

NMFS Interpretations of Council Intent

Disclaimer: Additional interpretations of the Council intent on the trawl rationalization program will arise as the program is reviewed by NMFS. Amendments 20 & 21 to the Groundfish FMP, have not yet been formally submitted to NMFS, or approved or implemented by NMFS. NMFS and the Council staff are currently clarifying issues raised by these amendments.

ALL TRAWL FISHERIES

Ownership Interest

1) All individuals with greater than or equal to 2% ownership interest in a permit or vessel must report their ownership interest to the individual level.

Background:

After reviewing public comment on the proposed rule to collect ownership interest for the trawl rationalization program (74 FR 47545, 9/16/09), NMFS decided to reevaluate the proposal to collect ownership information from ALL individuals with an ownership interest in the permit or vessel. Public comment noted that some permits are owned by large corporations (CDQ groups, publicly-held corporations, NGOs, etc) and NMFS proposed information collection would potentially require 1,000s of individuals and their % ownership to be reported to NMFS. Suggestions ranged from exempting large companies from reporting, to requiring them to sign an affidavit with heavy penalties for noncompliance, to setting a minimum threshold. NMFS is required to monitor ownership interest in order to avoid excessive control, in this case, through accumulation limits.

Rationale:

NMFS decided exempting large corporations would not be allowed . Requiring an affidavit would reduce NMFS' burden of monitoring accumulation limits. However, this option would not be as effective at achieving the goal of ensuring that the ownership of quota share is not inappropriately concentrated. By requiring the reporting of ownership information, NMFS can better ensure that accumulation limits are not exceeded before fishing under the program occurs, rather than after a violation has been identified and corrected. Therefore, NMFS decided to set a minimum threshold. NMFS decided that the variable threshold among sectors would add unnecessary complexity to the program. The 10% minimum threshold might be too high for some sectors. NMFS decided the

GAP recommended 2% (a threshold that is slightly below the lowest accumulation limit of 2.5 percent) was reasonable because it would ensure that data collection requirements are most useful for enforcement purposes without creating an undue administrative burden. It would also accomplish the purpose of reducing burdensome reporting for companies with large numbers of individuals with very small amounts of ownership interest.

Submission of an ownership interest form will be required with the initial applications, with permit renewal, transfers, and in subsequent years for a CV/MS endorsed permit, a MS permit, and a QS permit. Any new permit owner must also submit an ownership interest form at the time of transfer of the permit to another permit owner.

See Nov 2009 PFMC meeting, Agenda Item G.8.b, NMFS Report and Supplemental GAP Report, and the response to comments in the final rule for the ownership information collection for additional information.

Allocations

2) The amendment 21 allocation structure is in addition to existing groundfish allocation structures.

Background:

The Council motion on Am 21 from the April 2009 meeting states, “[Am 21] Allocations for all other species, except those for which IFQ would not be assigned through the trawl rationalization program as well as those species for which allocations would be decided through the biennial specifications process (actual species included listed in Table 2-10 on p. 23 of Preliminary Draft EIS). Note: longspine thornyhead south of 34°27' N. latitude would not be included.” In other words, Am 21 allocations do not apply to non-IFQ species and species with allocations decided through the biennial specifications process.

Rationale:

NMFS interpretation of the Council’s intent is that the Am 21(trawl/nontrawl) allocation structure is in addition to the existing groundfish allocation structure which is based on Am 6 (limited entry (LE)/open access (OA)) (See Table 1). A process for allocating between the limited entry and open access fisheries was developed with the limited entry program under Am 6 (see section 11.2.2 of the FMP). The Am 21 allocation structure (trawl/nontrawl) applies to Am 21 species (which differs from IFQ species which also includes whiting, sablefish N of 36, canary, bocaccio, cowcod, yelloweye rockfish, and minor shelf rockfish N & S). Note that while Am 21 does formally allocate some overfished species in the FMP (darkblotched, POP, and widow), it does not remove the FMP provision at 4.6.1(5) where formal limited entry, open access allocations may be suspended for overfished species for the duration of rebuilding. For trawl rationalization, canary, bocaccio, cowcod, yelloweye, minor shelf rockfish N & S would be allocated through the biennial specifications process. The Am 6 allocation structure (LE/OA) applies to remaining groundfish species.

Table 1. Groundfish allocation process and guidance.		Optimum Yield					
		Fishery Guideline					
		Commercial Guideline					Recreational
Step in Process	Policy Guidance	Initial Set-asides	LE Trawl	LE Fixed Gear	Directed Open Access		
1. Initial Set-Asides - Reduce OY by tribal amounts, estimated research catch, projected bycatch in non-gr, EFP bycatch limits.	Determine During Biennial Specifications Process	Tribal, Research, Incidental, EFPs					
2. Determine Limited Entry (LE) Trawl Allocation	A-21 (Fishery Guideline * Trawl %)		Trawl Amt				
3. Determine Recreational (Rec) Allocation	Determine During Biennial Specifications Process						Rec Amt
4. Determine Open Access (OA) Allocation	A-6 (Commercial Guideline x open access %)					Directed OA Amt	
5. Determine LE Fixed Gear	Remainder from Steps 1-4, Determined During Biennial Specifications Process				Fixed Gear Amt		
6. Subdivide trawl (Shoreside whiting (Wht)/Nonwhiting (NWht) split needed only for QS allocation in first year of program. Shoreside (SS), Mothership (MS), and catch-processor (CP) splits needed on an ongoing basis.	Split trawl based on A-21 and at-sea set asides (set asides modifiable during biennial specifications process).		SS Nwht	SS Wht	MS	CP	

Currently, the allocations between limited entry and open access are calculated from the commercial harvest guideline after certain amounts of fish are “taken off the top” or reduced from the OY. That process has been modified over time, and is currently as follows:

The OY is reduced by tribal amounts, estimated research catch (estimated research catch comes off the ABC for non-overfished species & off the OY for overfished species), projected bycatch in non-groundfish fisheries, EFP set-asides, and estimated recreational set-asides (defined in existing regulation at 660.302 under the definition for “commercial harvest guideline”). The result is the commercial harvest guideline. The commercial harvest guideline is then allocated between the limited entry fishery (both trawl and fixed gear) and the directed open access fishery.

After implementation of Am 21, if approved, the allocations for species will be a mix of trawl/nontrawl allocations for Am 21 species and LE/OA allocations for the remaining groundfish species. That process is interpreted as follows:

For Am 21 species:

The OY is reduced by tribal amounts, estimated research catch (estimated research catch comes off the ABC for non-overfished species & off the OY for overfished species), projected bycatch in non-groundfish fisheries, and EFP set-asides (note: recreational estimates are not deducted here). The result is the fishery harvest guideline. The fishery harvest guideline is then allocated between the trawl and nontrawl fisheries. Here the nontrawl fisheries are defined as limited entry fixed gear, directed open access, and the recreational fishery. For the nontrawl fisheries, the estimated recreational set-asides would be deducted.

The directed OA amount would be calculated according to the Am 6 LE/OA split where the LE amount is the amount for all of limited entry (i.e., limited entry trawl plus limited entry fixed gear). The resulting directed OA amount would be deducted and the remaining nontrawl allocation (after the deduction for the recreational set-asides and directed OA) would be available to the limited entry fixed gear fishery.

For remaining groundfish species:

The OY is reduced by tribal amounts, estimated research catch (estimated research catch comes off the ABC for non-overfished species & off the OY for overfished species), projected bycatch in non-groundfish fisheries, EFP set-asides, and estimated recreational set-asides. The result is the commercial harvest guideline. The commercial harvest guideline is then allocated between the limited entry fishery (both trawl and fixed gear) and the directed open access fishery.

The differences between these 2 allocation structures are where the recreational catch estimates are deducted and whether the limited entry fixed gear fleet shares a pot of fish with the limited entry trawlers or with the directed open access and recreational fleet.

To accommodate this blending of allocation structures, NMFS has developed a definition for a “fishery harvest guideline” and has revised the “commercial harvest guideline” definition in the draft regulations.

Annual Renewal

3) After initial issuance, all permits, licenses, agreements, and accounts will be subject to annual renewal or registration.

Background:

NMFS discussed whether some permits, licenses, agreements, or accounts could be effective for more than one year (i.e., not subject to annual renewal) and only subject to renewal/reissuance after a change (new owners, transfer, etc.).

Rationale:

NMFS decided that all permits, licenses, agreements, and accounts once issued should be subject to annual renewal. One reason for this decision is to emphasize that these permits, licenses, and accounts are a privilege that provide access to the fishery and not a permanent right or ownership. Another reason for this decision is that business arrangements change over time and while it is a requirement to notify NMFS within 15 days of any change, this does not always occur. Annual registration or renewal requires the permits, licenses, agreements, and accounts to be reviewed and updated each year. Examples of changes include change of address, change of members with ownership interest in a business entity or their percent ownership, change of authorized

representative or designated coop managers that serve as the responsible party and NMFS contact, etc.

Permit Transfers

4) Limits on the frequency of change in vessel registrations for MS permit, MS/CV endorsed permits, and C/P endorsed permits and effective date of a change in vessel registration.

Background:

Council motion as captured in Appendix D (p. D-35) states, “Limit on the Frequency of Transfers: MS permits may be transferred two times during the fishing year provided that the second transfer is back to the original mothership (i.e. only one transfer per year to a different mothership).” The same provisions apply to MS/CV endorsed permits and C/P endorsed permits (p. D-34 and D-41). NMFS has interpreted this as follows:

A MS permit may be registered to another vessel two times during the fishing season as long as the second transfer is back to the original vessel. NMFS considers the original vessel to mean either the vessel registered to the permit as of January 1 or if no vessel is registered to the permit as of January 1, the original mothership is the first vessel to which it is registered after January 1. In this latter case, the first transfer could be to another vessel, but any second transfer would have to be back to the original vessel.

The Council motion as documented in Appendix D of the Am 20 DEIS does not address the effective date of a change in vessel registration for C/P, CV/MS or MS permits. NMFS intends to make changes in vessel registrations for these permits effective upon NMFS approval and issuance of the transferred permit. This is different than the frequency and effective date of transfers for the other limited entry permits, including trawl endorsed limited entry permits in the shorebased IFQ fishery. [NOTE: If a MS/CV permitted vessel also fishes in the IFQ fishery, what is the effective date and does the 1 transfer or 2 transfer rule apply to that permit? See NMFS clarifications document for more details.]

Rationale:

NMFS has interpreted how the frequency of transfers applies to permits in an “unidentified” status (i.e., not registered to a vessel at the start of the year) in accordance with existing regulations on the frequency of limited entry permit transfers. Unlike the existing limited entry permit transfer rules, these permit transfers would be effective immediately upon NMFS issuance of the transferred permit because the at-sea coop fisheries are not subject to 2-month cumulative trip limits.

5) Frequency of permit transfers for limited entry trawl endorsed permits and effective date.

Background:

Limited entry trawl-endorsed permits without MS/CV or C/P endorsements would remain as stated in existing regulations. In other words, one transfer per year would be allowed and approved transfers would be effective at the start of the next cumulative trip limit period.

Rationale:

Transfers would continue to be effective at the start of the next cumulative trip limit period as long as there are trip limits in place. The reason for this requirement is to prevent any double dipping on the 2-month cumulative trip limit (a per vessel limit) by a permit being registered to 2 vessels within the same period.

6) QS permits, First Receiver Site Licenses, and Coop permits are non-transferable. If the permit or licenses are sold, the old one is “closed” and, as appropriate NMFS will issue a new permit or license.

Background:

QS permits, First Receiver Site Licenses, and Coop permits are not permits directly associated with a vessel and, are not limited entry permits. Therefore, these permits and licenses do not convey a transferrable privilege and as such are non-transferable. These types of permits and licenses are issued when a complete application and its associated requirements are submitted to NMFS.

Rationale:

QS permits, First Receiver Site Licenses, and Coop permits require certain standards to be met to acquire these permits. Since these are not limited entry permits associated with a vessel, any eligible entity could apply. These permits and licenses all require annual reissuance. In the case of the first receiver site license and the coop permit, NMFS does not presume that the holder will participate in their respective fishery in a subsequent year. Also, an applicant for the first receiver site license must submit a new catch monitor plan each year; while a coop must submit a coop agreement each year. In the case of a QS permit, in the third year of the program QS amounts (not permits) will become transferrable to other persons. At that time, any new person must register with NMFS and meet the eligibility requirements in order for NMFS to establish a QS account and to receive QS. The registration process to receive QS is separate from the actual transfer process of QS.

VMS declarations

7) New VMS declarations

Background:

VMS declarations are used to determine the fisheries in which vessels are participating in and which management measures apply. New VMS declarations will be needed for the trawl rationalization program.

Rationale:

NMFS will revise the VMS declarations to accommodate the trawl rationalization program. Multiple declarations will be needed for the IFQ fishery given how existing management measures, such as EFH, RCAs, conservation areas, gear requirements (one trawl gear onboard), apply in the IFQ fishery. New VMS declarations are as follows:

- Limited entry midwater trawl, non whiting IFQ
- Limited entry midwater trawl, Pacific whiting IFQ.
- Limited entry midwater trawl, Pacific whiting C/P sector.
- Limited entry midwater trawl, Pacific whiting MS sector.
- Limited entry IFQ bottom trawl, not including demersal trawl
- Limited entry IFQ demersal trawl.

These VMS declarations may be further revised as gear switching and other trawl rationalization program provisions are developed.

Definitions

8) Defining a whiting trip for the shoreside IFQ fishery.

Background:

Whiting trips, for the purpose of IFQ QS allocation, means those shorebased whiting fishing trips where greater than or equal to 50 percent of the total catch (landings and discards) is Pacific whiting. This definition does not work with the existing management measures for seasons and area closures in the shorebased whiting fishery.

Rationale:

The definition of whiting trips for IFQ QS allocations works for allocations and will be used for initial issuance of whiting QS, but does not work for ongoing management of the fishery, including seasons and area restrictions. The definition for whiting trips for IFQ QS allocations is based on information known after a trip. For management of the fishery, the whiting trip needs to be defined based on information known before or during the trip. Therefore, NMFS has developed a definition based on gear, similar to the definition currently used in regulation. The new definition for a shorebased whiting trip, for the purposes of ongoing management of the fishery, will be “a trip in which a vessel registered to a limited entry permit uses legal midwater groundfish trawl gear with a valid declaration for limited entry midwater trawl, Pacific whiting IFQ, as specified at 660.13 (d)(5) during the dates that the midwater whiting season is open.”

Endorsements

9) Use of endorsed permits among trawl sectors (IFQ, MS, C/P)

Background:

As stated in Appendix D section B-4.1 (p. D-41) vessels that operate as C/Ps may also operate as MS, but not in the same year. Section B-2.1 (p. D-33) states that permits with a MS/CV endorsement may participate in either the coop or non-coop portion of the Mothership fishery. This section also states that any groundfish LE trawl permitted vessel may participate in the coop portion of the MS fishery if they join a coop. Finally, section B-2.1 also specifies that a MS operating as a C/P may not operate as a MS during the same year that they participated as a C/P.

Rationale:

NMFS interprets the use of endorsed permits among the trawl sectors as follows:

- C/P endorsed permit can be used by a catcher/processor in the C/P sector
- a MS permit can be used by a mothership in the mothership sector
- A vessel may be registered to both a C/P endorsed permit and a MS permit, but cannot fish in both sectors in the same year
- MS/CV endorsed permit can be used by a catcher vessel in the MS sector and IFQ sector if QP are available for use by the vessel.
- A trawl endorsed permit with no at-sea endorsements can be used by a vessel in the IFQ sector if QP are available for use by the vessel and in the MS sector if it participates in a MS coop.

Observers

10) Current vessel observer data collection duties would incorporate, not be replaced by, IFQ species data collection needs.

Background:

With an increase of observer coverage, there has been some uncertainty about what observers on vessels would sample as part of the trawl rationalization program and whether their duties may focus entirely on collecting IFQ information.

Rationale:

With the implementation of trawl rationalization, updated sampling methodology will incorporate the need to collect more data on IFQ species; however, NMFS will maintain observer data collection necessary for the management of the groundfish fishery. These data collections are necessary in order to fulfill the Agency's overall conservation and management obligations under the MSA. An example of current data collection to be maintained under IFQ is species age structure data such as length, weight and sex. This information is key to many groundfish stock assessments.

11) No observer coverage waivers will be granted.

Background:

Currently, the bottom trawl fleet coverage is less than 100%. The IFQ program will require 100% observer coverage: all boats will be required to take an observer on all trips. NMFS will not issue observer coverage waivers to any vessels who wish to participate in the MS, C/P or IFQ sectors.

Rationale:

The IFQ program relies on 100% observer coverage to account for of all IFQ species. Granting coverage waivers would jeopardize the IFQ program's ability to accurately track and record catch of all IFQ species. Vessels must maintain safe conditions in order to have coverage or they cannot fish. If a vessel is determined to be unsafe, if appropriate, the quota pounds registered to it could be transferred to another vessel, consistent with the regulations.

IFQ PROGRAM

Trip Limits

12) Some status quo management measures will remain in place, including trip limits.

Background:

Am 20 DEIS, Appendix D, p. D-7 (A-1.3) states that unless otherwise specified, status quo regulations, including trip limits for non-IFQ species, would remain in place. It also states (p. D-3), "To ensure that optimum yields (OY) for species not covered by IFQ are not exceeded, catch of those species will be monitored and deductions made from the OY in anticipation of the expected level of shoreside trawl sector catch."

Rationale:

NMFS interprets this to mean trip limits will remain in place for some non-IFQ species such as spiny dogfish and other fish, while set asides are used for other non-IFQ species, such as nearshore species. These decisions can be made during the spex process to reflect the needs at the time. Routine management measures for the IFQ fishery will need to be defined at the start of the program to provide the rationale for an action and create a tool for management, should it be necessary.

Vessel Account

13) Holder of the vessel account and responsible party

Background:

The Am 20 DEIS, Appendix D, discusses the vessel account but does not define who will be the recognized “person” who may apply for the account or will be authorized to manage the account. It possibly could be interpreted to be the vessel owner, the vessel operator, or the vessel lessee or associated permit holder. Whoever is designated as the holder of the vessel account is responsible for managing the account and complies with the QP limits in the account or covering any overages. For any fishing violations associated with the vessel registered to the vessel account, the vessel owner(s) account manager(s) and/or vessel operator(s) will have joint and severable liability.

Rationale:

NMFS decided that the vessel owner is the holder of the vessel account and is responsible for managing the account. This is consistent with the current limited entry system where the vessel owner must be the holder of the limited entry permit that is registered to that owner’s vessel. When setting up or renewing a vessel account, the vessel owner may designate other persons that can access the vessel account (i.e., vessel operator, manager, etc.).

14) 30 days to cover all catch from an IFQ trip

Background:

The Council motion as captured in Appendix D of the Am 20 DEIS (A-2.2.1, p. D-12) states, “All catch a vessel takes on a trip must be covered with QP within 30 days of the landing for that trip unless the overage is within the limits of the carryover provision (Section A-2.2.2.b), in which case the vessel has 30 days or a reasonable time (to be determined) after the QP for the following year are issued, whichever is greater.”

Rationale:

NMFS plans to implement the Council motion as follows: All catch a vessel takes on a trip must be covered with QP within 30 days of the landing for that trip unless the overage is within the limits of the carryover provision (Section A-2.2.2.b), in which case the vessel has 30 days ~~or a reasonable time (to be determined)~~ after the QP for the following year are issued, ~~whichever is greater.~~ NMFS is removing the struckout language because a specific deadline is needed to be enforceable. NMFS has determined that 30-days is a reasonable amount of time to cover an overage. Because there is flexibility in the Council’s recommendation, the regulations could be amended in the future through a rulemaking to provide for a different timeframe.

(Note: issue 4 within the clarifications document addresses when the 30 day clock starts)

First Receiver Site License

15) An accepted catch monitoring plan will be required before issuance of a first receiver site license

Background:

The Council motion recommended the use of “shoreside site licenses” (Am 20 DEIS, Appendix D, A-2.3.1, p. D-17). NMFS concurs with the requirement for these licenses, but calls them “first receiver site licenses” to make the term consistent with existing shoreside whiting first receiver regulations at 50 CFR 660.373(j). First receiver site licenses and requirements are modeled after Pacific whiting first receiver EFP requirements used in 2008 and 2009 for the Pacific whiting shoreside fishery. To acquire the first receiver site license, NMFS will require additional information/equipment, including a catch monitoring plan, certified scale(s), necessary state first receiver fish buyers license, internet access, computer/software for electronic fish tickets, etc. For the requirement to have a certified scale(s), NMFS is working with the states to determine the best process. NMFS acknowledges that there is a state certification process and does not intend to duplicate effort. NMFS may conduct or require periodic scale testing to ensure compliance. Catch monitoring plans are prepared by the first receivers and are narrative responses to questions specified in regulation. NMFS may conduct a site inspection before accepting the plans and at any time during the year if there is a shift in first receiver operations (i.e., from receiving non-whiting groundfish to receiving whiting). Catch monitors may be shared by facilities or businesses using the same facilities, consistent with the regulations including those pertaining to coverage and daily working hours.

Rationale:

First receiver site licenses are needed to register those first receivers who are authorized to receive offloads of QS species at specific sites, for NMFS to assess catch monitor training and equipment needs, to ensure adequate monitoring and accounting of landed catch, to ensure accurate weighing and documenting of IFQ landings, and to ensure timely transmission of landed catch data. First receiver site licenses would only be issued to a person that submits a completed application to NMFS, including an accepted catch monitoring plan, and who has a corresponding physical location (not a PO Box). The catch monitor plan must be accepted by NMFS before NMFS will issue the license. A first receiver must have different site licenses for different physical locations where IFQ groundfish are received. NMFS will use the information in the application and catch monitoring plan to aid catch monitors in their duties and to assess if the catch can be adequately monitored. The catch monitoring plan is submitted annually and must be resubmitted if there is a substantial change in how fish are received, sorted, or weighed.

First receiver site licenses also provide NMFS with a mechanism to take enforcement or administrative action if any of the conditions of the license are not met. The site license

also provides a mechanism for NMFS, assess potential catch monitoring needs for a particular site, and the potential overall program need. NMFS may require the first receiver to attend a mandatory meeting and have a site inspection in order to receive a first receiver site license.

IFQ Species Area Management

16) As IFQ species will be managed in four distinct geographic areas with different management measures, a vessel will be prohibited from fishing in different areas during the same trip.

Background:

Many groundfish species are tracked as either a single species with different QS by area; or as a single species in one area and as part of a minor shelf or slope group north or south of 40°10' N. lat. For example, yellowtail rockfish is an individual species management unit north of 40°10', but a member of the minor shelf rockfish species complex south of 40°10'. QS for sablefish is issued with area distinctions either north or south of 36° N. lat. QS for shortspine thornyhead is issued with area distinctions either north or south of 34°27' N. lat.

Rationale:

The IFQ management areas will be as follows:

- US/Canada border to $\geq 40^{\circ}10'$
- $40^{\circ}10'$ to $\geq 36^{\circ}$
- 36° to $\geq 34^{\circ}27'$
- $34^{\circ}27'$ to the US/Mexico border

As landings are a mix of all hauls taken during a single trip, to simplify sorting requirements, at-sea observation and enforcement of IFQ limits, a vessel must fish entirely in one management area during any trip. This is the most straightforward and efficient method to track and verify total catch of a vessel's IFQ limits for individual species and rockfish complexes.

IBQ Data Collection

17) Pacific halibut discard and mortality data collection frequency will likely increase, but the nature of the information collected will remain constant under trawl rationalization in order to provide individual vessel mortalities.

Background:

In formulating IBQ, the Appendix D states "The IBQ will be required to cover legal and sublegal sized Pacific halibut bycatch mortality in the area north of 40°10' N latitude. It is the intent of the Council that halibut IBQ mortality be estimated on an individual vessel basis." (Appendix D, A.4, p. D-19).

Rationale:

Appendix A states "Pacific halibut IBQ would function in a manner similar to IFQ for other species, except that retention and landing of halibut would be prohibited and only

pounds of dead halibut would be counted against the IBQ. Discard at sea of Pacific halibut would be required, and before discard occurs observers would estimate the halibut bycatch mortality on that vessel (~~fleet-wide average mortality rates would be used~~) to provide greater individual accountability and incentives for harvesters to control halibut mortality.” (Appendix A, A-4, p. A-440). NMFS is not including this phrase as it is opposite to Council intent of the IBQ. If large numbers of Pacific halibut occur in a haul the observer would likely sub-sample.

The current data collection methodology makes no distinction between legal and sublegal halibut, but, as length is collected, allows for analysts to divide out halibut bycatch as needed. In addition, weight of discarded halibut is determined by a length to weight conversion developed by the International Pacific Halibut Commission. As collecting halibut weight at-sea is problematic, use of the published length to weight conversion table is the accepted method to determine Pacific halibut weights.

Processing at-sea by IFQ whiting vessels.

18) The exemption for processing at-sea by shoreside whiting vessels will remain in place and the value for the weight conversion will be based on a published value.

Background:

Under the definition of processing in the groundfish regulations at 50 CFR 660.302, heading and gutting is allowed while a vessel is at sea provided no additional preparation is done. At the start of 2009 a provision was added for Pacific whiting shoreside vessels 75 feet in length or less, to exclude from the processing definition whiting that are headed and gutted with the tails removed and frozen at sea. The provision allows these vessels to continue to be part of the shore-based whiting fishery and the Pacific whiting taken by these vessels continues to be attributed to the shore-based allocation (50 CFR 660.373(a)(3)). To date only a single vessel has headed and gutted Pacific whiting at sea. The vessel used a smaller net and shorter tows to maintain product quality. Allowing the Pacific whiting to be tailed and frozen at-sea increases the value of the catch. This provision will continue. Therefore, NMFS should have a weight conversion in regulation.

Rationale:

NMFS will use a weight conversion for whiting based on published values in Crapo et al. (2004) (Sea Grant document). Without conversions for other species, species other than whiting may not be processed at-sea.

AT-SEA COOP PROGRAMS (MS & C/P)

Equipment Requirements

19) All catch in the at-sea whiting fleet will be required to be weighed by a NMFS certified flow scale that meets the testing requirements.

Background:

The motherships and catcher/processors operating in the at-sea whiting fleet generally use flow scales to weigh catch, but are not required to do so. Flow scales were incorporated into their fishing operations due to their requirement to operate in restricted access fisheries in the North Pacific. Although flow scales are commonly used in the whiting fishery rather than changing factory layouts or operations, it is unknown if they follow similar performance testing requirements as when they participate in the North Pacific fisheries

Rationale:

As the flow scales are already in operation and they are a proven method to attain accurate estimates of total catch in this high volume fishery, NMFS will now require their use in the at-sea whiting fishery. Flow scale certification and regulations in place for the North Pacific fisheries will be adopted and updated where appropriate for use in the whiting fishery. The Northwest Region is working with the Alaska Region to determine how best to incorporate the North Pacific requirements.

Non-whiting species reapportionment

20) Non-whiting groundfish species with formal allocations may be reapportioned within the MS Coop Program or between the MS and C/P Coop Programs.

Background:

Non-whiting groundfish species with allocations (i.e., darkblotched, POP, widow, and canary) may be reapportioned to permitted coops and the non-coop fishery when a MS permitted coop or the non-coop fishery reaches its whiting allocation. Similarly when a sector (i.e., MS or C/P) reaches its whiting allocation, the non-whiting species catch allocations can be reapportioned to the other sector. Whiting allocations cannot be reapportioned.

Rationale:

Reapportionment could occur when a sector reaches its whiting allocation or participants in the sector do not intend to harvest the remaining sector allocation. When considering redistribution of non-whiting catch allocation, the Regional Administrator will take into consideration the best available data on total projected fishing impacts in all fisheries.

With coops, we assume a very small amount of whiting will be left on the table at the end of a season meaning that the allocation is never actually reached. We will use a cease

fishing notice provided by the participants to determine when coops and vessels are done for the year and reapportionment of non-whiting species with allocations can occur. The designated coop manager, or in the case of inter-coop, all of the designated coop managers, must notify NMFS in writing that their harvesting has concluded for the year. The regulations will specify that at any time after 80 percent of the MS sector whiting allocation has been harvested, the Regional Administrator may contact designated coop managers to determine whether they intend to continue fishing.

Coop Permit and Agreement

21) A coop permit approved by NMFS will be required of any coop participating in the MS or C/P Coop Program.

Background:

The Council motion as stated in Appendix D regarding the MS and C/P coop programs does not mention the requirement for a coop permit. In addition, Appendix D (p. D-42) of the Am 20 DEIS states that the C/P coop will not be required to have an annual registration or make annual declarations. However, NMFS has determined that there is a management need to require a permit at the coop level for both the MS and the C/P Coop Programs.

Rationale:

While both the MS and C/P sectors will be adequately managed by the coops, NMFS has determined that there is a need to require a permit at the coop level for any coop participating in the MS and the C/P Coop Program. The coop agreement establishes the terms and conditions for the coop. The coop permit formally registers the coop and its associated members to harvest and process whiting in the sector. The coop agreement, plus the specification of the coop managers, provides a mechanism for NMFS to track and to communicate with the coop. In NMFS's view, this is an appropriate element of the trawl rationalization program. In addition, the permit provides important accountability measures at the coop level instead of at the individual level, this is also an important element of the trawl rationalization program. The coop permit also provides NMFS a mechanism to take enforcement or administrative action at the coop level if any of the conditions of the permit and its associated coop agreement are not met. The coop permit may be revised by NMFS to reflect changes in the membership or participating vessels and other material changes to the coop.

22) Additional information in MS coop agreement.

Background:

Appendix D of the Am 20 DEIS (p. D-37) lists the contents of MS coop agreements. Item #1 states that a coop agreement must include "a list of all vessels, which must match the amount distributed to individual permit holders by NMFS." NMFS interprets this to

mean that the coop agreement should list the coop's permit numbers and also the vessels and vessel owners. Some vessels owners may not own the permit to which they are registered. In addition to the information recommended in Appendix D, the following information is also being required in a MS coop agreement (*See Attachment A for regulatory text of full list of MS coop agreement contents*):

- The mothership sector catch history assignment associated with each MS/CV endorsed limited entry permit.
- A catch history assignment clause indicating that each member MS/CV endorsed permit's catch history assignment must equal the catch history assignment that the member permit brings to the coop.
- A listing of all MS permits by permit number and the vessel registered to each permit that the MS coop members intend to deliver to.
- A description of how the coop would be dissolved.
[This replaces the Council recommendation for an agreement by at least a majority of the members is required to dissolve a coop. During Council discussion this was flagged by NOAA GC as having potential legal issues.]

Rationale:

NMFS has determined that a list of MS permits and a list of all vessels participating in the coop is necessary for establishing legal liability and catch tracking and monitoring. NMFS has determined that a list of permits participating in the coop is necessary as permits can be transferred and it is the permit that brings the catch history. The MS/CV endorsed permit owners are the coop members. The additional information includes a clause pertaining to the "Golden Rule" requirement recommended by the Council. These pieces of the program have been consolidated for efficiency.

23) A coop agreement will also be required of the C/P Coop.

Background:

The Council motion as stated in Appendix D (p. D-36 & D-37) requires submission of a coop agreement to NMFS and the Council for any MS coop. Appendix D does not have a similar coop agreement requirement for the C/P Coop Program. The coop agreement for the MS program is necessary to ensure that the coop will meet a set of terms and conditions (e.g., will adequately monitor catch and discards, designate a coop manager, list of participating permits/vessels, signatures of participants, obligation to produce an annual report, etc.).

Rationale:

For the same reasons that a coop agreement is required in the MS Coop Program, NMFS has determined that the C/P Coop Program should have a similar requirement for a coop agreement that is submitted to NMFS as part of the application process for a coop permit.

In addition, the coop agreement would allow NMFS to track if a member has left the coop and determine if the coop has been dissolved. This is an appropriate element of the trawl rationalization program. Because these events identify a coop failure, requirements for the C/P Coop Program to become an IFQ fishery would be triggered and NMFS requires certainty of this situation to take appropriate management action. The C/P coop agreement would be similar to that for the MS Coop Program, but with fewer provisions (i.e., the C/P coop agreement does not need to address catch history assignments). The draft regulatory text of the C/P coop agreement contents is in Attachment B.

24) Coop failure or dissolution

Background:

The Council's recommendation did not address specifically what constitutes a coop failure. Unlike the C/P fishery, NMFS could make a determination to revoke a particular MS coop permit or not reissue permits to MS coops that have been determined to have failed.

Rationale:

NMFS has interpreted a MS coop failure as any or all of the following :

1. If the coop members voluntarily dissolve the coop, or
2. If the coop membership falls below 20 percent of the CV/MS endorsed limited entry permits, or
3. If the coop agreement is no longer valid, or
4. If the coop fails to meet the MS coop responsibilities specified in regulation.
5. If the coop fails to submit an annual report.

MOTHERSHIP COOP PROGRAM

Maximized retention by mothership catcher vessels

25) The MS/CV fleet will only be allowed to discard minor operational amounts of catch at sea after the observer has accounted for the catch (i.e., a maximized retention fishery).

Background:

Current groundfish regulations at § 660.306 (i)(2) prohibit interfering with or biasing the sampling employed by an observer by mechanically or physically sorting or discarding catch before sampling. This language was intended to include the dumping of catch at sea by mothership catcher vessels. In addition, a prohibition was added in 2009 that prohibits the sorting or discarding of any portion of the catch taken by a catcher vessel in the mothership sector prior to the catch being received on a mothership, and prior to the observer being provided access to the unsorted catch, with the exception of minor amounts of catch that are lost when the codend is separated from the net and prepared for transfer. In addition the current definition of “landing” in regulation is that once the offloading of any species begins, all fish aboard the vessel are counted as part of the landing and must be reported as such. Transfer of fish at sea is prohibited unless a vessel is participating in the mothership or catcher-processor sectors. Maintaining the current regulations will require catcher vessels in the mothership sector to transfer catch to a vessel registered to a MS processor permit with all catch from a haul being transferred to the same mothership prior to the gear being set for a subsequent haul. Catcher vessels delivering to motherships will be required to carry observers under the coop system. Accommodation must be made to reduce the likelihood of hauls that are too large to purse off all catch in the codend. Catcher vessels with hauls that are too large to purse off in the cod end, must make accommodations for retaining and transferring the catch to the mothership or for the catcher vessel observer to obtain an accurate weight by species before fishing may be resumed. Catch in the mothership sector may not be offloaded to a tender vessel.

Rationale:

NMFS believes that maximized retention requirements must be maintained to derive accurate weights of the catch. Under this definition of “landing,” whiting catch cannot go from a MS/CV to a tender vessel. To avoid discarding any portion of the catch, the catcher vessel operator is responsible for taking the necessary steps to prevent dumping or bleeding of catch directly from the codend. Transfer of product to cargo vessels by mothership and catcher processor vessels continues to be allowed.

MS/CV endorsed limited entry permit catch history assignments

26) Years dropped in MS/CV catch history assignments

Background:

Appendix D (p.D-34) states that, “The initial catch history calculation for CV(MS) whiting endorsements will be based on whiting history of the permit for 1994 through 2003, dropping two worst years.” The Council motion in November 2008 does not include the word “worst”.

Rationale:

Initially NMFS will drop the two years with the lowest relative pounds of whiting. NMFS will then allow industry to choose which two years will be dropped from the calculation. If a participant would prefer to drop years other than the “worst” years (lowest relative pounds) This will reduce the burden on the agency during the initial issuance phase.

Non-coop Fishery

27) Allocation of whiting to the non-coop fishery

Background:

In Appendix D (B-2.5.3, p. D-39), the non-coop allocation is determined as follows: “Each year NMFS will determine the distribution to be given to the non-coop fishery based on the catch history calculation of permit holders registered to participate in that fishery.”

Rationale:

Interpreted literally, this would mean that the non-coop fishery is the sum of all permits that declare in to the non-coop fishery preseason through the permit renewal process. Potentially, there may be cases where permits were not renewed on time and are permanently expired. This means that any remaining catch history assignments from permits not renewed or those that did not declare a coop or non-coop fishery would not contribute to the fishery for that year.

NMFS has interpreted this provision in Appendix D as follows: “The non-coop whiting fishery is authorized to harvest a quantity of whiting that is remaining in the mothership sector annual allocation after the deduction of all coop allocations.” Thus, any remaining amounts of whiting from permits with catch history assignments that did not renew or that did not declare in to the coop fishery, would go toward the non-coop fishery allocation. In the second year, the catch history assignment from a permit that did not renew and were permanently expired would be redistributed proportionately to all valid MS/CV endorsed permits.

NMFS will require all MS coops to register with NMFS by a deadline date prior to the beginning of the at-sea whiting fishery. The catch history assignment associated with any MS/CV endorsed permit that is not registered for use by a coop would default to the non-coop fishery. NMFS will aggregate the amount of whiting catch history assignment for each of the permits assigned to the non-coop fishery and will allocate the aggregated sum to the non-coop fishery.

Only MS/CV vessels not registered to a coop may fish in the non-coop fishery. As part of the permit renewal process, NMFS will request that MS/CV endorsed permit owners indicate if they will participate in the coop or non-coop fishery.

Inseason management

28) Inseason management of species with at-sea sector set asides or without MS allocations

Background:

The Council action as captured in the Am 21 DEIS (p. 48) states that species with at-sea sector set asides would not be managed inseason; similarly any species without MS allocations would not be managed inseason.

Rationale:

NMFS agrees with this provision and interprets it to mean that these species would be managed on an annual basis according to the sector allocation, the species specific ACLs, and any other accountability measures.

29) MS Coop Program fishery closures.

Background:

In appendix D (B-1.1, p.D-29), states “NMFS will monitor the catch in the mothership non-coop fishery, the mothership co-op fishery, the CP fishery, and the overall whiting catch of all at-sea sectors. NMFS will close each segment of the fishery based on projected attainment of whiting catch. Additionally, all at-sea sectors will be subject to closure based on attainment of the overall trawl whiting allocation.”

Rationale:

NMFS also interprets this to mean that NMFS will close the entire MS fishery (coop and non-coop fishery) if they are projected to attain an allocation. NMFS will not close individual coops in the MS fishery. The individual coops are responsible for closing their coop as stated in their coop agreement.

Mutual Agreement Exception

30) Catch history assignment for a MS/CV endorsed permit exiting a MS coop

Background:

The Council motion as captured in Appendix D of the AM 20 DEIS, (B-2.4.2(b.), p.D-38) states, “By mutual agreement of the CV(MS) permit owner and mothership to which the permit is obligated, a permit may deliver to a licensed mothership other than that to which it is obligated.”

Rationale:

NMFS interpretation of the mutual agreement exception is that it means a written, private agreement that allows the owner of a MS/CV endorsed limited entry permit to withdraw the catcher vessel’s obligation to a permitted mothership processor. Catch shares that are obligated to a particular mothership can be moved between vessels in the same MS permitted coop or between MS permitted coops that have an accepted inter-coop agreement. Catch shares cannot move between the coop and non-coop fisheries. A mutual agreement exception must be submitted to NMFS as notification that a particular MS/CV endorsed permit and the vessel registered to it will deliver to a different permitted mothership processor for the fishing season.

Definition of “material change”

31) New definition for the term “material change” as it applies to the MS fishery.

Background:

The Council motion states in Appendix D, page D-36 that “Any material changes or amendments to the contract must be filed annually with the Council and NMFS by a date certain.” This language does not specifically define a material change.

Rationale:

NMFS has developed a preliminary definition for the term “material change”. A material change means: “After the mothership coop permit is issued, NMFS must be notified in writing if a mothership coop makes changes to any of the following components of the coop agreement:

1. the designated coop manager;
2. the description of the coop’s plan to adequately monitor and account for the catch of Pacific whiting and non whiting allocations, and to monitor and account for catch of prohibited species;
3. MS/CV endorsed member permit transfers ownership through mutual agreement in or out of the coop;
4. the description of the enforcement and penalty provisions;

5. the description of measures to reduce catch of overfished species;
6. the description of how the obligation to manage inseason transfers of catch history assignment will be conducted;
7. the description of how the coop is being dissolved;
8. the addition or withdrawal of any catcher vessel (MS/CV endorsed or limited entry trawl endorsed without an MS/CV endorsement) to the coop;

In addition, it is not clear why such changes would be submitted annually, unless no changes to the coop agreement and/or participants are anticipated to occur during the fishing season. If any substantive change to the coop agreement occurs during the fishing season, the coop manager must immediately provide to NMFS an amended cooperative agreement.

CATCHER/PROCESSOR COOP PROGRAM

Coop Formation

32) C/P Coop Program only allows for the formation of a single voluntary coop

Background:

In a couple of places, the council motion as captured in Appendix D (p. D-41, p.D-27) states that C/P endorsed vessels may form coops (plural). Other places in Appendix D (p. D-2, D-27, D-28, D-41) refer to a single voluntary coop. The Council motion in November 2008 refers to a single coop.

Rationale:

Because most places in Appendix D reference a single coop for the C/P coop program and because NMFS believes the Council intent is to keep the C/P coop structure similar to its current operations, NMFS has interpreted the C/P coop program to only include the formation of a single voluntary coop. Further, multiple competing coops could result in a race for fish, which is contrary to the goals of the trawl rationalization program.

Attachment A

Mothership Coop Agreements.

(A) Coop agreement. NMFS will review coop agreements for completeness and to determine if the coop permit contains sufficient information for the required items and to determine if the coop has adequate mechanisms to effectively manage the coop to track, monitor, and report on the catch activities of the coop members. A coop agreement must include all of the information listed at paragraph (e)(2)(iii)(A)(1) to be considered a complete coop agreement.

(1) Coop agreement contents. Each agreement must include the following information:

- (i) A listing of all coop member vessels, including any member vessels registered to a MS/CV endorsed limited entry permit or a trawl-endorsed limited entry permit without a MS/CV endorsement.
- (ii) A listing of all MS/CV endorsed limited entry member permits by permit number.
- (iii) The mothership sector catch history assignment associated with each member MS/CV endorsed limited entry permit.
- (iv) A listing of all MS permits by permit number and the vessel registered to each permit that the MS coop members intend to deliver to.
- (vi) A catch history assignment clause indicating that each member MS/CV endorsed permit's catch history assignment must equal the catch history assignment that the member permit brings to the coop.
- (vii) A description of the coop plan to adequately monitor and account for the catch of Pacific whiting and non-whiting groundfish allocations, and to monitor and account for the catch of prohibited species.
- (viii) A new member permit owner clause that requires new owners of member permit's to comply with membership restrictions in the coop agreements
- (ix) A description of the coop plan to enforcement and penalty provisions adequate to ensure that of Pacific whiting and non-whiting groundfish allocations overages do not occur.
- (x) A description of measures to reduce catch of overfished species.
- (xi) A description of how the obligation to manage inseason transfers of catch history assignments will be conducted.

(xii) A description of how the obligation to produce an annual report to the Council and NMFS by a date certain documenting the coop's catch and bycatch data and inseason transfers will be met.

(xiii) Identification of the designated coop manager.

(xiv) A signed clause by the designated coop manager acknowledging the responsibilities of a designated coop manager defined in 660.XXX.

(xv) A signed clause by all permit holders participating in the coop acknowledging the responsibilities of a coop member.

(xvi) A description for how the coop will be dissolved, including a requirement that at least a majority of the members are required to make a decision to dissolve a coop

(xvii) Provisions that prohibit coop membership by permit holders that have incurred legal sanctions that prevent them from fishing groundfish in the Council region.

Attachment B

Catcher/Processor Coop Agreements

(A) Coop agreement. NMFS will review coop agreements for completeness and to determine if the coop permit contains sufficient information for the required items and to determine if the coop has adequate mechanisms to effectively manage the coop to track, monitor, and report on the catch activities of the coop members. A coop agreement must include all of the information listed at paragraph (d)(2)(iii)(A)(1) to be considered a complete coop agreement.

(1) Coop agreements contents. Each agreement must include the following information:

- (i) A listing of all C/P endorsed limited entry member permits by permit number. The coop agreement is not required to list the vessels registered to each permit.
- (ii) A description of the coop plan to adequately monitor and account for the catch of Pacific whiting and non-whiting groundfish allocations, and to monitor and account for the catch of prohibited species.
- (iii) A new member permit owner clause that requires new owners of member permit's to comply with membership restrictions in the coop agreements
- (iv) A description of the coop plan for enforcement and penalty provisions adequate to ensure that of Pacific whiting and non-whiting groundfish allocations, Pacific halibut set-asides overages do not occur.
- (v) A description of measures to reduce catch of overfished species.
- (vi) A description of how the obligation to produce an annual report to the Council and NMFS by the November Council meeting documenting the coop's catch and bycatch data and inseason transfers will be met.
- (vii) Identification of the designated coop manager.
- (vii) A signed clause by the designated coop manager acknowledging the responsibilities of a designated coop manager defined in 660.XXXX.
- (viii) A signed clause by all permit holders participating in the coop acknowledging the responsibilities of a coop member.
- (ix) A description for how the coop will be dissolved.
- (x) Provisions that prohibit coop membership by permit holders that have incurred legal sanctions that prevent them from fishing groundfish in the Council region.