AMENDMENT 20 & 21 (TRAWL RATIONALIZATION AND ISA) –DEEMING ROUND 2

NMFS is developing regulations to implement the groundfish trawl rationalization program (program) based on our ongoing review of recommendations from the Council. The Council has developed the trawl rationalization program through two amendments to the Pacific Coast Groundfish Fishery Management Plan (FMP): (1) Amendment 20, the trawl rationalization program, and (2) Amendment 21, intersector allocation. Amendment 20 would create the structure and management details of the trawl rationalization program while Amendment 21 would allocate the groundfish stocks between trawl and non-trawl fisheries. The Council took initial action on Amendment 20 at its November 2008 meeting, with subsequent actions at its March and April 2009 meetings, culminating in a final recommendation to NMFS at the June 2009 meeting. The Council may revisit part of that final decision at this meeting; specifically the overfished species quota share allocations. The Council took final action on Amendment 21 at its April 2009 meeting but revised its recommendation on Pacific halibut at its June 2009 meeting. These amendments have not yet been formally transmitted from the Council to NMFS, but are scheduled for transmission in the spring of 2010.

At this meeting, NMFS is providing the following:

- Update on the schedule of actions
- Update on the rulemaking to collect ownership information for the program
- Draft outline of the regulatory structure for the program
- Tracking and monitoring presentation
- Estimated program costs

For the March Council meeting, NMFS plans to provide a preliminary draft of the trawl rationalization program regulations for deeming by the Council. NMFS also plans to bring forward any issues which may need further clarification.

_Draft Schedule_
NMFS announced a draft schedule for implementation at the June and September PFMC meetings. That schedule has not changed, except that the Amendment 21 (Intersector Allocation) DEIS is approximately 1-month behind schedule. The Amendment 21 DEIS was previously scheduled to be published by EPA and available for public comment with the Amendment 20 DEIS in late November/early December 2009. However, this should not affect the January 1, 2011 target implementation date as both final EISs should be ready to publish in June 2010.
Ownership Data Rulemaking

On September 16, 2009, NMFS published a proposed rule (74 FR 47545) announcing our intent to collect ownership interest information from potential participants in the trawl rationalization program and to announce the databases NMFS intends to use to determine initial allocation for the program. This is the first rulemaking for the trawl rationalization program. The comment period on the proposed rule ended October 16, 2009. NMFS will respond to the public comments received in a final rule scheduled to publish in December 2009. The deadline to complete and return ownership interest forms is proposed to be May 1, 2010.

NMFS received five public comments on the proposed rule. Of interest to the Council, commenters provided suggestions on collecting ownership information from large companies that currently own permits or processors, such as publicly-owned corporations (domestic or foreign), environmental groups, and Community Development Quota (CDQ) groups. These groups may consist of thousands of individuals that could be considered shareholders. Some suggestions from commenters included:

1. Exempting these groups from listing individual shareholders.
2. Requiring an affidavit provided to NMFS or MARAD.
   a. could be on permit applications and transfer forms
   b. failure to report amounts exceeding accumulation limits subject to significant enforcement action, including permanent loss of quota or permit.
3. Setting a minimum threshold level where only individual shareholders above that level need to report
   a. set threshold appropriate to each group with accumulation limits:
      i. MS (45% accumulation limit) – ex.: if only 6 permits in group, reporting for individuals with > or equal to 10% minimum threshold may be appropriate
      ii. CV/MS (20% accumulation limit)
      iii. IFQ QS control limits (varies by species from 2.5% to 20%)
   b. set minimum threshold at > or equal to 10%

Some commenters were also concerned about the confidentiality of the ownership information collected. The supporting statement for the Paperwork Reduction Act submission that accompanied this proposed rule addressed confidentiality as follows:

Some of the information collection described above is confidential under section 402(b) of the Magnuson-Stevens Act and NOAA Administrative Order 216-100, Protection of Confidential Fisheries Statistics. The names of individuals who have an ownership interest in an entity that owns a permit, vessel or processing plant and the actual percentage of ownership are considered business confidential and not releasable to the public. The phone number, fax, email, TIN, and date of birth are confidential.

Draft Regulatory Structure

In an effort to make Federal regulations easier to follow and to prevent program-specific regulations, like the trawl rationalization program, from becoming layered too deep and too
compartmentalized in the existing regulations, NMFS is reorganizing the groundfish regulations in to multiple subparts within the Code of Federal Regulation (CFR). Current groundfish regulations are found at 50 CFR part 660, subpart G. The reorganized groundfish regulations would be found at 50 CFR part 660, subparts C through G.

NMFS is currently drafting detailed regulations for the initial issuance and appeals processes and the coop program. However, these regulations are in the developmental stage and are not yet ready for meaningful deeming. NMFS plans to present the bulk of the draft regulations for deeming at the March and possibly April 2010 Council meetings. This will be a lot of information for the Council to review at one meeting. Because some of the clarifications may not need to come before the larger Council, NMFS would like to request a sub-group of the Council’s GMT meet and review the draft regulations and clarifications in late January/early February, before the March Council meeting briefing book deadline. NMFS suggests that this group be composed of one staff from each state, Council staff, NMFS staff, and a tribal representative.

An outline of the preliminary draft regulatory structure was provided at the September Council meeting. A more detailed preliminary draft outline follows. Italicized language is new trawl rationalization program language. However, there are some headings that do not show changes now that will be changed as the regulations are drafted.

NOTE: This is a working draft and has not been through full NMFS review. This outline will continue to change before the proposed rule is published, including numbering, organization, section headings and contents.

Subpart C – West Coast Groundfish Fisheries – General (660.10-660.99)

660.10 Purpose and Scope
660.11 Definitions
660.12 Prohibitions
660.13 Recordkeeping and reporting
   New Fishery Declarations
     Midwater Trawl Whiting MS
     Midwater Trawl Whiting CP
     Midwater Trawl IQ
660.14 Vessel Monitoring System (VMS) Program requirements.
660.16 Groundfish observer program.
660.17 Vessel and Gear Identification
660.20 Permits
   (a) General.
   (b) limited entry permits
      (1) eligibility and registration.
      (2) endorsements.
(i) “A” endorsements
(ii) gear endorsements
(iii) vessel size endorsements
(iv) sablefish endorsement and tier assignment
(v) sablefish at-sea processing prohibition and exemption
(vi) MS/CV at-sea whiting endorsement
(vii) C/P at-sea whiting endorsement
(viii) endorsement and exemption restrictions

(3) Permit actions - renewal, combination, stacking, change of permit ownership or permit holdership, and transfer.
(4) small fleet.
(5) permit fees.

(c) QS holder permit
(d) Coop permit
   (1) MS coop permit
   (2) C/P coop permit
(e) MS processor permit
(f) Shoreside first receiver/processor permit
(g) permit appeals process
(h) permit sanctions

660.30 Compensation with fish for collecting resource information – EFPs
660.40 Overfished species rebuilding plans
660.50 Pacific Coast Treaty Indian fisheries
     Washington coastal tribal fisheries management measures.
660.55 Allocations (include sablefish, whiting, black rockfish)
   (a) General. ***

   (1) Limited entry allocation. The allocation for the limited entry fishery is the allowable catch (harvest guideline or quota excluding set asides for recreational or tribal Indian fisheries) minus the allocation to the open access fishery. Within the limited entry fishery, groundfish are allocated between the trawl and nontrawl (longline and pot/trap) sectors as follows:

   (i) Lingcod – coastwide
       (A) trawl sector – 45 percent
       (B) nontrawl sector – 55 percent

   (ii) Pacific cod
       (A) trawl sector – 95 percent
       (B) nontrawl sector – 5 percent

   (iii) Pacific Ocean perch
       (A) trawl sector – 95 percent
       (B) nontrawl sector – 5 percent

   (iv) Widow rockfish
       (A) trawl sector – 91 percent
       (B) nontrawl sector – 9 percent
(v) Chilipepper – south of 40°10’ N. lat.
   (A) trawl sector – 75 percent
   (B) nontrawl sector – 25 percent

The remainder of the species allocated through the Amendment 21 process
will be established in regulations the same as the species listed here.

660.60 Specifications and management measures.
   Add’l Sorting requirements
   General Pacific whiting fishery sorting requirements
   (allows accurate whiting weights to be derived by subtraction of bycatch weights)
   IQ species sorting

660.70 Groundfish harvest specifications.

660.80-99 Closed Area - GCA’s and EFH

* ABC/OY Tables –
  Tables (1a), OY tables (1b), Allocation tables (1c), Tables 2a, 2b, and 2c
* Vessel Capacity Rating Table - Table 2 to Part 660

Subpart D – West Coast Groundfish – Trawl Fisheries (660.100-660.199)

660.100 Purpose and Scope
660.111 Definitions
660.112 Prohibitions
   MS CVs – removing catch from the bag prior to transfer
   CV’s - from bleeding the net or otherwise intentionally discarding catch from net
660.113 Recordkeeping and reporting
   IFQ Program – economic data, electronic vessel logbook report, vessel landing
   declaration report, electronic IFQ landing/discard report,
   processor production report
   Mothership Coop Program – economic data, report on catch/bycatch, inseason transfers,
   processor declaration
   C/P Coop Program – economic data, report on allocations, catch/bycatch,
   monitoring, inseason management

660.120 IFQ Program – Shore-based Trawl Fishery
   IFQ Species and Allocations
   QS permits and accounts
   Reallocation
   Eligibility and registration
   QS Initial Issuance and Appeals
   Renewal, change of permit ownership, and transfer
Accumulation limits
Fees
Appeals
Sanctions

Vessel QP accounts
Eligibility and registration
Renewal, change of account ownership, and transfer of QP
Accumulation limits
Carryover
Fees (?)
Appeals
Sanctions

First Receiver/Processor Permit (Site License)
Eligibility and registration
Renewal
Fees
Appeals
Sanctions

Observer
Coverage requirements
Workload
Procurement of services
Vessel responsibilities
  relative to observer verification of sorting and weighing process
Sample station provisions
Computer and communications equipment requirements
Add’tl safety requirements to ensure observer coverage

Shoreside Catch Monitors
Coverage requirements
Procurement of services
Workload
First Receiver responsibilities
Delivery notification requirements
First receiver responsibility relative to catch monitor verification of sorting & weighing

Retention requirements (whiting and non-whiting vessels)
  IFQ species
  Pacific halibut IBQ
Maximized retention requirements for participants in the Whiting SS Fishery.

Gear Switching
Adaptive Management Program
Accurate weight requirements
First receivers
Approved Scales
Approved methodology
Scale print outs
Equipment failure
Vessels
Approved Scales
Approved methodology
Scale print outs
Equipment failure

660.130 Mothership (MS) Coop Program – Whiting At-sea Trawl Fishery
MS Coop Program Species and Allocations
Whiting & Bycatch Species
Coop Permit (Agreement)
Eligibility and registration
Renewal, change of co-op members
Fees
Appeals
Sanctions
Mothership Permit
Eligibility and registration
Initial Issuance and Appeals
Renewal, change of permit ownership, and transfer
Accumulation limits
Fees
Appeals
Sanctions
Catcher Vessel Mothership (CV/MS) endorsement
Eligibility and registration
Initial Issuance and Appeals
Renewal, combination, change of permit ownership, and transfer
Catch history assignment
Accumulation limits
Fees
Appeals
Sanctions
Observers

Coverage requirements
Workload
Procurement of services
Vessel responsibilities
  relative to observer verification of sorting and weighing process
Sample station provisions
Add’tl computer and communications equipment requirements (if any)
Add’tl safety requirements to ensure observer coverage

Inter-Coop Agreements

Non-Coop Fishery
Retention requirements (MS & CV/MS)
Accurate weight requirements
  Approved Scales
  Approved methodology
  Scale print outs
  Equipment failure

660.140 Catcher-Processor (C/P) Coop Program - Whiting At-sea Trawl Fishery

C/P Coop Program Species and Allocations
  Whiting & Bycatch Species

Coop Permit (Agreement)
  Eligibility and registration
  Renewal, change of co-op members
  Fees
  Appeals
  Sanctions

C/P endorsement
  Eligibility and registration
    Initial Issuance and Appeals
  Renewal, combination, change of permit ownership, and transfer
  Fees
  Appeals
  Sanctions

Observers

Coverage requirements
Workload
Procurement of services
Vessel responsibilities
  relative to observer verification of sorting and weighing process
Sample station provisions
Add’tl computer and communications equipment requirements (if any)
Add’tl safety requirements to ensure observer coverage
Retention requirements
Accurate weight requirements
Approved Scales
Approved methodology
Scale print outs
Equipment failure

660.150 Crossover provisions – Areas, Gears (?), Trawl Fisheries.
660.160 Limited entry trawl fishery management measures.

* Figure 1
* Trip Limit Tables - Table 3 North and South

Subpart E – West Coast Groundfish - Fixed Gear Fisheries (660.200-660.299)

660.210 Purpose and Scope
660.211 Definitions
660.212 Prohibitions
660.213 Recordkeeping and reporting
660.216 Groundfish observer program.
660.220 Black rockfish fishery management.
660.230 Fixed gear sablefish fishery management.
660.240 Limited entry fixed gear fishery management measures.

* Trip Limit Tables - Table 4 North and South

Subpart F – West Coast Groundfish - Open Access Fisheries (660.300-.349)

660.310 Purpose and Scope
660.311 Definitions
660.312 Prohibitions
660.313 Recordkeeping and reporting
660.316 Groundfish observer program.
660.320 Open access fishery management measures.

* Trip Limit Tables - Table 5 North and South
Subpart G – West Coast Groundfish – Recreational Fisheries (660.350-.399)

660.350 Purpose and Scope
660.351 Definitions
660.352 Prohibitions
660.353 Recordkeeping and reporting
660.360 Recreational fishery management measures.