the definition is clarified. The RDW recommends only requiring those with a first receiver license to complete and submit an EDC report. This universe of entities is a representative sample of processors and buyers and will therefore allow NMFS staff to adequately assess the impacts of the trawl rationalization program.

Program Components Rule

The RDW noted that NMFS staff has taken into account many of the suggestions from the May RDW meeting. While the RDW has additional detailed comments upon the newly submitted draft Program Components Rule regulations, it appears that the major issues identified in May have been addressed.

PFMC
06/13/10

Notes from the May 20-21, 2010 meeting the Pacific Fishery Management Council's
Regulatory Deeming Workgroup (Workgroup)

During its meeting, the Workgroup reviewed a draft version of the trawl rationalization components rule provided to the group May 19, 2010. This document showed in track changes modifications to the component rule that were made since the April 2010 Council meeting. The Workgroup will meet again on June 10 and 11 to review an updated version of this rule. The Workgroup *strongly* requests that the version of the components rule that it will be expected to review at its next meeting be provided at least 48 hours in advance of that meeting (i.e. by close of business on June 7 so that it may be distributed by 8:00 a.m. on June 8).

The Workgroup's comments on the May 19 version of the rule are noted below. In many cases, comments are applicable in multiple locations in the regulations. Those comments which apply in multiple locations are noted but all the locations in which the comments apply are not necessarily specifically identified for every category of Workgroup comment.

Minor editorial comments are noted in track changes in the copy of the regulations accompanying these notes.

Specific Comments

Pg. 4. 660.12 (d)(5)(A) Declarations. Can a vessel use more than one gear on an IFQ trip? The Council does not appear to have addressed this issue. The workgroup does not have a recommendation on this issue but puts this forward as a question to be considered.

Should the "gear switching" declaration be subdivided and, if so, into how many gear types? The workgroup recommends two non-trawl gear-types: hook-and-line, and pot.

Pg 5. 660.15(a)(4)(ii) As specified, require platform scales be available on MSCVs. This needs to be consistent with any regulations which may prevent fish from being on brought on board MSCVs. See 663.06(1)(ii) for restrictions on motherships. Also, a conflict may need to be resolved between this requirement and a prohibition on sorting and discard prior to catch being transferred to motherships.

Pg. 6. 660.16(c) The workgroup questions the need for a provision preventing an IFQ observer from being used to comply with observer coverage requirements for any other Pacific Coast groundfish fishery. The workgroup was uncertain about the purpose of this provision and how it interacts with requirements to carry observers from the WCGOP.

Pg. 11. 660.17(e)(1)(vi)(C) The workgroup had concern about the need to specify a minimum visual acuity of 20/100 for observers. It seems that if an observer's vision can be corrected to 20/20 the minimum visual acuity is not relevant. This should be deemed unnecessary. The testing required only adds to costs.

Pg. 12. 660.18(c)(1) and (d). There is some inconsistency in the mention of state waters between these two sections.

Pg. 12. 660.18(c)(1) Revise to indicate that catch monitors must not have a direct financial interest in either the first receiver (the entity and its affiliates) or vessels that deliver to the first receiver at which they serve as a monitor. (i) through (iii) should be eliminated. There was concern that the restrictions, as stated in the draft, are too broad and may make it difficult to find monitors who reside in the community, making the program more expensive. *Similar adjustments are needed for similar provisions in numerous sections on monitors and observers.*

660.18(c)(3) The provision that prevents catch monitors from working on a vessel on which the catch monitor was previously employed does not make sense. Catch monitors do not work on vessels.

Pg. 16. 660.25 (e)(1) and (2) Replace “person” with “eligible co-op entity” as the term is used in section 660.15(e)(1)(i). Additionally, it is not the co-op entity that does the harvesting but rather the co-op entity receives and manages the co-op allocation.

Pg. 17. 660.55(i)(2) The 5% limit in the southern area should not be implemented as a per vessel limit but rather as a closure of the area on attainment of the 5% limit.

660.60(c) Routine management measures. The workgroup wants to be sure it is clear that management lines may be modified inseason to control impacts on any species, as necessary to prevent excess harvest without shutting down the entire trawl fishery.

Pg. 18. 660.60(d) In subsections as appropriate, clarify that when an at-sea sector reaches its allocation limit, it is only the sector that reaches its limit that is closed and not all at-sea sectors.

Pg. 19. 660.111 Separate the accumulation limit and usage limit definitions, by sector. This may be useful for clarifying and understanding the regulations.

In the definition of IFQ trip, split the declaration of “limited entry fixed gear” into a limited entry longline and a limited entry pot declaration.

In the definition of Pacific whiting IFQ trip, insert “whiting” between “primary” and “season.”

Pg. 20. 660.112(a)(4) Change section header to “Catch Monitors and Observers” and in (i) change “for an observer” to “monitoring personnel.” In (ii) change “observer coverage” to “approved monitoring measures.” While this does not change the observer and monitoring requirements as laid out in the remainder of the regulations, it sets out the approach and lays the groundwork for a future change that might allow monitor’s to provide some at-sea coverage.

Pg. 20. 660.112(1)(b)(1)(ii) Replace “and has no deficits” with “or a vessel account that has a deficit”

Pg. 21. 660.112(b)(1)(xi) Because of connotations, consider some word other than “dumping” for this section.

660.112(b)(2) (v) It should not be the plant responsibility to check that the vessel has complied with the observer provision.

660.112(b)(2)(vii) Change “Process catch” to “Receive IFQ landings.” Is “catch monitoring plan” defined somewhere in the regulations.

660.112 (c) How much of (c) is a change from the current regulations?

Pg 22. 660.112 (d)(9) Change to read “Prohibited to fish for a mothership co-op with a vessel that has not been identified by the co-op as a vessel authorized to harvest that co-op’s allocation.”

Make a similar language change for the equivalent section for the C/P sector.

660.112 (e) There was concern that the list of prohibition does not include the prohibition on a C/P vessel operating as a mothership in the same year it operated as a C/P, and that a vessel with a C/P permit cannot operate as a mothership unless it also has a MS permit.

Pg. 24. 660.113(b)(1)(ii). “Any person” should be “First receiver.”

660.113(b)(4)(i). Add “catch area” to the list of needed information.

Pg. 25. 660.113(c)(1)(i). It should be the individual fishing companies, not the co-op manager, that are responsible for submitting the mandatory economic data collection forms for the vessels.

It should also be clear that catcher vessels without MSCV endorsements should be included among those who are subject to the mandatory data collection requirement for the mothership sector. Catcher vessels delivering to motherships without MSCV permits are not co-op members.

With respect to who carries responsibility for submitting the mandatory economic data collection forms, make a similar language change for the equivalent section for the C/P sector.

660.113(c)(3)(i)(E), covering plans for next year’s fishery, should be deleted because this information will be reported later and does not have to do with activities for the year on which the report is due.

Make a similar language change for the equivalent section for the C/P sector.

Pg 26. 660.113 (c)(3)(ii) Eliminate the first sentence requiring submission of the report to the Council by November. The fishing year will not be complete.

Make a similar language change for the equivalent section for the C/P sector.

Pg. 27. 660.113 (a)(2)(Marked for deletion) Retain this section but remove reference to “selective flatfish gear.”

Pg 28. 660.113(a) Section is confusing and out of place. Cowcod is wrong.

Pg. 29. 660.113(d)(2). For IFQ vessels, add prohibition on discarding prior to sorting and weighing, comparable to the prohibitions for the at-sea catcher vessels.

660.113(d)(3)(ii). Delete the second clause. “and the vessel must not resume fishing until the catcher vessel observer has obtained an accurate weight by species for the sorted catch.” The Workgroup could see no reason for this provision.

Pg. 30. 660.113(a)(1). Delete from the definition of the catcher/processor sector “, or C/P co-op Program,” and “, which are vessels.”

660.113(a)(1). Delete from the definition of the catcher/processor sector “, or MS co-op Program.” Depending on how the term “mothership sector” is being used, consider deleting the end of the last sentence starting with “for vessels registered to limited entry permits without a MS/CV endorsement. . .” In considering the appropriateness of including or deleting this clause, keep in mind that such vessels are not part of the MS co-op. If such vessels are to be included in the sector definition, refer to them as “vessel authorized to harvest the co-op’s allocation.”

660.113(b)(1) Delete the second clause: “and ends when an vessel has no more whiting QP in their vessel account;” Fishing will stop as individual co-ops and vessels exhaust their allocations. There will be no “season end” per se.

660.113(b)(1)(ii) Delete the second clause “and the fishery is open for the catcher/processor sector;”

660.113(b)(2). There will be no “after” the primary whiting season. Consider carefully the provisions to be included in this section with respect to gears (midwater trawl) and areas which are prohibited and allowed (activities in the RCA).

Pg. 30. 660.113(b)(3)(ii) To the end of the paragraph (top of page 31), add to the list “the period between when catcher vessels declaration of annual processor obligations and the start of the fishery.”

Pg. 31. 660.113(b)(3)(iii)(C)(4) The workgroup feels that trip limits in the whiting fishery are no longer appropriate.

Pg. 32. 660.113(c) Maintain all the conservation zones (1) through (4), they still have value as a means for reducing impacts. Note: inconsistency/need for clarification with respect to automatic actions listed in 660.60(d).

660.113(d) Eureka Area Trip Limits, should not be struck.

Pg 33. 660.113(g) Bycatch reduction. Workgroup believes that this section is no loner applicable, however, the provision on donations should be preserved.

Pg. 35. 660.140(b)(2)(ix) add “member” after “MS co-op” at end of section.

Pg. 36. 660.140(d)(3)(i) Requiring QS permit renewal by December 31 is too late. What happens to the QP that would go to a QS permit which is not renewed? Is it withheld pending QS permit renewal; or does it get redistributed to the remainder of the QS permits (i.e. the non-renewed QS permit loses QP distribution for the coming year, providing an incentive for renewing on time)?

Pg. 37. 660.140(d)(7) For this section (*and all subsequent sections discussing cost recovery*): eliminate language in sections specifying measures related to cost recovery and leave for development as part of the full regulatory package on cost recovery.

660.140(d)(7) When cost recovery provisions are developed, this section should not preclude the recovery of costs related to the issuance of QP permits.

660.140(e)(1)(i) “Exempted trawl” is the wrong term.

660.140(e)(2)(i) Modify to indicate a person must own or control a vessel (i.e. add “or control”).

660.140(e)(2)(ii) Since QP control has a bearing on QS control, add a requirement for the submission of ownership information similar to what is required for QS permits.

Pg. 39. 660.140(f)(2)(i) *and other sections* where there are references to state “fish buyer’s licenses” make sure “buyer’s licenses,” is the correct term for the license required of the first receiver.

Pg. 43. 660.140(h)(2)(iv) Delete “and the use of” *here and elsewhere in the regulations* where it pertains to observer access to navigational equipment. Observers should be able to access and view data on the vessel’s position but not use the equipment.

Pg. 44. 660.140(h)(4)(v) Review this provision *and similar provisions in numerous other sections* for consistency with how the obligation to provide observers arises within the program. Providers should not be automatically required to provide observers to anyone who requests one.

Pg. 45. 660.140(h)(4)(vii)(D) With respect to accommodations provided between vessel assignments, an exception is needed for someone who is permanently or temporarily residing in the community in which they are standing by. *Similar adjustments are needed for similar provisions in numerous other sections.*

660.140(h)(4)(viii) The Workgroup felt that a period of at least 90 days should be considered. A longer period would provide more flexibility in small ports and control costs related to moving observers between ports. A 45 day rule would probably increase the number of trained observers that would have to be kept on hand. *Similar consideration may be needed for similar provisions in other sections.*

Pg. 50. 660.140 (h)(5)(vi)(J) Check consistency between conflict of interest information for observers and observer providers (e.g. mention of north Pacific in one section but not the other). Also, check for consistency with the section on conflict of interest for monitors. Use what the workgroup recommended on conflict of interest for catch monitors and observers (see comments above on 660.18(c)(1)). The concern is constraining the pool of observers that might be recruited from coastal communities.

Pg. 55. 660.150(b)(1)(i) Restructure to indicate all three conditions are required: (A), (B) and (C).

660.150(b)(1)(i)(D) Delete this section because a special provision for bareboat charter is not needed.

Pg. 56. 660.150(b)(3)(ii)(B) This provisions should apply to all vessels fishing for the co-ops. Strike “registered to member permits” and replace with “fish for the co-op”. However, in general, make sure it is understood and reflected in the regulations that vessels that fish on co-op allocations that do not have MSCV endorsements would not be members of the co-op. Think of them as tourists, not citizens.

Pg. 57. 660.150(b)(3)(iii). Need clarification that the liability is restricted to the co-op.

660.150(b)(3)(iv) MS coop failure. Provisions seem unnecessary. These regulations should be written from the perspective of “mothership co-op permit validity” rather than “co-op failure”. The workgroup was also concerned with (A)(4) and (C), which are vague and undefined at this point.

660.150(b)(3)(iv)(D) If a co-op permit is invalidated during the year, the co-op’s unharvested allocation should go to the non-co-op fishery and members of the failed co-op should be able to participate in the non-co-op fishery.

660.150(d)(2)(i)(A). Any unassigned quota should be assigned pro rata to all MSCV permits that are participating in the fishery.

Pg. 58. 660.150(d)(2)(i)(B)(2) Too vague as to the species covered and the actions which might be taken.

660.150(d)(2)(ii) Annual co-op allocations and (iii) annual non-co-op allocations. For both the co-op and non-co-op fisheries, allocation should be assigned based on the permits participating in each, rather than the approach of using “remaining” for the non-co-op fishery.

Pg. 59. 660.150(d)(3)(ii) The last sentence, as written, would preclude a mothership from receiving fish from participants in the non-co-op fishery. This should be revised to allow motherships receiving co-op deliveries to continue to receive non-co-op deliveries after the co-op is closed.

Workgroup members also felt that closure of co-ops should be on reaching allocations rather than on projection (for both the mothership and catcher-processor program). This would be consistent with the Council's final preferred alternatives. ***Similar modifications may be necessary in other sections which reference closure on approach of attainment, including sections on catcher-processors.***

660.150(d)(3)(iii). A similar revision to that for (ii) is needed in this section.

660.150(d)(4)(iii) The statement that there will be no inseason actions for set asides may conflict with provisions in 660.60(d).

660.150(d)(5) It should be clear that closure on projection should not apply to the co-op allocations.

Pg. 60. 660.150(d)(7)(i) Replace "vessel" with "permit" and strike everything after "registered."

660.150(d)(7)(ii) Strike everything after "through" and replace with " the processor obligation declaration process." There is a different process specified for the mothership obligation process.

660.150(d)(7)(iv) mutual agreement exception. Replace "termination" with "release" because it may be a temporary release of the obligation rather than a complete termination.

Pg. 61. 660.150(e)(1)(iii)(A)(1)(i) Eliminate referenced to trawl endorsed limited entry permits without a MSCV endorsement. These vessels are not part of the co-op and may change throughout the season. Enforcement needs will be met through the VMS declaration process.

660.150(e)(1)(iii)(A)(1)(v) Revise to be consistent with the Council motion. Both dates need to be included. One on when to inform the mothership (September 1) and the other when to inform NMFS (December 31).

Pg. 62. 660.150(e)(1) (iii)(A)(1)(xiv) Delete this section. Does not need to be there. ***Make a similar change for the C/P co-op section.***

660.150(e)(1) (iii)(B)(4). Three days is an unnecessarily tight time frame, particularly given that it is not even three business days. Thirty days would be more reasonable. ***Similar adjustments may be needed for similar provisions in other sections.*** Consideration needs to be given to differentiating between those changes that are important to monitoring and enforcing the program and those which are less important. Less important changes need to be treated with more latitude.

Pg. 63. 660.150(e)(1) (iv)(C) Three calendar days is too tight a time frame. See previous comment.

660.150(e)(1)(iv)(D) Revise language to eliminate reference to "co-op failure" and replace with the concept that a permit condition as not been met.

660.150(e)(2) If vessels rather than permits are responsible for paying fees, then the co-op should not be penalized if a vessel has not paid its fees. See Workgroup comments on dropping cost recovery language at this time.

660.150(e)(6) Cost recovery. Individual permit holders should pay the fees. The co-ops should not collect and pay the fees. This language should be dropped and the section reserved until the cost recovery program is fully developed.

Pg. 64. 660.150(h)(A) There is no mothership “obligation” in the non-co-op fishery. Drop this section.

Pg. 65 660.150(h)(C) There is no mothership “obligation” in the non-co-op fishery. Drop this section.

Pg. 66. 660.150(j)(2)(i)(E) Remove “, and the use of,” See previous comment on observer access to navigational equipment.

Pg. 69. 660.150(j)(4)(vi) See previous comment about needing to revise sections like this to take into account how contractual obligations to provide observers arise.

660.150(j)(4)(viii)(C)(5) See previous comment about needing to revise sections like this to include possibility that observers may have permanent or temporary residences in the port and not need motel accommodations.

Pg. 73. 660.150(j)(5)(i)(F)(1) See previous comment about needing to revise sections like this regarding conflict interest.

Pg. 77. 660.160(b)(1)(i) Replace “C/P permit” with “C/P endorsed LE permit.”

660.160(b)(3)(i)(A). Change “MS co-op permit” to “CP co-op permit.”

660.160(b)(3)(i)(B). Replace “be owned and operated by” with “membership must be composed of.”

660.160(b)(3)(ii)(B) clarify what “member permits” means.

Pg. 78. 660.160(b)(3)(iii)(A) The Workgroup expressed concern with the role that NMFS would play in defining co-op failure. Sections (4) and (5) should be better defined, particularly given the significant implications of failure of the co-op. (C) should be deleted as there is no indication that there are standards by which this evaluation would be made. With respect to (D), is it the Council’s intent that NMFS determines a failure has occurred or that this determination be made by the Council after notice to the Council that certain criteria have not been met (listed on page 78) (or is the agency’s role only to authorize the co-op by issuance of a permit)?

660.160(c)(3)(iii) It’s not clear what species are in this category.

Pg. 80. 660.160(d)(1)(iii)(A)(1)(ix) (listed as (ivx)). Remove, as suggested for the motherships.

660.160(d)(1)(iii)(A)(2) There is only one co-op. Change plural to singular. Change “MS co-op permit” to “CP co-op permit.”

Pg. 81. 660.160(d)(1)(iii)(B)(4) and (iv)(C) As suggested for the mothership sector, change three days to 30 days in both places that it occurs.

660.160(d)(5). As suggested elsewhere, drop language on cost recovery until such provisions are fully developed.

Pg. 82. 660.160(e)(2)(ii) Eliminate the second sentence. It’s unnecessary, confusing, and redundant with declarations which will occur in MS program.

660.160(e)(3)(ii). Clarify that the changes which are allowed are from, then back to, the vessel on which the starts.

Pg. 83. 660.160(e)(6) As mentioned previously, drop the language on cost recovery until such provisions are fully developed. When these provisions are developed, the individual participants, not the co-ops should be responsible for payment of fees.

Pg. 84. 660.160(g)(5)(iv) As per previous comments, delete “and the use of,” with respect to observer accessing navigational equipment.

The WCGOP should consider the need for a policy requiring that observers carry backup software with them.

Pg. 86. 660.160(?) (4)(v) [numbering designation seems to be off] See previous comments on need for changes that take into account how contractual obligations arise for the provision of observers.

Pg. 87. 660.160(?) (4)(v) (continued from previous page). In the case of incapacity of an at-sea observer, there should be a reasonable period of time (“as soon as practicable”) provided for the replacement of the observer.

660.160(?) (4)(viii)(D) Similar comment to previous on need to provide option for observers to stay at their local permanent or temporary residences.

Pg. 88-89. 660.160(?) (4)(xiv) Same comment as above on conflict of interest standards. Make sure that observers can work on research cruises without creating a conflict of interest that interferes with their ability to work as a fishery observer.

Pg. 91. 660.160(?) (5)(i)(E) Same comment as above on conflict of interest standards.
660.160(?) (5)(i)(E)(3) Specify that “employed” means “employed other than in the role as an observer” Add a time frame for the duration of the conflict of interest.

There may be one comment missing from this report: **Pg. 20.** 660.112(1)(b)(1)(i). Staff will follow up on this comment with the Workgroup and, if necessary, NMFS.

**Notes from the June 10-11, 2010 meeting the Pacific Fishery Management Council's
Regulatory Deeming Workgroup (Workgroup)**

The Workgroup's comments on draft regulations are noted below. In many cases, comments are applicable in multiple locations in the regulations. Those comments which apply in multiple locations are noted but all the locations in which the comments apply are not necessarily specifically identified for every category of Workgroup comment.

Observer Program

Comments below are to a draft document that was provided to the Workgroup. The same regulatory language was also included in the draft of the trawl rationalization program components rule (Agenda Item B.6.b, Supplemental NMFS Report 2, June 2010).

Shorebased IFQ program

660.140(h)(1) - NMFS mentioned change in coverage requirements to include split deliveries. RDW supports this change.

660.140(h)(1)(ii) – RDW suggests deleting the deployment limitation language that says there must be a minimum 6 hrs continuous rest period. Trend is going to be to make shorter tows. This 6 hr restriction would greatly interrupt the fishing behavior of the fleet. Important to make shorebased IFQ catcher vessels and mothership catcher vessels consistent because of crossover between these fisheries. The 6 hr restriction should be removed from both the IFQ and mothership catcher vessel observer regulations.

660.140(h)(1)(ii)(A) – change to be more specific that it's when “unable to perform their duties for any reason...” rather than “unable to sample for any reason...” It is to capture observers who are ill or injured.

[similar change in MS coop section at 660.150(j)(1)(ii)(B)(1) for MS/CV]

660.140(h)(1)(iii) Boarding refusal- Revise language to reflect that provider must notify NMFS immediately if an observer refuses to board.

[similar change to observer sections in MS & C/P Coop Programs]

660.140(h)(4) – could delete and reserve paragraph (4) because stated in previous paragraph

660.140(h)(5)(v) Respond to industry requests for observers – covered in 5/20 RDW comments. Has to be a contract in place between vessel and provider before provider can supply an observer. Suggest revising the language to read “An observer provider must provide an observer for deployment as requested by vessels pursuant to the terms of their contract between the observer provider and the vessel owner.” Revise paragraph to add “...pursuant to the terms of their contract...” where appropriate. Should this paragraph even be there? Vessel is requirement to meet 100% coverage of program so do we even need to speak to the observer provider. Want

to retain the last sentence and add only for vessels with contractual relationships. “...from the vessel owner with whom the observer provider has a contract.”

[Revise in all observer sections (IFQ, MS, C/P).]

660.140(h)(5)(vii) Observer deployment limitations - Is there a possibility for a waiver in cases deemed appropriate by NMFS. Add language “unless otherwise authorized by NMFS,…”

[Revise in all observer sections.]

660.140(h)(5)(xi)... (iv)(3) Debriefing- NMFS suggested deleting “..will notify the observer provider by the 15th of each month which observers...” RDW supports this change.

[Revise in all observer sections.]

660.140(h)(5)(xi)(F) - Delete paragraph (F) on boarding refusal because stated earlier.

660.140(h)(5)(xiii) – RDW concerned about confidentiality of observer performance records. This paragraph deserves some further thought. Could add language to paragraph stating “...as otherwise required by law.”

[If revise, applies to all observer sections.]

660.140(h)(5)(ivx)(C) Must meet limitations on conflict of interest- Add language to exclude observer provider compensation such as “...gift, favor, entertainment, loan, or anything of monetary value, except for compensation for providing observer services, from anyone who...” Correct numbering under paragraph (h)(5), some 3rd level paragraph misnumbered.

660.140(h)(6)(vii)(B) – Regarding limitations on conflict of interest for observers, some concern that language “...anything of monetary value from anyone who either conducts activities that are regulated by NMFS or...” is too broad. Noted that this is stock language that mirrors Alaska language and language observer providers are used to.

660.140(h)(6)(viii)(2) – Regarding observer responsibilities if they refuse to board, change language to state that observer must “Immediately report to the observer provider any time they refuse to board a vessel” rather report to the observer program and OLE. Observer provider required to report to observer program and OLE.

[Similar change to all sections.]

MS Coop Program

660.150(j)(1)(ii)(B) – will need waivers from limitation to no more than 22 calendar days in a month for catcher vessels in the mothership sector. The vessels have showers and washer/dryers. Priority is to keep shorebased IFQ and mothership catcher vessel observer regulations consistent, but will need a waiver for mothership catcher vessels. RDW suggests making the mothership catcher vessel requirement for the number of consecutive days an observer can be on a vessel the same as the MS and C/P requirement.

660.150(j)(2)(ii)(A) – RDW concerned that language on safe conditions may be too onerous that allows observer to request a vessel return to port. Support intent of this language. Solution may

be for NMFS to clarify vessel's responsibility once the request to return to port has been made. [Similar language in all sections.]

660.150(j)(2)(v) Transfer at-sea-- RDW concerned that transfer of observer between MS/CV and MS not permitted. Understand different training requirements between for observer on MS versus observer on MS/CV, but logistically should be allowed for MS/CV to bring an MS observer out to a MS (i.e., serve a transportation function). In addition, C/Ps should be allowed to transfer observers to and from CVs for that same logistic function. Suggest NMFS revise paragraph (B) to allow transfer of observer from MS/CV to MS or CP under certain circumstances. Suggested revised language for paragraph (B), "transfer at-sea between catcher vessels are prohibited. Catcher vessels may transfer observers to and from motherships or catcher-processors. For transfers between mothership or catcher-processors and mothership catcher vessels, they must...[insert (a)(b)(c) from mothership paragraph (A)]."

660.150(j)(5)(iii) [p.39] - Revise header language that says "Provide vessels only observers" to something more clear.
[Revise in all other observer sections]

660.150(j)(5)(vi)(A)(2) [p.41] – 24 hour lodging on the boat, assuming there will be flexibility (similar to Alaska program) for situations that may be longer than 24-hours (e.g. storms, etc.)

660.150(j)(5)(v)(A)(4)(i) [p.55] Issuance of an observer certification- Remove "or the Pacific Coast" from the sentence "Be a prior NMFS-certified observer in the groundfish fisheries off Alaska or the Pacific Coast."
[Remove in C/P section, too.]

Economic Data Collection Program

Comments below are to draft documents that were provided to the Workgroup. The same regulatory language was also included in the draft of the trawl rationalization program components rule (Agenda Item B.6.b, Supplemental NMFS Report 2, June 2010).

Regulations:

660.11 definition of "charterer"- revise definition as follows "...or services of the vessel are secured for a period of time for the purposes of commercially harvesting fish,..." This would exempt research charters, but not bareboat charters. Change "signed any agreement" to "entered in to any agreement" so that it covers agreements that aren't written. Also remove references to "bareboat" within the definition of "charterer".

660.113 (a) –

- Suggest revising language in the permit renewal column to say, "...will not be renewed ~~if any~~ until required EDC's..."
- Baseline data– If a permit owner or first receiver license owner did not own the permit or vessel, or processing facility at any point during the baseline period

(2009 and 2010), then they should not be held accountable for providing information from the prior owner.

- RDW has concern over the permit owner being liable for the vessel owner, lessee, or charterer not submitting their EDC. Similarly, doesn't make sense if there are multiple owners of a permit or first receiver license and one of them does not submit their EDC. For the first receiver site license, the requirement to submit an EDC should not be required to track beyond the first receiver with a site license. The RDW questions the jurisdictional authority to collect information from processors that aren't federally permitted. **Strongly suggest that the party that is submitting the data should be the one held responsible for submitting that data.** Could make it a regulatory violation. This applies to both baseline and ongoing data collections. NMFS stated that a choice was made to make this an administrative requirement rather than a violation of regulation or penalty action. This concerns the RDW because this type of action should be subject to due process, especially because the regulations are set up to require one party to be subject to a response from a third party over which the one party has no control. The consequences of making this an administrative requirement are too high.

660.113 (b) – (f) – Clarify who is the “questionnaire submitter.”

660.113 (f)(1)(ii) – In order to allow some timing flexibility for complex cases (e.g., if there is a substantial amount of data for someone to gather for the audit), the RDW suggests revising this sentence to say “...within 20 days of the date of issuance of the inquiry, unless a waiver is issued by NMFS.” This would allow NMFS to review, on a case by case basis, whether the person being audited should be granted more time to gather information and respond to the audit. Suggest reviewing the approach being taken under Alaska's Amendment 80, which has come to a resolution after issues with their audit process.

Questionnaires:

The RDW also had an opportunity to review the draft mandatory EDC questionnaires and provide feedback. The RDW appreciates the NWFSC's hard work to date in working with industry to design the questionnaires. It is our understanding that the questionnaires are not subject to regulatory deeming, but the RDW appreciated the opportunity to comment. The RDW has the following comments:

- Clarify on the questionnaires who is required to complete them.
- Suggest define the terms for QS or QP leasing or sales used in the questionnaire to make sure it is very clear so that types of answers will be more similar. Definition could include length of arrangement. (#22 on shoreside processor questionnaire; #16 of the catcher vessel questionnaire)
- In the catcher vessel questionnaire, add West coast groundfish fixed gear and Pacific halibut fishery to #11 & 13.

Additional comment:

RDW suggests that PacFIN track which processing facilities are the same even though the buyer ID for that facility may change.

Regulations for Other Components of the Program

Comments below are to the draft of the trawl rationalization program components rule (Agenda Item B.6.b, Supplemental NMFS Report 2, June 2010).

Suggest revising the use of the term “C/P permit” to “C/P endorsed limited entry trawl permit” throughout the regulations.

Page 13, “candidates must have a minimum visual acuity of 20/100...” clarify that the previous RDW report should reference catch monitors rather than observers.

Page 14, C.3 – “catch monitors may not serve on a vessel”. Clarify that catch monitors do not serve on vessels.

Page 14, make conflict of interest recommendations consistent with other recommendations. For instance, the two year timeline applying to observers should also apply to catch monitors. This clarification might go under C.1 or C.3

Page 16, (v) It is unlikely that “double dipping” in a cumulative limit period would occur for the species which still have trip limits. These species were not IQ species because the trawl fishery does not catch or target these species. Also, the fact that only a single transfer of a permit can occur in a year makes it even more unlikely that someone would “double dip” on trip limits. The committee recommends that permit transfers be allowed to occur within a cumulative period so as not to restrict the trawl IQ program.

Page 17, last sentence in (C). The committee recognizes that this portion of the regulations has already been deemed, however the restriction on permit transferability could significantly restrict some operations. In general, the restriction on permit transferability is not necessary in a rationalization program. The committee recommends that the issue of permit transferability be taken up in a trailing action since it appears that such restriction is not necessary.

Change reference in May report on “eligible coop entity” 660.150

Page 18, d (i) revise to state that we close an at sea sector of the fishery when that sector’s whiting or bycatch limit is reached.

Page 21, (3) (iii) the committee agrees with the regulatory language identifying the prohibition to fail to submit a complete EDC questionnaire. This regulatory approach is more appropriate than the administrative approach which would fail to renew a permit if the EDC questionnaire is not filled out. The administrative approach could lead to penalizing the permit holder when a vessel owner fails to fill out a form.

Page 3 of May report. 660.12e should be changed to “operate in the mothership sector” instead of “operate as a mothership”.

660.113 a 3 – the committee recommends the final column in the EDC section be removed. This would address the concerns over penalizing a permit holder for a failure on the part of the vessel owner/operator to submit an EDC.

In may draft, coop manager responsible for EDC forms. Recommend that member companies responsible for providing forms.

Page 31, 3 E ii – the committee is concerned that requiring plans for next years coop be included in the draft annual report may effectively mean that the coop plans must be developed by November, which is inconsistent with other regulations indicating the plans must be submitted in the spring preceding the year of fishing. If the plans for next year’s fishery must be included in the November report, then the committee recommends that they not be binding and can be changed during the formal coop permit application process.

Page 33 660.130 a. Cowcod should be allowed to be retained in an IFQ fishery.

Page 34, 3 ii – reword to say “until the observer has sampled the catch”

Page 35, b 1 i – the shorebased IFQ program for Pacific whiting should have no end date. Vessels simply stop targeting whiting as quota is depleted. End the sentence as “...conducted after the season start date.”

Page 35, remove section (2).

Page 37, top of page. Requiring the trawl to be attached to the trawl doors when the trawl doors are on board is logistically impossible unless the net is still in the water. The committee recommends revising the regulations to state that the trawl does not need to be attached to the doors when the doors are on board.

page 37, bycatch reduction and full utilization section. This section is not necessary. MS and CPs will have two observers and under rationalization use of species is fine since they are accounted for against the bycatch cap.

Page 40, iii – strike “from the date of landing” and only retain “from the time the overage from that trip is documented in the vessel account”. The overage may not be known until after the landing has occurred due to QA/QC of observer data. This issue is also referenced from the April Council meeting, Agenda item I1.b. NMFS supplemental report 2, issue 3

The committee discussed quota account deficits. The committee believes that a trailing amendment should be taken up that would consider allowing vessels the flexibility to use their 10 percent “carry over” to avoid a violation, but then fish later in the year if quota becomes available on the market and they cover that deficit later.

Page 43, (D) strike “and a complete economic data collection form as required” as this places the EDR burden on the permit holder even though he/she may not have the ability to fill out the form.

Page 47, ii B read “the amount of QP or IBQ pounds...is within the 10 percent carry over amount. The 10 percent carry over amount is calculated based on....”

Bottom of page 50. same issue with first receiver not issued a site license due to a EDR failing to be submitted.

Page 69 (d) clarify that the gear switched vessels would not be subject to LE FG trip limits, but they would still be held to trip limits specified for the trawl sector

The committee recommends that closing upon projection should apply to the non-coop fishery and to the sector, but not to the individual co-ops within the mothership sector. The co-op structure is akin to an IFQ fishery where vessels are obligated to not exceed their allowable catch amount.