

DRAFT OUTLINE FOR THE PACIFIC COAST GROUND FISH LIMITED ENTRY FIXED GEAR SABLEFISH PERMIT STACKING PROGRAM REVIEW

1 Need for a Program Review

Twelve years have elapsed since implementation of the Sablefish Permit Stacking Program, a type of individual fishing quota (IFQ) program. A review would evaluate whether the program is functioning as originally intended in the goals and objectives of Amendment 14 to the Pacific coast groundfish fishery management plan (FMP), the overall FMP, and the Magnuson-Stevens Fishery Conservation and Management Act (MSA). A review would also identify any potential modifications or improvements to the program. A program review is consistent with the requirements in 303A of the MSA, to have periodic reviews of limited access privilege programs (LAPPs).

1.1 Relevant Groundfish Policy and Regulatory Changes Since Implementation

Since the implementation of the fixed gear sablefish permit stacking program, numerous regulatory changes have taken place within the Pacific coast groundfish fishery. Chief among these changes was implementation of groundfish conservation areas (i.e. Ecologically Important Habitat Closed Areas and Rockfish Conservation Areas) and the rationalization of the trawl fishery. Due to the large numbers of transfers occurring between the limited entry fixed gear (LEFG) sablefish fishery and the rationalized trawl fishery, development of the rationalized trawl fishery is further discussed in this section.

Trawl rationalization involved two closely related and interlinked decisions. The first was the specification of the management system used to rationalize the trawl fishery, Amendment 20 to the FMP. Amendment 20 involved the consideration of harvest control tools such as IFQs and harvester co-ops. The second decision involved determining the proportion of the available catch that would be allocated to the trawl versus the non-trawl fishery. This decision was addressed as Amendment 21 to the FMP.

1.2 Potential Issues this Review May Address

The following is a bulleted list of specific issues that have been identified for discussion, and potential inclusion in this program review:

- Identify primary ports where sablefish landings (both primary season landings and landings made in the daily trip limit (DTL) fishery) are occurring;
- Analyze how much stacking is occurring overall, as well as by port, and by vessel;
- Review use of different permit types and gear types;
- Analyze length of harvest period during the sablefish primary season vs. DTLs;

- Formulate and propose method(s) to improve catch accounting between the sablefish primary fishery and LEFG sablefish DTL fishery within the same year, such as moving to an e-fish ticket system;
- Analyze cross-over between this program and the trawl rationalized fishery;
- Address the MSA requirement for cost recovery;
- Analyze opportunities for new entrants (considering, for example, the high cost of a Tier 1 permit);
- Reconsider the limits on the number of permits that may be owned and/or held by an individual or entity;
- Review owner-on-board requirement;
- Review fish ticket requirements to ensure permit/tier documentation; and
- Review/analyze downstream effects to catch accounting, observer monitoring, and enforcement efficacy of allowing a fixed gear permit and a trawl permit to be registered to the same vessel at the same time (please note that the Council has already taken action on this item, but because this has potential implications for both the trawl rationalized fishery and LEFG fleet, further analysis on this issue will be included in this review).

2 Background

2.1 Pre-Permit Stacking Management History

Sablefish (*Anoplopoma fimbria*), also known as “black cod,” is one of the most valuable species in the Groundfish fishery off Washington, Oregon, and California. Because of its high ex-vessel value per pound, sablefish is a desirable target species for many West Coast fisheries and gear groups. The Pacific Fishery Management Council (Council) has made several sablefish allocation decisions over the 15 years prior to implementation of Amendment 14 in order to divide this desirable resource among different sectors of the fishery.

In 1987, an allocation of sablefish was established between trawl (52 percent) and non-trawl gear (48 percent) groups. This allocation was later adjusted to 58 percent and 42 percent. Industry representatives of vessels participating in the non-trawl sablefish fisheries expressed their desire that the fishery be managed on a seasonal basis (as opposed to the year-round policy the Council pursued for most sectors of the groundfish fishery). The pursuit of seasonal management for the non-trawl segment of the sablefish fishery was a key decision that, when combined with a decline in sablefish abundance, ultimately impacted safety, efficiency, and allocational issues that the permit stacking program was meant to address.

The vast majority of the trawl and non-trawl sablefish harvest was placed under a license limitation program in 1994 (Amendment 6). Of the non-tribal commercial optimum yield of sablefish, 90.6 percent was allocated to the limited entry fishery and 9.4 percent was allocated to the open access fishery. The limited entry sablefish allocation was then allocated 58 percent to the limited entry trawl sector and 42 percent to the limited entry non-trawl (fixed gear) sector.

Management for the fixed gear fleet was, and continues to be divided at the 36° N. lat. line with separate annual catch limits (ACLs) for the northern and southern fisheries. While the coastwide trawl fishery took sablefish as part of its year-round cumulative trip limit fisheries, the northern

fixed gear fleet landed 85 percent of its allocation in a directed sablefish season, and 15 percent of its allocation in DTL fisheries. The southern fixed gear fleet landed all of its allowed harvest in DTL fisheries. The directed season north of 36° N. lat. had become increasingly tense over the years, as vessel capacity and competition for landings increased and amounts of fish available for harvest decreased. Through 1996, the directed (or “primary”) season was managed as an open competition derby (“derby”). Derby duration shortened each year, until the fishery was just five days long in 1996.

Concern for the safety of participants in the sablefish derby led the Council to develop Amendment 9 to the FMP. In 1997, National Marine Fisheries Service (NMFS) implemented Amendment 9, the sablefish endorsement program. Limited entry permit holders were eligible for sablefish endorsements based on their permit history. Permits without sufficient sablefish landings history were not endorsed for future participation in the primary season, but could still be used in the DTL fisheries.

Even with the sablefish endorsement, the fishery season remained short (nine days in 1997). In order to lengthen the season, equal limits were imposed on all qualified participants (sablefish endorsement holders). However, the season still had to be limited to keep the fishery from being classified as an individual quota (IQ) program. A fishery with a limited class of participants each with an amount of fish they are allowed to harvest is an IQ. In its 1996 re-authorization of the MSA, Congress had included a moratorium on implementing new IQ programs through October 1, 2000. The moratorium was interpreted to cover any program that would allow a vessel ample time and opportunity to catch a limit allocated specifically to that vessel. The moratorium forced the Council to manage the primary season to a short duration that prevented many participants from fully taking their vessel-specific limits (a “modified derby”). To further assure that the cumulative limits would not be categorized as an IQ program, regulations were established to set a maximum season length of 10 days. Equal cumulative limits were viewed by the Council as being extraordinarily reallocative in nature, but for 1997, equal limits were the only option available to lengthen the season and to begin to address safety issues.

The inequitable allocation system created by the equal cumulative limits was partially resolved with a “three-tier” system, which was established by regulatory amendment for 1998 and beyond. Under this “three-tier” system, sablefish endorsement holders were ranked into three different tiers based on their permit histories, with the lowest tier (Tier 3) having the lowest qualification requirements. Annual management of the three-tier cumulative limit system required that the allocation for this fishery be divided such that there were three different cumulative limits for the different tiers. While somewhat more equitable than the cumulative limit program, the three-tier system still required some fishermen to make large cutbacks in their harvest levels while allowing others to expand. The system provided little flexibility to operators to determine the manner in which their sablefish catch is harvested or to scale their harvest upward to match their pre-existing levels of capital investment. This lack of flexibility undoubtedly reduced efficiency, resulting in a lower net value for harvest.

Even under the three-tier system, the fishery still had to be managed as a modified derby, and the seasons were still too short (between 6-9 days) to allow fishermen to operate with care and

safety. Short derby seasons are believed to result in accidents due to fatigue, and financial pressure to fish and transit under unsafe conditions.

The MSA moratorium on new IQ programs expired on October 1, 2000. On December 21, 2000, Public Law 106-553, an appropriations bill for NOAA, contained a continuation of the IQ moratorium through October 1, 2002 and an exception to that moratorium for a permit stacking program in the West Coast fixed gear sablefish fishery. On August 2, 2001, Amendment 14 implemented a permit stacking program, in which up to three sablefish-endorsed permits could be registered for use with a single vessel and that vessel could then have access to the primary season sablefish cumulative limits associated with each of those permits. Most importantly, the exception to the IQ moratorium for the fixed gear sablefish fishery as implemented through Amendment 14 allowed longer seasons (April through October), so that each vessel could fish against its limits at its own speed.

Portions of Amendment 14 were implemented for the 2001 primary sablefish season. The extended sablefish season was fully implemented in 2002. In 2006, NMFS implemented additional regulations for Amendment 14. In the future, NMFS will implement a permit stacking program fee system as required by the MSA.

Stages of Implementation

- Beginning in 2001, NMFS implemented the initial permit stacking provisions (66 FR 41152, August 7, 2001). The following provisions were put in place in 2001:
 - (1) up to 3 sablefish-endorsed permits may be registered for use with a single vessel;
 - (2) the limited entry, primary sablefish season is from August 15 - October 31, 2001;
 - (3) a vessel may fish for sablefish during the primary season with any of the gears specified on at least one of the limited entry sablefish-endorsed permits registered for use with that vessel;
 - (4) no person may own or hold more than 3 sablefish-endorsed limited entry permits unless that person owned more than 3 permits as of November 1, 2000;
 - (5) no partnership or corporation may own a sablefish-endorsed limited entry permit unless that partnership or corporation owned a permit as of November 1, 2000;
 - (6) cumulative limits for species other than sablefish and for the sablefish daily trip limit fishery remain per vessel limits and are not affected by permit stacking; and
 - (7) the limited entry daily trip limit fishery for sablefish is open during the primary season for vessels not participating in the primary season.
- Beginning in 2002, NMFS extended the fishing season to April 1 - October 31 as part of the Pacific Coast groundfish final specifications and management measures (67 FR 10490; March 7, 2002).

- Beginning in 2006, NMFS implemented further permit stacking regulations that include the following provisions (71 FR 10614, March 2, 2006):
 - (1) permit owners and permit holders are required to document their ownership interests in their permits to ensure that no person holds or has ownership interest in more than 3 permits;
 - (2) an owner-on-board requirement for permit owners who did not own sablefish-endorsed permits as of November 1, 2000;
 - (3) an opportunity for permit owners to add a spouse as co-owner;
 - (4) vessels that do not meet minimum frozen sablefish historic landing requirements are not allowed to process sablefish at sea;
 - (5) permit transferors are required to certify sablefish landings during mid-season transfers; and
 - (6) a definition of the term “base permit.”

2.2 Permit Stacking Program Goals and Objectives

The legal basis for Amendment 14 is the Groundfish FMP approved by the Secretary of Commerce under the authority provided by the MSA.

Permit stacking and its accompanying regulatory provisions were expected to help the Council address objectives related to National Standards 4 (fair and equitable allocation), 5 (consider efficiency), 6 (take into account variations and contingencies), 8 (take communities into account), 9 (minimize bycatch and bycatch mortality), and 10 (promote safety). Specifically, it was expected to affect achievement of Groundfish FMP Goals 2 (maximize the value of the resource as a whole) and 3 (achieve maximum biological yield) through impacts related to Objectives 4 (achieve greatest net benefit), 9 (reduce wastage), 11 (equitable sharing of conservation burden, minimize bycatch or bycatch mortality), 12 (minimize gear conflicts), and 13 (accomplish changes with minimum disruption).

Key objectives of Amendment 14 and the permit stacking program were further defined as follows:

- Rationalize the fleet and promote efficiency. Capacity reduction is one of the key elements of the strategic plan. The strategic plan generally approaches capacity reduction by reducing the number of fishing vessels. This reduction does not of itself imply the rationalization of the fleet or increased efficiency. It is possible that the most efficient fixed gear sablefish harvest could involve a greater number of vessels taking sablefish as bycatch in other fisheries. However, given the high degree of overcapitalization in the fishery, it is believed that a reduction in capacity will generally move the fishery toward greater efficiency, addressing National Standard 5 and FMP Objective 6.
- Maintain or direct benefits toward fishing communities. This objective relates to National Standard 8 on fishing communities, and FMP Objective 17.
- Prevent excessive concentration of harvest privileges. This objective relates to National Standard 4 on allocation, National Standard 8 on fishing communities, and FMP Objective 16.

- Mitigate the reallocational effects of recent policies (3-tier system and equal limits). This objective relates to National Standard 4 on allocation and FMP Objectives 13 on equitable allocation and 15 on minimizing disruption.
- Promote equity. This objective relates to National Standard 4 on allocation and FMP Objective 13 on equitable sharing.
- Resolve or prevent new allocation issues from arising. This objective relates to National Standard 4 on allocation and FMP Objectives 13 on equitable sharing and 15 on minimizing disruption.
- Promote safety. This objective relates to National Standard 10 and FMP Objective 18 on safety.
- Improve product quality and value. This objective relates to National Standard 5 on efficiency and FMP Objective 6 on net national benefits.
- Take action without creating substantial new disruptive effects. This objective relates to FMP Objective 15 on minimizing disruption.
- Create a program that will readily transition to a multimonth IQ program. This objective relates to capacity reduction recommendations in the strategic plan. Where individual quotas are transferable and divisible they address National Standard 6 by providing the fleet with substantial flexibility to respond to changing conditions in the fishery and National Standard 5 by taking efficiency into account. FMP Objective 6 is also addressed.

The stacking program was intended to modify the economic and social impacts of the fishery management system in order to attain a more favorable result with respect to the entire suite of standards, goals, and objectives for management of the groundfish fishery.

2.3 Description of the Current Permit Stacking Program

The current permit stacking program, or sablefish primary fishery, occurs north of 36° N. lat., where vessels registered to at least one limited entry permit, with either a gear endorsement for longline or trap (or pot) gear, and an endorsement for sablefish, fish a specified tier limit. Such vessels are eligible to fish in the DTL fishery before the primary season (i.e., January through March) and after their aggregate tier limit on the vessel has been harvested, or the season has ended, whichever comes first. This transition between fisheries often occurs during the sablefish primary season. Under the permit stacking program, each fixed gear sablefish endorsed limited entry permit is assigned to one of three tiers. The permit's tier level determines the poundage of sablefish which can be landed by that permit each season while participating in the primary sablefish fishery. For sablefish endorsed, limited entry permits, the Regional Administrator will biennially or annually announce the size of the cumulative trip limit for each of the three tiers associated with the sablefish endorsement such that the ratio of limits between the tiers is approximately 1:1.75:3.85 for Tier 3:Tier 2:Tier 1, respectively. Up to three permits can be stacked onto a single vessel, allowing that vessel to land up to the sum of the three tier limits in aggregate.

The program also includes other provisions, including a prohibition on the ownership of permits by corporations or other business entities, a permit owner-on-board requirement, a limit on the number of permits any individual or entity (individually and collectively) can own or hold, and a

prohibition on at-sea processing. A grandfather clause was provided for each of these provisions, allowing the continuation of situations in place prior to Council action. For non-grandfathered permits, the owner must be on board the vessel during the primary season when that permit's tier amount is being fished. If landings from a trip will be attributed to multiple tiers, then all permit owners of those tiered permits being fished must be onboard. However, there are medical and death exemptions from this requirement.

Currently there are 164 sablefish endorsed permits of which 131 are endorsed for longline only; 27 are trap/pot endorsed only, and 6 have two gear endorsements. The number of permits by tier levels is as follows: Tier 1 -28 permits; Tier 2 – 42 permits, and Tier 3 – 94 permits. As of August 2013, approximately 40 vessels have stacked permits (either tier 2 or 3).

Further sections of this review may be structured as follows:

3 Program Performance and Review

- 3.1 Overview of Materials Available for Program Review**
- 3.2 Biological Outcomes**
- 3.3 Socioeconomic Outcomes**
- 3.4 Community Impacts**
- 3.5 Safety at Sea**
- 3.6 Management Costs and Cost Recovery**
- 3.7 Enforcement**

4 Research Needs

- 4.1 Biological**
- 4.2 Socioeconomic**
- 4.3 Community**

5 Recommendations for Moving Forward

6 Review Summary and Conclusions

7 References

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