

AREAS OF THE PROPOSED COMPONENTS RULE  
ON WHICH NMFS HAS REQUESTED SPECIFIC COMMENT

The following text is excerpted from the preamble to the components rule. It provides those sections of the preamble in which NMFS specifically asked for public comment. The preamble and components rule are provided in their entirety as Agenda Item I.5.a, Attachment 5.

Permits

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With respect to transfer of MS/CV-endorsed permits, the Council motion included a provision (Appendix D, Page D-34) that would allow an MS/CV-endorsed permit to have two changes in vessel registration in the same calendar year, provided that the second change in vessel registration would return the registration to the original vessel assigned to the permit in that year. Transfer rules for limited entry trawl permits without an MS/CV endorsement, however, limit the permit owner to only one transfer in a given year. During its March 2010 meeting, the Council considered that because vessels registered to an MS/CV-endorsed permit would be able to deliver whiting to the MS sector and would also potentially be able to deliver IFQ groundfish to shorebased first receivers, it may be possible for owners of an MS/CV endorsed permit to circumvent the restrictions on transfers of limited entry permits in the Shorebased IFQ Program for owners of permits that lack an MS/CV-endorsement. Consequently, the Council decided that if the owner of an MS/CV-endorsed permit were to transfer registration of the permit a second time, the vessel to which the permit is transferred to would not be eligible to fish in the Shorebased IFQ Program under that permit during the remainder of the year. The Council's motion on this issue did not address the timing of when the second transfer would be effective. Under the regulations being proposed, the second transfer would be effective at the start of the next cumulative limit period (i.e., 2-month period). If there are no trip limits for the mothership fishery, then this restriction on the effective date of transfers may not be necessary. NMFS solicits public comment on the effective date for a second transfer within the same year of an MS/CV-endorsed limited entry permit.

Conflict of Interest Regulations in the Observer or Catch Monitor Programs

The proposed regulations, as deemed by the Council, contain language on conflict of interest provisions for observers . . . . However, NMFS has concerns with the language and believes it has the potential to undermine the integrity of the shorebased and at-sea monitoring programs . . . . NMFS intends to use its authority under section 305(d) of the MSA to publish language in the final rule that differs from what was deemed by the Council. This proposed rule includes both the Council-deemed regulatory language and the language proposed by NMFS. The regulatory language labeled Alternative 1 in the conflict of interest provisions for observers (§§ 660.140(h)(6)(vii), 660.150(j)(6)(vii), and 660.160(g)(6)(i)(G)) and for catch monitors (§ 660.18(c)) is the Council-deemed language, and Alternative 2 is the language NMFS proposes to publish in the final rule. [See appendix to this attachment for example language for the alternatives.]

NMFS specifically requests comment on these conflict of interest provisions for observers and catch monitors, and on NMFS's intent to publish Alternative 2 to make these requirements consistent within the region and with other NMFS programs.

## Ownership Information

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In some cases, the structure of the ownership interests may raise questions as to how NMFS interprets the ownership interest in order to make its determination. NMFS has identified two such instances: (1) joint ownership, and (2) ownership by a trust. Each of these situations is addressed in the proposed rule, and NMFS specifically requests comments on the implications of its interpretations of these ownership structures, or of any other ownership structure not previously identified that may raise questions.

A joint ownership situation exists where more than one person claims an interest indivisible from that of another person, such that the total ownership interest is greater than 100 percent. An example of this would be a joint tenancy, a form of property ownership where two parties (often a husband and wife) each own 100 percent, and in the event of death of one of them, the survivor would retain the indivisible 100 percent already owned. In these situations, NMFS would credit each owner with the full percent claimed (e.g., in this example, 100 percent each), even though the sum of all ownership interests would exceed 100 percent. . . .

Ownership by a trust creates another area where questions arise regarding compliance with accumulation limits. In any consideration of trusts, there are three parties that need to be considered: the trustee, the beneficiaries, and the trustor. . . . Because a trust vests the legal title to the property in the trustee, under the proposed rule NMFS would credit ownership to the trustee. If there is more than one trustee (i.e., "co-trustees"), NMFS would consider each trustee to have 100 percent ownership of the trust property. . . .

## Maximized Retention in the Pacific Whiting IFQ Fishery

Under current practices in the maximized retention Pacific whiting fisheries, some minor amounts of operational discard are allowed. Under trawl rationalization, any minor operational amounts of discard would be estimated by the observer and deducted from allocations. NMFS raised this issue at the Council's March 2010 meeting for the maximized retention fishery in the mothership sector (Agenda Item E.6.b, NMFS Report 1, March 2010, #25). For the Shorebased IFQ Program, however, the Council motion at Appendix D, A-2.3.1, p. D-13 states: "Whiting: Maximized retention vessels: Discarding of fish covered by IFQ or IBQ, and nongroundfish species prohibited." The proposed rule adopts this language at § 660.140(g)(2), which states: "Maximized retention vessels participating in the Pacific whiting IFQ fishery are prohibited from discarding any IFQ species/species group and nongroundfish species[:]" however, this language is potentially ambiguous in that it refers to maximized retention vessels, but prohibits discarding. NMFS specifically requests public comment on any implications that the prohibition on discarding may have on the prosecution of a maximized retention fishery, and further requests comment on what should constitute discarding under this provision of the Shorebased IFQ Program.

## Weight Limits and Conversions

Groundfish allocations, harvest guidelines, and quotas are expressed in round weight. In cases where fish are landed dressed (headed and gutted, or in the case of Pacific whiting, headed and gutted with tails removed (neither activity is considered processing under the groundfish regulations which prohibit processing at-sea for the shorebased fishery), catch weight conversions are used to determine actual round weight of the harvested fish.. . .

Due to the increased individual accountability of catch (landings and discards) and the individual allocations of harvest opportunity under the Shorebased IFQ Program, NMFS proposes to revise regulations at § 660.60(h)(5)(ii) to create more consistent use of weight

conversion factors coastwide. Currently, some discrepancies exist between the weight conversions used by the states of Washington, Oregon, and California. . . .

NMFS specifically requests public comment on the actual values and implications of the proposed conversion factors.

### Gear Switching Provisions

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One issue under consideration with regards to gear switching is how often a fisherman would be able to declare and switch gears. Although the declaration system managed by the NMFS Office of Law Enforcement can manage frequent changes in vessel declarations as would be the case for frequent gear switching, NMFS believes the process must be managed in an orderly fashion so as to not compromise the efficient management of the observer program by the Northwest Fisheries Science Center. NMFS specifically requests comment regarding the impact of any restrictions on changes in declarations on gear switching in the Shorebased IFQ Program.

### IFQ Carryover Provision

. . . . a vessel account that incurs a deficit (a negative balance for any IFQ species) that is lower than the carryover limit where the vessel account owner is unable to transfer QP or IBQ pounds into the vessel account to cure the deficit within 30 days, the vessel account owner could cure the deficit by declaring the vessel out of the fishery for the remainder of the year and transferring sufficient QP or IBQ pounds into the vessel account within 30 days of NMFS's issuance of QP and IBQ pounds in the following year.

During discussions at the RDW, some commenters expressed concern that the requirement to declare out of the fishery for the remainder of the year in order to invoke the carryover provision for a deficit would be overly restrictive and that, in their view, a vessel that declares out of the IFQ fishery under the carryover provision should be able to declare back into the fishery if able to obtain sufficient QP or IBQ pounds later in the year . . . .

. . . . NMFS specifically highlights this issue to solicit public comment.

### At-sea Sector Donation Program

A management measure that may no longer be necessary or may need further revision is the optional "bycatch reduction and full utilization program for at-sea processors" (called bycatch reduction and donation program) . . . . Under trawl rationalization, the at-sea sector regulations may not require vessels to be subject to trip limits for groundfish species other than Pacific whiting outside of the primary whiting season. Therefore, the donation program may no longer be necessary or may require minor adjustments. . . . NMFS specifically requests comment on the implications of removing or retaining this program and suggested language revisions.

### Processor Obligations

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In developing the regulations for the processor obligation provision, NMFS discovered that there may be some confusion over the extent of the annual obligation of an MS/CV endorsed permit to a specific processor . . . . Accordingly, NMFS has clarified the regulation to specify that the processor obligation refers only to the commitment of the permit's catch history assignment to a given MS permit, and specifically requests comment on the implications that this interpretation may have on anticipated operations within the MS Coop Program.

Appendix  
Alternatives on Conflict of Interest Regulations

660.18(c) (shaded text = no difference between the alternatives)

[Similar alternatives for observers are in 660.140(h)(6)(vii), 660.150(j)(6)(vii) and 660.160(g)(6)(i)(G).]

**[Alternative 1 for paragraph (c) (Council-deemed)]**

(c) Limitations on conflict of interest for catch monitors. (1) Catch monitors must not have a direct financial interest in the first receivers at which they serve as catch monitors or vessels that deliver to those first receivers, other than the provision of observer or catch monitor services. (2) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS or has interests that may be substantially affected by the performance or nonperformance of the catch monitor's official duties. (3) May not serve as a catch monitor at any shoreside or floating stationary processing facility owned or operated where a person was previously employed in the last two years. (4) May not solicit or accept employment as a crew member or an employee of a vessel, or shoreside processor while employed by a catch monitor provider. (5) Provisions for remuneration of catch monitors under this section do not constitute a conflict of interest.

**[Alternative 2 for paragraph (c) (NMFS-proposed)]**

(c) Limitations on conflict of interest for catch monitors. (1) Catch monitors must not have a direct financial interest, other than the provision of observer or catch monitor services, in a North Pacific fishery managed pursuant to an FMP for the waters off the coast of Alaska, Alaska state waters, or in a Pacific Coast fishery managed by either the state or Federal governments in waters off Washington, Oregon, or California, including but not limited to:

- (i) Any ownership, mortgage holder, or other secured interest in a vessel, shore-based or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish,
- (ii) Any business involved with selling supplies or services to any vessel, shore-based or floating stationary processing facility; or
- (iii) Any business involved with purchasing raw or processed products from any vessel, shore-based or floating stationary processing facilities.

(2) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS or has interests that may be substantially affected by the performance or nonperformance of the catch monitor's official duties. (3) May not serve as a catch monitor at any shoreside or floating stationary processing facility owned or operated where a person was previously employed in the last two years. (4) May not solicit or accept employment as a crew member or an employee of a vessel, or shoreside processor while employed by a catch monitor provider. (5) Provisions for remuneration of catch monitors under this section do not constitute a conflict of interest.