

## STAFF RECOMMENDATION ON AMENDING THE GROUND FISH FMP TO INCORPORATE THE TRAWL RATIONALIZATION PROGRAM

### Proposed Structure of the Amendment Language

Staff envisions that the details of the trawl rationalization program would be specified in Federal regulations. The FMP would briefly describe the program. An appendix to the FMP would summarize the contents of the regulations. This descriptive appendix could be revised from time to time without going through the Magnuson-Stevens Act (MSA) §304(a) Secretarial Review Process.

This approach would effectively allow Council discretion over program changes and a full public process both through the Council and Administrative Procedures Act (APA) full notice and comment rulemaking but not require a somewhat duplicative MSA §304(a) FMP amendment process. Council Operating Procedure 11 specifies a three meeting Council process for considering FMP amendments, but this does not necessarily apply to how the Council considers regulatory amendments independent of any FMP change. If there is concern that proposals for regulatory changes would not get sufficient consideration in the Council process then the operating procedures could be modified to add a comparable requirement for regulatory proposals (of course, the Council is not prohibited from applying the three-meeting framework to regulatory amendments in the absence of any specific requirement in operating procedures). Other applicable law, such as the National Environmental Policy Act (NEPA), would still apply, affording public participation opportunities. In addition, full notice and comment rulemaking includes public comment on the proposed rule.

The October 2008 preliminary DEIS contains the following recommendation for structuring the amendment language:

The language of the FMP will be amended to indicate the following:

1. the shoreside whiting and nonwhiting trawl fishery will be managed under a single IFQ system;
2. the mothership whiting fishery will be managed as a co-op with processor linkages;
3. the catcher-processor fishery will be managed with a catcher-processor endorsement or an IFQ program in which each permit starts with the same initial allocation;
4. the Council may use some of the trawl allocation for an adaptive management program;
5. the length endorsement will not apply with respect to LE trawl endorsements.

The specific provisions of the trawl rationalization program provided here will be incorporated as appendices to the FMP but will be amendable through regulatory action. The recommendations for a halibut IBQ provision will be implemented as a regulatory action.

Rather than conceiving of the appendices as “amendable through regulatory action” it is probably more accurate to say that the appendices will summarize the regulations, which will specify the details of the program. As discussed above, the regulations could be changed by regulatory amendment (full notice and comment rulemaking) and the appendices could then be revised to reflect these changes without Secretarial Review. The Groundfish FMP currently incorporates several appendices containing descriptive material. Section 1.2 of the FMP includes the following statement:

The appendices contain supporting information for the management program. Because these appendices do not describe the management framework or Council groundfish management policies and procedures, and only supplement the required and discretionary provisions of the FMP described in §303 of the Magnuson-Stevens Act, they may be periodically updated without

being subjected to the Secretarial review and approval process described in §304(a) of the Magnuson-Stevens Act. These appendices are published under separate cover.

## **Description of Proposed Changes to the Content of the Groundfish FMP Related to the Trawl Rationalization Amendment**

To implement Amendment 20, in addition to adding appendices describing the IFQ and co-op programs, certain sections of Chapters 6 and 11 need to be modified. Those modifications are provided as an attachment and summarized here.

Chapter 6 in the FMP describes the range of management measures available to the Council, organized according to major categories. Section 6.9 of the chapter describes measures to control fishing capacity, including permits and licenses.

- Section 6.9.1 describes general provisions for permits. A section is added to cover the new requirement for processor permits for the mothership fishery.
- Section 6.9.3, “Individual Fishing Quota Programs” was incorporated into the FMP by Amendment 18 and authorizes an IFQ program. It has been rewritten to cover trawl rationalization in general (both IFQs and co-ops) and a separate subsection was created to preserve the language referencing IFQs as they would apply to other sectors.

Chapter 11 describes the license limitation program and the division that program created between the limited entry and open access segments.

- Section 11.2.1 identifies the Federal permit requirements and the regulations that apply when vessels with limited entry permits use open access gears. That language is modified to indicate that when a vessel with a trawl permit uses an exempted gear IFQ regulations apply, except with respect to those gears for which the IFQ program provides an exception (see Section A-1.1 of the IFQ program for the gear exceptions).
- Section 11.2.5 identifies the requirements for gear endorsements. Paragraph 6 of this section has been rewritten to clarify the ability of vessels with limited entry permits to use gears for which they do not hold an endorsement and to incorporate language that provides for gear switching.
- A new section was added “Section 11.2.6 Sector Endorsements.” The existing sections on fixed gear sablefish were moved from Section 11.4 to this section and sections were added on catcher processor (CP) endorsements, and Pacific whiting mothership catcher vessel (CV(MS))endorsements.
- Section 11.2.7 addresses the size endorsement. It has been modified to indicate a trawl permit’s size endorsement will not be reduced if it is transferred to a smaller vessel.
- Section 11.2.11 covers the rules for combining permits. A new paragraph was added to address the treatment of the new endorsements CP and CV(MS) endorsements when permit combination occurs.
- Section 11.5 contained the language implementing Amendment 15. As indicated in the first paragraph of that section, these provisions sunset with the creation of a trawl rationalization program for the Pacific whiting fishery. Therefore, this language has been removed.

## Draft Amendment 20 Language

*[N.B. Text to be added to Chapter 1 noting amendment of the FMP by Amendment 20 and citing the added Appendix E containing a description of regulatory measures.]*

### **6.0 MANAGEMENT MEASURES**

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### **6.9 Measures to Control Fishing Capacity, Including Permits and Licenses**

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#### *6.9.1 General Provisions For Permits*

##### **6.9.1.1 Commercial Fisheries Permits**

All U.S. commercial fishing vessels are required by state laws to be in possession of a current fishing or landing permit from the appropriate state agency in order to land groundfish in the Washington, Oregon, and California area. Federal limited entry permits authorize fishing within limits and restrictions specified for those permits. Vessels without such permits are also subject to the specified limits and restrictions for the open access fishery. ~~Federal permits also may be required for groundfish processors.~~ In the event that a Federal fishing or access permit is required, failure to obtain and possess such a Federal permit will be in violation of this FMP.

##### **6.9.1.2 Recreational Fisheries Permits**

All U.S. recreational fishermen are required by state laws to obtain a recreational permit or license in order to fish for groundfish. In the event that a Federal license or permit is required, failure to obtain and possess such Federal permit will be in violation of this FMP.

##### **6.9.1.3 Processor Permits**

Federal permits also may be required for groundfish processors. Under the trawl rationalization program (see Section 6.9.3) mothership processors in the Pacific whiting fishery must possess a mothership (MS) permit. Like groundfish limited entry permits (see Chapter 11) Pacific whiting mothership (MS) permits are transferrable once initially distributed to qualifying vessels at the beginning of the trawl rationalization program. To qualify for initial issuance of an MS permit at the beginning of the program, a processing vessel must have processed at least 1,000 mt of Pacific whiting in each of any two years from 1997 through 2003.

#### *6.9.2 Sector Endorsements*

The Council may establish sector endorsements, such as with the limited entry fixed gear sablefish fishery (see Section 11.2.6). Sector endorsements would limit participation in a fishery for a particular species or species group to persons, vessels, or permits meeting Council-established qualifying criteria. Participants

in a sector-endorsed fishery may be subject to sector total catch limit management. A sector endorsement, whether it is applied to vessels that already hold limited entry permits or to those in the open access or recreational fisheries, is a license limitation program.

### 6.9.3 Fishery Rationalization~~Individual Fishing Quota~~

#### 6.9.3.1 The Trawl Rationalization Programs

The trawl rationalization program applies to vessels holding trawl-endorsed groundfish limited entry permits (and mothership processors registered to mothership permits). The program is intended to reduce fishery capacity, minimize bycatch, and meet other goals of the FMP. The program replaces most cumulative landing limits (in both whiting and nonwhiting shoreside limited entry trawl sectors) with individual fishing quotas. Under the Magnuson-Stevens Act, “an ‘individual fishing quota’ means a Federal permit under a limited access system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person.” The Council may establish IFQ programs for any commercial fishery sector. ~~IFQ programs would be established for the purposes of reducing fishery capacity, minimizing bycatch, and to meet other goals of the FMP. Participants in an IFQ fishery may be subject to individual total catch limit management (Section 6.7.1).~~The Pacific whiting mothership sector is managed through a system of cooperatives (co-ops) under which catcher vessels choosing to fish in a co-op would be obligated to deliver their catch to an associated mothership processor. Each year motherships and catcher vessels must identify which co-op they plan to participate in. If they do not plan to join a co-op for that year they participate in a non-co-op fishery. The Pacific whiting catcher-processor sector operates as a single, voluntary co-op. If the voluntary catcher-processor co-op dissolves any allocation to the sector will be divided equally among the catcher-processor endorsed permits.

Appendix E describes the details of the trawl rationalization program, which are also specified in Federal regulations at [cite].

The trawl rationalization program may be modified through regulatory amendments proposed by the Council per §303(c) of the MSA and reviewed by the Secretary per §304(b). Appendix E may be revised from time to time to reflect changes to the program as specified in regulations, but such changes can be made without submitting such changes for review by the Secretary as described in §304(a) of the MSA. The Council will establish a process for considering recommended changes to the regulations.

#### 6.9.3.2 Rationalization of Other Fishery Sectors

IFQ programs could be established in other fishery sectors for the purposes of reducing fishery capacity, minimizing bycatch, and to meet other goals of the FMP. Participants in an IFQ fishery may be subject to individual total catch limit management (Section 6.7.1).

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## 11.0 GROUND FISH LIMITED ENTRY

### 11.1 Introduction

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### 11.2 Management, Allocation and General Rules on the Issuance and Use of Groundfish LE Permits, Gear Endorsements Size Endorsements, and Fixed Gear Sablefish Endorsements

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#### 11.2.1 Federal LE Permits Required Only for Gears Fishing on the Limited Access Quota

1. Federal groundfish LE permits will be required and issued only for those vessels catching Council-managed groundfish species<sup>1/</sup> with groundfish limited entry gears (trawl, longline or fishpot gear) under the limited access quota.<sup>2/</sup>
2. Vessels using exempted gears (all gears other than trawl, longline and fishpot) or using longline or fishpot gear<sup>3/</sup> without a permit endorsed for one of those gears may continue to catch groundfish under an open access system. However catch by vessels with trawl-endorsed LE permits that use such gears may instead be managed with IFQs, as specified in the regulations for the IFQ program (see Appendix E). (Exempted, longline and fishpot gears used by vessels without endorsements for those gears are termed open access gears.)

#### 11.2.2 Allocations between the Limited and Open Access Fisheries and Management of the Open Access Fishery

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#### 11.2.3 Initial Issuance of LE Permits

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#### 11.2.4 Ownership Restriction and Changes in Ownership

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<sup>1</sup> All references to "Council-managed groundfish" refer only to groundfish species specified in the Council groundfish FMP which are caught in the exclusive economic zone or adjacent state waters off Washington, Oregon and California.

<sup>2</sup> References to longline, pot and trawl gear are references to legal groundfish gears as defined by the groundfish FMP.

<sup>3</sup> Trawl gear may not be used without a permit because the open access fishery for limited entry gears is aimed at accommodating small producers and will likely be managed under restrictive trip limits. The fishing power of trawl gear would result in excessive discards under these trip limits. Additionally, while longline and fishpot vessels catching small quantities of groundfish will be prevented from qualifying by the structure of the minimum landing requirements (MLRs) (a day's landings must be greater than 500 pounds in order for the day to count toward meeting the MLR; Section 11.3.1.3), this structure will provide little barrier for most trawl vessels. Thus, there is no strong reason to provide the open access opportunity to compensate for the 500 pound per landing day threshold.

## 11.2.5 Gear Endorsements

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[N.B. In the following shaded text indicates there is corresponding text in the deleted version of paragraph 6.]

- ~~6. An LE permit will not allow the use of limited entry gears to catch any Council-managed groundfish unless a valid gear endorsement for the specific gear is affixed to the LE permit. Trawl gear and Council-managed groundfish may not be on board a vessel at the same time, nor may the gear be deployed, without an LE permit registered for the vessel and endorsed for trawl gear. If a vessel has longline or fishpot gear on board, an LE permit registered for the vessel and the permit is endorsed for the gear on board, regulations for the limited access fishery will apply.~~
6. Gear endorsements are required for LE-permitted vessels to use limited entry gear types (see Section 11.2.1, paragraph 1) to catch groundfish under the regulations governing the limited entry fishery.
- a. Longline and Fishpot Usage for Vessels with a Permit Endorsed for the Gear. ~~If a vessel has longline or fishpot gear on board, and the vessel is registered to an LE permit that is endorsed for the longline or fishpot gear on board, regulations for the limited access fishery will apply to the vessel. If the vessel also has a trawl endorsement and has opted to participate for a period in the trawl rationalization program using the fixed gear (longline or fishpot) for which it holds an endorsement then the trawl rationalization portion of the limited entry fishery regulations will apply to the vessel for that period.~~
- b. Exception for Longline and Fishpot Gear Usage for Vessels With a Limited Entry Permit Not Endorsed for the Gear Being Used
- i. ~~As specified in Section 11.2.1, paragraph 2, Limited Entry vessels may use longline and pot gear without an endorsement, in which case the use of the gear is governed by the open access fishery regulations unless the vessel's limited entry permit is endorsed for trawl gear.~~
- ii. ~~As specified in Section 11.2.2, if a vessel registered to a LE permit is fishing with longline or fishpot gear, but without an endorsement for that gear, the catch still counts against the limited entry fishery allocation (See Section 11.2.2).~~
- iii. ~~As specified in the trawl rationalization program (Section 6.9.3.1 and Appendix E) vessels registered to a trawl-endorsed LE permit and using longline or fishpot gear without a limited entry endorsement for those gears must cover their landings with trawl IFQ and comply with the provisions of the trawl IFQ program. Open access sector regulations will not apply to vessels participating under the IFQ program.~~
- b. Trawl gear usage. Trawl gear and Council-managed groundfish may not be on board a vessel at the same time, nor may the gear be deployed, without an LE permit registered for the vessel and endorsed for trawl gear.

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## 11.2.6 Sector Endorsements

### 11.2.6.1 Fixed Gear Sablefish Endorsements

*[N.B. Section 11.4, with the same title, is incorporated into this section as a housekeeping measure.]*

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 non-sablefish 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 36EN 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.
2. The fixed gear sablefish endorsement will be affixed to the permit.
3. The fixed gear sablefish endorsement will remain valid when the permit is transferred.
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.
5. Limitations which apply to the fixed gear sablefish endorsement and fishing thereunder shall not restrict the use of any trawl gear endorsement on the same LE permit, unless these restrictions are specific in their application to trawl gear.
6. Rules on the issuance of fixed gear sablefish endorsements and other characteristics of the endorsements are specified in [Section 11.4 below](#).

*[N.B. The following text is moved from Section 11.4, also entitled Fixed Gear Sablefish Endorsements]*

The fixed gear sablefish endorsement is intended for operations participating in the fixed gear sablefish fishery which were significantly active and dependent on the fishery prior to the end of the qualifying period specified in paragraph 3. [The following paragraphs describe qualifying criteria that were used for initial issuance of the fixed gear sablefish endorsement.](#)

1. A fixed gear sablefish endorsement will be affixed to any LE permit which meets the fixed gear sablefish endorsement qualifying criteria.
2. The catch history used to determine whether a permit meets the fixed gear sablefish endorsement qualifying criteria is the permit catch history. Permit catch history includes the catch history of the vessel(s) that initially qualified for the permit and the catch of any other vessels with which the permit rights were associated during the time the rights were associated with the vessel (if the current permit is the result of the combination of multiple permits, then for the combined permit to qualify for an endorsement, at least one of the permits which were combined must have

sufficient sablefish history to qualify for an endorsement on its own; or the permit must qualify based on catch occurring after it has combined but within the qualifying period). Permit catch history also includes the catch of any interim permit held by the current owner of the permit during the pendency of an appeal on a permit denied under the groundfish limited entry program, but only if (1) the appeal on which the interim permit was based was lost and (2) the owner's current permit was used by the owner in the 1995 limited entry sablefish fishery.

3. The fixed gear sablefish endorsement qualifying criteria are at least 16,000 pounds round weight of sablefish caught with longline or fishpot gear in one year from 1984 to 1994
4. All catch must be non-Indian harvest from Council managed areas. Harvest taken in tribal set aside fisheries does not qualify.
5. The NMFS issuing authority will have broad authority to examine information other than codes on landing tickets in determining whether the qualifying criteria is or is not met.

#### **11.2.6.2 Pacific whiting Catcher-processor (CP) Endorsement**

The class of CP endorsed permits (CP permits) is limited by an endorsement placed on an LE permit. LE permits registered to qualified catcher-processor vessels are endorsed as CP permits. A qualified permit is one that harvested and processed in the catcher-processor sector of the Pacific whiting fishery at any time from 1997 through 2003. A vessel that is 75 feet or less LOA that harvests whiting and, in addition to heading and gutting, cuts the tail off and freezes the whiting, is not considered to be a catcher/processor nor is it considered to be processing fish. Such a vessel is considered a participant in the shorebased whiting sector, and is subject to regulations and allocations for that sector (50 CFR 660.373(a)(3). Therefore, such vessels do not require a CP endorsement.

#### **11.2.6.3 Pacific whiting Catcher Vessel (CV(MS)) Endorsement**

Permits with a qualifying history are designated as CV(MS) permits through the addition of an endorsement to their LE groundfish permit. Only vessels registered to an LE permit with a CV(MS) endorsement may participate in the Pacific whiting mothership-processor fishery. A qualified permit is one that has a total of more than 500 mt of whiting deliveries to motherships from 1994 through 2003.

#### *11.2.7 Size Endorsement Will Specify the Vessel Length*

The LE base permit will be endorsed with the length overall (as defined for purposes of U.S. 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 11.2.11, ~~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.~~<sup>4</sup> ~~Regulations may be promulgated to waive this downsizing requirement if the permit was transferred to a smaller vessel for the purposes of stacking (see Section 11.2.4, paragraph 3).~~ Vessels which do not have documents stating their length overall will have to be measured by a marine surveyor or the U.S. Coast Guard and certified for that length.<sup>5</sup>

<sup>4</sup> The FMP included an exception for when LE permits endorsed for trawl gear were transferred to a smaller vessel such that the LE permit will be reissued with a size endorsement for the length of the smaller vessel (from Amendment 6). This exception was removed by Amendment 20.

<sup>5</sup> While not an immediate cap on vessel capacity, the size endorsement places an upward limit on the amount by which the capacity used with an LE permit may increase.

If the Council establishes a permit stacking program, that program may or may not require that permits stacked on top of the base LE permit be endorsed with the length overall of the vessel holding the permits.

*11.2.8 An LE Permit and Necessary Gear Endorsements Will Be Held by the Owner of Record of the Vessel*

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

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*11.2.10 Loss of a Vessel*

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*11.2.11 Combining LE Permits*

1. Two or more LE permits with “A” gear endorsements for the same type of limited entry gear (either trawl, longline or fishpot) may be combined (based on specific criteria) to “step-up” to a permit with a larger size endorsement. NMFS, with professional advice of marine architects and other qualified individuals, and after consultation with the Council and review board, will develop and implement a standardized measure of harvest capacity for the purpose of determining the appropriate endorsed length for LE permits created by combining two or more permits possessing smaller length endorsements. The capacity represented by the appropriate length endorsement for the combined permit should not exceed the sum of the capacities of the LE permits being combined.
2. LE permits may not be divided to “step-down” to more than one permit with smaller size endorsements.
3. Survival of Gear Endorsements. When LE permits are combined, “A” endorsements identical on both LE permits will remain valid. Provisional “A”, “B” and designated species “B” gear endorsements will generally become invalid because they are not separable from the vessel for which they are initially issued. (See table below for examples.) ~~Fixed gear sablefish endorsements will remain valid only if all the longline or fishpot permits being combined have fixed gear sablefish endorsements.~~

1st Permit Endorsement on 1st LE Permit	+	2nd Permit Endorsements on 2nd LE Permit	=	Combined Permit Endorsements on the Combined LE Permit
“A” - Trawl		“A” - Pot		None
“A” - Longline		“A” - Longline		“A” - Longline
“A” - Trawl		Provisional “A” - Trawl		None
“A” - Pot		“B” - Pot		None
“A” - Trawl		Designated Species “B” - Shortbelly - Trawl		None

4. Survival of Fixed Gear Sector Endorsements: Fixed gear sablefish endorsements will remain valid only if all the longline or fishpot permits being combined have fixed gear sablefish endorsements.

45. Survival of Trawl Sector Endorsements. When a CP-endorsed LE permit is combined with an LE trawl permit without a CP-endorsement a single CP-endorsed permit with a larger size endorsement will result. A CV(MS) endorsement on a permit being combined with a CP-endorsed permit will not be reissued on the resulting permit. If a CV(MS) endorsed permit is combined with a permit without a sector endorsement the CV(MS) endorsement is retained on the resulting permit. The resulting size endorsement will be determined based on the permit combination formula authorized in paragraph 1 above.

11.2.12 Permit Renewal

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11.2.13 Owner-on-board Requirements

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**11.3 Multilevel Gear Endorsement System**

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**11.4 Fixed Gear Sablefish Endorsement**

*[N.B. Text in this section moved to Section 11.2.6 as shown above.]*

**11.5 Limited Entry Program for the Pacific Coast Whiting Fishery**

~~Until the implementation of a trawl IQ or cooperative management program in the Pacific whiting fishery, no vessel may participate in the shoreside, mothership, or catcher processor sector of the Pacific whiting fishery unless that vessel meets the following participation requirements for such vessel in such sector:~~

~~For catcher vessels participating in the shore based sector, the participation requirements are that the vessel with a limited entry trawl endorsed permit using mid-water trawl gear made at least one whiting delivery to a shoreside whiting processor in at least one primary whiting season for the shore based sector between January 1, 1994, and January 1, 2007.~~

~~For catcher vessels participating in the mothership sector, participation requirements are that the vessel made at least one delivery to a mothership whiting processor during the at sea processing season for the mothership sector between January 1, 1997, and January 1, 2007.~~

~~For catcher/processors vessels, participation requirements are having caught and processed whiting during the at sea processing season for the catcher/processor sector in any one qualifying year from January 1, 1997, through January 1, 2007.~~

~~For mothership vessels, participation requirements are having received at least one delivery of whiting during the at sea processing season for the mothership sector in any one qualifying year from January 1, 1997, through January 1, 2007.~~

~~A vessel may qualify for participation in each sector for which it meets the above standards.~~

~~Implementing regulations will specify the application procedures. NMFS will maintain a list of vessels or issue a certificate to vessels that qualify for participation in each sector.~~

[Added, Amendment 15]

**11.64 LE Permit Issuance Review Board**

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**11.75 Implementation, Application and Appeals Process**

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**11.86 Council Review and Monitoring**

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