

JUNE 2001 NMFS REPORT:

AMENDMENT 14 (PERMIT STACKING) REGULATORY SCHEDULE FOR 2001, IMPLEMENTATION ISSUES FOR 2002 AND BEYOND

Amendment 14 Regulatory Schedule for 2001

On May 9, NMFS published a Notice of Availability for Amendment 14 in the *Federal Register*. This notice announced the start of a 60-day public comment period on Amendment 14, ending on July 9. NOAA has 30 days from the end of the comment period to approve, disapprove, or partially approve the amendment. On June 8, NMFS published a proposed rule (attached) to implement the Amendment 14 permit stacking program for 2001, with the public comment period ending on July 9. If NOAA approves or partially approves Amendment 14, we will publish a final rule for the 2001 season as soon as possible after the end of the comment period. The most optimistic schedule would not allow the extended season with permit stacking until August 15, but much of the publication scheduling is now out of the hands of the Region. As discussed at past Council meetings, some portions of Amendment 14 are too complex and time-consuming to implement in time for the 2001 season. These provisions will be implemented in 2002 through a second proposed rulemaking. The table on page 5 provides details on when NMFS expects to implement each of the Amendment 14 provisions.

Amendment 14 Implementation for 2002 and Beyond – Issues for Council Guidance

Requirements for Permit Owners During the Primary Season

Amendment 14 provides three specific requirements for participants in the primary sablefish season. NMFS needs Council guidance on the following requirements:

- Absent specific exceptions, the permit owner must be on board the vessel during fishing operations.
- Stacked permits may only be used for sablefish harvest during the primary season and only to harvest the tiered sablefish cumulative limits.
- Limited entry, fixed gear sablefish fishery participants must provide six hours' notice before making landings during the primary sablefish season.

Amendment 14 is structured so that once the primary season begins, all of a vessel's sablefish landings count toward the tier limits associated with its permit(s). If a vessel harvests all of its tier limit(s) before the end of the primary season, it may then participate in the daily trip limit (DTL) fishery, subject to DTL regulations. Some permit holders may opt to fish for rockfish or other species at the start of the season, with plans to harvest the bulk of their sablefish later in the season. If a vessel does fish for rockfish early in the season, it may also catch sablefish incidentally during rockfish-targeted trips.

NMFS needs clarification on whether a permit owner is required to be on board a vessel during the primary season when the vessel is fishing for sablefish daily trip limits or for species other than sablefish. A vessel may have up to three permits with different gear endorsements and only one permit must match the size of the vessel. When fishing for its primary season, tiered sablefish limits, a vessel may use any of the fixed gears endorsed on any of the permits associated with that vessel. Stacked permits may not be used for additional non-sablefish limits or for additional DTLs. This structure raises some questions:

Issue 1 (Owner on Board)

- (a) Must the owner be on board the vessel for all fishing operations during the primary season, even if the vessel takes its tiered sablefish limit(s) during the first few weeks or months? OR
- (b) Must the owner be on board during the entire primary season until the primary season sablefish limit has been taken? OR
- (c) Must the owner be on board only when sablefish are being harvested toward the primary season limit(s)?

While Option (c) allows the most flexibility for a permit owner who might wish to hire a skipper to operate his boat when fishing for species other than sablefish, it could also result in sablefish discard if the skipper were to catch sablefish incidentally to other fishing operations during times when the permit owner is not on board.

Issue 2 (Gear Use for Permits with Different Size Endorsements)

- (a) If a vessel carries a pot permit that matches the length of the vessel and a longline permit that is endorsed for a shorter length than the vessel and the vessel fishes with longline gear for either the sablefish DTLs or for rockfish, may the vessel keep amounts of non-sablefish species up to the limited entry limits for those species? OR
- (b) Under the scenario described in (a), would the vessel be allowed to retain non-sablefish species up to the open access limits? (Under limited entry regulations, a pot-endorsed vessel fishing with longline gear is considered a participant in the open access fishery.)

Option (b) would be difficult to enforce. Enforcement agents would not necessarily know what gear was used during fishing operations, and would probably not know the permit that the vessel was fishing against on any particular trip. Enforcement would be more clear under (a), which would allow the vessel to use either gear during the primary season to take its tiered sablefish limits and per vessel rockfish limits. Outside of the primary season, the vessel would be restricted to using only the gear designated on its length-appropriate permit when participating in the limited entry fishery.

Issue 3 (Advance Notice of Landings) Amendment 14 would require vessels to "provide six hours' notice when making landings during the primary season."

- (a) Must a vessel provide six hours notice on every trip (regardless of target species) during the primary season, even after it has reached its primary season sablefish limit(s)? OR
- (b) Must a vessel provide six hours notice on every trip (regardless of target species) during the primary season until it has harvested its primary season limit(s)? OR
- (c) Must a vessel provide six hours notice for every trip in which it harvests sablefish during the primary season? (Including DTLs)

Option (b) would ensure that all primary season sablefish trips are noted by enforcement, regardless of how much sablefish a vessel is landing and whether the vessel catches sablefish through targeting fishing or incidentally to other fisheries. While Option (a) would also ensure enforcement notice of primary season landings, it would be unnecessarily burdensome for vessel to continue to hail in their landings after they have reached their primary season tier limits. Option (c) would be most flexible for the vessels, but would weaken enforcement of the limits because vessels might make small and incidental sablefish landings without hailing in.

Related Question: The required six hours notice is a *minimum* time requirement. What is the *maximum* time before landing that a vessel may provide notice of landing? For example, may a vessel hail in to say that it will be making a sablefish landing 12 hours or 24 hours from the hail-in?

Base Permits and Gear Designation – Under Section 14.2.4, paragraph 3, of the FMP, “If the Council authorizes a limited entry permit stacking program, in which a vessel could use more than one permit simultaneously, each limited entry fishery participant would be required to hold at least one ‘base’ permit. A limited entry base permit is the initial permit necessary to participate in the limited entry fishery, and subject to all of the requirements described herein for limited entry 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.”

According to Amendment 14, vessels may stack permits with different gear endorsements. To implement Amendment 14 in keeping with section 14.2.4 of the FMP, permit holders would be required to designate one of their permits as a base permit. That base permit would carry the vessel’s appropriate length and gear endorsements. Outside of the primary season, the vessel would operate under the per vessel cumulative limit restrictions appropriate to the gear of the base permit.

Owner-On-Board Exemption – Amendment 14 allows an emergency exemption to the owner-on-board requirement “for medical and personal emergencies beyond the control of the permit owner.”

(a) Should NMFS implement this provision using language in its regulations that would allow an emergency exemption to the owner-on-board requirement in cases of “medical and personal emergencies?” OR

(b) Should NMFS implement this provision using similar exemption language to the limited entry program application process, which would allow an emergency exemption to the owner-on-board requirement in cases of “either death, or illness, or injury of the permit owner that prevents the permit owner from participating in the fishery for at least one-half of the duration of the primary season?” OR

(c) Should NMFS implement this provision using the language used by NMFS’s Alaska Region for a similar emergency exemption to the owner-on-board requirement in the Alaska sablefish/halibut IQ program, which would allow an emergency exemption “in the event of extreme personal emergency involving the [permit owner] during a fishing trip?”

Option (b) is the most clear of the three options and leaves less discretion to the NMFS Regional Administrator. Providing a time constraint on “illness or injury” limits potential for frivolous use of the exemption. Phrases like “medical and personal emergencies” or “extreme personal emergency” are vague and provide broad opportunities for abuse. Option (b) is in keeping with the level of discretion that this Council has traditionally granted to the Regional Administrator.

Defining Ownership in Sablefish-Endorsed Permits

- No person, partnership, or corporation may own more than 3 sablefish-endorsed permits unless that person, partnership or corporation owned more than 3 permits as of 11/1/00.
- No partnership or corporation may own a sablefish-endorsed permit unless that partnership or corporation owned that sablefish-endorsed permit as of 11/1/00.
- For any permit purchased after 11/1/00, the permit owner must be on board the vessel while the vessel is fishing against its primary sablefish fishery limits.

Although there are some public records available to NMFS to determine the individual persons who own shares in a partnership or corporations, NMFS cannot guarantee that it will always be able to know the identities of all persons involved in a corporation. Neither can NMFS guarantee that it will be able to know whether a permit is in fact owned by an individual person, as opposed to being owned by a corporation that is contracting a particular individual to serve as an "owner" on NMFS paperwork. These ownership provisions were modeled after the Alaska halibut/sablefish IFQ program. In implementing that program, NMFS asks quota share owners to self-certify the names of the person(s) owning the quota shares. For example:

"I, Bob Jones, certify that I am the sole owner of this limited entry permit #GF0XXX, _____ (sign here) "

or, "We, Bob Jones and Shirley Jones, certify that we are the only persons with ownership interest in Jones, Inc., which owns this limited entry permit #GF0XXX, _____ (sign here), _____ (sign here) "

NMFS would be unable to verify the truth of these statements through normally-accessible public records. A criminal investigation into activities counter to the Magnuson-Stevens Act might lead enforcement agents to take a closer look at corporate ownership structure, but the NMFS permits office would not undertake that level of investigation.

Ownership Limits Versus "Holdership" Limits – In the Amendment 14 EA/RIR (page 8 of 3/01 draft), under Provision 3, no more than three sablefish-endorsed permits that may be owned by an individual, unless that person held more than three permits as of November 1, 2000. Under the current groundfish regulations, at 50 CFR 660.302, "permit owner" and "permit holder" are defined as follows:

"*Permit holder* means a permit owner or a permit lessee."

"*Permit owner* means a person who owns a limited entry permit."

NMFS needs clarification from the Council on the following questions:

(a) Is a person restricted to *owning* no more than three permits, or is a person restricted to *holding* no more than three permits? For example, may a person own three permits and then lease additional permits beyond those three owned permits? If a person owns no permits, is there a restriction on the number of permits he/she may *hold*?

(b) If a person *held* more than three permits as of November 1, 2000, but did not *own* more than three permits as of November 1, 2000, is that person grandfathered for the privilege of *holding* more than three permits? In other words, are we grandfathering the privilege of *ownership* or of *holdership*?

Mid-Season Permit Transfers – If a permit owner wishes to transfer a permit from one vessel to another vessel during the primary sablefish season, NMFS may not be able to verify the amount of sablefish landed against that permit by the first vessel until after the end of the season. For 2001, NMFS will only be able to caution the owner of the second vessel that he needs to be aware of the first vessel's sablefish landings before fishing against the received permit. NMFS and appropriate state enforcement officers will receive lists of vessel names connected with permits via a mid-season transfer for post-season investigations. For 2002 and beyond, NMFS would require submission of fish tickets for a mid-season transfer of a sablefish endorsed permit. Even with fish tickets, however, preventing "double-dipping" on a permit will be difficult and enforcement will most likely occur post-season. If double-dipping occurs, both the permit transferor and transferee could be prosecuted for exceeding the sablefish trip limit.

Allowing At-Sea Processing – Amendment 14 includes a provision to allow at-sea processing for permit owners who can demonstrate the landing of at least 2,000 lb of frozen sablefish in 1998, 1999, or 2000. Sablefish cumulative limits are given in round weight, while landings are made both dressed and round. Frozen, processed sablefish is usually sold dressed.

Should the freezing-at-sea landings qualification apply to dressed or round weight sablefish?

Fish tickets do not usually specify whether a product has been landed frozen. A vessel that has purchased a freezer may or may not be using that freezer for sablefish, thus shipyard receipts of freezer installation may not be useful evidence of a history of freezing sablefish.

What evidence should NMFS accept in trying to verify that the at-sea freezing qualification requirements have been met?

Implementation Schedule for 2001 and 2002 Seasons

Amendment 14 has many detailed provisions for managing the limited entry, fixed gear sablefish permit stacking program. If NOAA approves Amendment 14, NMFS will implement some of those provisions in time for the 2001 fishery and the remainder for the 2002 fishery. Implementing some aspects of Amendment 14 would require a six-month Paperwork Reduction Act (PRA) authorization process followed by a three- to four-month application and permitting process with NMFS. The agency plans to implement the provisions most desired by the public in time for an extended 2001 fishery. A second set of amending proposed and final rules would be needed for the 2002 season.

2001	2002
Permit Stacking – A single vessel may carry up to three permits during the 2001 season. Permits may be unstacked and transferred within the restrictions of the permit transfer regulations.	No change.
Season Length – If NMFS encounters no unanticipated problems, the agency anticipates an August 15 through October 31 season.	April 1 through October 31.
Gear Used – Vessel may use any fixed gear type specified on at least one of the permits associated with the vessel.	No change.
# of Permits per Person – No more than 3 permits per person, although persons who owned more than 3 permits as of 11/01/00 may continue to own those particular permits. However, permit owners will not need to submit detailed ownership information until 2002, so individual ownership within corporations and partnerships may be difficult to track.	No more than 3 permits per person, although persons who owned more than 3 permits as of 11/01/00 may continue to own those particular permits. Permit owners will be required to provide ownership information to ensure that no single individual human has ownership interest in more than 3 permits.
Permits owned by Partnerships/Corporations – No partnership or corporation may own or hold a sablefish-endorsed permit unless it owned a permit before 11/01/00. (NMFS will only transfer permits to individuals, or to corporations or partnerships that owned permits as of 11/01/00.)	Partnerships and corporations will be required to provide the details of their ownership structures to NMFS, as they existed on 11/01/00.
At-Sea Processing – No prohibition.	Vessel owners who provide proof to NMFS that their vessels landed at least 2,000 lb frozen, Council-managed sablefish in 1998, 1999, or 2000 will be allowed to process (freeze) sablefish at sea. Otherwise, at-sea processing will be prohibited.
Owner-on-Board – No requirement.	Persons with no ownership interest in a sablefish-endorsed permit as of 11/01/00 who now own permits must be on board their vessels during primary sablefish fishery.
Limits for Species Other Than Sablefish – Cumulative limits for species other than sablefish remain per-vessel limits and may not be stacked.	No change.
Daily Trip Limit Fishery – DTL fishery for sablefish will be open during the primary season. Vessels with stacked permits that have already taken their cumulative limits for the primary season will be subject to per-vessel limits in the DTL fishery.	No change.
Advance Notice of Landing – No requirement	Vessels landing sablefish against their primary fishery cumulative limits will be required to "hail in" at least 6 hours before making a landing.

