

## RESTATEMENT OF MOTHERSHIP AND SHORESIDE CO-OP ALTERNATIVES

Over the summer, Council staff worked with NMFS staff and NOAA General Counsel to review the alternatives and identify areas needing clarification. During that process, issues arose regarding completeness of some aspects of the co-op alternatives (e.g. explicit identification of provisions pertaining to co-ops joining together to form inter-co-ops) and the need to identify those elements that would require Council/NMFS action as distinct from those that the industry would undertake independently. For discussion purposes, a reorganization of the alternatives has been developed. The reorganization contains sections addressing each of the following central questions.

1. Who can participate in the co-op fishery and who can participate in the non-co-op fishery?
2. What licenses would be issued and what are their characteristics?
3. How would co-ops form?
4. How would processor ties be established and maintained?
5. What would be the NMFS Role and how would the fishery be managed?

Additionally, for the mothership program this document contains a list of potential required elements to co-op agreements, as suggested by an industry representative (B-1.3.3.e and f). For Council consideration, a parallel section has been added to the shoreside co-op alternative (B-2.3.3.e and f).

NOTE: These programs do not reflect the most recent recommendations made by the Groundfish Allocation Committee or the Ad Hoc Groundfish Trawl Individual Quota Committee at their fall meetings.

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## WHITING MOTHERSHIP SECTOR CO-OP PROGRAM

Overview: Qualified permits will be endorsed for MS co-op participation. Each year the holders of those permits will choose whether their vessels will fish in the co-op fishery, in which individual co-ops will direct harvest, or fish in a non-co-op fishery that will be managed by NMFS as an Olympic style fishery. The co-op will be obligated to deliver its fish to specific mothership processors based on the obligations of each permit in the co-op. Limited entry permits will be issued for motherships and required for a mothership to receive whiting from catcher vessels.

### **B-1.1 Participation in the Mothership Sector**

- a. Catcher Vessels:** Vessels with CV(MS) endorsed permits may participate in either the co-op or non-co-op portion of the mothership fishery. They will choose annually which fishery they will participate in for the coming year. Additionally, any groundfish limited entry trawl permitted vessels may participate in the co-op portion of the fishery if they join a co-op (as described in Section B-1.3.3).<sup>1</sup> No other catcher vessels may participate in the mothership fishery.
- b. Processors.** Only motherships with a mothership limited entry permit may receive deliveries from catcher vessels participating in the co-op or non-co-op portions of the mothership sector whiting fishery. (Note: Motherships may acquire such permits by transfer, see Section B-1.2.2.)
- c. Vessels Excluded:**
  - ~~A vessel that has been under foreign registry after the date of the AFA and that has participated in fisheries in the territorial waters or exclusive economic zones of other countries will not be eligible to participate as a mothership in the mothership sector of the Pacific whiting fishery. [Confirm language in previous sentence. Need rationale]~~
  - A vessel may not harvest whiting and operate as a mothership in the same year.

### **B-1.2 Permits/Endorsement Qualification and Characteristics**

#### **B-1.2.1 Catcher Vessel Mothership Whiting Endorsement (CV(MS) Whiting Endorsement)**

##### **a. Endorsement Qualification and History Assignment**

Permits with a qualifying history will be designated as CV(MS) permits through the addition of an endorsement to their limited entry groundfish permit. At the time of endorsement qualification, each permit will also be assigned a catch history that will determine the share of the mothership whiting allocation associated with that permit.

**Qualifying for a CV(MS) Whiting Endorsement.** A limited entry permit will qualify for a CV(MS) whiting endorsement if it has a total of more than 500 mt of whiting deliveries to motherships from

**Qualification Option 1:** 1998 through 2004

**Qualification Option 2:** 1994 through 2003

**Catch History Assignment (Identification of Endorsement Related Catch History)** The following are options for the initial calculation to be used in determining NMFS distribution to co-op and non-co-op fishery pools. A CV(MS) whiting endorsement calculated catch history will be based on whiting history during the related permit's

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<sup>1</sup> When such permits participate in a co-op the co-op will not be allocated any additional fish based on participation by such a vessel.

- Allocation Option 1:** best 6 out of 7 years from 1998 through 2004
- Allocation Option 2:** best 9 out of 11 years from 1994 through 2004
- Allocation Option 3:** best 5 out of 6 years from 1998 through 2003
- Allocation Option 4:** best 8 out of 10 years from 1994 through 2003

For the purpose of the endorsement and initial calculation, catch history associated with the permit includes that of permits that were combined to generate the current permit.

**b. Whiting Endorsement Transferability and Endorsement Severability**

**Transfer Option 1:** The CV(MS) whiting endorsement (together with the associated catch history) may not be severed from the groundfish limited entry trawl permit.

**Transfer Option 2:** The CV(MS) whiting endorsement (together with the associated catch history) may be severed from the groundfish limited entry trawl permit and transferred to a different limited entry trawl permit. Catch history associated with the whiting endorsement may not be subdivided.

**d. Accumulation Limit**

**CV(MS) Permit Ownership:** No individual or entity may own CV(MS) permits for which the allocation totals greater than 10%, 15%, or 25% of the total mothership sector whiting allocation.

**e. Combination**

**CV(MS) Permit Combination to Achieve a Larger Size Endorsement.** When a CV(MS) endorsed permit is combined with another permit, the resulting permit will be CV(MS) endorsed, except when the CV(MS) permit is combined with a CP permit in which case the CV(MS) endorsement will not survive on the resulting permit.<sup>2</sup>

**B-1.2.2 Mothership Processor Permit**

**a. Qualifying Entities**

The vessel owners of qualifying motherships will be issued MS permits. In the case of bareboat charters, the charterer of the bareboat will be issued the permit.

**b. Qualification Requirements**

A qualifying mothership is one which processed at least 1,000 mt of whiting in each of any two years from 1998 through 2004.

**c. Transferability**

- (1) MS permits will be transferable and
- (2) MS permits may be transferred to a vessel of any size (there will be no size endorsements associated with the permit.)
- (3) MS permits may not be transferred to a vessel engaged in the harvest of whiting in the year of the transfer.
- (4) MS permits may only be used for processing by one vessel per year.

**d. Usage Limit**

No individual or entity owning a MS permit(s) may process more than . . . **Option 1** 20%, **Option 2**, 30% or **Option 3** 50% . . . of the total mothership sector whiting allocation.

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<sup>2</sup> Specifically, a CV(MS) endorsed permit that is combined with a limited entry trawl permit that is not CV(MS) endorsed or one that is CV(Shoreside) [CV(SS)] endorsed will be reissued with the CV(MS) endorsement. If the other permit is CV(SS) endorsed, the CV(SS) endorsement will also be maintained on the resulting permit. However, CV(MS) and CV(SS) catch histories will be maintained separately on the resulting permit and be specific to participation in the sectors for which the catch histories were originally determined. If a CV(MS) permit is combined with a CP permit, the CV(MS) endorsement and history will not be reissued on the combined permit. The size endorsement resulting from permit combinations will be determined based on the existing permit combination formula.

### **B-1.3 Co-op Formation and Operation Rules.**

#### **B-1.3.1 Who and Number of Co-ops**

Co-ops will be formed among CV(MS) permit owners.

**Co-op Formation Option 1 (Multiple Co-ops):** Multiple co-ops would be organized around motherships. Permit owners choosing to participate in the co-op fishery must form a separate co-op based on the mothership where the CV(MS) permit holders delivered the majority of their most recent years' catch.

**Co-op Formation Option 2:** Multiple co-ops are not required. Catcher vessels may organize a single co-op or multiple co-ops but are obligated to deliver to the processors as proscribed in B-1.4.

#### **B-1.3.2 When**

Each year at a date certain prior to the start of the fishery, MS and CV(MS) permit holders planning to participate in the mothership sector must register with NMFS. At that time CV(MS) permit holders must identify which co-op they will participate in or if they plan to participate in the non-co-op fishery.

#### **B-1.3.3 Co-op Agreement Standards**

##### **a. Submission to NMFS**

Co-op agreements will be submitted to NMFS for approval.

##### **b. Number of Participants in Each Co-op (Including Inter-co-ops)**

Two or more permits may form a co-op but participation must conform to the requirements of Section B-1.3.1. Co-ops may form co-ops with other co-ops.

##### **c. Catch History Distributions Among Permits**

Co-op agreements must stipulate that catch allocations to members of the co-op be based on their catch history calculation distribution to the co-op by NMFS.

##### **d. Participation by Non-CV (MS) Endorsed Permits**

Through temporary arrangements a co-op allocation may be harvested by any catcher vessel holding a valid limited entry trawl permit which has joined the co-op (including one that does not have a CV(MS) endorsement).<sup>3</sup>

##### **e. Other Required Co-op Agreement Provisions (PROPOSED INSERTION)**

- 1) a list of all vessels and permit holders participating in the coop and their share of allocated catch which must match the amount distributed to individual permit holders by NMFS,
- 2) signature by all permit holder owners participating in the coop
- 3) a plan to adequately monitor catch and bycatch,
- 4) adequate enforcement and penalty provisions to ensure that catch and bycatch overages to not occur,
- 5) measures designed to reduce bycatch of overfished species
- 6) obligation to manage inseason transfers of catch history,
- 7) a requirement that at least a majority of the members are required to dissolve a coop,
- 8) an obligation to produce an annual report to the Council documenting the coop's catch and bycatch data and inseason transfers,
- 9) identification of coop manager to serve as the contact person with the agency and Council and other coops and to be responsible for annual distribution of catch and bycatch, oversight of

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<sup>3</sup> As a member of the co-op, such a vessel would be subject to paragraph B-1.4 and the indicated processor obligations.

transfers, preparation of annual reports and is authorized to receive or respond to any legal process against the coop.

- 10) provisions that prohibit coop membership by permit holders that have incurred legal sanctions that prevent it from fishing groundfish in the Pacific Fishery region,

**f. Additional Provisions for Inter-co-op Agreements (PROPOSED INSERTION)**

- 1) In the case of two or more cooperatives entering into an inter-cooperative agreement, provisions must include adequate monitoring, enforcement and penalty provisions to ensure that aggregate coop catch and bycatch overages do not occur,
- 2) Each fishery cooperative must file a signed copy of a cooperative contract with NMFS that is available for public review before it is authorized to engage in fishing activities.
- 3) Any material changes or amendments to the contract, including change in membership must be filed annually with NMFS by \_\_\_\_\_.
- 4) Each coop must prepare and file an annual report with NMFS by \_\_\_\_\_. The report will document the catch, bycatch and transfer of coop's annual distribution of fish during that year. The annual report will be available to the public.
- 5) Each coop must file with NMFS a copy of a letter from the coop requesting a business review letter on the fishery cooperative from the Department of Justice and any response to such request.

**B-1.3.4 Annual Allocation Transferability**

- a. The annual allocations received by a co-op based on catch history of the whiting endorsements held by its members may be transferred among co-op members and from one co-op to another so long as obligations to processors are met (as per Section B-1.4). Additionally, in order to transfer annual allocation from one co-op to another there must be a NMFS approved inter-co-op agreement.
- b. Allocations may not be transferred from the mothership sector to another sector.

**B-1.4 Processor Ties**

**B-1.4.1 Formation and Modification of Processor Tie Obligations**

In the first year of the program, the CV(MS) permit owner's choice will be between delivering in the non-co-op fishery and making co-op deliveries to the licensed mothership to which the permit made a majority of its whiting deliveries in the last calendar year in which it participated. If a mothership does not qualify for an MS permit in the first year of the program, the vessels which delivered to that mothership in the previous year may deliver to the qualified mothership to which it last delivered its majority of catch or participate in the non-co-op fishery.

Thereafter, each year, CV(MS) permit owners choosing to participate in a co-op will deliver to the same mothership that they most recently delivered the majority of their whiting catch. (on a calendar year basis), However, if the CV(MS) permit owners chose to participate in the non-co-op fishery in the previous year, or did not participate in the mothership whiting fishery it is released from its obligation and may deliver to any mothership with an MS permit

**Mothership Permit Transfer.** If a mothership transfers its MS permit to a different mothership or different owner, the CV(MS) permit obligation remains in place and transfers with the MS permit to the replacement mothership unless the obligation is changed by mutual agreement or participation in the non-co-op fishery.

#### **B-1.4.2 Flexibility in Meeting Processor Tie Obligations**

##### **a. Temporary Transfer of the Annual Allocation Within the Co-op or From One Co-op To Another**

When CV(MS) permit owners transfer co-op allocations from one co-op member to another within the co-op or from one co-op to another within an inter-co-op, such transfers must deliver co-op shares to the mothership to which the allocation is obligated, unless released by mutual agreement.

##### **b. Mutual Agreement Exception.**

By mutual agreement of the CV(MS) permit owner and mothership to which the permit is obligated, and on a year-to-year basis, a permit may deliver to a licensed mothership other than that to which it is obligated. Such an agreement will not change the permit's future year obligation to the mothership (i.e., the permit will still need to participate in the non-co-op fishery for one year in order to move from one mothership to another).

#### **B-1.4.3 Mothership Processor Withdrawal**

**Mothership Withdrawal.** If a mothership does not participate in the fishery and does not transfer its permit to another mothership or mutually agree to transfer delivery to another mothership, the CV(MS) permit holders obligated to that mothership may participate in the non-co-op fishery.

### **B-1.5 NMFS Role**

#### **B-1.5.1 Permit and Endorsement Issuance**

NMFS will issue all necessary permits and endorsements under the rules specified under this program. Appeals processes will be provided as appropriate and necessary.

#### **B-1.5.2 Fishery Registration and Co-op Approval**

NMFS will announce a deadline before which all co-op agreements must be received for the coming year. NMFS will review and approve or reject co-op agreements based on standards provided here and other standards which it deems necessary to achieve the policy intent of the Council's actions.

#### **B-1.5.3 Annual Allocation to Co-ops and the Non-co-op Fishery**

**a. Co-op Allocation.** Each year NMFS will determine the percent of the mothership sector's harvest allocation to be given to each co-op based on the catch history calculation of CV(MS) permits registered to participate in the co-op that year. NMFS does not allocate to the individual permit holder, rather, allocates an aggregate amount of harvest tonnage annually to the co-op, based on the catch histories associated with the members of the co-ops.

**b. Non-co-op Allocation.** Each year NMFS will determine the distribution to be given to the non-co-op fishery based on the catch history calculation of permit holders registered to participate in that fishery.

#### **B-1.5.4 Fishery Management and Co-op Monitoring**

**a.** NMFS will track all permit and endorsement transfers (if endorsement transfers are allowed) and the invocation of mutual agreement exceptions. Permit and endorsement transfers will not be valid until registered and acknowledged by NMFS.

- b.** NMFS will monitor catch and close segments of the fishery as necessary to ensure catch limits are not exceeded for:
  - 1. the whiting mothership co-op fishery
  - 2. the whiting mothership non-co-op fishery
  - 3. the mothership whiting sector as a whole
- c.** NMFS will not necessarily monitor but will investigate and enforce as it deems necessary the permit and co-op obligations to processors
- d.** NMFS will not necessarily monitor or enforce (except as it deems necessary)
  - 1. an individual permit's progress towards its catch allocations (permit level catch control will be at the co-op level and enforced through execution of the private contract)
  - 2. a co-op's progress toward its catch allocation<sup>4</sup>
  - 3. actual performance on the co-op agreement (the parties to the contract will resolve through private contract and remedies any deviation from provisions such as "the golden rule.")
- e.** NMFS will monitor other program provisions as needed. For example, ensuring that a vessel operating as a mothership does not also harvest whiting in the same year.

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<sup>4</sup> This assumes that there is an inter-co-op agreement in place that covers the entire co-op fishery. If such an agreement is not in place covering both catch and bycatch, NMFS may need to monitor catch by each individual co-op (but not by the individual vessels in the co-op).

## WHITING SHORESIDE SECTOR CO-OP PROGRAM

Overview: Qualified permits will be endorsed for shoreside co-op participation. Each year the holders of those permits will choose whether their vessels will fish in the co-op fishery, in which individual co-ops will direct harvest, or fish in a non-co-op fishery that will be managed by NMFS as an Olympic style fishery. The co-op will be obligated to deliver its fish to specific processors based on the obligations of each permit in the co-op. For the first two years, only certain qualified processors will be eligible to receive deliveries from co-op vessels. Over time, these obligations may change or end (depending on options selected).

### B-2.1 Participation in the Shoreside Whiting Sector

- a. **Catcher Vessels:** Vessels with CV(SS) endorsed permits may participate in either the co-op or non-co-op portion of the shoreside fishery. They will choose annually which portion of the fishery they will participate in for the coming year. Additionally, any groundfish limited entry trawl permitted vessels may participate in the co-op portion of the fishery if they join a co-op (as described in Section B-2.3.3).<sup>5</sup> No other catcher vessels may participate in the shoreside whiting sector.
- b. **Processors.** Any processor may receive fish from vessels participating in the shoreside non-co-op fishery. In the first two years, only co-op qualified shoreside processors<sup>6</sup> that have declared their intent to participate<sup>7</sup> may receive deliveries from catcher vessels in a shoreside co-op (Section B-2.3). Thereafter any shoreside processor may receive deliveries from co-ops.
- c. **Catcher Vessels and Processors in the Nonwhiting Fishery.** This program does not affect vessels or processors receiving whiting taken incidentally in the nonwhiting fishery.

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<sup>5</sup> When such permits participate in a co-op the co-op will not be allocated any additional fish based on participation by such a vessel.

<sup>6</sup> A shoreside processor is an operation, working on US soil, that takes landings of trawl-caught groundfish that has not been processed at-sea or previously processed shoreside; and that thereafter subjects those groundfish to shoreside processing. Entities that received fish that have not undergone at-sea processing or shoreside processing (as defined in this paragraph) and sell that fish directly to consumers shall not be considered a processor for purposes of the shoreside co-op program.

“Shoreside Processing” is defined as any activity that takes place shoreside; and that involves:

- a) cutting groundfish into smaller portions; OR
- b) freezing, cooking, smoking, drying groundfish; OR
- c) packaging that groundfish for resale into 100 pound units or smaller for sale or distribution into a wholesale or retail market.

<sup>7</sup> A shoreside processor is an operation, working on US soil, that takes landings of trawl-caught groundfish that has not been processed at-sea or previously processed shoreside; and that thereafter subjects those groundfish to shoreside processing. Entities that received fish that have not undergone at-sea processing or shoreside processing (as defined in this paragraph) and sell that fish directly to consumers shall not be considered a processor for purposes of the shoreside co-op program.

“Shoreside Processing” is defined as any activity that takes place shoreside; and that involves:

- a) cutting groundfish into smaller portions; OR
- b) freezing, cooking, smoking, drying groundfish; OR
- c) packaging that groundfish for resale into 100 pound units or smaller for sale or distribution into a wholesale or retail market.

## **B-2.2. Permits/Endorsement Qualification and Characteristics**

### **B-2.2.1 Catcher Vessel Shoreside Whiting Endorsement (CV(SS) Endorsement)**

#### **a. Endorsement Qualification and History Assignment**

Permits with a qualifying history will be designated as CV(SS) permits through the addition of a CV(SS) endorsement to their limited entry groundfish permit. At the time of endorsement qualification, each permit will also be assigned a catch history that will determine the share of the shoreside whiting allocation associated with that permit.

**Qualifying for a CV(SS) Endorsement.** A limited entry permit will qualify for a CV(SS) endorsement if it has a total of more than 500 mt of whiting deliveries to shoreside processors from:

**Qualification Option 1:** 1998 through 2004

**Qualification Option 2:** 1998 through 2003

**Qualification Option 3:** 1994 through 2004

**Qualification Option 4:** 1994 through 2003

**Qualification Option 5:** 2001 through 2003

**Catch History Assignment. Initial calculation to be used in determining NMFS distribution to co-op and non-co-op fishery pools.** A CV(SS) permit calculated landings history will be based on whiting history during the related permit's

**Allocation Option 1:** best 6 out of 7 years from 1998 through 2004

**Allocation Option 2:** best 9 out of 11 years from 1994 through 2004

**Allocation Option 3:** best 5 out of 6 years from 1998 through 2003

**Allocation Option 4:** best 9? out of 10 years from 1994 through 2003

For the purpose of the endorsement and initial calculation, landing history associated with the permit includes that of permits that were combined to generate the current permit.

#### **c. Transferability and Endorsement Severability**

**Transfer Option 1:** The CV(SS) Endorsement (together with the associated catch history) may not be severed from the groundfish limited entry trawl permit.

**Transfer Option 2:** The CV(SS) Endorsement (together with the associated catch history) may be severed from the groundfish limited entry trawl permit and transferred to a different limited entry trawl permit. Catch history associated with the whiting endorsement may not be subdivided.

Whiting harvest history (i.e. co-op shares) are not permanently separable from the CV(SS) endorsement.

#### **d. Accumulation Limits**

**CV(SS) Permit Ownership:** No individual or entity may own CV(SS) permits for which the allocation totals greater than 15% of the total whiting shoreside allocation.

#### **e. Combination**

##### **CV(SS) Permit Combination to Achieve a Larger Size Endorsement**

When a CV(SS) endorsed permit is combined with another permit, the resulting permit will be CV(SS) endorsed, except when the CV(SS) permit is combined with a CP permit, in which case the CV(SS) endorsement will not survive on the resulting permit.<sup>8</sup>

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<sup>8</sup> Specifically, a CV(SS) endorsed permit that is combined with a limited entry trawl permit that is not CV(SS) endorsed or one that is CV(MS) endorsed will be reissued with the CV(SS) endorsement. If the other permit is CV(MS) endorsed, the CV(MS) endorsement will also be maintained on the resulting permit. However, CV(SS) and CV(MS) histories will be maintained separately on the resulting permit and be specific to participation in the sectors for which the histories were originally determined. If a CV(SS) permit is combined with a CP permit, the CV(SS)

### **B-2.2.2 Shoreside Co-op Eligible Processor Permit**

#### **a. Activities Requiring this Permit**

Only processing entities with a shoreside co-op processor permit (SSP) are eligible to receive whiting fish from whiting cooperatives in the first two years of the program. Thereafter, any processing corporation could be eligible to receive whiting from participants in a whiting cooperative, subject to the other provisions of this plan. Processors without SSPs may receive whiting from participants in the non-co-op fishery and whiting harvested incidentally in the nonwhiting fishery at any time, including within the first two years of the program.

#### **b. Qualification Requirements**

An initial co-op qualified shoreside processing entity is one that processed at least 1,000 mt of whiting in each of any two years from 1998 through 2004.

#### **c. Transferability**

SSP permits will be transferable. If a shoreside processor transfers its SSP permit to a different shoreside processor or different owner, the CV(SS) permit's obligation remains in place unless changed by mutual agreement (as per Section 2.4.3.b) or participation in the non-co-op fishery, (as per Section 2.4.2).

#### **d. Since SSP permits are only in effect for the first two years of the program, this section is also in effect only for the first two years of the program.**

### **B-2.3. Co-op Formation and Operation Rules**

#### **B-2.3.1 Who**

Co-ops will be formed among CV(SS) permit owners. Multiple co-ops may be formed and new co-ops may be formed each year, prior to annual registration. Owners of LE trawl permits that are not CV(SS) endorsed may join a co-op but their participation in the co-op will not add to the co-op's allocation. Vessels fishing in the non-co-op fishery may not form co-ops to coordinate harvest in the non-co-op fishery.<sup>9</sup>

#### **B-2.3.2 When**

Each year CV(SS) permit holders planning to participate in the shoreside sector must register with NMFS and express their intent to be a member of the co-op at a date certain prior to the start of the fishery. At that time CV(SS) permit holders must identify which co-op they will participate in or if they plan to participate in the non-co-op fishery..

#### **B-2.3.3 Co-op Agreement: Standards and Permissible Provisions**

##### **a. Co-op agreements will be submitted to NMFS for approval.**

##### **b. Number of Participants**

Two or more CV(SS) permit owners may form a co-op for harvesters. Co-ops may also form co-ops with other co-ops.

##### **c. Golden Rule**

Co-op agreements must distribute catch allocations to members based on the permit specific history calculation that NMFS used to distribute allocation to the co-op.

##### **d. Participation by Non-CV(SS) Endorsed Permits**

Through temporary arrangements co-op shares may be harvested by any catcher vessel holding a valid trawl limited entry permit (including one that does not have a CV(SS) endorsement,

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endorsement and history will not be reissued on the combined permit. The size endorsement resulting from permit combinations will be determined based on the existing permit combination formula.

<sup>9</sup> This provision does not cover cooperative behavior that is not governed by formally memorialized covenants (written contracts).

provided it has become a member of a co-op and has acquired the right to harvest co-op shares via lease or other contract with a CV(SS)co-op member.).<sup>10</sup>

**e. Other Required Co-op Agreement Provisions (PROPOSED INSERTION)**

- 11) a list of all vessels and permit holders participating in the coop and their share of allocated catch which must match the amount distributed to individual permit holders by NMFS,
- 12) signature by all permit holder owners participating in the coop
- 13) a plan to adequately monitor catch and bycatch,
- 14) adequate enforcement and penalty provisions to ensure that catch and bycatch overages do not occur,
- 15) measures designed to reduce bycatch of overfished species
- 16) obligation to manage inseason transfers of catch history,
- 17) a requirement that at least a majority of the members are required to dissolve a coop,
- 18) an obligation to produce an annual report to the Council documenting the coop's catch and bycatch data and inseason transfers,
- 19) identification of coop manager to serve as the contact person with the agency and Council and other coops and to be responsible for annual distribution of catch and bycatch, oversight of transfers, preparation of annual reports and is authorized to receive or respond to any legal process against the coop.
- 20) provisions that prohibit coop membership by permit holders that have incurred legal sanctions that prevent it from fishing groundfish in the Pacific Fishery region,

**f. Additional Provisions for Inter-co-op Agreements (PROPOSED INSERTION)**

- 6) In the case of two or more cooperatives entering into an inter-cooperative agreement , provisions must include adequate monitoring, enforcement and penalty provisions to ensure that aggregate coop catch and bycatch overages do not occur,
- 7) Each fishery cooperative must file a signed copy of a cooperative contract with NMFS that is available for public review before it is authorized to engage in fishing activities.
- 8) Any material changes or amendments to the contract, including change in membership must be filed annually with NMFS by \_\_\_\_\_.
- 9) Each coop must prepare and file an annual report with NMFS by \_\_\_\_\_. The report will document the catch, bycatch and transfer of coop's annual distribution of fish during that year. The annual report will be available to the public.
- 10) Each coop must file with NMFS a copy of a letter from the coop requesting a business review letter on the fishery cooperative from the Department of Justice and any response to such request.

**B-2.3.4 Annual Allocation Transferability**

**a. Temporary Transfer of Quota Shares Within the Co-op**

Temporary transfers of harvest allocation may take place within the co-op between permit holders..<sup>11</sup> Temporary transfers may also be made from one co-op to another so long as both co-ops are part of an inter-co-op agreement. Such inter- or intra-co-op transfers must deliver co-op allocation (shares) to the shoreside processor to which the shares are obligated unless released by mutual agreement. (See Section B-2.4)

- b. Transfer of shares from the shoreside sector to other sectors in any form are prohibited.

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<sup>10</sup> As a member of the co-op, such a vessel would be subject to paragraph B-2.4 and the indicated processor obligations.

<sup>11</sup> Such transfers may be used to allow a permit holder to make deliveries exclusively to one processor.

## **B-2.4. Processor Ties**

### **B-2.4.1 Initial Formation of Ties**

During the first two years of co-op formation, permit owners that join a co-op shall be required to deliver their whiting catches to the co-op qualified processors that were the basis of their landing history during the period . . . **Years Option 1, 2001; Years Option 2, 2000; Years Option 3, 2000-2003** . . . on a pro rata basis. Determination of the processor(s) to which a permit owner is obligated will take into account any of the processor's(s') successors in interest.

Processor Successor In Interest. In determining the processor to whom a permit owner that participates in a co-op is required to deliver in the first two years of the program, a processor's successor in interest will be taken into account. If a processor's assets were purchased and the landing history expressly identified as an asset in the purchase agreement, then any permit owner obligation based on those landings will accrue to the processor making the purchase. For landings history associated with a defunct or non-qualifying processor, that portion of a permit's allocation will be linked to the permit's initially assigned landing history on a pro-rata basis.

### **B-2.4.2 Duration and Modification of Processor Ties (Options 1 and 2)**

A permit's obligation to a processor will remain in place from one year to the next unless modified through the following process.

**Option 1:** Once a CV(SS) permit has participated in the non-co-op fishery for [*Options: 1 to 5 consecutive years*], it is released from its delivery obligations to the processor(s) that were the basis of its history, and may join any of the various co-ops, or join with other permit holders who have also been released from delivery obligations to form a new co-op, and deliver to any shoreside processor in the subsequent years after the SSPs have expired.

**Option 2:** Any CV(SS) permit participating in a co-op is linked indefinitely to the processor they are delivering to under the initial linkage requirements. The permit can sever that linkage by participating in the non-co-op fishery for a period of [*Options: 1 to 5 years*] years. After completing their non-co-op obligation, the permit is then free to reenter the co-op system and deliver to a processor of their choosing. Once the permit reenters the co-op system and elects to deliver their fish to a processor, a new linkage is then established with that processor. Should the permit later choose to break that new linkage, the non-co-op participation requirements again apply.

Should a permit elect to enter the non-co-op fishery within the first two years of this program, that permit must participate in the non-co-op fishery for a minimum of [*Options: 2 to 5 years*], regardless of other non-co-op participation requirements applying elsewhere in this document. Once the permit meets that obligation and later elects to enter a co-op, all provisions of co-op participation, including the processor linkage provisions, apply.

### **B-2.4.3 Flexibility in Meeting Processor Tie Obligations**

#### **a. Temporary Transfer of the Annual Allocation Within the Co-op or From One Co-op To Another**

When a co-op or inter-co-op transfers catch among its members it must ensure that the total co-op allocation received by the co-op, based on the permit holders that are members thereof, is distributed between the various co-op qualified processors on a pro rata basis based on the landing history of the members of the co-op during the initial formation period specified in Section B-2.4.1 or the ties established through subsequent obligations, as per Section B-2.4.2.

**b. Mutual Agreement Exception**

By mutual agreement of the CV(SS) permit owner and shoreside processor to which the permit's catch is obligated, the vessel with the CV(SS) endorsed permit may deliver to a shoreside processor other than that to which it is obligated. The transfer may be temporary or permanent. In either case the vessel's catch taken under that permit will continue to be obligated to the same processor (which, in future years, is the transferring processor if the transfer is temporary or the processor receiving the transfer if the transfer is permanent) subject to the terms of the transfer agreement. To make an additional change from its processor link (a change that is not by mutual agreement) the permit will need to be used in the non-co-op fishery for the prescribed time (as per Section B-2.4.2).

**B-2.4.4 Shoreside Processor Annual Declaration and Withdrawal**

- a. Each year SSP permit holders planning to participate in the shoreside sector must register with NMFS.
- b. If a qualified shoreside processor does not participate in the whiting fishery in any year in which the co-op fishery is in operation, the CV(SS) permit holders that will otherwise be obligated to deliver to that shoreside processor shall be free to deliver to any other shoreside processor that year.

**B-2.5. NMFS Role**

**B-2.5.1 Permit and Endorsement Issuance**

NMFS will issue all necessary permits and endorsements under the rules specified under this program. Appeals processes will be provided as appropriate and necessary.

**B-2.5.2 Fishery Registration and Co-op Approval**

- a. NMFS will announce a date certain before which all co-op agreements must be received for the coming year. NMFS will review and approve or reject co-op agreements based on standards provided here and other standards which it deems necessary to achieve the policy intent of the Council's actions.
- b. For the first two years of the program NMFS will announce a date certain before which processors with SSPs must declare their intent to participate in the fishery.

**B-2.5.3 Annual Allocation**

**a. Co-op Allocation**

Each year NMFS will determine the distribution to be given to each co-op based on the landing history calculation of CV(SS) permits registered to participate in the co-op that year. In addition, NMFS will determine the landing history linking each co-op to each processor, if any.

**b. Non-co-op Allocation**

Each year NMFS will determine the distribution to be given to the non-co-op fishery based on the landing history calculation of permit holders registered to participate in that fishery. The whiting allocation for the non-co-op segment shall be in proportion to the permit history of non-co-op participants, relative to the co-op participants. That allocation shall be available to all CV(SS) endorsed permit holders who have registered to participate in the non-co-op fishery that year.

**B-2.5.4 Fishery and Co-op Monitoring**

- a. NMFS will track all permit and endorsement transfers (if endorsement transfers are allowed) and the invocation of mutual agreement exceptions. Permit and endorsement transfers will not be valid until registered and acknowledged by NMFS.

- b. NMFS will monitor catch and close segments of the fishery as necessary to ensure catch limits are not exceeded for:
  - 1. individual co-ops<sup>12</sup>
  - 2. the whiting shoreside co-op fishery
  - 3. the whiting shoreside non-co-op fishery
  - 4. the shoreside whiting sector as a whole
- c. NMFS will not necessarily monitor but will investigate and enforce as it deems necessary the permit and co-op obligations to processors.
- d. NMFS will not necessarily monitor or enforce (except as it deems necessary)
  - 1. an individual permit's progress towards its catch allocations (permit level catch control will be at the co-op level and enforced through execution of the private contract)
  - 2. actual performance on the co-op agreement (the parties to the contract will resolve through private contract and remedies any deviation from provisions such as "the golden rule.")
- e. NMFS will monitor other program provisions as needed.

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<sup>12</sup> If a co-op of co-ops (inter-co-op) is formed NMFS will only monitor catch at the highest co-op level that meets the co-op agreement standards. If an inter-co-op covers the entire shoreside sector's whiting harvest then NMFS will monitor the sector as a whole.