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UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Sustainable Fisheries Division
7600 Sand Point Way N.E., Bldg. #1
Seattle, Washington 98115-0070

FEB 20 2002

Dr. Hans Radtke, Chairman
Pacific Fishery Management Council
7700 NE Ambassador Place
Portland, OR 97220

Dear Dr. Radtke:

On August 7, 2001, the National Marine Fisheries Service (NMFS) published a final rule implementing Amendment 14 to the groundfish fishery management plan with a basic permit stacking program for sablefish endorsed limited entry permits (66 FR 41152). In that *Federal Register* notice, we indicated that the agency would implement the more complex provisions of Amendment 14 through a second set regulations for the start of 2002 primary sablefish season. Due to the recent groundfish litigation and associated workload and due to the need for clarification of the Council's intent regarding some of these provisions, only the April 1 through October 31 season will be implemented for 2002. The remaining measures will be implemented for the 2003 season after further consultation with the Council.

For 2002, NMFS will set a April 1 through October 31 fishing season through the final rule to implement the 2002 groundfish specifications and management measures. Following further consultation with the Council, we will complete implementation of these provisions as regulations for 2003 and beyond:

- 1) An owner on-board requirement for permit owners who did not own sablefish endorsed permits on November 1, 2000;
- 2) A requirement that corporations and partnerships provide documentation listing each shareholder in order to determine the number of permits owned by an individual;
- 3) A determination of which sablefish endorsed vessels have sufficient frozen sablefish landings to qualify for the exemption from a prohibition on the at-sea processing of sablefish.

Of these three items, the latter two items are reasonably straightforward to implement, although their implementation requires Paperwork Reduction Act clearance from the Office of Management and Budget. However, NMFS is reluctant to proceed on the owner-on-board requirement and its possible exemptions without further guidance from the Council. With this letter, I would like to alert the Council and the public to some of the complexities of the owner-on-board provision and ask that the Council and its advisory bodies consider some of the potential consequences to the fishing fleet of implementing the owner-on-board provisions and confirm the Council's intent that these provisions be implemented as currently characterized in Amendment 14. I believe that clarifying these issues would be an appropriate agenda item for the April 2002 Council meeting.

Owner-on-board provision: Under the Council's regulatory recommendations for implementing Amendment 14, "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:

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. 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 will cease if there is any change in the identity of a corporation or partnership owning the stacked permits..." (Amendment 14 regulatory recommendations further defined a change in identity as the addition of a new member to the corporation.)

Last year, the Council provided some clarification for the owner-on-board provision by interpreting it to mean that owners would have to be on board whenever sablefish is landed, starting from April 1 through whenever the vessel takes its primary sablefish limits. Only persons, partnerships or corporations that owned sablefish endorsed permits as of November 1, 2000 would be exempt from this requirement. NMFS would appreciate the Council's consideration of the following issues, several of which have arisen as a result of recent efforts by permit owners to transfer their permits:

1. If Vessel Owner A is exempt from the owner-on-board provision leases a permit from Person B, who is not exempt from the owner-on-board provision, does Vessel Owner A need to carry Person B aboard his/her vessel while fishing against B's permit? Or, would Vessel Owner A have to buy Person B's permit in order to fish that permit without having B aboard?
2. If a vessel owner leases permits from two different permit owners who are *not* exempt from the owner-on-board requirement, do those permit owners need to be on board the vessel beginning April 1 and ending when all of the sablefish limits associated with that vessel have been taken?
3. If a permit owner is exempt from the owner-on-board provision, when does that exemption end? If a permit owner sells all of his/her permits and then some time later buys a new permit, is he/she still exempt from the owner-on-board provision? What if two permit owners who are exempt from the owner-on-board provision want to swap permits? Do they keep their exemptions? If the exemption doesn't end when an original permit owner sells all of his/her permits, then does the exemption from owner-on-board requirement would not end until the death of that permit owner.
4. If a corporation is eligible for the owner-on-board exemption by virtue of having owned one permit as of November 1, 2000, and one of the persons with ownership in that corporation wants to buy additional permits for his/her own use, is that person still exempt from the owner-on-board requirement? Or, is that person subject to the requirement because he/she did not personally own a permit as of November 1, 2000?

5. Under the Council's initial recommendations, adding another person to a corporation dissolves that corporation's ownership privileges and exemption from owner-on-board provisions. A family-owned corporation, with the husband and wife given as the sole shareholders, owns a permit as of the control date. If that corporation later wishes to add a child as an additional owner in that corporation, will that corporation lose its exemption from the owner-on requirement? Similarly, suppose a corporation that includes father, mother and son owns a permit as of the control date. If the son marries after the control date and wishes to add his wife to the corporation, does the corporation lose its owner-on-board exemption?
6. If a married man who is exempt from the owner-on-board requirement is the sole owner of a permit and he dies with his wife as the inheritor of his permit, would she still be exempt from the owner-on-board provision? What if the couple divorces while he still owns the permit? Is she exempt from the owner-on-board provision if she wants to buy another permit for herself? We think that these are particularly difficult issues because Washington and California are common property states, while Oregon is not. If possible, we would like to have regulations that apply equally to all permit owners, regardless of their states of residence.
7. A single person who owned a permit as of the control date adds his girlfriend or a brother as co-owner of the permit after the control date. Does the original permit owner lose his/her owner-on-board grandfather status by adding another individual after the control date or does only the new co-owner (i.e.; girlfriend or brother) of the permit have to be on board?

As you can see, the owner-on-board provision raises many questions for the agency and for the sablefish endorsed fleet. Questions of this nature are usually difficult to predict during the Council's initial deliberations on new regulations affecting a license limitation program. Only the practical application of the regulations brings out questions from our permit owners and from my permits staff. We would appreciate the Council's consideration of these owner-on-board issues.

Sincerely,



William L. Robinson
Assistant Regional Administrator
for Sustainable Fisheries

