

**NMFS REPORT ON VESSEL OWNERSHIP INTEREST IN THE LIMITED ENTRY FLEET
FOR VESSELS REGISTERED TO PERMITS WITH SABLEFISH ENDORSEMENTS**

At its April 2007 meeting, the Council decided to review under this June agenda item a request from Mr. Robert Alverson of Fishing Vessel Owner’s Association (FVOA) that the Council consider revising the FMP and/or Federal regulations such that: if a person has 20 percent or less ownership interest in a vessel participating in the limited entry primary sablefish fishery, that person should not be considered to have responsibility for or control of the permits attached to that vessel. Mr. Alverson explained that the purpose of this request was to allow vessel owners with multiple vessels to have ownership interest in and/or hold sablefish-endorsed permits on those multiple vessels. Mr. Alverson also explained on the Council floor that this request stemmed from how FVOA members divide their vessel ownership interest in multiple vessels under regulations developed by the North Pacific Fishery Management Council and implemented by NMFS’s Alaska Region governing halibut/sablefish individual fishing quota use off Alaska.

During its April 2007 discussions of this request, Council members asked that NMFS provide a report to the June 2007 meeting on whether vessel owners were being constrained from having ownership interest in and control over more than three permits by FMP language, Federal regulations, or both. This report provides: background on the current ownership status of vessels registered to sablefish-endorsed permits; the history of FMP language and West Coast Federal regulations that define the relationship between vessel owners and their limited entry permits; the revisions to Federal regulations that would be needed to implement this proposal; and information on where the 20-percent vessel ownership interest issue is addressed in Federal regulations for waters off Alaska.

VESSEL OWNERSHIP INTEREST: NMFS reviewed its limited entry permits database on May 2, 2007 to determine the number of vessels registered to sablefish-endorsed permits that were owned by more than one person and found the following ownership arrangements:

A total of 76 unique vessels are registered to one or more of the 164 sablefish endorsed permits.

Vessels registered to sablefish-endorsed permits where...	# of vessels
1 person is listed as vessel owner	31
2 people are listed as vessel owners	19
1 corporation is listed as vessel owner, where 1 person is behind the corporation	9
1 corporation is listed as vessel owner, where 2 people are behind the corporation	8
1 corporation is listed as vessel owner, where 3 people are behind the corporation	2
1 corporation is listed as vessel owner, where 4 people are behind the corporation	2
1 corporation is listed as vessel owner, where 5 people are behind the corporation	1
1 corporation plus 1 person are listed as vessel owners, where 1 person is behind the corporation, for a total of 2 people having ownership interest in the vessel	1
3 corporations plus 2 people are listed as vessel owners, with a total of 7 people having ownership interest in the vessel	1
2 corporations plus 1 person are listed as vessel owners, with a total of 7 people having ownership interest in the vessel	1

VESSEL OWNERSHIP INTEREST IN THE FMP AND REGULATIONS: The Groundfish FMP and West Coast groundfish implementing regulations require a relationship of responsibility, whereby vessel owners are responsible for their vessel's activities, including a vessel's participation in the limited entry fishery when registered to a limited entry permit. **Amendment 6 to the FMP**, implemented in 1992, set the limited entry program in place. Among other program provisions, Amendment 6 declared vessel owners to be responsible for holding limited entry permits if they were using their vessels to participate in the limited entry fishery. Sections 11.2.8(1) and (5) of the FMP read:

“(1) The vessel owner is responsible for acquiring and holding an LE [limited entry] permit with the necessary gear endorsement(s) for each vessel that is required to have an LE permit to catch Council-managed groundfish under the limited entry system (vessels fishing limited entry gear under the limited access quota and regulations).”

And, “(5) A vessel owner may not use a vessel, or allow a vessel to be used, to catch any Council-managed groundfish with limited entry gear under the limited access quota and regulations unless the vessel owner holds an LE permit with gear endorsement(s) which explicitly allows such catch and the LE permit has been registered with NMFS for use with that vessel.”

In implementing Amendment 6, Federal regulations also required that relationship of responsibility for limited entry fishery participants. 50 CFR 660.333(a) reads:

“*General.* In order for a vessel to participate in the limited entry fishery, the vessel owner must hold (by ownership or lease) a limited entry permit and, through SFD, must register that permit for use with his/her vessel. When participating in the limited entry fishery, a vessel is authorized to fish with the gear type endorsed on the limited entry permit registered for use with that vessel. There are three types of gear endorsements: trawl, longline, and pot (or trap). A sablefish endorsement is also required for a vessel to participate in the primary season for the limited entry fixed gear sablefish fishery, north of 36° N. lat. A limited entry permit confers a privilege of participating in the Pacific Coast limited entry groundfish fishery in accordance with Federal regulations in 50 CFR part 660.”

Amendment 9 to the FMP, implemented in 1997, added the sablefish endorsement program, which essentially created a license limitation program within the limited entry fixed gear fleet, reserving 85% of the limited entry fixed gear sablefish allocation for vessels participating in the primary sablefish fishery. Amendment 9 reinforced the notion of a vessel owner being responsible for holding a limited entry permit to participate in the limited entry fishery, and being responsible for vessel activities while the permit is associated with the vessel. Amendment 9 revised the FMP to add, among other items, Sections 11.2.8(2) and (6) to read:

“(2) The vessel owner is responsible for acquiring and holding an LE permit with the longline or fishpot endorsement(s), and fixed gear sablefish endorsement(s), for each vessel that is required to have such endorsements to catch Council-managed sablefish under the limited entry system (vessels fishing longline and fishpot gear against the LE fixed gear sablefish allocation and under LE fixed gear sablefish regulations during fishing periods specified in the regulations and north of 36°N latitude).”

And, “(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 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 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.”

The **three-tier program**, was implemented in 1998, revising the sablefish endorsement program to separate sablefish-endorsed permits into three tiers with different associated annual limits. **Amendment 14 to the FMP**, implemented in 2001, allowed up to three permits to be stacked on a single vessel, and restricted the number of permits that could be owned or held by a person, partnership, or corporation. Provision 3 of the Amendment 14 FMP and regulatory analysis document provided limits on permit stacking and ownership. The ownership limit options and sub-options adopted by the Council were:

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

- Three permits. Exceptions would be made for individuals then currently holding permits in excess of the limit. These individuals would not be allowed to accumulate more permits.
- An individual’s ownership would be calculated by summing the total permits for which an individual holds some ownership interest, regardless of how small.

At the Council’s June 2001 meeting (agenda item C.7.,) which was held during the comment period on the Amendment 14 proposed rule (66 FR 30869, June 8, 2001,) NMFS asked the Council for clarification on whether and how Provision 3 should be interpreted for vessel owners who lease permits – persons who hold those permits and fish against quotas associated with those permits, but do not own the permits. As explained in the final rule to implement Amendment 14 (66 FR 41152, August 7, 2001, at page 4155):

“The Council confirmed that it had not intended Amendment 14 to allow a person to own three permits and then lease any number of additional permits. Nor had the Council intended to provide exemptions to the three-permit limit for persons who held more than three permits, but who did not own more than three permits as of November 1, 2000.

Rather, the Council's intent had been to allow a person to hold no more than three permits, regardless of whether those permits are owned or leased.”

As a result of this guidance, NMFS implemented regulations at §660.334(d)(4)(ii) that read:

“No individual person, partnership, or corporation in combination may have ownership interest in or hold more than 3 permits with sablefish endorsements either simultaneously or cumulatively over the primary season, except for an individual person, or partnerships or corporations that had ownership interest in more than 3 permits with sablefish endorsements as of November 1, 2000...”

REVISIONS TO REGULATIONS NEEDED TO IMPLEMENT PROPOSAL: Restrictions on ownership interest were implemented in Federal regulations based on the Council's Amendment 14 suite of recommended revisions to the FMP and Federal regulations. To implement the proposed revisions to regulations, the Council would need to consider recommendations to revise the implementing regulations for Amendment 14 to determine whether the Council wishes to allow vessel owners with 20 percent or less interest in a vessel to own and/or hold more than 3 sablefish-endorsed limited entry permits. Because the initial regulations were developed based on an extensive public record, the Council would be required to consider the prior record and rationale for the existing rule, and would need to address in its new record why it is recommending a change to the regulations, and the effect of that change.

ALASKA SABLEFISH/HALIBUT REGULATIONS RELATIVE TO THE 20 PERCENT OWNERSHIP PROVISION: Federal fisheries regulations for fishing activities off the coast of Alaska are found at 50 CFR 679, with the Alaska halibut/sablefish individual fishing quota (IFQ) regulations at 50 CFR 679.42. The references to 20-percent ownership interest in a vessel in these regulations simply exempt any person or corporation that was initially issued halibut or sablefish quota share and that owns at least 20-percent interest in that vessel: from being subject to owner-on-board regulations, and from having to be present at the time that individual fishing quota (IFQ) landings occur. If the proposal discussed above were implemented for West Coast regulations, persons with exactly 20-percent ownership interest in a vessel would be considered to both:

- have a great enough ownership interest to be considered a primary vessel owner and therefore exempt from owner-on-board provisions off Alaska,
- have too little ownership interest to be subject to West Coast restrictions on the number of sablefish-permits that may be owned or held by a vessel owner.