

FMP AMENDMENT LANGUAGE – AMENDMENT 13

Draft amending language is in bold; text to be removed has been crossed-out.

2.0 GOALS AND OBJECTIVES

2.1 Goals and Objectives for Managing the Pacific Coast Groundfish Fishery

The Council is committed to developing long-range plans for managing the Washington, Oregon, and California groundfish fisheries that will promote a stable planning environment for the seafood industry, including marine recreation interests, and will maintain the health of the resource and environment. In developing allocation and harvesting systems, the Council will give consideration to maximizing economic benefits to the United States, consistent with resource stewardship responsibilities for the continuing welfare of the living marine resources. Thus, management must be flexible enough to meet changing social and economic needs of the fishery as well as to address fluctuations in the marine resources supporting the fishery. The following goals have been established in order of priority for managing the West Coast groundfish fisheries, to be considered in conjunction with the national standards of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

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Utilization.

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Objective 11. Strive to reduce the economic incentives and regulatory measures that lead to wastage of fish. **Develop management measures that minimize bycatch to the extent practicable and, to the extent that bycatch cannot be avoided, minimize the mortality of such bycatch. Promote and support monitoring programs to improve estimates of total fishing-related mortality and bycatch, as well as those to improve other information necessary to determine the extent to which it is practicable to reduce bycatch and bycatch mortality.**

2.2 Operational Definition of Terms

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Bycatch means fish which are harvested in a fishery, but which are not sold or kept for personal use and includes economic discards and regulatory discards. **Such term does not include fish released alive under a recreational catch and release fishery management program.**

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5.1 SAFE Document

For the purpose of providing the best available scientific information to the Council for evaluating the status of the fisheries relative to the MSY and overfishing definition, developing ABCs, determining the need for individual species or species group management, setting and adjusting numerical harvest levels, assessing social and economic conditions in the fishery, and updating the appendices of this fishery management plan (FMP); a SAFE document is prepared annually. Not all species and species groups can be reevaluated every year due to limited state and federal resources. However, the SAFE document will in general contain the following information:

1. A report on the current status of Washington, Oregon, and California groundfish resources by major species or species group.

2. Specify and update estimates of harvest control rule parameters for those species or species groups for which information is available.
3. Estimates of MSY and ABC for major species or species groups.
4. Catch statistics (landings and value) for commercial, recreational, and charter sectors.
5. Recommendations of species or species groups for individual management by OYs.
6. A brief history of the harvesting sector of the fishery, including recreational sectors.
7. A brief history of regional groundfish management.
8. A summary of the most recent economic information available, including number of vessels and economic characteristics by gear type.
9. Other relevant biological, social, economic, ecological, and essential fish habitat information which may be useful to the Council.
10. A description of any rebuilding plans currently in effect, a summary of the information relevant to the rebuilding plans, and any management measures proposed or currently in effect to achieve rebuilding plan goals and objectives.
11. **A list of annual specifications and management measures that have been designated as routine under processes described in the FMP at Section 6.2.**

The preliminary SAFE document is normally completed late in the year, generally late October, when the most current stock assessment and fisheries performance information is available and prior to the meeting at which the Council approves its final management recommendations for the upcoming year. The Council will make the SAFE document available to the public by such means as mailing lists or newsletters and will provide copies upon request. A final SAFE may be prepared after the Council has made its final recommendations for the upcoming year and would include the final recommendations, including summaries of proposed and pre-existing rebuilding plans. The final SAFE document, if prepared, would also be made available upon request.

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6.2 General Procedures for Establishing and Adjusting Management Measures * * * * *

A. Automatic Actions * * * * *

B. "Notice" Actions Requiring at Least One Council Meeting and One *Federal Register* Notice - These include all management actions other than "automatic" actions that are either nondiscretionary or for which the scope of probable impacts has been previously analyzed.

These actions are intended to have temporary effect, and the expectation is that they will need frequent adjustment. They may be recommended at a single Council meeting (usually November), although the Council will provide as much advance information to the public as possible concerning the issues it will be considering at its decision meeting. The primary examples are those management actions defined as "routine" according to the criteria in Section 6.2.1. ~~These include trip landing and frequency limits for all gear types for widow rockfish, sablefish (including size limits), Pacific ocean perch, the Sebastes complex, nontrawl year-end trip limits for sablefish, and recreational bag limits for rockfish and lingcod.~~ **These include trip landing and frequency limits and size limits for all commercial gear types and closed seasons for any groundfish species in cases where protection of an overfished or depleted stock is required, and bag limits, size limits, time/area closures, boat limits, hook limits, and dressing requirements for all recreational fisheries.** Previous analysis must have been specific as to species and gear type before a management measure can be defined as "routine" and acted upon at a single Council meeting. If the recommendations are approved, the Secretary will waive for good cause the requirement for prior notice and comment in the *Federal Register* and will publish a single "notice" in the *Federal Register* making the action effective. This category of actions presumes the Secretary will find that the extensive notice and opportunity for comment on these types of measures along with the scope of

their impacts already provided by the Council will serve as good cause to waive the need for additional prior notice and comment in the *Federal Register*.

C. Abbreviated Rulemaking Actions Normally Requiring at Least Two Council Meetings and One *Federal Register* "Rule" or "Notice" - These include ~~all management actions~~ (1) **management actions** being classified as "routine", (2) **trip limits that vary by gear type, closed seasons or areas, and in the recreational fishery, bag limits, size limits, time/area closures, boat limits, hook limits, and dressing requirements the first time these measures are used or** (2 3) **management measures that** are intended to have permanent effect and are discretionary, and for which the impacts have not been previously analyzed. Examples include changes to or imposition of gear regulations, or imposition of **landings limits, frequency limits, or limits that are differential by gear type, or closed areas or seasons** for the first time on any species or species group, or gear type. The Council will develop and analyze the proposed management actions over the span of at least two Council meetings (usually September and November) and provide the public advance notice and opportunity to comment on both the proposals and the analysis prior to and at the second Council meeting. If the Regional Administrator approves the Council's recommendation, the Secretary will waive for good cause the requirement for prior notice and comment in the *Federal Register* and publish a "final rule" **or "notice"** in the *Federal Register* which will remain in effect until amended. If a management measure is designated as "routine" by "~~final rule~~" under this procedure, specific adjustments of that measure can subsequently be announced in the *Federal Register* by "notice" as described in the previous paragraphs. Nothing in this section prevents the Secretary from exercising the right not to waive the opportunity for prior notice and comment in the *Federal Register*, if appropriate, but presumes the Council process will adequately satisfy that requirement.

The primary purpose of the previous two categories of abbreviated notice and rulemaking procedures is to accommodate the Council's September-November meeting schedule for developing annual management recommendations, to satisfy the Secretary's responsibilities under the Administrative Procedures Act, and to address the need to implement management measures by January 1 of each fishing year.

It should be noted the two Council meeting process refers to two decision meetings. The first meeting to develop proposed management measures and their alternatives, the second meeting to make a final recommendation to the Secretary. For the Council to have adequate information to identify proposed management measures for public comment at the first meeting, the identification of issues and the development of proposals normally must begin at a prior Council meeting, usually the ~~July~~ **June** Council meeting.

D. Full Rulemaking Actions Normally Requiring at Least Two Council Meetings and Two *Federal Register* Rules (Regulatory Amendment) * * * * *

6.2.1 Routine Management Measures

"Routine" management measures are those the Council determines are likely to be adjusted on an annual or more frequent basis. Measures are classified as "routine" by the Council through either the full or abbreviated rulemaking process (C. or D. above). In order for a measure to be classified as "routine", the Council will determine that the measure is **appropriate of the type normally used** to address the issue at hand and may require further adjustment to achieve its purpose with accuracy.

As in the case of all proposed management measures, prior to initial implementation as "routine" measures, the Council will analyze the need for the measures, their impacts, and the rationale for their use. Once a management measure has been classified as "routine" through one of the two rulemaking procedures outlined above, it may be modified thereafter through the single meeting "notice" procedure (B. above) only if (1) the modification is proposed for the same purpose as the original measure, and (2) the impacts of the modification are within the scope of the impacts analyzed when the measure was originally classified as "routine." The analysis of impacts need not be repeated when the measure is subsequently modified if the Council determines that they do not differ substantially from those contained in the original analysis. The Council may also recommend removing a "routine" classification.

Experience gained from management of the Pacific coast groundfish fishery indicates that certain measures usually require modification on a frequent basis to ensure that they meet their stated purpose

with accuracy. ~~These measures are commercial trip landing limits and trip frequency limits, including landing frequency and notification requirements and recreational bag limits as they have been applied to specific species, species groups, sizes of fish, and gear types.~~ **For commercial fisheries, these measures are trip landing limits and trip frequency limits, including cumulative limits, and notification requirements.** Their purpose in application to the commercial fishery has consistently been either to stretch the duration of the fishery so as not to disturb traditional fishing and marketing patterns, to reduce discards and wastage, or to discourage targeted fishing while allowing small incidental catches when attainment of a harvest guideline or quota is imminent. **In cases where protection of an overfished or depleted stock is required, the Council may impose limits that differ by gear type, or establish closed areas or seasons.** These latter two measures have not historically been imposed through the annual management cycle because of their allocative implications, however, this additional flexibility has become necessary to allow the harvest of healthy stocks as much as possible while protecting and rebuilding overfished and depleted stocks, and equitably distributing the burdens of rebuilding among sectors. The first time a differential trip limit or closed season is to be imposed in a fishery it must be imposed during the annual management cycle (with the required analysis and opportunity for public comment,) and subsequently may be modified inseason through the routine adjustment process.

For recreational fisheries, bag limits, size limits, time/area closures, boat limits, hook limits, and dressing requirements may be applied to specific species, species groups, sizes of fish and gear types. For the recreational fishery, bag and size limits have been imposed to spread the available catch over a large number of anglers, to avoid waste, and to provide consistency with state regulations.

Routine management measures are also often necessary to meet the varied and interwoven mandates of the Magnuson-Stevens Act and FMP through: achieving the overfished species rebuilding plans, reducing bycatch, preventing overfishing, allowing the harvest of healthy stocks as much as possible while protecting and rebuilding overfished and depleted stocks, and equitably distributing the burdens of rebuilding among the sectors.

~~As of October 1998, the measures listed below by species and gear type had been classified as "routine" measures through the rulemaking process. Recreational bag and size limits have also been designated as "routine."~~

The following measures were classified as routine measures through [insert date of Amendment 13 approval]:

Limited Entry Trip Landing and Frequency Limits

Widow rockfish - all gear
Sebastes complex - all gear
Yellowtail rockfish - all gear
Canary rockfish - all gear
Bocaccio - all gear
Pacific ocean perch - all gear
Sablefish (including size limits) - all gear
Dover sole - all gear
Thornyhead rockfish (separately or combined) - all gear
Pacific whiting - all gear
Lingcod (including size limits) - all gear

Open Access Trip Landing and Frequency Limits

All groundfish species, separately or in any combination - all gear types

All Commercial Fisheries, All Gear Types: In cases where protection of an overfished or depleted stock is required, trip limits may differ by gear type, and time/area closures may be established.

Recreational Bag and Size Limits

Lingcod
Rockfish

All Recreational Fisheries, All Gear Types: For all groundfish species separately or in any combination, bag limits, size limits, time/area closures, boat limits, hook limits, and dressing requirements. The first time one of these measures is imposed in the fishery, it must be imposed during the annual autumn management cycle.

Any measure designated as "routine" for one specific species, species group, or gear type may not be treated as "routine" for a different species, species group, or gear type without first having been classified as "routine" through the rulemaking process. **Each year the annual SAFE document will list all measures that have been designated as routine.**

The Council will conduct a continuing review of landings of those species for which harvest guidelines, quotas, optimum yields (OYs) or specific "routine" management measures have been implemented and will make projections of the landings at various times throughout the year. If in the course of this review it becomes apparent the rate of landings is substantially different than anticipated and that the current "routine" management measures will not achieve the annual management objectives, the Council may recommend inseason adjustments to those measures. Such adjustments may be implemented through the single meeting "notice" procedure.

6.3 Bycatch Management

6.3.1 Bycatch of Nongroundfish Species * * * * *

6.3.2 Standardized Reporting Methodologies

Bycatch and discard survival data, information to assess the effects of bycatch and discard on managed populations and the ecosystem, and data on the socio-economic effects of alternative management measures to reduce bycatch are limited. Due to these limitations, precise estimates of bycatch, bycatch mortality, or associated effects of alternative conservation and management measures in the groundfish fishery are not possible.

Improving estimates for information on total fishing mortality is essential. Sources of this information may include at-sea observer programs, dockside sampling programs, and new technology to monitor fishing activities and catch, as well as better use of industry-reported catch and discard information. Timely summaries of the amount and type of bycatch for each fishery should be collated in annual *Stock Assessment and Fishery Evaluation (SAFE)* reports.

6.3.3 Measures to Control Bycatch

Bycatch and discard create unquantified problems for the groundfish fishery. Solving these problems requires both knowing how much bycatch mortality occurs, and setting management measures to reduce that mortality. Bycatch and bycatch mortality can be measured through observer programs (see below at 6.5.1.2) and through other means. Once it initiates programs to measure bycatch, the Council can better identify and prioritize the bycatch problems in the groundfish fishery, based on the expected benefits to the U.S. and on the practicality of addressing these problems. The Council will develop measures to reduce bycatch and bycatch mortality in accordance with the points of concern or the socioeconomic framework provisions of the FMP. These measures may include but are not limited to:

- Full retention or increased utilization programs
- Setting a shorter-than-year-round fishing season in combination with higher cumulative landings limits

- **Allowing permit stacking in the limited entry fleet**
- **Gear modification requirements**
- **Catch allocation to, or gear flexibility for, gear types with lower bycatch rates**
- **Re-examining/improving species-to-species landings limit ratios**
- **Time/area closures**

6.4 Recreational Catch and Release Management

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6.5 Other Management Measures

6.5.1 Generic

6.5.1.1 Permits * * * * *

6.5.1.2 Observers

All fishing vessels operating in this management unit including catcher/processors, at-sea processors, and those vessels which harvest in the Washington, Oregon, and California area and land in another area, may be required to accommodate **an observer or video-monitoring system for the purpose of collecting scientific data or verifying landings and discard used for scientific data collection.** ~~NMFS-certified, onboard observers for the purposes of collecting scientific data.~~ An observer program or video-monitoring system will be considered only for circumstances where other data collection methods are deemed insufficient for management of the fishery. Implementation of any observer program will be in accordance with appropriate federal procedures including economic analysis and public comment.

The Regional Administrator may implement an observer program through a Council-approved federal regulatory framework. Details of how observer coverage will be distributed across the West Coast groundfish fleet will be described in an observer coverage plan. NMFS will publish an announcement of the authorization of the observer program and description of the observer coverage plan in the *Federal Register*.

There may be a priority need for observers on at-sea processing vessels to collect data normally collected at shore based processing plants. Certain information for management of the fishery can be obtained from logbooks and other reporting requirements, but the collection of some types of data would be too onerous for some fishermen to collect. Processing vessels must be willing to accommodate onboard observers and may be required to provide the ~~NMFS-certified~~ **required** observers prior to issuance of any required federal permits.

Observers are required on foreign vessels operating in the Exclusive Economic Zone (EEZ) according to the Magnuson-Stevens Act.

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14.0 GROUND FISH LIMITED ENTRY

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14.2.4 Ownership Restriction and Changes in Ownership

1. Only entities (human beings, corporations, etc.) qualified to own a U.S. fishing vessel may be issued or may hold (by ownership or otherwise) an LE permit. (Foreign ownership of LE permits should be limited to the maximum degree possible given what is allowed under the law.)
2. Ownership of a permit will be considered to change when there is an ownership change on U.S. Coast Guard documents, however, an owner can submit documents to demonstrate that the controlling interest has not changed and therefore the change in documentation is not a change in ownership.

3. **An entity qualified to hold an LE permit may hold more than one LE permit. If the Council authorizes a LE permit stacking program, in which a vessel could use multiple permits simultaneously, each LE fishery participant would be required to hold at least one LE "base" permit. An LE base permit is the initial permit necessary to participate in the LE fishery, and subject to all of the requirements described herein for LE permit ownership qualifications, and gear and length endorsements. Requirements and additional privileges for permits "stacked" on to base permits may be authorized in a federal rulemaking.**

14.2.5 Gear Endorsements

1. An LE permit confers no rights without a valid gear endorsement attached.

2. **Either:**

As of Amendment 13 to the FMP, there is only one functioning type of endorsement, the "A" endorsement. With Amendment 13, the provisional "A" endorsement, the "B" endorsement, and the designated species "B" endorsements were removed as expired or defunct.

OR

As of Amendment 13 to the FMP, there are two functioning types of endorsements, the "A" endorsement and the provisional "A" endorsement. With Amendment 13, the "B" endorsement, and the designated species "B" endorsements were removed as expired or defunct.

~~There are four types of gear endorsements: "A" endorsements, provisional "A" endorsements, "B" endorsements and designated species "B" endorsements.~~

3. Gear endorsements will be affixed to the LE permit and specify type of limited entry gear which may be used to catch Council-managed groundfish.
4. A gear endorsement for a particular gear authorizes the catch of all Council-managed groundfish species with that gear, except in the case of ~~the designated species "B" gear endorsements and for fishing for which a fixed gear sablefish endorsement is required (see Section 14.2.6). Designated species "B" gear endorsements authorize catch of only the designated species specified in the endorsement and bycatch as specified for the joint venture fishery for that species.~~ Limited entry vessels using longline and fishpot gear to catch sablefish against the limited entry quota north of 36°N latitude are required to hold fixed gear sablefish endorsements during periods specified in the regulations, in addition to the required gear endorsement.
5. More than one gear endorsement may be affixed to a single LE permit.
6. An LE permit will not allow the use of limited entry gears to catch any Council-managed groundfish unless a valid gear endorsement for the specific gear is affixed to the LE permit. Trawl gear and Council-managed groundfish may not be on board a vessel at the same time, nor may the gear be deployed, without an LE permit registered for the vessel and endorsed for trawl gear. If a vessel has longline or fishpot gear on board, an LE permit registered for the vessel and the permit is endorsed for the gear on board, regulations for the limited access fishery will apply.
7. Depending on the type of gear endorsement (see Section 14.3 on the specific type of gear endorsements):
 - a. the period for which the gear endorsement is valid may be limited, and

- b. the gear endorsement may or may not remain valid when the LE permit is transferred.^{1/}
- 8. Gear endorsements are not separable from the LE permit and therefore may not be transferred separately from the LE permit.^{1/}
- 9. Limitations which apply to a given gear endorsement shall not restrict the use of any other gear endorsement on the same LE permit.
- 10. Rules on the issuance of gear endorsements and other characteristics of the gear endorsements are specified under sections on each type of gear endorsement (see Section 14.3).

14.2.7 Size Endorsement Will Specify the Vessel Length

The LE **base** permit will be endorsed with the length overall (as defined for purposes of U.S. Coast Guard documentation) of the vessel for which the LE permit is initially issued. The length for which the LE permit is endorsed will be changed only when LE permits are combined, as per Section 14.2.10, or, in the case of LE permits endorsed for trawl gear, when the size of the vessel used with the permit is more than five feet less than the originally endorsed length. In the latter case, the LE permit will be reissued with a size endorsement for the length of the smaller vessel. Vessels which do not have documents stating their length overall will have to be measured by a marine surveyor or the U.S. Coast Guard and certified for that length.^{1/}

If the Council establishes a permit stacking program, that program may or may not require that permits stacked on top of the base LE permit be endorsed with the length overall of the vessel holding the permits.

14.2.8 An LE Permit and Necessary Gear Endorsements Will Be Held by the Owner of Record of the Vessel

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14.2.9 Transfer of an LE Permit to Different Owners or Vessels of the Same Owner

- 1. LE permits may be transferred to other owners for use with other vessels or used with other vessels under the same ownership, but will continue to be restricted by size and gear endorsements **unless otherwise designated through a permit stacking program.**
- 2. Whenever an owner wishes to transfer an LE permit to a different owner or use an LE permit with a different vessel under the same ownership, the NMFS issuing authority must be notified of the change. Notification is not complete until acknowledged in writing by NMFS.

1/ Unless otherwise noted:

- a. Transferable means separable from the vessel owner and vessel.
- b. LE permit transferability, with respect to an owner, means the LE permit may be transferred, inherited, sold, bartered, traded, given or otherwise alienated from the LE permit owner.
- c. LE permit transferability, with respect to a vessel, means the LE permit may be registered for use with a different vessel.

2/ The intent of this provision is to not allow the fishing capacity to expand by separate transfer of endorsements which might otherwise go unused.

3/ While not an immediate cap on vessel capacity, the size endorsement places an upward limit on the amount by which the capacity used with an LE permit may increase.

3. LE **base** permits may be used with vessels greater in length than the endorsed length provided the increase does not exceed five feet of the endorsed length. Original size endorsements will change only when LE permits are combined as per Section 14.2.10,^{17/} or when an LE permit with a trawl endorsement is transferred to a vessel five feet less in length than the endorsed length. In the latter case, the LE permit will be reissued with a size endorsement for the length of the smaller vessel.
4. The transfer of LE permits between vessels or owners may not be used to circumvent vessel landing limits.
5. When an LE permit is transferred to a different owner or vessel, provisional "A", "B" and designated species "B" gear endorsements will become invalid, unless the transfer is caused by the total loss of a vessel (as per Section 14.2.9) and ownership of the LE permit is not transferred.

14.2.10 Loss of a Vessel

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14.2.11 Combining LE Permits

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14.2.12 Permit Renewal

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14.3 Multilevel Gear Endorsement System

This section contains a description of the characteristics specific to each type of gear endorsement. Gear endorsements may not be transferred separate from the LE permit to which they are affixed. An LE permit confers no rights without a valid gear endorsement attached. These and other general characteristics of all gear endorsements are described in Section 14.2.5.

14.3.1 "A" Gear Endorsement

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14.3.2 Provisional "A" Gear Endorsement^{17/} *****This endorsement may or may not be removed with Amendment 13 to the FMP. If it is NOT removed, it may be amended as indicated below.*****

14.3.2.1 Overview of the Provisional "A" Endorsement

The provisional "A" endorsement is intended for: ~~(1) the vessel owner who, during the window period, was preparing through construction, conversion or purchase to use a vessel with limited entry gear in the West Coast groundfish fisheries; (2) the owner of a replacement vessel who would otherwise receive an "A" endorsement on an LE permit endorsed for a smaller sized replaced vessel when the replacement has occurred prior to September 30, 1990; and (3) owners of a vessel landing sufficient groundfish during the window but using a gear type which has been prohibited by a state (Washington, Oregon or California) or the Secretary of Commerce subsequent to the window period.~~ The purpose of the provisional "A" endorsement is to require the owner demonstrate, by actual catching activity, intent to participate in the West Coast groundfish fisheries with the vessel and limited entry gear. When intent has been

4/ Allowance for a slight length increase over the endorsed length is made to provide flexibility in replacing vessels.

17/ ~~If this type of endorsement were not provided, vessels constructed, converted or purchased during the window destined for any fishery in the U.S. could qualify the owner for an "A" endorsement in the West Coast groundfish fishery. The owner could then sell the permit for use with another vessel in the groundfish fishery and never participate in the fishery. Therefore, demonstration of intent through a period of substantial participation in the fishery is required before an "A" endorsement is issued. Opportunity to demonstrate this intent is afforded through the provisional "A" endorsement.~~

demonstrated (as per Section 14.3.2.4), the provisional "A" endorsement may be upgraded to an "A" endorsement. The provisional "A" endorsement allows the catch of all Council-managed groundfish species, except as noted, with the specified gear; becomes invalid when the LE permit is transferred, except in the case of a lost vessel; and is valid for a maximum of three years.

14.3.2.2 Description, Use and Transferability of the Provisional "A" Endorsement

1. Each provisional "A" endorsement affixed to an LE permit will specify a combination of gear type and vessel that the LE permit may be used (e.g., "Provisional 'A'-Trawl-vessel identification").
2. The vessel identified in the provisional "A" endorsement will be allowed to catch all Council-managed groundfish with the gear specified in the provisional "A" endorsement, except for sablefish harvested north of 36°N latitude during times and with gears for which a fixed gear sablefish endorsement is required.
3. The provisional "A" endorsement will become invalid if the LE permit is transferred to a different owner or vessel, unless the transfer to another vessel is caused by the total loss of a vessel (as per Section 14.2.9) and ownership of the permit does not change.

14.3.2.3 Provisional "A" Endorsement Initial Issuance Criteria

1. A provisional "A" endorsement will be affixed to a vessel's LE permit for each gear that the vessel qualifies for under these provisional "A" endorsement initial issuance criteria.
2. No provisional "A" endorsement will be issued if a vessel has already failed to meet the upgrade criteria (Section 14.3.2.4). If a vessel has already met the upgrade criteria at the time of initial issuance, an "A" endorsement, rather than provisional "A" endorsement, may be issued.
3. ~~A vessel must qualify separately for each gear that a provisional "A" endorsement is requested.~~
 - a. ~~Owners of vessels qualifying for a provisional "A" endorsement under the following construction or conversion criteria for initial issuance must select one gear type for endorsement at application time.~~
 - b. Owners of vessels qualifying for a provisional "A" endorsement under the following prohibited gear criteria for initial issuance may be issued only one provisional "A" endorsement regardless of the number of gears for which the vessel might meet the qualifying requirements.
4. ~~For a vessel to be considered "under conversion," for the purpose of determining provisional "A" endorsement eligibility:~~
 - a. ~~the conversion must have impacted the vessel's ability to meet MLRs;~~
 - b. ~~previous to the conversion, the vessel must not have been structurally capable of fishing for groundfish with the specified limited entry gear, and the conversion must have involved a structural change to the vessel which makes it functionally able to fish for groundfish with the specified gear; and~~
 - c. ~~the amount invested in conversion (including all equipment and gear) must be more than~~
~~(1) 25 percent of the appraised value of the converted vessel, or~~

18/ ~~Specifications of the conversion criteria in earlier drafts stated that the purchase of gear alone will not be considered sufficient to establish that a vessel is under conversion. This provision is contained by implication in Criteria b and c. To maintain this intent, any revision to these two criteria should continue to require, by implication, that the purchase of gear alone would not be sufficient to qualify the vessel for conversion provisions.~~

~~(2) \$10,000~~

~~whichever is less, and of which not more than one-fifth of the expenditures may be for gear.^{19/}~~

- ~~d. The NMFS issuing authority may develop additional administrative criteria for determining whether a vessel was under conversion and whether the conversion impacted the vessels ability to meet MLRs. —~~
- ~~5. A person who contracted to have a vessel constructed or converted may qualify for a provisional "A" endorsement for the vessel if:—~~
- ~~a. a contract for any part of the work was signed and substantial earnest money was paid (10 percent or more of the value on that contract) prior to August 1, 1988; and~~
- ~~b. the contract for the vessel under construction (or ownership of a vessel under conversion) is not transferred or otherwise alienated from the contract holder between August 1, 1988 and the issuance of the endorsement;^{20/} and~~
- ~~c. construction or conversion had not been completed^{21/} prior to July 11, 1984; and~~
- ~~d. fishing commenced prior to September 30, 1990.~~
- ~~6. An owner who constructed or converted a vessel may qualify for a provisional "A" endorsement for the vessel if:—~~
- ~~a. the keel was laid or conversion began prior to August 1, 1988; and~~
- ~~b. vessel ownership is not transferred or otherwise alienated from the owner between August 1, 1988 and issuance of a provisional "A" endorsement; and~~
- ~~c. construction or conversion was not completed prior to July 11, 1984 ; and~~
- ~~d. fishing commenced prior to September 30, 1990.~~
- ~~7. A vessel owner who purchased the vessel during the window period and used a limited entry gear to catch and land or deliver Council-managed groundfish but does not meet MLRs for an "A" endorsement may qualify for a provisional "A" endorsement endorsed for the limited entry gear(s) used during the window period, provided ownership of the vessel is not transferred between August 1, 1988 and the issuance of the endorsement.~~
- ~~8. An owner of a replacement vessel (i.e., a vessel that replaces, through construction, conversion, purchase or trade, a vessel that would qualify for "A" endorsement) more than five feet longer than the replaced vessel may be issued a provisional endorsement for the length of the replacement vessel if the replacement vessel is in place prior to September 30, 1990. "In place"~~

~~19/ Gear is defined as anything that is not permanently affixed to the vessel (not welded or bolted). Only expenditures for electronic equipment, which is specifically required for use of the gear in the groundfish fishery, will be included as an expenditure for gear for the purpose of the conversion criteria.~~

~~20/ The prohibitions against transfer of construction contracts prevents keels laid prior to August 1, 1988 on sales speculation from qualifying purchasers buying after that date.~~

~~21/ For vessels qualifying under construction provisions, completion is defined as occurring when a landing or delivery of any kind of fish is made anywhere. For vessels qualifying under conversion provisions, completion would occur with the first such landing after vessel conversion began.~~

~~means the owner of the vessel which would have qualified has acquired a replacement vessel and disposed of the replaced vessel (the vessel which would have qualified), while reserving the right to a future LE permit issued on the basis of the history of the replaced vessel. Such a vessel owner must choose between (1) an "A" endorsement on an LE permit with a size endorsement for the replaced vessel or (2) a provisional "A" endorsement on an LE permit with a size endorsement for the replacement vessel. The endorsement would be for the gear(s) that the replaced vessel would have qualified for an "A" endorsement.~~

9. 4. If after the window period a gear is prohibited by a state (Washington, Oregon or California) or the Secretary of Commerce, the owners of such vessels who would not otherwise qualify for an "A" or provisional "A" endorsement may qualify for a provisional "A" endorsement for one of the three limited entry gears subject to the following provisions:
- a. In order to qualify for an endorsement for a particular limited entry gear, the vessel must have used the prohibited gear to make sufficient landings of groundfish during the window period to meet the MLR for the limited entry gear that the endorsement is to be issued (as specified in Section 14.3.1.3 paragraph 4).
 - b. If a vessel would qualify an owner for an endorsement for more than one limited entry gear, the owner must choose from among those gears the type of gear for which the endorsement will be issued.
 - c. No endorsement will be issued if none of the MLRs for limited entry gears were met with the prohibited gear.
 - d. If an "A" or provisional "A" endorsement was previously issued for the vessel and the endorsement was subsequently transferred or expired, no endorsement may be issued under these criteria for prohibited gear.
10. 5. The NMFS review authority will have discretionary powers to grant exceptions to the qualification criteria on specified grounds. The basis on which the NMFS review authority may grant exceptions are described in Section 14.3.5.

14.3.2.4 Criteria for Upgrading a Provisional "A" to an "A" Endorsement

- 1. A provisional "A" endorsement may be upgraded to an "A" endorsement by demonstrating through actual catch intent to participate in the Council-managed groundfish fishery with the limited entry gear specified in the endorsement.
- 2. To demonstrate intent to participate in the Council-managed groundfish fishery and in order to receive the endorsement upgrade, a holder of a provisional "A" endorsement must use or have used, as per paragraph 3 of this section, the vessel to receive the endorsement upgrade in each of the first three 365-day annual periods commencing with the earliest date of:
 - a. endorsement issuance;
 - b. vessel completion^{21/} for vessels qualifying under the construction or conversion provision;
 - c. vessel purchase for vessels qualifying under purchase provisions; or
 - d. vessel replacement for vessels qualifying under replacement provisions.
- 3. For upgrading a provisional "A" endorsement, "use" will be defined for a particular 365-day period as one fourth of the MLR.^{22/}

22/ One-fourth of the MLR is the approximate equivalent of the annualized MLR. Thus, vessels are required to land at a rate which equalized the average rate required for the window period.

- Trawl: At least 2 days in which over 500 pounds of any groundfish species are landed or delivered, or 113 mt of landings or deliveries of any groundfish species except Pacific whiting, or 5 days in which over 500 pounds of Pacific whiting are landed or delivered, or 938 mt of landings or deliveries of Pacific whiting.
- Longline: At least 2 days in which over 500 pounds of any groundfish species are landed or delivered, or 10 mt of landings or deliveries of any groundfish species.
- Fishpot: At least 2 days in which over 500 pounds of any groundfish species are landed or delivered, or 36 mt of landings or deliveries of any groundfish species.

14.3.2.5 Expiration of the Provisional "A" Endorsement

1. The provisional "A" endorsement will expire at the end of any annual period in which a vessel's landings (or deliveries) are not sufficient to meet the use criteria. (The maximum duration of a provisional "A" endorsement is three years.)
2. The provisional "A" endorsement expires if the LE permit it is attached to is transferred, except in the case of total loss of a vessel (as per Section 14.3.2.2, paragraph 3).
3. The provisional "A" endorsement expires on failure to renew the permit (as per Section 14.2.11).
4. In the event the provisional "A" endorsement expires, another provisional "A" endorsement will not be issued.

14.3.3 "B" Gear Endorsement

14.3.3.1 Overview of the "B" Endorsement

The "B" endorsement ~~is~~ **was** intended for the vessel owner who was active in the West Coast groundfish fishery prior to the cut-off date (August 1, 1988) with a limited entry gear, but did not land sufficient groundfish with the gear during the window period to qualify for an "A" endorsement. The "B" endorsement ~~provides~~ **provided** for an adjustment period during which a vessel owner ~~may~~ **could** seek to acquire a permit with an "A" endorsement or find an alternative fishery. The "B" endorsement which ~~allows~~ **allowed** the catch of all Council-managed groundfish species with the gear and vessel specified in the endorsement, ~~became~~ **becomes** invalid when the LE permit ~~is~~ **was** transferred or **after December 31, 1996, which was three years** three years after implementation of the limited entry program. To qualify for a "B" endorsement, an owner must **have owned** a vessel which ~~meets~~ **met** the initial issuance requirements and must have owned it during and continually since the time the qualifying activities occurred.

In accordance with the FMP, the "B" endorsement program expired on December 31, 1996. Amendment 13 to the FMP removed expired "B" endorsement language from the FMP.

~~14.3.3.2 Description, Use and Transferability of the "B" Endorsement~~

- ~~1. Each "B" endorsement affixed to an LE permit will specify a combination of gear type and vessel with which the LE permit may be used (e.g., "B"-Trawl-vessel identification).~~
- ~~2. The vessel identified in the "B" endorsement will be allowed to catch all Council-managed groundfish with the gear specified in the "B" endorsement.~~
- ~~3. The "B" endorsement will become invalid if vessel ownership changes, or if the LE permit is transferred to a different owner or vessel, unless the transfer to another vessel is caused by the total loss of a vessel (as per Section 14.2.9) and ownership of the permit does not change.~~

14.3.3.3 "B" Endorsement Initial Issuance Criteria

1. ~~A "B" gear endorsement will be affixed to a vessel's LE permit for each gear that the vessel qualifies under these "B" endorsement initial issuance criteria.~~
2. ~~A vessel must qualify separately for each gear for which a "B" endorsement is requested.~~
3. ~~Vessel owners may qualify if they:~~
 - a. ~~own a vessel which landed or delivered (JV or domestic) at least 500 pounds of groundfish with limited entry gear on at least three separate days prior to August 1, 1988, but during the window period did not meet the MLRs for an "A" endorsement; and~~
 - b. ~~have continuously owned the vessel during and since the last making of the landings described in paragraph a (except in the case of vessel loss, see Section 14.2.9).^{23/24/}~~
4. ~~An owner will not be issued a "B" endorsement for the same gear for which an "A" or provisional "A" endorsement may be received except as follows. If an owners fails in an attempt to upgrade a provisional "A" endorsement to an "A" endorsement, and if the provisional "A" endorsement was not issued under initial issuance criteria covering replacement of smaller qualifying vessels, the owner may then apply for and receive a "B" endorsement if the vessel meets the other initial issuance criteria for "B" endorsements.~~
5. ~~The NMFS review authority will have discretionary powers to grant exceptions to the qualification criteria on specified grounds. The basis on which the NMFS review authority may grant exceptions are described in Section 14.3.5.~~

14.3.3.4 Duration of the "B" Endorsement

1. ~~The "B" endorsement will expire three years after implementation of the program.~~
2. ~~The "B" endorsement will expire if the LE permit it is attached to is transferred to another vessel or owner, except in the case of total loss of a vessel (as per Section 14.3.3.2).~~
3. ~~The "B" endorsements will expire on failure to renew an LE permit as per Section 14.2.11.~~

14.3.4 Designated Species "B" Gear Endorsements

14.3.4.1 Overview of the Designated Species "B" Endorsement

The designated species "B" gear endorsement ~~is~~ **was** intended to allow for expansion of domestic processing of underutilized species in the event the limited entry fleet (those holding LE permits other than the designated species "B" endorsement holders) ~~was~~ **is** unwilling to harvest the full amount of the underutilized species desired by domestic processors or acceptable biological catch, whichever ~~is~~ **was** less. In this event, designated species "B" endorsements would ~~be~~ **have been** issued to harvesters willing to deliver to domestic processors. In addition, the endorsement may ~~be~~ **have been** ~~be~~ issued when the possibility ~~exists~~ **existed** that an apportionment to TALFF ~~will~~ **would** occur. In ~~this~~ **that** event, designated species "B" endorsements would ~~be~~ **have been** issued to harvesters willing to deliver to JV processors. A separate endorsement ~~is~~ **was** required for each combination of gear type and species. The designated species "B" endorsement ~~allows~~ **allowed** the catch of the specified species with the gear

23/ ~~The continuous ownership provision prevents individuals purchasing vessels after the cut off date, where the vessel meets the first criteria, from qualifying for a limited duration endorsement, and prevents the repurchase of a vessel by a previous owner in order to qualify.~~

24/ ~~Ownership will be considered to change when there is an ownership change on the U.S. Coast Guard documentation; however, an owner can submit documents to demonstrate that the controlling interest has not changed and therefore the change in documentation is not a change in ownership.~~

and vessel specified in the endorsement. The endorsement ~~becomes~~ **became** invalid when the LE permit ~~is was~~ transferred and would ~~have~~ **have** expired at the end of the fishing year.

Amendment 12 to the FMP declared all species managed under the FMP to be fully utilized.
Amendment 13 removed the designated species "B" endorsement option from the FMP.

14.3.4.2 Description, Use and Transferability of the Designated Species "B" Endorsement

- ~~1. Each designated species "B" endorsement affixed to an LE permit will specify the combination of gear type, vessel and species with which the LE permit may be used (e.g., "Designated Species "B" Trawl shortbelly rockfish vessel identification").~~
- ~~2. The vessel identified in the designated species "B" endorsement will be allowed to catch the species specified in the endorsement with the gear specified in the endorsement.~~
- ~~3. Deliveries may be made only to domestic processors (including catcher-processors delivering to themselves), unless the possibility of an apportionment for TALFF exists as per Section 14.3.4.3, paragraph 4.~~
- ~~4. By-catch allowances will be established using the procedures specified for incidental allowances in JV and foreign fisheries as outlined at 50 CFR Part 663, Appendix II.J.~~
- ~~5. The designated species "B" endorsement will become invalid if the LE permit is transferred to a different owner or vessel.~~

14.3.4.3 Designated Species "B" Endorsement Initial Issuance Criteria

- ~~1. A designated species "B" gear endorsement will be affixed to a vessel's LE permit for each combination of gear and species for which the vessel qualifies under these designated species "B" initial issuance criteria.~~
- ~~2. Designated species "B" endorsements will be issued for only Pacific whiting, jack mackerel north of 39°N and shortbelly rockfish.~~
- ~~3. A vessel must qualify separately for each combination of gear and species for which a designated species "B" endorsement is requested.~~
- ~~4. In the fall of each year, NMFS will determine the limited entry fleet's commitment^{25/} (the commitment of those holding LE permits with "A", provisional "A" or "B" endorsements) to harvest a particular underutilized species for domestic processors in the following year. If this commitment is less than domestic annual processing and the harvest guideline or quota for the species, designated species "B" endorsements valid for delivery to domestic processors only (including catcher-processors delivering to themselves) will be issued in numbers necessary for full domestic utilization. Additionally, if the procedures specified in Sections 5.8 and 5.9 of this FMP would result in the apportionment of TALFF, "B" endorsements valid for delivery to foreign processors will be issued in numbers necessary to fulfill JV processing.~~
- ~~5. The NMFS issuing authority will grant the designated species "B" endorsements first on the basis of seniority and then on a first come basis. Seniority will be based on use of the designated species "B" endorsement in previous years. If there are more seniority or first come applicants with equal priority than endorsements to be issued, a lottery may be held to determine who should receive the endorsements. In the first year of issuance for a particular species, endorsements will be issued first on the basis of seniority (number of years) in the fishery for the designated species rather than use of the designated species "B" endorsement.~~

~~25/ "Commitment" means a permit holder's definite arrangement (by contract or agreement) with a specific domestic processor to deliver an estimated amount of the underutilized species.~~

~~6. A designated species "B" endorsement catch limit will be established as the harvest guideline or quota for the designated species minus the commitment of the limited entry fleet. If at any time during the fishing year it is determined that any part of the limited entry fleet commitment will not be taken, a reapportionment will be made to the designated species "B" endorsements.~~

14.3.4.4 Expiration of the Designated Species "B" Endorsement

- ~~1. The designated species "B" endorsement expires at the end of the calendar year.~~
- ~~2. The designated species "B" endorsement expires if the LE permit to which it is attached is transferred to a different owner or vessel.~~

14.3.4.5 Designated Species "B" Gear Endorsements for Holders of "A", Provisional "A" and "B" Gear Endorsements

- ~~1. "All-species" endorsement ("A", provisional "A" or "B" endorsements) holders must hold designated species "B" endorsements to catch an underutilized species with gear for which they do not hold an all-species endorsement.~~
- ~~2. An all-species endorsement holder is not required to hold any kind of designated species "B" endorsement for the same gear for which an all-species endorsement is held.~~
- ~~3. A provisional "A" or "B" endorsement holder may apply for and receive a designated species "B" endorsement for the same gear for which a provisional "A" or "B" endorsement is held, provided the endorsement holder meets the initial issuance criteria for a designated species "B" endorsement.~~

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