

STAFF REPORT ON DRAFT INITIAL ISSUANCE RULE

This document provides comments from Council staff regarding the draft initial issuance rule (Agenda Item I.1.b, NMFS Report 6).

Policy Issues. The Council staff notes the following as areas where adjustments may be needed to reflect the general intent of Council policy.

1. Trawl/Nontrawl Allocations and Open Access Allocations. 660.55(d)(1) (page 69). This section presumes the NMFS interpretation that Amendment 6 open access sector allocations remain in effect for Amendment 21 species (see Agenda Item I.1.b, NMFS Report 3), as opposed to the interpretation that the Amendment 21 species allocations for the open access sector will be a component of the “non-treaty non-trawl sectors combined” (quotation as phrased in the Amendment 21 DEIS), with the amount of the open access allocation determined through the biennial specifications process. The consequences of the existing proposed regulatory language may be severe for the fixed gear allocation of chilipepper rockfish and potentially for other species. The Council may wish to review their policy intent on this matter. Depending on the Council’s guidance, adjustment to other sections of the regulations may also be required.
2. Co-op Permits: 660.111 Trawl Fishery - Definitions (page 79). Revise to indicate that a permit would not be required for catcher/processor co-ops (this issue is covered in Agenda Item I.1.b, NMFS Report 2). Also, revise 660.160(a) (page 126) to indicate that the catcher-processor (CP) co-op program is not a limited access privilege program.
3. Pacific Halibut Set-Aside. 660.111 Trawl Fishery – Definitions (page 80). The definition indicates a possible intent to allocate halibut bycatch to permitted co-ops. Council policy has recommended a set-aside of halibut for the at-sea whiting sectors in aggregate but has not recommended allocation of bycatch among at-sea whiting sectors, to co-ops, or to the non-co-op fishery.

Substantial Adjustments. The following adjustments are particularly substantial in terms of their importance but appear relatively easy to implement.

1. Length Endorsements: 660.25(b)(3)(iii)(A)(1) (page 46) The permit downsizing provision for length endorsements should no longer apply to trawl permits. The proposed revisions only exclude application of the provision to mothership/catcher-vessel (MS/CV) and CP endorsed trawl permits. This also affects paragraphs (B)(2) and (3) of this section.
2. Long-term Shoreside Whiting-Nonwhiting Allocation: 660.55 (starting on page 66). Add a section specifying the allocations among trawl sectors for darkblotched rockfish, Pacific ocean perch, and widow rockfish, as per Amendment 21.
3. Initial Quota Share (QS) Allocation and Short-term Shoreside Whiting-Nonwhiting Allocation: 660.140 (d)(8)(ii) (starting on page 107). Add the shoreside whiting-nonwhiting allocations from Amendment 21 and add a reference to the species for which the shoreside-whiting-nonwhiting allocations will be determined through the biennial specifications process (these are one time allocations needed to create a single shoreside sector individual fishing quota (IFQ) program).

Other Clean-up. The Council staff also notes there are a number of minor adjustments which may be needed that do not appear to reflect on the Council's policy intent but should be addressed prior to Council submission of a deeming letter for the regulations. If the Council deems the regulations consistent with its policy intent, the staff recommends that the Council authorize its staff to continue to work with National Marine Fisheries Service (NMFS) staff to make technical adjustments. Examples of the types of adjustments that might be considered include:

1. Catch Monitor: 660.11 Definitions (page 12). In the definitions, consider renaming "Catch Monitors" to "Landings Monitors" and specifying that their role is to monitor "landings" rather than "catch."
2. Effectiveness Dates for Transfers: 660.25(b)(1)(iii) (page 44). Paragraph (B) specifies the transfer rules that apply to MS/CV endorsed permits when they are participating in the at-sea whiting fishery, but none of the paragraphs in this section specify the transfer rule for the permits when they are participating in the shoreside fishery.
3. Pacific Halibut Individual Bycatch Quota (IBQ). 660.140 (starting on page 101). Consider whether and, if so, how halibut IBQ should be further incorporated into the description of the IFQ program and regulations. At present halibut IBQ is only mentioned in the control limit section and the section on initial allocations (the halibut "bycatch allocation" for the trawl fishery is mentioned in 660.55(m) (page 71)).
4. Initial Allocation of QS:
 - a. 660.140 (d)(8)(iii) (starting on page 107). Miscellaneous minor clarifications to the initial allocation formulas.
 - b. 660.140 (d)(8)(iii)(B)(3)(~~xix~~) (page 110). Delete this paragraph. This step is handled at a later point in the allocation formula.
5. Control Rule for Mothership Co-op Program. 660.150(f)(1)(iii)(A)-(I) (pages 118-119). Adjust language on the mothership processor permit usage limit to refer to processing. 660.150(g) (3)(i)(B) (pages 122-123). Consider whether the language on MS/CV permit control might unintentionally take in activities that are entailed in the participation in a co-op.

Staff Note on NMFS Report 3

Own and Control (page 5 of Supplemental NMFS Report 3). The NMFS proposed language on this issue appears to be beneficial by explicitly identifying some of the manners in which the QS control rule might limit the use of quota pounds (QP). Staff notes that the examples of "undesirable forms of control" exerted through influence of QP use provided by NMFS, as well as other types of control of QS that may be evidenced through arrangements and transactions involving QP, are covered under the QS control limit provisions. The specific regulatory language addressing some ways in which influence over the use of QP might fall under the QS control limit should not be interpreted as implying that other ways of influencing the use of QP would not be evidence of control of the QS underlying the QP.

PFMC
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