

**EXCERPTS FROM THE DECISION PACKAGE FOR
 AMENDMENT 14 TO GROUND FISH FMP**

2.2.2 Permit-Stacking Regime Alternatives [ADOPTED]

The following are the provisions and options considered by the Council for inclusion in the limited entry fixed gear permit-stacking alternative adopted in its final action in November 2000. Where an FMP amendment is required, the related amendment language is provided in Appendix B. For many of the provisions, options have been listed. Provisions/options adopted by the Council are indicated. The permit-stacking alternatives considered by the Council comprise mixes of options that fall under the following major topics.

The Permit-Stacking alternative	
Topic	Provision
Permit Stacking	1–Basic Provision: Allow permit stacking 2–Gear Usage: Specify the fixed gear a vessel may use 4–Unstacking Permits: Determine whether, once stacked, permits can be unstacked 8–Stacking Non-sablefish Limits and Sablefish DTLs: Determine whether nonsablefish cumulative limits and/or sablefish DTL limits can be stacked
Accumulation	3–Cumulation Limits: Determine whether there should be limits on the number of permits a person owns and/or limits on the number of permits associated with a vessel, and if so, determine the limits
Season Length	5–Season Duration: Determine the appropriate season length 9–Opportunities for Unendorsed Vessels: Determine whether, given other aspects of the stacking alternatives, adjustments are needed to the regulations specifying fishing opportunities for limited entry vessels not endorsed for sablefish 11–Advance Notice of Landings: Determine whether, given other aspects of the stacking alternatives, advance notice of landings should be required 12–Stacking Deadline: Determine whether a deadline for stacking should be imposed and, if so, specify the deadline
At-Sea Processing	6–Processing Prohibition and Freezer Vessel Endorsement: Determine whether, given other aspects of the stacking alternatives, there should be a prohibition on at-sea processing
Permit-Ownership/Owner-on-Board	7–Individual Ownership Only and Owner-on-Board Requirement: Determine whether, given other aspects of the stacking alternatives, permit ownership should be restricted to individuals and whether the owner should be required to be on-board the vessel during fishing operations
Foreign Control	10–US Citizenship Requirement: Determine whether, given other aspects of the stacking alternatives, additional constraints should be recommended on foreign ownership of permits

Provision 1: Basic Stacking [ADOPTED]

Participants in the limited entry fixed gear (longline and fishpot) primary sablefish fishery would be allowed to register multiple fixed gear sablefish endorsed permits for a single vessel (allowed to stack permits). A vessel would be allowed to take up to the full primary season fixed gear sablefish cumulative limit associated with each permit registered to the vessel. The primary fixed gear sablefish fishery includes the current directed sablefish fishery and the mop-up fishery.

Provision 2: The Base Permit and Gear Usage

When permits are stacked, one of the permits would be designated by the vessel owner as the base permit. The base permit would be required to have a fixed gear sablefish endorsement and meet the length requirement for that vessel. Permits of different fixed gear types (longline and fishpot) could be stacked together.

- Options : 2a. When fishing in the primary fixed gear sablefish fishery, the vessel must fish fixed gear sablefish with the gear endorsed on the designated base permit.
- 2b. When fishing in the primary fixed gear sablefish fishery, the vessel may fish fixed gear sablefish with the gear endorsed on its base permit or any fixed gear endorsed on any of its stacked permits for which the length endorsement associated with the stacked permit is equal to or greater than that of the base permit. For example, a 45-foot longline permit could be stacked with a 55-foot fishpot permit designated as the base permit and the longline permit tier endorsement would add to the cumulative limit for the 55-foot vessel, but the vessel could only use fishpot gear. On the other hand, if both the base permit and the stacked permit had length endorsements of 55 feet or greater, then the vessel could use either longline or fishpot gear.
- 2c. **[ADOPTED]** When fishing in the primary fixed gear sablefish fishery, the vessel may fish with any fixed gear endorsed on at least one of its stacked permits.

[ADOPTED] Additionally, if one of the stacked fixed gear sablefish endorsed permits includes an endorsement for trawl gear and the length endorsement is equal to or greater than that of the base permit, the vessel may continue to use trawl gear, but not in the fixed gear fishery. In such a case if the permit is stacked on a vessel that is more than five feet shorter than that specified by the size endorsement for the trawl gear permit, the requirement that the trawl-endorsed permit be downsized will be waived (Section 14.2.9 paragraph 3 of the FMP), unless permits are permanently stacked as specified in Options 4b and 4c.

Note: If Option 4a is adopted, there would be no need to designate a base permit under Options 2b or 2c.

Provision 3: Limits on Stacking and Ownership

Stacking: **[ADOPTED]** No more than three permits may be stacked on a single vessel.

The analysis includes discussion of other permutations such as limits on stacking two and four permits..

Ownership: The number of fixed gear sablefish permits owned by an individual will be restricted to the following options:

- Ownership Options:** (a) two permits
- (b) **[ADOPTED]** three permits
- (c) four permits, or
- (d) an amount with tier limits that add-up to 5% of the total sablefish allocated to the fixed gear primary season

Exceptions would be made for individuals currently holding permits in excess of the limit. These individuals would not be allowed to accumulate more permits. *The possibility of not limiting ownership is discussed in the analysis.* An individual's ownership would be calculated by either

Calculation Suboption (a): [ADOPTED] Summing the total permits ~~(or, for ownership option (d), percent harvest represented by a permit)~~ for which an individual holds some ownership interest, regardless of how small, or

Calculation Suboption (b): Summing the individual's percent interest in each permit to determine the number of permits held (or percentage harvest held).

For the purpose of grandfathering in concentrations in excess of proposed limits, the Council ADOPTED November 1, 2000, as the date for determining maximum ownership concentration.

Provision 4: Unstacking Permits

- Options:
- 4a. **Permits May Be Unstacked. [ADOPTED]** Permits that are stacked would retain their original length, gear, fixed gear sablefish and tier endorsements and could be transferred to other vessels in the future (i.e., when unstacked stacked permits would not take on the gear and length endorsement of the vessel's designated base permit when unstacked).
 - 4b. **Permits May Not Be Unstacked and Tier Endorsements Are Not Tradeable.** When permits are stacked on a single vessel, they would be reissued as a single permit that could not be unstacked (redivided); endorsements remaining on the permit would confer the fishing opportunities specified in Provisions 1 and 2. The length endorsement would be the length endorsement on the permit designated as the base permit.
 - 4c. **Permits May Not Be Unstacked and Tier Endorsements are Tradeable Among the Endorsed Fleet.** Same as Option 4b except that tier endorsements could be transferred separate from the permit to another permit with a fixed gear sablefish endorsement. However, at least one tier endorsement must remain with the base permit. Permits would be limited to a maximum number of endorsements as specified in Provision 3.

Provision 5: Fishery Duration

- Options:
- 5a. **The fishery would extend over a number of months (the initial recommended season is April 1 through Oct. 31). [ADOPTED]** For 2001, the fishery would start as soon as possible after April 1, 2000, in order to provide time for regulations to be put in place. *There would be no preseason and postseason closures and vessels would be required to make their final deliveries prior to closure of the season. There would be no mop-up fishery. No stacking deadline would be needed (Provision 12). When transfers occur midseason, the seller (lessor, etc) will be responsible for providing copies of all sablefish fish tickets landed for the year, to date; and the buyer (lessee, etc.) would have to maintain such copies aboard the vessel.*
 - 5b. **Current Situation: The fishery would continue to be managed as a modified derby followed by a mop up.** *The current preseason and postseason closures would continue to apply and vessels would be required to cease fishing upon closure of the fishery. Permits would have to be stacked before some deadline prior to the start of the seasons in order to provide analysts and the Council sufficient time to assess and recommend appropriate cumulative limits and season durations (Provision 12). The steps would include (1) setting the allocation in November, (2) making a preliminary estimate of season lengths and limits and setting season opening date in March, (3) a deadline for stacking of May 15, and (4) final season duration and limits set in June. (Seasons would continue to be set short enough that many vessels would be unable to fully take the allowed catch. In recent years the season duration has been slightly more than one week. Maintenance of this abbreviated fishery has been necessary to prevent the program from being classified as an individual quota program. Such programs are currently prohibited under the Magnuson-Stevens Act.)*

Provision 6: At-Sea Processing

Note that "processing," as defined under the West Coast groundfish FMP includes such activities as freezing but **excludes heading and gutting.**

- Options: 6a. **Prohibit at-sea processing.** At-sea processing would be prohibited in the fixed gear sablefish fishery except for vessels that can demonstrate the landing of at least 2000 pounds of frozen sablefish in 1998, 1999, or 2000.
- 6b. **Current Situation: Allow at-sea processing.** At-sea processing would be allowed in the fixed gear sablefish fishery. (Note: At-sea processing has not played a significant role in the fishery in recent years because of the short seasons in place since 1996.)
- 6c. **Prohibit at-sea processing but include grandfather provision. [ADOPTED]** Same as Option 6a except provide that the temporary exemption for vessels able to demonstrate frozen sablefish landings would expire with the transfer of the permit to a different owner. For corporations and partnerships, changes in ownership are defined as a change in the identity of a corporation or partnership, as specified in Provision 7.

Provision 7: Permit Ownership and Permit-Owner-on-Board Provisions

- Options: 7a. **Permit ownership. [ADOPTED]** Fixed gear sablefish permits could be transferred only to individual human beings (corporations and partnerships and other such business entities would not be allowed to acquire permits unless they already owned permits as of November 1, 2000). The requirement that the permit be owned by an individual would not restrict other aspects of the business operation from being organized as a partnership, corporation, or other type of legal entity ~~(Also see Provision 10).~~

Grandfathered Corporations and Partnerships. The exemption for a particular corporation or partnership allowing it to own a permit would cease with a change in the identity of that corporation or partnership, as defined below.

Permit owner on board. [ADOPTED] The permit owner would be required to be onboard the vessel during fishing operations, with the exception of those falling under the following grandfather provision.

Grandfathered Absentee Owners: Corporations, partnerships, and individuals who hold sablefish endorsed permits as of November 1, 2000 will not be required to be onboard the vessel on which the permit will be used **[THE FOLLOWING WAS STRUCK FROM THE OPTION AT TIME OF FINAL ADOPTION]** ~~so long as they also have~~

- ~~a) 20% ownership interest in the vessel (the amount of ownership required might be at least 20% (as in the North Pacific IFQ program), or~~
- ~~b) 100% ownership interest in the vessel.~~
- ~~c) Some other value (specify)~~

~~The percent ownership required will be decided by the Council at the time it makes its final recommendations.~~ Grandfathered absentee owners may acquire additional permits to stack with the permits they own, subject to accumulation caps, and still maintain their exemption from the owner on board provision. ***This exemption from the permit-owner on board requirement will cease if there is any change in the identity of a corporation or partnership owning the stacked permits, as defined below.***

Emergency Exemption: NMFS may grant exemptions from the permit-owner-on-board provision for medical and personal emergencies beyond the control of the permit owner.

Definition: Changes in the Identity of Corporations or Partnerships: A change in the identity of the corporation or partnership will be deemed to occur with a change in the corporate or partner membership, except a change caused by the death of a member providing the death did not result in any new members. Additionally, membership is not deemed to change if a member

becomes legally incapacitated and a trustee is appointed to act on his behalf, nor is membership deemed to have changed if the ownership of shares among existing members changes, nor is membership deemed to have changed if a member leaves the corporation or partnership and is not replaced. Changes in the ownership of publicly held stock will not be deemed changes in ownership of the corporation.

- 7b. Current Situation: Any business entity eligible to own a US fishing vessel may own a limited entry permit and the permit owner would not be required to be on board the vessel during fishing operations.
- 7c. ~~Same as 7a, except that the onboard requirement would apply only when permits are stacked.~~ (NOTE: At its September 2000 meeting, the Council voted to drop this option. The option number (7c) and discussion of the option will be retained in the analytical document in order to speed the release of the final document.)

Provision 8: Nonsablefish Cumulative Limits and Sablefish Daily Trip Limits

- Options:
- 8a. **[ADOPTED]** The stacking of permits with sablefish endorsements would not allow vessels to harvest more than one cumulative limit for nonsablefish groundfish species. Under the following suboptions for the limited entry sablefish DTL fishery, stacked permits would not convey any harvest opportunity in excess of the DTLs provided for vessels that do not stack permits. Suboptions: (1) Fixed gear sablefish DTL harvest opportunities would run concurrent with and be in addition to the sablefish cumulative limits associated with sablefish endorsed permits. (2) **[ADOPTED]** A vessel with a sablefish-endorsed permit would not be allowed to fish under the fixed gear sablefish DTL regulations until after its tier cumulative limit is exhausted. (3) A vessel with a sablefish-endorsed permit would not be allowed to fish under the fixed gear sablefish DTL regulations except when the primary fishing season is closed (prior to April 1 and after October 31, under Option 5a).
 - 8b. When permits are stacked, some credit would be provided to allow the landing of additional nonsablefish groundfish species. The suboptions for the sablefish DTL fishery are the same as for Option 8a, except that under the 8b DTL suboptions vessels with stacked sablefish permits would be entitled to additional sablefish under the DTL regulations in some proportion to the number of permits stacked.

Provision 9: Vessels without Sablefish Endorsements

- Options:
- 9a. Current Situation: The limited entry daily-trip-limit fishery for vessels without sablefish endorsements would be closed during the primary fixed gear sablefish fishery.
 - 9b. **[ADOPTED]** The limited entry daily-trip-limit fishery (or other sablefish harvest opportunities) for vessels without sablefish endorsements would be allowed to run at the same time as the primary fixed gear sablefish fishery.

Provision 10: US Citizenship Requirement

- Options :
- 10a. Only individual US citizens would be allowed to acquire fixed gear sablefish permits.
 - 10b. **[ADOPTED]** Current situation: Individual human beings and other legal entities eligible to own a US fishing vessel may acquire fixed gear sablefish limited entry permits.

Provision 11: Advance Notice of Landing

- Options:
- 11a. When making landings under stacked permits, fishers would be required to provide six hours' prior notice.
 - 11b. Current situation. No advance notice is required.
 - 11c. **[ADOPTED]** All limited entry fixed gear sablefish fishers would be required to

provide six hours' notice when making landings during the primary season. As part of this advance notice, fishers may be asked to provide hail weights and location of landing.

Provision 12: Stacking Deadline (Required Only in Conjunction with Option 5b)

At its November 2000 meeting, the Council adopted Option 12b as a fall back in case an extended season (Option 5a) could not be implemented due to the IFQ moratorium. In December 2000, Congress exempted the West Coast fixed gear sablefish fishery from the IFQ moratorium. Provision 12 would not be needed under the Council recommended option.

- Options:
- 12a. Fishers would be required to declare their intent to stack by June 30 in the year 2001 and by January 15 in all subsequent years; or
 - 12b. All permit stacking would have to occur by June 30 in the year 2001 and by **May 15** in all subsequent years.
 - 12c. Current situation: No notice of intent to stack would be required.

Options 12a and 12b are necessary only if a short season is to be maintained (Option 5b). For 2001, the final set of alternative season durations and cumulative limits will not be available until after the June Council meeting. A process will need to be established to allow NMFS to make the final determination of season duration and cumulative limits. This would be similar to the process established for setting the cumulative limits for the mop up that follows the initial opening of the primary fishery.

APPENDIX B: PROPOSED CHANGES TO GROUND FISH FMP LANGUAGE (AMENDMENT 14)

This Appendix outlines changes to the FMP text that would constitute Amendment 14 to the groundfish FMP and implement those aspects of the stacking alternative that would require an FMP amendment (see Section 2.3). Text to be added is highlighted in ***bold italics*** and text to be deleted is struck through.

Existing FMP Language Authorizing Permit Stacking

Section 14.2.4 of the FMP authorizes the stacking of permits and reads as follows (**bolded text** added as part of Amendment 13):

14.2.4 Ownership Restriction and Changes in Ownership

1. Only entities (human beings, corporations, etc.) qualified to own a US 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 US 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 more than one permit 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 priorities for permits "stacked" on to base permits may be authorized in a federal rulemaking.**

Any Provision 2 Stacking Option Combined with Option 4a of the Stacking Alternative [ADOPTED]

Section 14.2.4 gives the Council the authority to create a permit stacking program, however, Provision 2 of the stacking alternative specifies that where a trawl endorsement is involved in permit stacking (i.e. a permit has both a trawl endorsement and at least one fixed gear endorsement), if permits can be unstacked (Option 4a), the downsizing requirement for trawl permits will be waived. The following the changes to the FMP needed to implement any Provision 2 option combined with Option 4a.

14.2.7 Size Endorsement Will Specify the Vessel Length

The LE permit will be endorsed with the length overall (as defined for purposes of US 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. ***Regulations may be promulgated to waive this downsizing requirement if the permit was transferred to a smaller vessel for the purpose of stacking (See Section 14.2.4 paragraph 3).*** Vessels which do not have documents stating their length overall will have to be measured by a marine surveyor or the US Coast Guard and certified for that length.

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

3. LE 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, 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. **Regulations may be promulgated to waive this downsizing requirement if the permit was transferred to a smaller vessel for the purpose of stacking (See Section 14.2.4 paragraph 3).**

Option 4c of the Stacking Alternative [NOT ADOPTED]

Section 14.2.4 gives the Council the authority to create a permit stacking program and require that once permits are stacked they cannot be unstacked. However, tier limits are associated with the sablefish endorsement. In order to allow tier limits to be transferred separately from the sablefish endorsements, as specified in Option 4c, Section 14.2.6 paragraph 4 of the FMP would be amended to read:

14.2.6 Fixed Gear Sablefish Endorsements

4. ***If permits are stacked such that a single permit has multiple sablefish endorsements, sablefish endorsements and associated cumulative limits may be transferred to other sablefish-endorsed permits so long as at least one sablefish endorsement and associated tier limit remains with the permit. Fixed gear sablefish endorsements may not be transferred from permits on which there is only one fixed gear sablefish endorsement.*** ~~are not separable from the LE permit and therefore may not be transferred separately from the LE permit.~~

Options 7a and 7c of the Stacking Alternative [OPTION 7A ADOPTED]

Section 14.2.4 gives the Council the authority to create a permit stacking program and require that permit owners be on board the vessel when permits are stacked. However, Option 7a would require all permit owners to be on board while a vessel is participating in the primary fixed gear sablefish fishery, even when permits are not stacked. Additionally, for the purpose of implementing a grandfather clause, Options 7a and 7c would create a definition of change in ownership different from that in the FMP. To implement the grandfather clause Section 14.2.4 of the FMP would need to be modified as follows.

14.2.4 Ownership Restriction and Changes in Ownership

....

4. ***For the purpose of provisions specifically identified by the Council, NMFS may promulgate regulations which define a change in ownership of a permit as a change in the identity or ownership interest of a corporation or partnership owning a permit.***

To implement the owner-on-board requirement for permits that are not stacked (Option 7a), a new section (Section 14.2.12) would be added to the FMP:

14.2.12 Owner-on-board Requirements

In order to preserve the social and historic characteristics and practices in the fishery or to encourage the flow of fishery benefits into fishing communities, on the Council's recommendation, as it deems appropriate and consistent with the goals of the groundfish FMP and National Standards, NMFS may require permit owners to be on-board a vessel during fishing operations.

Option 9b of the Stacking Alternative [ADOPTED]

Under the extended season specified in Option 5a, vessels with fixed gear limited entry permits that do not have sablefish endorsements would not be able to operate for a substantial portion of the season.

If these vessels are to be provided a fixed gear sablefish opportunity during the primary fixed gear fishery, the following changes would be needed in the FMP language.

14.2.6 Fixed Gear Sablefish Endorsements

1. The permit and gear endorsement requirements of the license limitation program limit the number of vessels which may participate in the groundfish fishery, however, there is still substantial opportunity for vessels to shift between segments of the groundfish fishery. One of the segments of the limited entry fishery subject to an increase in the number of vessels participating is the limited entry fixed gear sablefish fishery. To prevent the movement of vessels from nonsablefish segments of the limited entry fixed gear groundfish fishery to the sablefish segment of the fishery, a fixed gear sablefish endorsement for limited entry permits is required for longline and fishpot gear limited entry vessels to take sablefish against the fixed gear limited entry allocation **and as part of the primary fishery, the major limited entry fixed gear sablefish harvest opportunities north of 36°N latitude. Such endorsements are not required to harvest under fixed gear limited entry daily-trip-limit or other regulations intended to allow low level or incidental harvest.** ~~during periods of time specified in the regulations. The general intent is to require an endorsement to take part in the major limited entry fixed gear sablefish harvest opportunities north of 36°N latitude, but not when management measures are intended to allow only small or incidental sablefish harvests.~~

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

6. A vessel owner may not use a vessel, or allow a vessel to be used, to catch any Council-managed sablefish with longline or fishpot gear against the LE fixed gear sablefish allocation ~~and under LE fixed gear sablefish regulations during fishing periods~~ **as part of the primary fixed gear sablefish fishery** specified in the regulations and north of 36°N latitude, unless the vessel owner holds an LE permit with a longline or fishpot gear endorsement and a fixed gear sablefish endorsement, and the LE permit has been registered with National Marine Fisheries Service (NMFS) for use with that vessel. **Sablefish endorsements are not required to harvest under fixed gear limited entry daily-trip-limit or other regulations intended to allow low level or incidental harvest.**

Option 10a of the Stacking Alternative [NOT ADOPTED]

14.2.4 Ownership Restriction and Changes in Ownership

1. Only entities (human beings, corporations, etc.) qualified to own a US fishing vessel may be issued or may hold (by ownership or otherwise) an LE permit **with the exception of limited entry longline and fishpot permits endorsed for sablefish. Longline and fishpot permits endorsed for sablefish maybe owned only by US citizens.** (Foreign ownership of LE permits should be limited to the maximum degree possible given what is allowed under the law.)

PFMC
06/05/01

