

## GROUND FISH ESSENTIAL FISH HABITAT REVIEW

The 5-year periodic review of groundfish essential fish habitat (GFEFH) is scheduled to begin in 2011. To prepare for that process, the Council should review and modify the schedule and procedures outlined in Council Operating Procedure (COP) 22 to help guide the ad hoc Groundfish EFH Review Committee (EFHRC). Council staff has drafted a modified COP 22 for Council consideration (Agenda Item I.1.a, Attachment 1), which addresses both the substance and schedule for the periodic review. Specifically, the Council should consider the following issues:

1. **The scope of issues in the review.** Section 7.6 of the Groundfish Fishery Management Plan requires "...review the EFH description and identification, HAPC designations, and information on fishing impacts and nonfishing impacts...". There are currently two proposals pending for modification of Ecologically Important Habitat Closed Areas (Eel Canyon and Olympic 2/Grays Canyon); proposals for other modifications should be solicited. In addition to proposals from outside entities, the Council will also need to consider corrections to current EFH description, identification of new information, and emerging threats to EFH.
2. **The role and composition of the EFHRC.** Depending on the scope of issues to be addressed, the EFHRC could serve strictly as a review body, or as a workgroup to develop information and proposals.
3. **Staffing and funding necessary to accomplish the review.** Depending on the role identified for the EFHRC, agencies should consider staff available to accomplish the tasks, or if outside contractors would be necessary. For example, if modeling similar to that used to describe GFEFH in Amendment 19 was necessary.
4. **Schedule and process for completing the review.** The time necessary to complete the review will depend on a number of factors, including the scope of issues to be addressed and the number of proposed changes received and advanced to the review process. Attachment 2 includes two timelines for Council consideration and includes a proposed EFHRC meeting in December to provide EFHRC recommendations on the process and the scope of potential changes. The final determination of the process and schedule would occur in March or April after the benefit of the EFHRC input. The administrative process necessary to incorporate any changes in the fishery management plan should be discussed, but will not be ripe for decision at this stage. Issues may include whether to integrate changes in the specification process or to pursue a separate amendment process.
5. **Near term objectives and activities of the EFHRC.** Depending on Council input on the review schedule and role of the EFHRC, it may be necessary to schedule EFHRC meetings, Council agenda time, and solicit proposals between the September 2010 and April 2011 Council Meetings as indicated in Attachment 2.

### **Council Action:**

1. **Provide preliminary direction for the GFEFH review process, including the initial schedule for completion of review and implementation of modifications.**

Reference Materials:

1. Agenda Item I.1.a, Attachment 1: COP 22 – Draft Proposed Changes to Council Operating Procedure 22, Process for Groundfish Essential Fish Habitat Review and Modification.
2. Agenda Item I.1.a, Attachment 2: Proposed Groundfish Essential Fish Habitat (EFH) Review Process and Schedule.

Agenda Order:

- a. Agenda Item Overview
- b. Reports and Comments of Advisory Bodies and Management Entities
- c. Public Comment
- d. **Council Action:** Discuss and Initiate Planning for the Five Year Review

**Chuck Tracy**

PFMC  
08/23/10

**Draft Proposed Changes**

**COUNCIL OPERATING PROCEDURE**

Process for Groundfish Essential Fish Habitat Review and Modification

22

Approved by Council: 6/13/07

Revised: 9/11/08

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**PURPOSE**

To guide the Council's review and modification of groundfish essential fish habitat (EFH), especially the implementation of those portions of Amendment 19 to the Groundfish Fishery Management Plan (FMP) which identify requirements to:

1. Modify existing or designate new areas closed to bottom trawling for the protection of EFH (FMP Sections 6.2.4 and 6.8.5).
2. Modify existing or designate new Groundfish EFH and habitat areas of particular concern (HAPC) (FMP Sections 7.3.2 and 6.2.4).
3. Conduct an overall review of the EFH description, HAPC designations, and information on fishing and non-fishing impacts included in the FMP which is to be initiated within no more than five years since approval of the previous review (Section 7.6).

**OBJECTIVES**

To assist in keeping the Council's identified EFH and HAPC responsive to and updated by changing knowledge of marine habitat and fishery and non-fishery activities that affect it by:

1. Establishing the membership and operating guidelines for an EFH Review Committee (EFHRC) charged with reviewing and making recommendations to the Council for proposed changes to EFH and HAPC.
2. Establishing a process for efficiently reviewing proposed changes to Groundfish EFH and HAPC, including an overall review at intervals of no more than five years.

**GROUND FISH ESSENTIAL FISH HABITAT REVIEW COMMITTEE**

Duties

When requested by the Council Chair or Executive Director, the Groundfish EFHRC shall review proposals or information with regard to modifying groundfish EFH and specifically:

1. Review groundfish EFH designations and areas currently closed to bottom contact fishing gear to protect groundfish habitat and recommend to the Council the elimination of existing areas, addition of new areas, or modification of existing areas. In making its recommendations, the EFHRC should, as a minimum, consider the best scientific information

regarding the items listed in Section 6.2.4 of the Groundfish FMP. The EFHRC may also include recommendations for modifying HAPC consistent with the proposed modification of the location and extent of areas closed to bottom trawling or other benthic contact fishing gear.

2. Review proposals for modifying or designating new HAPC.
3. Conduct a periodic five year review of the EFH description, HAPC designations, and information on fishing and non-fishing impacts included in the FMP.

#### Composition

The Groundfish EFHRC will be an ad hoc committee following the administrative procedures of COP 8 (members appointed by the Council Chair with advice from Council members and advisors, etc.).

The specific members of the EFHRC may vary, depending on the review assignment and geographic area of the proposed changes. The committee will include a representative from the Enforcement Consultants and may include appropriate representatives from the Groundfish Advisory Subpanel, Groundfish Management Team, Scientific and Statistical Committee, Habitat Committee, and other individuals with familiarity and expertise in the fisheries and marine habitats of the areas proposed for changes (e.g., commercial bottom trawl representatives, NMFS scientists, professors involved in marine habitat research and mapping, etc.). The original Groundfish Habitat Technical Review Committee that was a key review group for identifying the initial EFH and HAPC was composed of two NMFS scientists (NW and SW Science Centers) familiar with Pacific marine habitats, two bottom trawl representatives knowledgeable about fisheries and trawling practices on the West Coast, two scientists representing conservation entities, and two professors intimately involved and expert in mapping of marine habitats off the Pacific Coast.

In selecting members to review a particular proposal(s), the Council Chair will also consider the need for some consistency in membership. If the appointed EFHRC lacks expertise to adequately review a proposal or proposals, the EFHRC may request additional assistance through the Council Chair.

#### Member Terms, Alternates, and Officers

As described in COP 8, *Ad Hoc Committees*.

#### Meetings

As described in COP 8, *Ad Hoc Committees*.

#### Staff Responsibilities



As described in COP 8, *Ad Hoc Committees*.

## EFH REVIEW PROCEDURES

The EFH designated for groundfish covers an extensive area and was identified through inclusive, intensive, and collaborative assessment processes that required FMP amendment and incorporation in the groundfish fishery regulations. Any significant changes to EFH require a deliberative process and NEPA review. Therefore, the Council will generally follow a cycle of five years between each complete review. Changes to EFH in the interim periods between the full reviews will only be contemplated in unusual cases in which significant harm might result by inaction. If significant new information or EFH issues emerge prior to a planned five year review, the Council may contemplate advancing the beginning of the next full review to something less than a five year period. The Council may request the EFHRC review interim proposals to provide its recommendations on how imperative it may be to act on the new information.

### Periodic Five Year Review Process

The periodic five year review of the Council's EFH and HAPC designations is a major task that requires special expertise and planning. The review process, based on the initial five year review, is expected, to the extent practicable, to proceed as follows in the table below. The actual timing of some actions may vary, depending on Council workload, level of new information being reviewed, and complexity of the modifications being considered. The table in this COP will be modified for the next five-year review to reflect the realities of the process and the updated Council workload.

**[Note: See Agenda Item I.1.a, Attachment 2 for potential schedules.]**

## Draft Proposed Changes

### **COUNCIL OPERATING PROCEDURE**

Process for Groundfish Essential Fish Habitat Review and Modification

22

Approved by Council: 6/13/07  
Revised: 9/11/08

#### **PURPOSE**

To guide the Council's review and modification of groundfish essential fish habitat (EFH), especially the implementation of those portions of Amendment 19 to the Groundfish Fishery Management Plan (FMP) which identify requirements to:

1. Modify existing or designate new areas closed to bottom trawling for the protection of EFH (FMP Sections 6.2.4 and 6.8.5).
2. Modify existing or designate new Groundfish EFH and habitat areas of particular concern (HAPC) (FMP Sections 7.3.2 and 6.2.4).
3. Conduct an overall review of the EFH description, HAPC designations, and information on fishing and non-fishing impacts included in the FMP which is to be ~~accomplished~~ initiated within no more than five years since approval of the previous review at least once every five years (Section 7.6).

#### **OBJECTIVES**

To assist in keeping the Council's identified EFH and HAPC responsive to and updated by changing knowledge of marine habitat and fishery and non-fishery activities that affect it by:

1. Establishing the membership and operating guidelines for an EFH Review Committee (EFHRC) charged with reviewing and making recommendations to the Council for proposed changes to EFH and HAPC.
2. Establishing a process for efficiently reviewing proposed changes to Groundfish EFH and HAPC, including an overall review at ~~least once every~~ intervals of no more than five years.

#### **GROUND FISH ESSENTIAL FISH HABITAT REVIEW COMMITTEE**

##### Duties

When requested by the Council Chair or Executive Director, the Groundfish EFHRC shall review proposals or information with regard to modifying groundfish EFH and specifically:

1. Review groundfish EFH designations and areas currently closed to bottom contact fishing gear to protect groundfish habitat and recommend to the Council the elimination of existing areas, addition of new areas, or modification of existing areas. In making its recommendations, the EFHRC should, as a minimum, consider the best scientific information regarding the items listed in Section 6.2.4 of the Groundfish FMP. The EFHRC may also

include recommendations for modifying HAPC consistent with the proposed modification of the location and extent of areas closed to bottom trawling or other benthic contact fishing gear.

2. Review proposals for modifying or designating new HAPC.
3. Conduct an ~~overall-periodic five year~~ review of the EFH description, HAPC designations, and information on fishing and non-fishing impacts included in the FMP ~~at least every five years~~.

### Composition

#### General

The Groundfish EFHRC will be an ad hoc committee following the administrative procedures of COP 8 (members appointed by the Council Chair with advice from Council members and advisors, etc.).

~~The specific members of the EFHRC will may vary, depending on the review assignment and geographic area of the proposed changes. The committee will include a representative from the Enforcement Consultants and may include appropriate representatives from the Groundfish Advisory Subpanel, Groundfish Management Team, Scientific and Statistical Committee, Habitat Committee, and other individuals with familiarity and expertise in the fisheries and marine habitats of the areas proposed for changes (e.g., commercial bottom trawl representatives, NMFS scientists, professors involved in marine habitat research and mapping, etc.).~~ The original Groundfish Habitat Technical Review Committee that was a key review group for identifying the initial EFH and HAPC was composed of two NMFS scientists (NW and SW Science Centers) familiar with Pacific marine habitats, two bottom trawl representatives knowledgeable about fisheries and trawling practices on the West Coast, two scientists representing conservation entities, and two professors intimately involved and expert in mapping of marine habitats off the Pacific Coast.

In selecting members to review a particular proposal(s), the Council Chair will also consider the need for some consistency in membership ~~from ad hoc committee to ad hoc committee~~. If the appointed EFHRC lacks expertise to adequately review a proposal or proposals, the EFHRC may request additional assistance through the Council Chair.

#### Short Term EFH Reviews

~~To address new information received between the five year comprehensive reviews, the Council Chair will appoint an ad hoc EFHRC with a composition tailored to deal effectively with the unique new information at hand. This ad hoc EFHRC will meet in accordance with the schedule described in the short term review portion of this COP, and disband at the conclusion of that process.~~

### Five Year Review and Extensive Modifications

~~To address the overall five year review or proposals for major modifications requiring special expertise, the Council Chair will appoint an ad hoc EFHRC with a composition similar to the original Groundfish Habitat Technical Review Committee that was a key review group for identifying the initial EFH and HAPC. That committee was composed of two NMFS scientists (NW and SW Science Centers) familiar with Pacific marine habitats, two bottom trawl representatives knowledgeable about fisheries and trawling practices on the West Coast, two scientists representing conservation entities, and two professors intimately involved and expert in mapping of marine habitats off the Pacific Coast.~~

### Member Terms, Alternates, and Officers

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The EFH designated for groundfish covers an extensive area and was identified through inclusive, intensive, and collaborative assessment processes that required FMP amendment and incorporation in the groundfish fishery regulations. Any significant changes to EFH require a deliberative process and NEPA review. Therefore, the Council will generally follow a cycle of five years between each complete review. Changes to EFH in the interim periods between the full reviews will only be contemplated in unusual cases in which significant harm might result by inaction. If significant new information or EFH issues emerge prior to a planned five year review, the Council may contemplate advancing the beginning of the next full review to something less than a five year period. The Council may request the EFHRC review interim proposals to provide its recommendations on how imperative it may be to act on the new information.

~~Review procedures utilized by the Council will vary depending on the purpose or type of review.~~

### Periodic Five Year-Complete Review Process

The ~~complete review every~~periodic five year reviews of the Council's EFH and HAPC designations is a major task that requires special expertise and planning. The review process, based on the initial five year review, is expected, to the extent practicable, to proceed as follows in the table below. The actual timing of some actions may vary, depending on Council

workload, level of new information being reviewed, and complexity of the modifications being considered. The table in this COP will be modified for the next five-year review to reflect the realities of the process and the updated Council workload.

[Note: See Agenda Item I.1.a, Attachment 2 for potential schedules.]

<b>Timing*</b>	<b>Action</b>
June 2011 Council Meeting	<del>Council Chair appoints adequate EFHRC to complete comprehensive five year review of EFH and HAPC. Any proposals for modifications to be included in the review from outside entities must be submitted to the Council office no later than three weeks prior to the June Council meeting. To help plan the June Council meeting agenda, the Council may request a notice of intent for any proposals to be provided in June no later than the April 2011 Council meeting.</del>
July 2011 through May 15, 2012	<del>EFHRC meets to review the FMP EFH and HAPC descriptions and proposals for any extensive modifications; then develops recommendations for the Council.</del>
June 2012 Council Meeting	<del>Council considers recommendations of the EFHRC and adopts proposed changes for public review.</del>
September 2012 Council Meeting	<del>Council adopts final recommendations for changes to be incorporated in the FMP and become effective in the next biennial management specifications.</del>

\* This table describes the initial five year review beginning in 2011; subsequent reviews would follow five years after final approval of the previous five year review.

#### Short Term EFH Reviews

Within a 5 year period, to allow for an orderly and efficient process for considering proposed changes to areas closed to fishing by various gear types (e.g., bottom trawl and bottom contact gear) to protect EFH, the review of proposals by the EFHRC and final determination by the Council will be coordinated with the groundfish biennial management specifications process to the degree possible. [Some exceptions to the schedule may be necessary in the initial review] The normal process will be as follows:

<b>Timing</b>	<b>Action</b>
<del>June Council Meeting of Odd Numbered Years</del>	<del>Final deadline for Council to request the EFHRC to review a proposed modification to areas closed to bottom trawl or bottom contact gear for the next biennial groundfish season (complete proposals must be received at the Council office no later than three weeks prior to the Council meeting).</del>
<del>November Council Meeting of Odd Numbered Years</del>	<del>Council considers recommendations of EFHRC and makes recommendations for considering modifications in ongoing biennial management process (implementation in following odd year).</del>
<del>April Council Meeting of Even Numbered Years</del>	<del>Council may include proposed modifications among a range of alternatives prepared for the next biennial groundfish management period for public review.</del>
<del>June Council Meeting of Even Numbered Years</del>	<del>Council makes its final recommendations for implementation by NMFS in January of next odd year.</del>

8/25/2010

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**Proposed Groundfish Essential Fish Habitat (EFH) Review Process and Schedule**

(Schedule (Path 1 or Path 2) dependent on complexity and scope of proposed changes)

<b>Timing</b>	<b>Action</b>	<b>Comments &amp; Concerns</b>
<b>Common Initial Planning and Schedule</b>		
<b>2010</b>		
Sep Council Mtg	Council: - Review & comment on preliminary plan - Approve Notice for Review	Limited staff involvement due to workload on ACL's, trailing A-20 amendments, Salmon EFH & methodology, halibut allocation, & sardine mgmt
Sep 21	Staff: - Issue notice of EFH review & request for proposed adjustments with deadline of Nov 19	
Early Dec	EFHRC Meets: - Review & identify scope of & workload for reviewing & recommending potential changes - Make recommendations for process (COP 22)	
<b>2011</b>		
Mar or Apr Council Mtg	Council: - Review EFHRC recommendations - Determine process & schedule (Path 1 or Path 2) dependent on complexity and breadth of possible changes	Limited staff involvement due to Feb-Apr workload on ACL's, salmon preseason process & EFH, & halibut allocation
=====		
<b>Initiate Path 1: In the Case of Minor Adjustments to EFH</b>		
<b>2011</b>		
Apr - mid Oct	EFHRC Meets: - Work assignments & coordination to complete review - Develop draft report & recommendations to Council	
Nov Council Mtg	Council: - Approve report & recommendations for public review	
Dec - Feb 2012	EFHRC Meets: - Make any needed refinements in draft report	
<b>2012</b>		
Mar Council Mtg	Council: - Approve final report and, if needed, FMP Amendment Schedule	
=====		
<b>Initiate Path 2: In the Case of Complex or Controversial Adjustments</b>		
<b>2011</b>		
Apr- Dec	EFHRC Meets: - Work assignments & coordination to complete review - Develop draft report & recommendations to Council	
<b>2012</b>		
Jan- mid Aug	EFHRC Meets: - Complete draft report & recommendations to Council	Final GF mgmt specs. in Jun
Sep Council Mtg	Council: - Adopt EFHRC Report for Public Review	
Nov Council Mtg	Council: - Approve final report & FMP amendment schedule	

## GROUND FISH ADVISORY SUBPANEL REPORT ON GROUND FISH ESSENTIAL FISH HABITAT REVIEW

The Groundfish Advisory Subpanel (GAP) discussed the groundfish essential fish (EFH) habitat review process with Mr. Chuck Tracy and offers the following recommendations.

The GAP is concerned about the process for considering new EFH closed areas and strongly recommends a systematic and science-based approach for considering new EFH designations. The GAP recommends the Council and the Council's Groundfish EFH Review Committee (EFHRC) first review the goals, objectives, and criteria used in deciding EFH areas before modifying existing EFH areas or considering new EFH designations.

The GAP strongly believes there is a need for more scientific information to inform new EFH areas. The GAP believes the Amendment 19 process that established the current system of EFH closed areas lacked a robust scientific evaluation of habitats. For instance, some EFH closed areas, such as a portion of the Eel River canyon, are now closed to fishing despite being flat, sand/mud bottom substrate. Closing this area has inconvenienced fishermen in the area by needlessly closing habitats that are not particularly valuable to most groundfish species or vulnerable to bottom disturbance. Therefore, the GAP recommends the EFHRC first review all the scientific information available from habitat surveys before soliciting nominations for new EFH closed areas. There should also be an evaluation of the effectiveness of EFH area management in increasing groundfish stock size. The EFHRC should also provide industry with habitat maps of the coast; review the relevant enforcement issues of managing current EFH closed areas; and evaluate current EFH area boundaries in relationship to current RCA boundaries. Only after these tasks are completed should the EFHRC solicit input from industry and the public on modifying existing EFH closed areas and considering new EFH designations.

The GAP notes that closed EFH areas should theoretically help mitigate management and scientific uncertainty and provide benefits to directed groundfish fisheries. However, the GAP is frustrated because of the difficulty in evaluating these potential benefits given that survey and fishery-dependent data from EFH areas are lacking that could inform stock assessments. The GAP therefore concludes there is little benefit to the fishing industry from managing EFH closed areas and instead increases costs to industry. EFH closed areas limit the ability to target fish within their range and incurs higher impacts on remaining open areas. Until there is some benefit provided to industry from managing EFH closed areas, the GAP is concerned about the potential proliferation of new EFH designations.



## HABITAT COMMITTEE REPORT ON GROUNDFISH ESSENTIAL FISH HABITAT REVIEW

The Habitat Committee (HC) discussed the proposed essential fish habitat (EFH) review process and schedule. The HC identified some timeline issues with the schedule and offers the following comments and recommendations on the review process:

1. The HC notes a discrepancy between the Situation Summary and the proposed schedule regarding timeline for submission of proposals for new and adjusted areas. The proposed schedule indicates the submission deadline is November 19, 2010, while the Situation Summary indicates April 2011. However, as we suggest below, this deadline should be advanced further into the process.
2. The two-path approach may not be necessary, given that the longer time period of Path 2 is likely warranted for even “minor” adjustments to existing designations. A more protracted timeline will allow more time for informed and constructive input from interested parties. Additionally, the definition of minor adjustments is subjective.
3. This process will likely set a precedent for subsequent EFH 5-year reviews; therefore, an established framework would provide structure and consistency for subsequent reviews. The HC suggests the following:
  - a. The current schedule should provide formal notice and adequate time for agencies, academia, and the public to prepare for and engage in the process, including time to prepare and contribute new information.
  - b. A formal public notice should be issued. The notice should describe the triggers/thresholds that would warrant either modifications to existing EFH designations or evaluation of new EFH proposals.
  - c. The current proposed schedule does not lend itself to considering new information (e.g., updated west coast seafloor map for benthic habitats, emerging threats to EFH) early enough to inform the extent and magnitude of the EFH process. While not all new information is available to the current process, there should at least be a placeholder in the framework for identifying and reviewing available new information. This would provide an opportunity to evaluate what data/information could be useful and the level of effort necessary to incorporate this information.
  - d. New proposals should not be solicited, nor modifications to existing EFH designations proposed, until *after* new scientific information has been identified and evaluated.
4. Since new habitat and species-habitat information has emerged in the last five years, the EFH Review Committee should weigh the costs and benefits of rerunning the Habitat

Suitability model and/or risk model. However, the initial model development was very expensive and may be cost-prohibitive to rerun.

5. The HC agrees with the draft proposed changes to the Council Operating Procedure for the EFH review process, with the changes recommended above.

PFMC  
09/12/10

# Groundfish EFH 5-Year Review

Continuing to Lead the Way  
in Marine Spatial Planning

Geoff Shester, Ph.D.



Hydrocorals in Carmel Bay (90 ft.), Geoff Shester

# 2006 EFH Closures

- A huge step forward for precautionary ecosystem-based management by the PFMF
- Protected over 135,000 square miles of habitat while maintaining vibrant fisheries along the U.S. West Coast



Fish eggs attached to California hydrocoral, off Monterey.

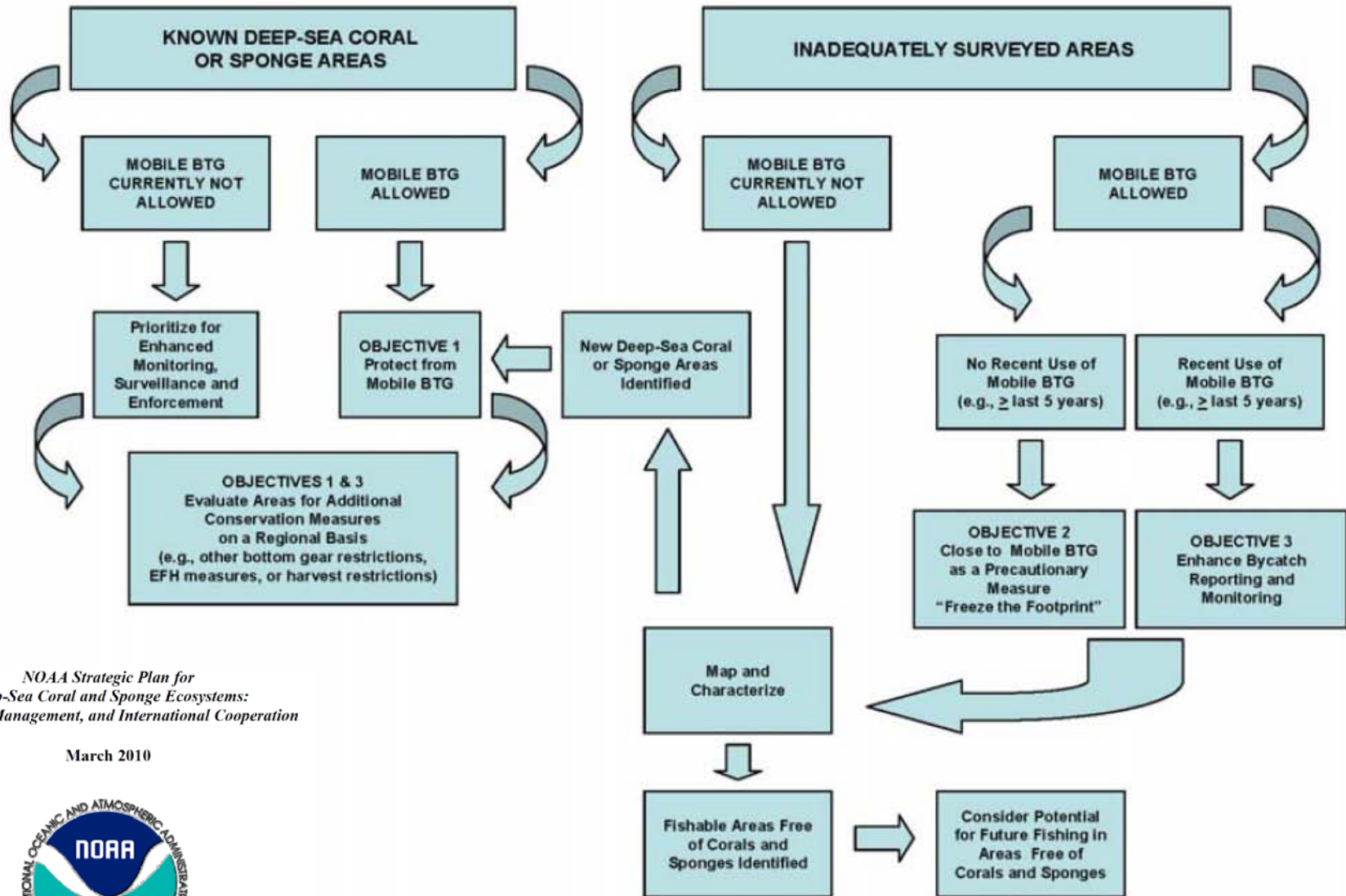


Biogenic habitat on Big Sur Bank.



**Figure 1. NOAA's precautionary approach to manage bottom-tending gear (BTG), especially mobile BTG and other adverse impacts of fishing on deep-sea coral and sponge ecosystems.**

## Approach to Manage Bottom-Tending Gear (BTG) Impacts



*NOAA Strategic Plan for  
Deep-Sea Coral and Sponge Ecosystems:  
Research, Management, and International Cooperation*

March 2010



# EFH Policy Objectives

- Minimize trawl footprint
- Prohibit trawling in sensitive habitats within footprint
- Adjust closures over time with new information
- Maintain/enhance economic viability of groundfish fishery



Courtesy Milton Love



Geoff Shester

# Role of EFH Committee

- Evaluate 2006 EFH measures
- Analyze and define recent trawl footprint
- Compile updated information on coral and sponge areas and seafloor mapping
- Review new studies on trawl impacts

# Evaluating Effectiveness of 2006 EFH Management Measures

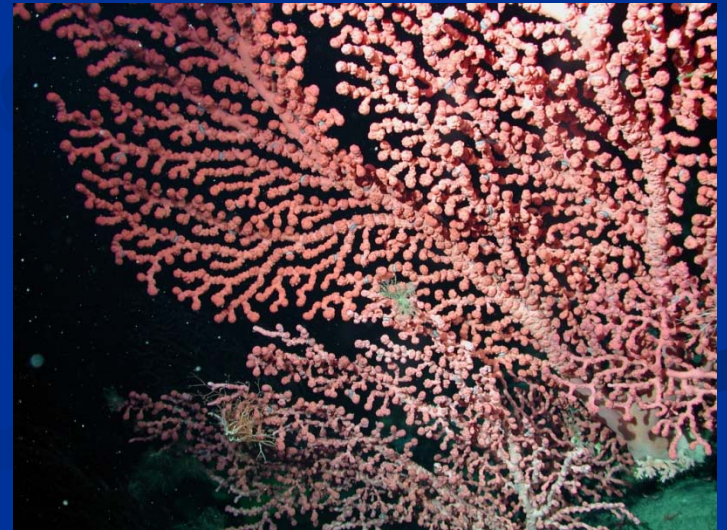
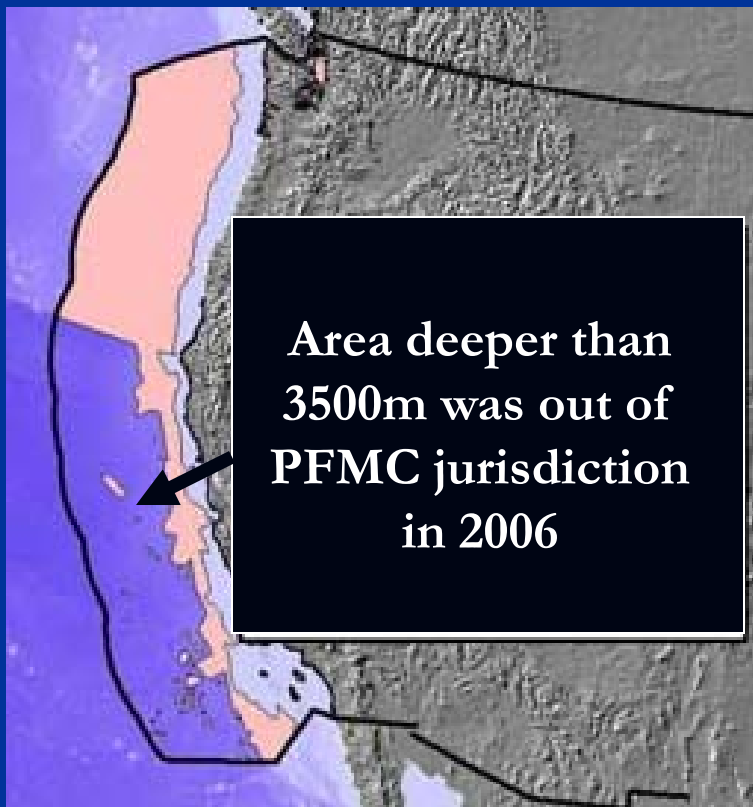
- Economic impacts of 2006 closures:
  - Evidence of decreased revenue or CPUE?
  - Increased fishing costs?
- Spatial extent of trawling before/after
  - Has trawling shifted to new areas?
- Compare coral/sponge bycatch before and after 2006 closures
  - Are there new bycatch hotspots?





# Revisions to Magnuson

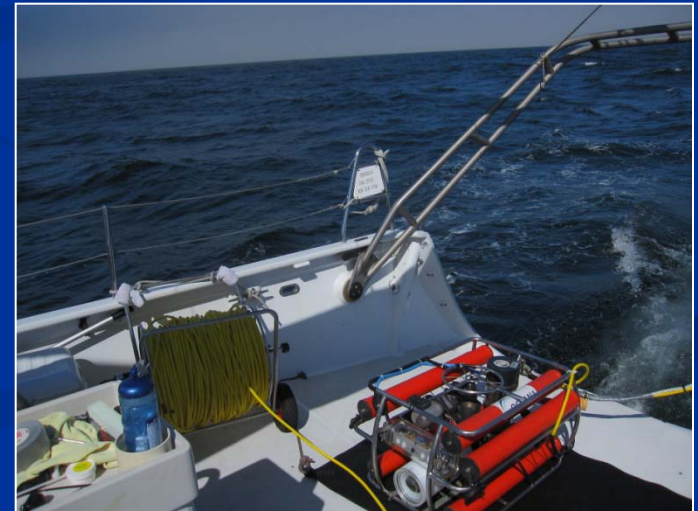
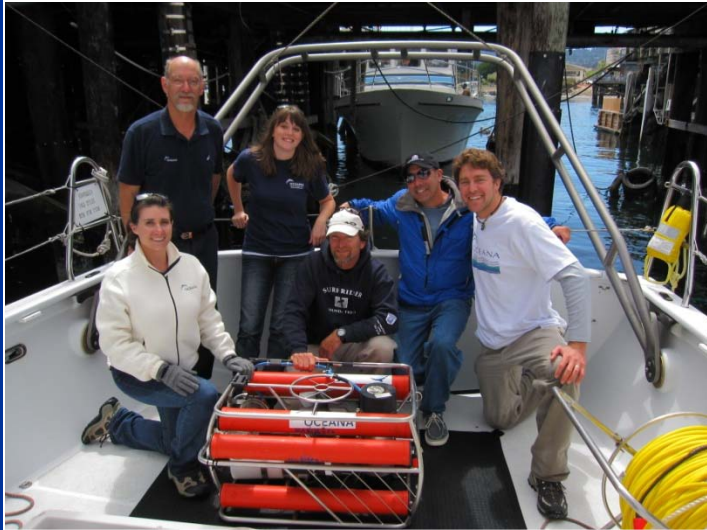
- MSA at Section 303(b)(2)(B).
- Council now has authority to close deep waters, as intended in the 2006 EFH Final Motion.



# Near-term Next Steps

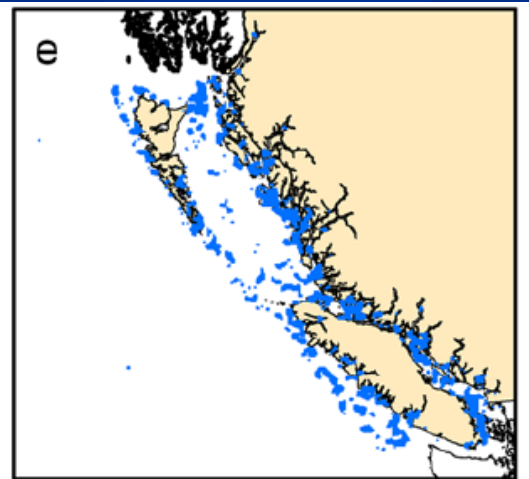
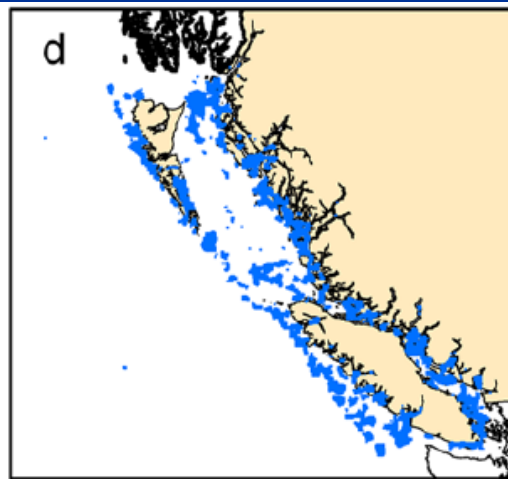
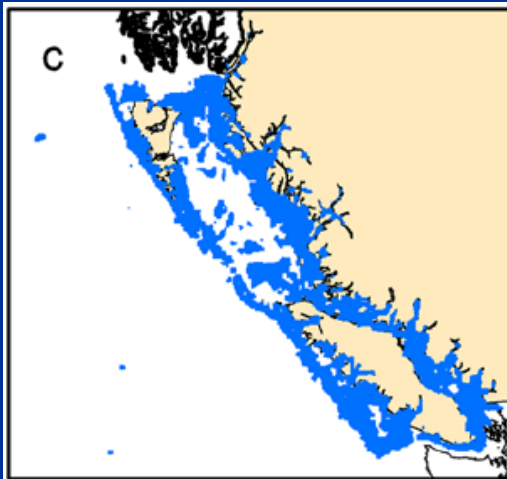
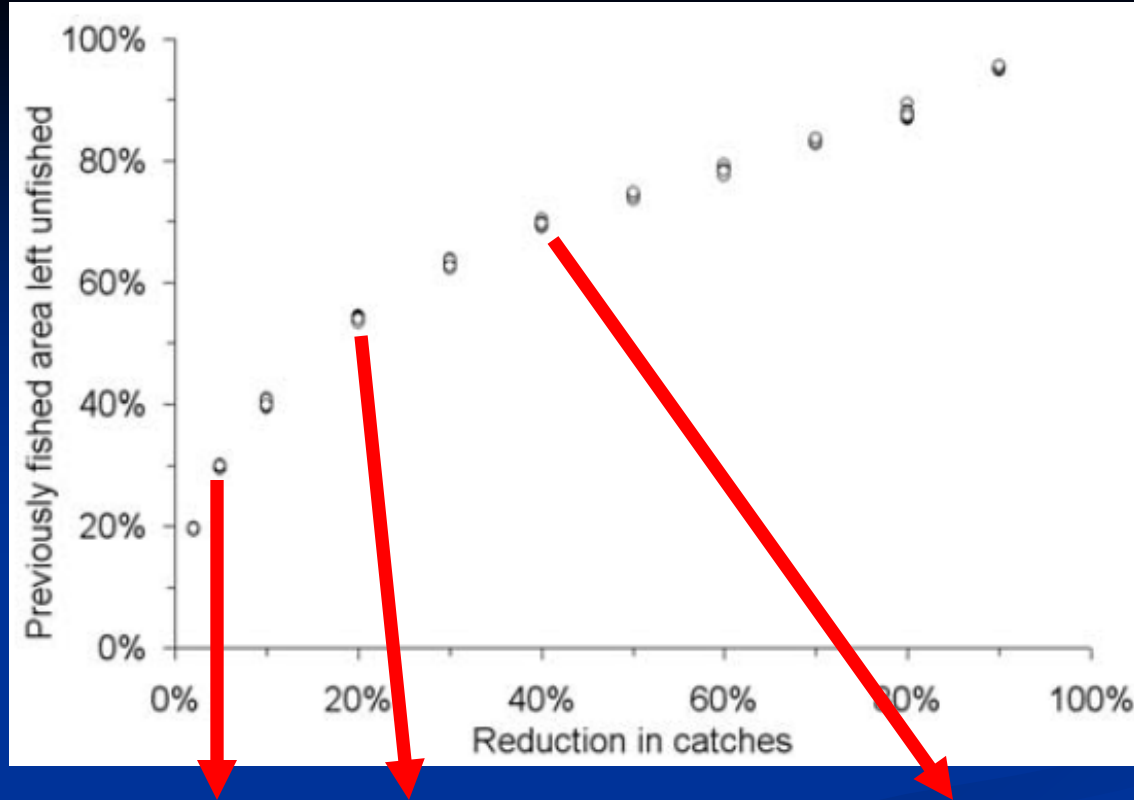
- Formal Data Request to Evaluate 2006 Closures
  - New trawl footprint
  - Observer data on coral/sponge bycatch
  - Catch data before/after closures
  - Seafloor habitat studies
- Updated literature review
- Craft proposal for revisions to EFH closures
- Obtain feedback from fishing community, tribes
- Submit and review at EFH Committee

# Oceana's ROV



# Minimize the Footprint

- Minimal area necessary to catch groundfish quotas
- Move toward “runway” approach
- Compare variability in footprint from year to year (how much flexibility/buffer is necessary)
- Many areas may not be necessary to maintain vibrant fishery



Ban NC, Vincent ACJ (2009) Beyond Marine Reserves: Exploring the Approach of Selecting Areas where Fishing Is Permitted, Rather than Prohibited.. PLoS ONE 4(7): e6258.

## CONSIDERATION OF INSEASON ADJUSTMENTS – PART I

Management measures for the 2010 groundfish season were set by the Council with the general understanding these measures would likely need to be adjusted throughout the biennial period to attain, but not exceed, the optimum yields. This agenda item will consider inseason adjustments to ongoing 2010 fisheries. Potential inseason adjustments include adjustments to Rockfish Conservation Area boundaries, adjustments to commercial and recreational catch limits, and are, in part, based on catch estimate revisions and the latest information from the West Coast Groundfish Observer Program.

The Groundfish Management Team and the Groundfish Advisory Subpanel will meet prior to this agenda item to discuss and recommend inseason adjustments to 2010 groundfish fisheries. The Council will consider this agenda item on Tuesday, September 14, 2010, and make recommendations as necessary. If further consideration of inseason adjustments is warranted, Agenda Item I.7, Consideration of Inseason Adjustments – Part II, is scheduled for Thursday, September 16, 2010.

### **Council Action:**

1. **Consider information on the status of 2010 fisheries and adopt preliminary or final (if possible) inseason adjustments as necessary.**

### **Reference Materials:**

1. None.

### **Agenda Order:**

- a. Agenda Item Overview
  - b. Reports and Comments of Advisory Bodies and Management Entities
  - c. Public Comment
  - d. **Council Action:** Adopt Preliminary or Final Recommendations for Adjustments to 2010 Groundfish Fisheries
- Kelly Ames**

PFMC  
08/31/10

ENFORCEMENT CONSULTANTS REPORT ON  
CONSIDERATION OF INSEASON ADJUSTMENTS – PART I

The Enforcement Consultants (EC) recommends that the request for recreational deepwater lingcod/yellowtail bubble fishing zones offshore of Depoe Bay not be considered. The EC does not support small open areas or bubble fisheries within the Recreational Rockfish Conservation Area. The two proposed areas are described as shipwrecks in 85 to 100 fathoms. There are significant enforcement challenges associated with monitoring very small open areas to ensure fishing does not occur within the extensive surrounding closures.

PFMC  
09/13/10



GROUND FISH ADVISORY SUBPANEL REPORT ON  
CONSIDERATION OF INSEASON ADJUSTMENTS - PART I

The Groundfish Advisory Subpanel (GAP) discussed inseason adjustments to 2010 groundfish fisheries with the Groundfish Management Team (GMT) and offers the following recommendations.

Limited Entry Non-Whiting Trawl Fisheries

The GAP recommends GMT Alternative 3 for limited entry trawl fisheries, which leaves the petrale cutouts open in period 6 and provides a slight increase in cumulative landing limits for healthy target species. The GAP notes that the GMT impact projections under Alternative 3 are within specified optimum yields (OYs) for petrale sole, other overfished species, and healthy target species. Closing the petrale cutouts in period 6 would greatly diminish petrale landings resulting in significant economic impacts to west coast fishing communities. The slight increase in bimonthly limits for the healthy species will provide some economic relief for depressed west coast fishing communities.

Conception Area Sablefish Fisheries

The GAP recommends GMT Alternative 2 for limited entry and open access fixed gear fisheries targeting sablefish in the Conception area (Limited Entry: weekly limit of 2,800 lbs; Open Access: weekly limit of 800 lbs and a monthly limit of 1,600 lbs). The GAP believes there is a need to decrease daily trip limits (DTL) in this fishery to prevent exceeding the OY.

The GAP strongly recommends a decrease in the Conception area limited entry and open access sablefish DTL limits for next year to reduce the risk of early OY attainment in 2011. With no direct effort control mechanism for the open access fishery, it is anticipated that the same increase in effort would occur given the DTL limits adopted in the 2011-12 specifications process. The Amendment 21 non-trawl allocation of Conception area sablefish will provide fewer opportunities for Conception area fixed gear fisheries, which underscores the need for lower sablefish limits. The GAP notes that the public comment period for the proposed biennial specifications regulations is open until the end of the month and recommends the Council provide comment to NMFS to modify the final regulations to implement lower Conception area DTL limits. The GAP recommends tasking the GMT at this meeting with an analysis of lower DTL limits so that explicit recommendations can be considered under the final inseason action (Agenda Item I.7) on Thursday.



## GROUND FISH MANAGEMENT TEAM REPORT ON CONSIDERATION OF INSEASON ADJUSTMENTS

The Groundfish Management Team (GMT) considered the most recent information on the status of ongoing fisheries and requests from industry and provides the following recommendations for 2010 inseason adjustments.

The GMT also received guidance from NMFS Northwest Region (NWR) regarding timing of implementation of inseason recommendations from this meeting. NMFS anticipates working to get any adjustments recommended by the Council as quickly as possible. Therefore, the GMT modeled for adjustments to fishery management measures beginning October 1, 2010.

### Research Catch Updates

#### *International Pacific Halibut Commission (IPHC)*

The IPHC research is finished and yelloweye rockfish catches were less than the scorecard projection from June 2010 (1.1 mt from the IPHC survey plus 0.2 mt from other research for a total of 1.3 mt). The total catch of yelloweye rockfish in the IPHC survey was only 0.3 mt. Therefore, the scorecard has been updated with total yelloweye rockfish research impacts of 0.5 mt, which includes 0.3 for IPHC and 0.2 mt for other research (NMFS trawl survey, etc).

### Recreational Fisheries

#### *Washington*

Estimates through July indicate that catches are tracking as expected. No changes to fishery management measures are recommended and no changes to the scorecard are proposed. I.e., the scorecard values for canary and yelloweye rockfish reflect the Washington portion of the shared Washington and Oregon recreational harvest guideline (HG).

#### *Oregon*

The Oregon Department of Fish and Wildlife (ODFW) took inseason action on July 23, 2010 restricting the recreational groundfish fishery to inside of 20 fathoms. Moving the fishery from inside 40 fathoms to inside 20 fathoms was intended to reduce the impact to yelloweye rockfish. Concurrent action was not taken by the Council because this action occurred between the June and September Council meetings.

Angler effort in the recreational groundfish fishery has continued to be high throughout the summer months. Angler trips through August in 2010 (2010 August data is preliminary and will not be finalized until early October) are up by over 9,400 trips (14 percent) from 2009 and 6,000 trip (10 percent) from 2008. Information received from ODFW Ocean Recreational Boat Survey (ORBS) samplers indicate that effort and catch for groundfish were low during Labor Day weekend, due to a combination of weather conditions, colder water off the Oregon coast causing the fish to be “off the bite”, and some opportunities for tuna and salmon. Angler effort, and associated impacts, for groundfish drops off greatly after Labor Day weekend in the Oregon

recreational groundfish fishery. The other source of yelloweye impacts in Oregon recreational fisheries is the halibut fishery. Angler trips for halibut in 2010 were also up (approximately 21 percent) over 2009. The central Oregon coast halibut seasons, nearshore and all-depth, are closed for the remainder of 2010, therefore there will be no further impacts from that fishery.

ODFW made an estimation of overfished species impacts (canary and yelloweye rockfish) on September 10, 2010 using finalized data through July, preliminary data through August, and approximations for Labor Day weekend based on discussions with ORBS samplers. Under status quo regulations, restricted to inside 20 fathoms for the remainder of the year, the Oregon recreational fishery yelloweye impacts are projected to be 2.8 mt, exceeding their 2.3 mt portion of the combined Washington/Oregon HG (4.9 mt). The yelloweye remainder in the scorecard with the Oregon recreational update and revised research impacts is 0.3 mt. The canary rockfish impacts are projected to be well below the 16.0 mt HG.

#### Request to Fish Seaward of the 20-fm Management Line in the Oregon Recreational Fishery

The GMT considered supplemental public comment requesting the opportunity to target lingcod and rockfish at specific sites deeper than 20-fm off the central Oregon coast (see Agenda Item I.2.c, Supplemental Public Comment, September 2010). Site-based recreational groundfish fishing opportunities seaward of management lines have not been analyzed through the biennial specifications process and are therefore not an available inseason option. **Therefore, the GMT recommends no site-based recreational groundfish fishing inside the RCA for the Oregon recreational groundfish fishery.**

#### *California*

Recreational catches in California are tracking as expected. No changes to fishery management measures are recommended. No changes to the scorecard are proposed.

#### Commercial Fisheries

##### *Limited Entry Whiting Trawl Fishery*

The GMT received an update on the Pacific whiting fishery from the NWR along with the latest whiting report (see [Preliminary Report 4](#)). The mothership fishery started May 15 and was closed on June 5 when the mothership whiting quota was attained. The shoreside season began on June 15 and has actively worked to avoid bycatch by implementing a series of voluntary stand downs. Catches of Pacific ocean perch are higher than preseason estimates (catch of 10.7 mt compared to 4.7 mt preseason projection); as such the scorecard has been updated to reflect a revised estimate based on the amount of whiting remaining (approximately 33 percent). Catcher-processors began fishing a few weeks ago and whiting catch rates are good and bycatch is low.

##### *Limited Entry Non-whiting Trawl Fishery*

Projections of 2010 fishing impacts were made for overfished and target species of the LE non-whiting trawl sector using the Trawl Bycatch Model (Hastie 2003). The model was run using historical landings, depth and geographic area information from fish tickets and logbook data from 2005 through 2009, as well as bycatch and discard rate estimates from the West Coast Groundfish Observer Program (WCGOP) from the same time period. The model was updated from the PacFIN Quota Species Monitoring system Best Estimate Report through Period 3, on August 18, 2010.

Projected impacts for modeled target species are currently beneath their respective trawl allocations or harvest guidelines, and rebuilding species are projected to be under their OYs in the current 2010 scorecard. Three alternative model runs are presented here for consideration, in order to explore a range of potential inseason management measures. Under Alternative 1 (A1), the No Action alternative (Table 1 and Table 2), Rockfish Conservation Area (RCA) boundaries and trip limits remain as they were adopted by the Council at the June 2010 meeting.

Under Alternative 2 (A2), the petrale sole cutouts are closed during Period 6, and the seaward RCA boundary is set at 200 fathoms, north of 40°10' N. latitude. Trip limits under A2 remain the same as in A1 (Table 3 and Table 4). Impacts to petrale sole, which is under a Point of Concern (POC) framework in 2010, and a rebuilding plan beginning in 2011, were reduced from 1,063 mt to 1,028 mt by closing the cutouts. Petrale sole move to deeper waters in November through February, with their highest densities between 175 and 200 fm, and historical landings during the winter months have increased substantially when there has been opportunity. Petrale sole trip limits were kept at 6,300 pounds per bimonthly period coast-wide, under all three alternatives presented here. Closing the petrale cutouts also reduced projected impacts to Pacific ocean perch (POP) by 9.5 mt, compared with A1, and reduced impacts to darkblotched rockfish by 29.8 mt. Widow rockfish projected impacts were also reduced.

Looking at the projected impacts under A1 and A2, one could make a case for additional fishing opportunity, for some species to more fully attain their respective OYs. To address this, cumulative bimonthly trip limits were increased for a number of species in Alternative 3 (A3), compared with A1, in order to demonstrate projected impacts of increasing fishing opportunity for periods 5 and 6 (Tables 5 and 6). For example, sablefish trip limits were raised from 21,000 pounds to 24,000 pounds with large/small footrope gear, and from 9,000 pounds to 10,000 pounds for selective trawl gear. Moderate increases were also made for longspine and shortspine thornyheads, Dover sole, arrowtooth flounder, "other flatfish", and slope rockfish in the North. Petrale sole trip limits were not changed from A1. The petrale cutouts are open under A3 in Period 6. Under A3, impacts on sablefish, longspine thornyheads, shortspine thornyheads, Dover sole, POP, and darkblotched rockfish were increased, as compared with A1 (Table 5 and 6). However, sufficient residuals exist in the scorecard to allow for these levels of rebuilding species catch.

With regard to increased darkblotched from a higher slope rockfish limit, the GMT discussed the concern that a higher limit may lead to some targeting. It is not possible with the model to predict the level that will induce targeting rather than just turning discard into landings, but there are numerous periods over the last five years where the limit has been 4,000 lbs/2 months (i.e., the model prediction of impacts should be fairly robust). The model predicts that at the proposed increase, when combined with all other impacts, the total take of darkblotched (218.8) in the scorecard will be within both the commercial harvest guideline of 288 mt and the 330 mt OY.

The GMT notes that A3 comes with both consideration of risk for the petrale sole rebuilding plan and of adequate fishing opportunity for the fleet during Period 6. The GAP requested that the petrale cutouts remain open for Period 6; they indicated that with them closed, there would be no access to petrale sole in December, particularly in the north. Bycatch data from the WCGOP indicate the highest densities of petrale sole are from 175 to 200 fm in Periods 1 and 6. In addition, it indicates substantial densities from 200 to 250 fm in those periods. However, those

data may be biased towards higher depths because of hauls predominantly progressing from deep to shallow, with the starting point of the haul recorded at the greatest depth.

The petrale sole OY is trawl dominant, and thus the risk of being too liberal with management measures, either by allowing too much access to winter spawning aggregations, or too high of trip limits would be toward exceeding the OY. Exceeding the OY could delay rebuilding, and incur lost revenue to fishermen, as well as if a new rebuilding plan is required, there is additional workload. Bycatch estimates for petrale sole trip limits this low exist only for one period in 2005, which is the oldest data year included in the trawl bycatch model; this data is weighted the lightest in calculating average bycatch rates, and is therefore the least informative to the model. Thus, the model is poorly informed about discard rates under low petrale trip limits, and could potentially underestimate petrale discard in a low trip limit situation such as the current one.

If leaving the cut outs open resulted in higher discards that exceed the OY and retard rebuilding, that would not be known until the observer data were available (generally two years later). By that time a new rebuilding plan would have been adopted, new ACLs set, and management measures designed without the benefit of that knowledge.

On the other hand, data from QSM of 2010 indicates that the model is slightly under-projecting petrale landings, compared with landings data from previous periods in 2010, and this suggests a possible additional buffer to that in the projected impacts tables, and a reduced risk of overage. The risk of being too conservative is to fail to attain the OY, resulting in a loss in potential revenue to the trawl fleet for the remainder of 2010.

Table 1. **Alternative 1, No Action** projected LE trawl impacts for 2010 (**petrale cutouts open in Period 6, status quo limits**) for management areas north and south of 40°10' N. latitude.

Species/Mgmt. group	North	South	Total	OY/HG/Al.	Total-HG	Total/HG
Canary	10.5	1.2	11.7			
<b>POP</b>	100.8	0.2	<b>100.9</b>			
<b>Darkblotched</b>	196.1	17.1	<b>213.2</b>			
Widow	8.0	6.3	14.3			
Bocaccio	1.4	20.6	22			
Yelloweye	0.2	0.0	0.3			
Cowcod	0.0	0.3	0.3			
<b>Sablefish N of 36° N. lat.</b>	2,451.3	341.2	<b>2,792.4</b>	<b>2,955</b>	-163	<b>94%</b>
Longspine N. of 34° 27' N. lat.	1,309.5	291.1	1,600.6	2,129	-528	75%
Shortspine N. of 34° 27' N. lat.	1,177.9	152.2	1,330.1	1,567	-237	85%
Dover	12,025.4	1,124.5	13,149.9	16,093	-2,943	82%
Arrowtooth	5,238.5	11.1	5,249.6	9,755	-4,505	54%
<b>Petrale</b>	875.3	188.1	<b>1,063.4</b>	<b>1,140</b>	-76	<b>93%</b>
Other flatfish	1,005.7	175.1	1,180.7	4,685	-3,504	25%
Slope rockfish	235.7	191.8		1,160/626		

Table 2. **Alternative 1, No Action** cumulative LE groundfish trawl trip limits and RCA boundaries, as adopted at the June, 2010 council meeting (**petrale cutouts open in Period 6**).

2-month period	RCA lines (fm)		2-month cumulative-poundage limits							
	shallow	deep	sable-fish	long-spine	short-spine	Dover sole	petrale sole	arrow-tooth	other flatfish	slope rockfish
<b>N. of 40°10' N lat.</b>										
Large/small footrope limits										
1	75	150	20,000	24,000	18,000	110,000	9,500	150,000	110,000	6,000
2	75	200	20,000	24,000	18,000	110,000	9,500	150,000	110,000	6,000
3	75	150/200	24,000	24,000	18,000	110,000	9,500	150,000	110,000	2,000
4	100	150/200	21,000	24,000	18,000	100,000	6,300	150,000	100,000	2,000
5	75	200	21,000	24,000	18,000	100,000	6,300	150,000	100,000	2,000
6	75	<b>200-pco</b>	21,000	24,000	18,000	100,000	6,300	150,000	100,000	2,000
Selective gear limits										
1	75	150	9,000	5,000	5,000	65,000	9,500	90,000	90,000	
2	75	200	9,000	5,000	5,000	65,000	9,500	90,000	60,000	
3	75	150/200	9,000	5,000	5,000	65,000	9,500	90,000	60,000	
4	100	150/200	9,000	5,000	5,000	65,000	6,300	90,000	60,000	
5	75	200	9,000	5,000	5,000	65,000	6,300	90,000	60,000	
6	75	<b>200-pco</b>	9,000	5,000	5,000	65,000	6,300	90,000	60,000	
<b>38° - 40°10' N lat.</b>										
1	100	150	22,000	24,000	18,000	110,000	9,500	10,000	110,000	15,000
2	100	150	22,000	24,000	18,000	110,000	9,500	10,000	110,000	15,000
3	100	150	22,000	24,000	18,000	110,000	9,500	10,000	110,000	15,000
4	100	150	21,000	24,000	18,000	100,000	6,300	10,000	100,000	15,000
5	100	150	21,000	24,000	18,000	100,000	6,300	10,000	100,000	15,000
6	100	150	21,000	24,000	18,000	100,000	6,300	10,000	100,000	15,000
<b>S. of 38° N lat.</b>										
1	100	150	22,000	24,000	18,000	110,000	9,500	10,000	110,000	55,000
2	100	150	22,000	24,000	18,000	110,000	9,500	10,000	110,000	55,000
3	100	150	22,000	24,000	18,000	110,000	9,500	10,000	110,000	55,000
4	100	150	21,000	24,000	18,000	100,000	6,300	10,000	100,000	55,000
5	100	150	21,000	24,000	18,000	100,000	6,300	10,000	100,000	55,000
6	100	150	21,000	24,000	18,000	100,000	6,300	10,000	100,000	55,000

Note: “**200-pco**” denotes the modified 200 fm seaward RCA with **petrale cutouts open**.

Chilipepper rockfish trip limit = 17,000 pounds/2 months.

Table 3. **Alternative 2**, projected LE trawl impacts for 2010, (**petrale cutouts closed**). Trip limit structure is the same as Alternative 1 (No Action) for management areas north and south of 40°10' N. latitude.

Species/Mgmt. group	North	South	Total	OY/HG/AI.	Total-HG	Total/HG
Canary	10.4	1.2	11.7			
<b>POP</b>	91.1	0.2	<b>91.3</b>			
<b>Darkblotched</b>	166.3	17.1	<b>183.4</b>			
Widow	6.8	6.3	13.1			
Bocaccio	1.3	20.6	21.9			
Yelloweye	0.2	0.0	0.2			
Cowcod	0.0	0.3	0.3			
<b>Sablefish N of 36° N. lat.</b>	2,443.2	341.2	<b>2,784.4</b>	<b>2,955</b>	-171	<b>94%</b>
Longspine N. of 34° 27' N. lat.	1,309.1	291.1	1,600.2	2,129	-529	75%
Shortspine N. of 34° 27' N. lat.	1,172.8	152.2	1,325.0	1,567	-242	85%
Dover	11,984.6	1,124.5	13,109.1	16,093	-2,984	81%
Arrowtooth	5,184.1	11.1	5,195.2	9,755	-4,560	53%
<b>Petrale</b>	840.1	188.1	<b>1,028.2</b>	<b>1,140</b>	-111	<b>90%</b>
Other flatfish	998.2	175.1	1,173.2	4,685	-3,512	25%
Slope rockfish	232.6	191.8		1,160/626		

Table 4. **Alternative 2**, LE groundfish trawl RCA boundaries for north of 40° 10' N. latitude during Period 6. Trip limit structure is the same as Alternative 1 (No Action). In the table, “200” denotes that the seaward RCA boundary is at 200 fm, with the **petrale cutouts closed in Period 6**, for this alternative.

2-month Period	RCA lines (fm)	
	shallow	deep
1	75	150
2	75	200
3	75	150/200
4	100	150/200
5	75	200
6	75	<b>200</b>

Table 5. **Alternative 3**, projected LE trawl impacts for 2010, under optional trip limit and RCA structure, **(increased non-petrale limits, petrale cutouts open in Period 6)**.

Pref Alt Species/Mgmt. group	North	South	Total	OY/HG/Al.	Total-HG	Total/HG
Canary	10.7	1.2	11.9			
<b>POP</b>	102.9	0.2	<b>103.1</b>			
<b>Darkblotched</b>	201.3	17.5	<b>218.8</b>			
Widow	8.1	6.3	14.4			
Bocaccio	1.4	21	22.4			
Yelloweye	0.2	0.0	0.3			
Cowcod	0.0	0.3	0.3			
<b>Sablefish N of 36° N. lat.</b>	2,535	355	<b>2,890</b>	<b>2,955</b>	-65	<b>98%</b>
Longspine N. of 34° 27' N. lat.	1,330	291	1,621	2,129	-508	76%
Shortspine N. of 34° 27' N. lat.	1,221	158	1,380	1,567	-187	88%
Dover	12,422	1,168	13,590	16,093	-2,503	84%
Arrowtooth	5,239	11	5,250	9,755	-4,505	54%
<b>Petrale</b>	875	188	<b>1,063</b>	<b>1,140</b>	-76	<b>93%</b>
Other flatfish	1,006	175	1,181	4,685	-3,504	25%
Slope rockfish	236	192	428	1160/626		



Table 6. **Alternative 3**, potential LE trawl cumulative trip limits and RCA structure, (**increased non-petrale limits, petrale cutouts open in Period 6**).

2-month period	RCA lines (fm)		2-month cumulative-poundage limits							
	shallow	deep	sable-fish	long-spine	short-spine	Dover sole	petrale sole	arrow-tooth	other flatfish	slope rockfish
<b>N. of 40°10' N lat.</b>										
Large/small footrope limits										
1	75	150	20,000	24,000	18,000	110,000	9,500	150,000	110,000	6,000
2	75	200	20,000	24,000	18,000	110,000	9,500	150,000	110,000	6,000
3	75	150/200	24,000	24,000	18,000	110,000	9,500	150,000	110,000	2,000
4	100	150/200	21,000	24,000	18,000	100,000	6,300	150,000	100,000	2,000
5	75	200	24,000	26,000	20,000	110,000	6,300	180,000	110,000	4,000
6	75	<b>200-pco</b>	24,000	26,000	20,000	110,000	6,300	180,000	110,000	4,000
Selective gear limits										
1	75	150	9,000	5,000	5,000	65,000	9,500	90,000	90,000	
2	75	200	9,000	5,000	5,000	65,000	9,500	90,000	60,000	
3	75	150/200	9,000	5,000	5,000	65,000	9,500	90,000	60,000	
4	100	150/200	9,000	5,000	5,000	65,000	6,300	90,000	60,000	
5	75	200	10,000	5,500	5,500	70,000	6,300	100,000	70,000	
6	75	<b>200-pco</b>	10,000	5,500	5,500	70,000	6,300	100,000	70,000	
<b>38° - 40°10' N lat.</b>										
1	100	150	22,000	24,000	18,000	110,000	9,500	10,000	110,000	15,000
2	100	150	22,000	24,000	18,000	110,000	9,500	10,000	110,000	15,000
3	100	150	22,000	24,000	18,000	110,000	9,500	10,000	110,000	15,000
4	100	150	21,000	24,000	18,000	100,000	6,300	10,000	100,000	15,000
5	100	150	24,000	26,000	20,000	110,000	6,300	12,000	110,000	15,000
6	100	150	24,000	26,000	20,000	110,000	6,300	12,000	110,000	15,000
<b>S. of 38° N lat.</b>										
1	100	150	22,000	24,000	18,000	110,000	9,500	10,000	110,000	55,000
2	100	150	22,000	24,000	18,000	110,000	9,500	10,000	110,000	55,000
3	100	150	22,000	24,000	18,000	110,000	9,500	10,000	110,000	55,000
4	100	150	21,000	24,000	18,000	100,000	6,300	10,000	100,000	55,000
5	100	150	24,000	26,000	20,000	110,000	6,300	12,000	110,000	55,000
6	100	150	24,000	26,000	20,000	110,000	6,300	12,000	110,000	55,000

Note: “**200-pco**” denotes the modified 200 fm seaward RCA with **petrale cutouts open**.

Chilipepper rockfish trip limit = 17,000 pounds/2 months.

*Sablefish Limited Entry and Open Access Daily Trip Limit (DTL) Fisheries South of 36° N. lat.*

Landings data through July 31, 2010 indicate that LE and OA DTL removals for Conception Area sablefish (south of 36° N. lat) are higher than previous years (Table 7, Figure 1). Without inseason action, catches are expected to exceed the 2010 sablefish OY for south of 36° N. lat. of 1,258 mt. Under the same trip limit structure in 2009, only 54 percent of the Conception Area OY was attained (

Table 7, Figure 1). Favorable weather conditions early in the year in Morro Bay, combined with a greater number open access vessels in that area at the beginning of 2010, contributed to higher landings in January through March. Landings decreased in the open access sector from March through July, due mostly to poor weather conditions in Morro Bay. Had weather conditions been

more favorable it is reasonable to expect open access landings would have been higher. Although some limited entry vessels operate in Morro Bay, the majority of the fleet operates south of Point Conception (34°27' N lat) where they are less affected by weather. As such, limited entry landings, although higher in 2010, have remained fairly consistent and have not varied like the open access sector.

Table 7. Limited entry and open access landings in 2009 and 2010.

2009	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
LE	3.7	4.7	14.5	12.5	15.8	30.5	30.3	41.0	39.3	36.4	36.8	42.1	<b>307.6</b>
OA	7.4	5.0	10.8	19.4	36.3	27.2	36.2	35.2	38.4	54.4	89.1	78.0	<b>437.6</b>
Total	11.1	9.8	25.4	32.0	52.1	57.7	66.5	76.3	77.7	90.7	126.0	120.1	<b>745.2</b>

2010	Jan	Feb	Mar	Apr	May	Jun	Jul
LE	6.5	9.4	17.7	15.8	34.4	34.5	52.7
OA	31.1	39.8	51.0	36.1	43.5	46.3	23.4
Total	37.7	49.2	68.7	51.9	77.9	80.8	76.1

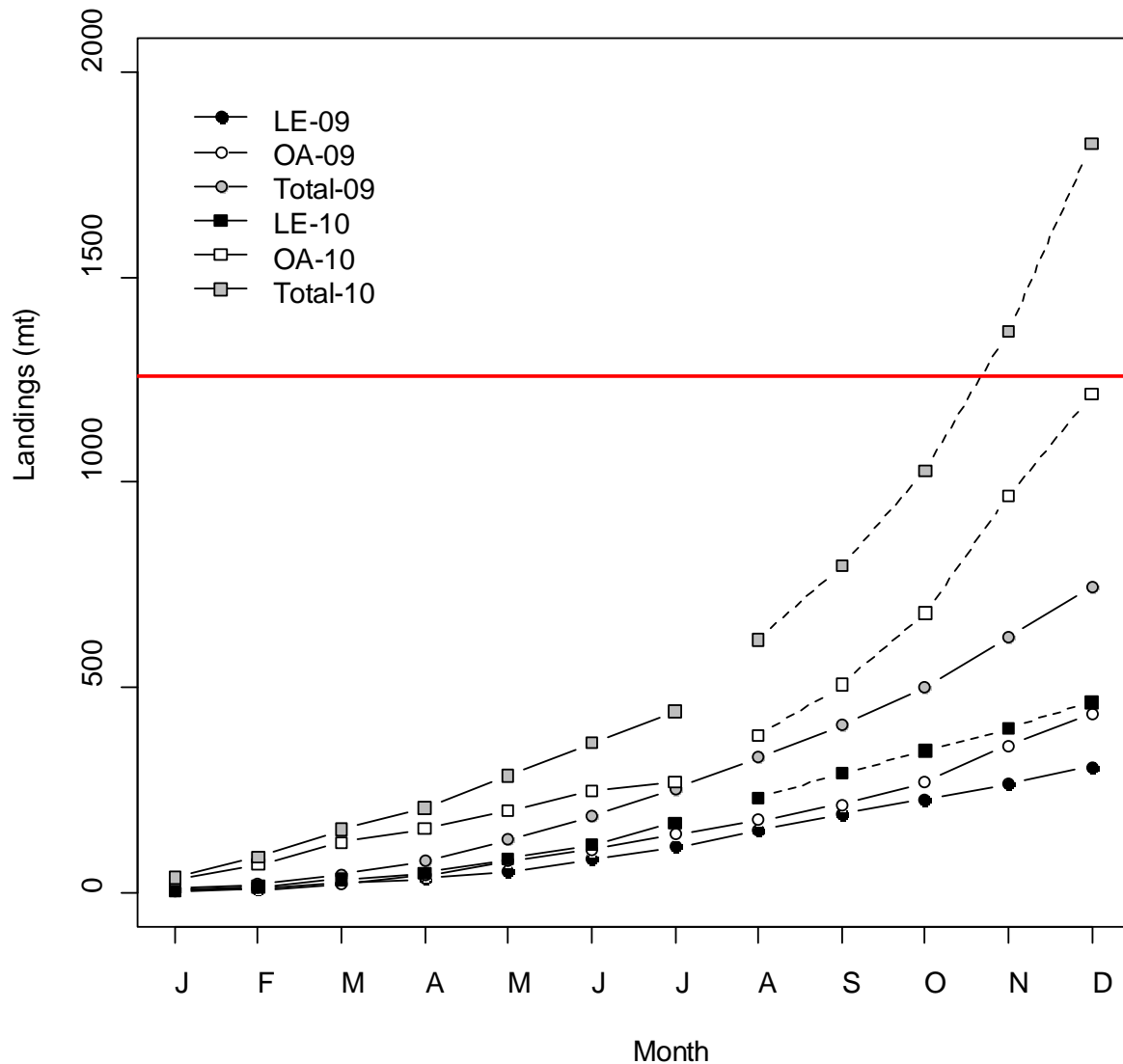


Figure 1. Limited entry and open access landings in 2009 and 2010 (straight line at top of figure represents the Conception Area OY)

In general, participation in the open access sector is highly variable and difficult to predict. Industry sources indicate that the open access fishery started out 2010 with a higher level of vessel participation which has further increased as a result of the higher September 2010 trip limits. These new vessels include both vessels that shifted effort south and new entrants from other fisheries.

On September 1, 2010 trip limits were previously scheduled to increase for both the limited entry and open access sectors based on inseason action taken in June 2009. Action was taken in June 2009 to address lower than anticipated removals. At the June 2010 Council meeting the GMT

did not investigate modifications to scheduled trip limits for this fishery, due in part to workload at that meeting and lack of new fishery data. Catch data from January through March were available at that time, but would have been insufficient to inform if there was need for inseason changes, and what magnitude of changes may be necessary. As such, the automatic trip limit adjustments from 2009 again went into effect on September 1, 2010.

### **Projected Total Landings for remainder of 2010, using 2009 as a proxy**

In order to project total fleet landings for the remainder of 2010, the GMT used 2009 landings as a proxy. The same trip limits (both LE and OA sectors) were in place in 2009 as have been in place to date in 2010. The average of monthly LE landings from January through July in 2010 was 1.6 times greater than they were in 2009. Landings in the OA fishery were 3.2 times higher over the same period. To project landings from August through December, the GMT used 2009 landings from the same time period and applied multipliers of 1.6 and 3.2 for the LE and OA fisheries respectively (Table 8).

The GMT notes that the Morro Bay/Port San Luis EFP is currently underway in this area, with a total sablefish catch limit of 300 mt. The Nature Conservancy has indicated that as of September 2, 2010, 145 mt of sablefish is still remaining in this EFP. In projecting 2010 sablefish landings, the GMT assumed full attainment of the sablefish catch limit for this EFP (300 mt).

Using this method, and without inseason adjustments, the Conception Area is projected to exceed the 2010 sablefish OY by 567 mt (Table 9). The GMT notes that this value may be an underestimate since it is difficult to verify the number of vessels participating in the open access fishery, especially given the current change in trip limits for the rest of the year.

Table 8. Landings by fleet from January through July and projected August-December 2010 landings based on comparisons to 2009.

2010	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Sub-Total
LE	6.5	9.4	17.7	15.8	34.4	34.5	52.7	61.6	58.9	54.6	55.2	63.1	464.3
OA	31.1	39.8	51.0	36.1	43.5	46.3	23.4	112.7	123.0	174.0	285.3	249.7	1,216.1

Table 9. Summary of projected landings for 2010 (mt).

Sub-total of landings	1,680
remaining EFP	145
Total projected landings	1,825
2010 OY	1,258
<b>Overage</b>	<b>-567</b>

### **Reducing trip limits in both the LE and the OA fishery**

Landings of sablefish in the Conception Area are estimated to be 442 mt through July 31, 2010. The OY for the area is 1,258 mt. This leaves 671 mt for the OA and LE fisheries, after subtracting 145 mt of remaining EFP catch. Catch data from 2006-2009 indicate that the OA fishery landed approximately 60 percent of sablefish in the Conception area, with the remaining

40 percent landed by LE vessels. If trip limits for the LE fishery were reduced from 3,000 lbs per week to 2,800 lbs per week from October through December 2010, the LE fishery is projected to take 300 mt from August through the end of the year. An OA trip limit of 800 lbs per week, up to a maximum of 1,600 lbs per month effective October 1, 2010 could allow for an opportunity throughout the remainder of the year. If all of the GMT's assumptions are met this would result in full attainment of the OY (Table 10).

This alternative assumes that 70 vessels will continue to participate in the Conception area OA sablefish fishery and land 1,600 lbs per month (the proposed maximum). The GMT emphasizes that estimated landings (250 mt) and effort (in number of boats) by the southern OA fishery for August and September are considerably uncertain.

Table 10. Summary of Alternative 2 projected sablefish impacts.

Sub-total of landings	1,113
remaining EFP	145
Total projected landings	1,258
2010 OY	1,258
<b>Residual</b>	<b>0</b>

*Sablefish Daily Trip Limit (DTL) Fisheries North of 36° N. lat.*

LIMITED ENTRY

Landings data through July 31, 2010 indicate that catches in the Limited Entry Fixed Gear Sablefish Daily Trip Limit fishery (LEFG-DTL) are higher than previous years (Figure 2**Error! Reference source not found.**). This is a result of recent attempts to better predict landings for this fishery using a trip-limit based model (see Agenda Item G.4.b, Supplemental GMT Report, November 2009). Indeed, landings through July 2010 (138 mt) are 33 percent higher than observed through July 2009 (104 mt). A 33 percent increase over 2009 landings would ultimately under-harvest the 2010 annual allocation by 55 mt (88 percent of the allocation would be landed during 2010 under this assumption). However, a significant increase in the bimonthly trip limit was recommended at June 2010 PFMC meeting (from 7,000 lbs/two months to 8,500 lbs/two months; Agenda Item B.5.b, Supplemental GMT Report 2, June 2010). Furthermore, this recommended increase only recently became effective on August 18, 2010 (National Marine Fisheries Service Public Notice, NMFS-SEA-10-12b, August 20, 2010). Therefore, because this fishery is tracking faster than before and the recent trip limit increase has been effective for only approximately three weeks, **the GMT does not recommend changing current trip limits for the LEFG-DTL sablefish fishery for periods 5 and 6.**

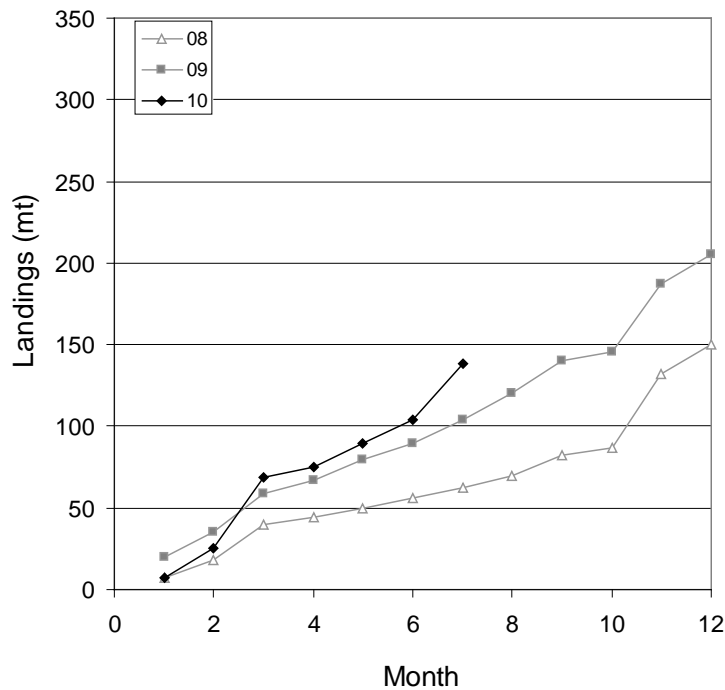


Figure 2. Monthly landings (mt) of sablefish for the Limited Entry Fixed Gear Sablefish DTL fishery north of 36° N latitude for 2008, 2009 and 2010. Data shown for 2010 are only through July 31.

#### OPEN ACCESS

Landings data through July 31, 2010 indicate that catches for the open access sablefish DTL fishery north of 36° N. lat. are approximately 28 percent below the pace required for reaching its allocation of 529 mt for 2010 (Figure 3). Note that trip limits were unchanged between 2009 and 2010 (to date) and the 529 mt of sablefish that were landed by the open access sablefish fishery in 2009 is equal to the 2010 allocation for this fishery (Table 1). Assuming this open access sablefish fishery under-harvests its annual allocation by 28 percent, then we project that a total of 381 mt will be landed by December 31, 2010. This would leave approximately 148 mt of sablefish left unharvested by this fishery.

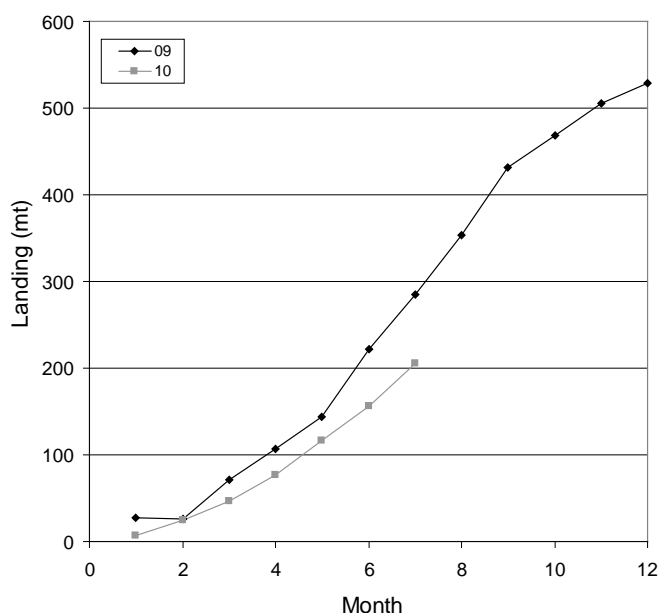


Figure 3. Monthly landings (mt) of sablefish for the Open Access Sablefish DTL fishery north of 36° N latitude for 2009 and 2010. Data shown for 2010 are only through July 31.

Increasing the trip limit for this open access fishery can be risky, because potential effort (number of boats fishing) is not capped. The unpredictable nature of this fishery is made apparent by comparing annual landings with annual allocations (Table 11). Landings have exceeded the annual allocation for open access sablefish fishery north of 36° N. lat. for three of the past six years. Most contrast was demonstrated between 2004 and 2005, when the allocation was almost identical (627 – 629 mt). The allocation was under-harvested in 2004 by 27 percent whereas it was overharvested in 2005 by 44 percent.

Table 11. Open Access Sablefish DTL allocation, catch, and proportion of allocation for 2004 – 2009 north of 36° N. lat.

Year	Allocation (mt)	Landings (mt)	Proportion of Allocation
2004	629	458	0.73
2005	627	904	1.44
2006	613	698	1.14
2007	484	365	0.75
2008	484	491	1.01
2009	578	529	0.92
2010	529	.	.

The GMT notes that the OA DTL fisheries north and south of 36° N. latitude are not independent. Indeed, a likely reason that the northern OA DTL fishery is tracking low and the southern OA DTL fishery is tracking high relative to 2009 (see discussion above) is a shift in effort of open access boats from north to south and new entrants in the southern fishery. Indeed, effort for the northern fishery was 23 percent – 30 percent lower during Periods 1 and 2 of 2010 relative to 2009. Under this scenario, it is clear that effort could easily shift again from south to north if the southern fishery becomes constrained relative to status quo, especially if the southern OA DTL fishery is closed.

The GMT recently updated a model that will help predict landings of sablefish for this open access sablefish fishery (see Appendix A, Description of Projection Models, 2011-2012 Groundfish Harvest Specifications, Draft Environmental Impact Statement). This model was used to predict landings for periods 5 and 6 of 2010. We projected that the landings through August 31, 2010 would be 72 percent of that observed through August 31, 2009 (see above), or 255 mt. If no changes are made to trip limits for this fishery, then the model predicts 456 mt will be landed by December 31, 2010 (86 percent of the allocation). Considering the potential for a shift in effort back to the north, we modeled the potential impact of a shift in effort of thirty vessels from the south the north (beginning October 1, 2010); this increase in effort is predicted to result in total landings of 499 mt through December 31, 2010, or 94 percent of the allocation. Based on these results, **the GMT does not recommend changing current trip limits for the OA DTL sablefish fishery north of 36° N. latitude for periods 5 and 6.**

#### GMT Recommendations

1. For non-whiting LE trawl, adopt cumulative limit increases for sablefish, longspine thornyhead, shortspine thornyhead, Dover sole, arrowtooth flounder, Other Flatfish, and slope rockfish (including darkblotched) as described in Alternative 3.
2. Consider whether to leave petrale cut outs open in Period 6.
3. Adopt lower sablefish DTL limits for both LE (2,800 lbs/week with no daily limit) and OA (800 lbs/week not to exceed 1,600 lbs/month) fisheries South of 36° N lat.



**Projected mortality impacts (mt) of overfished groundfish species for 2010 updated based on updated research and latest bottom trawl, Pacific whiting, and Oregon recreational data under No Action.**

Fishery	Bocaccio b/	Canary	Cowcod	Dkbl g/	POP	Widow	Yelloweye
Limited Entry Trawl - Non-whiting	25.1	11.7	0.3	213.2	100.9	14.3	0.3
Limited Entry Trawl - Whiting							
At-sea whiting motherships a/		3.3		6.0	0.5	67.0	0.0
At-sea whiting cat-proc a/		4.8		8.5	0.5	95.0	0.0
Shoreside whiting a/		5.9		10.5	16.5	117.0	0.0
Tribal whiting		4.3		0.0	7.2	5.0	0.0
Tribal							
Midwater Trawl		3.6		0.0	0.0	40.0	0.0
Bottom Trawl		0.8		0.0	3.7	0.0	0.0
Troll		0.5		0.0	0.0		0.0
Fixed gear		0.3		0.0	0.0	0.0	2.3
Fixed Gear Sablefish	0.0	2.5	0.0	4.5	0.4	0.0	0.9
Fixed Gear Nearshore	0.3	3.6	0.0	0.0	0.0	0.3	1.1
Fixed Gear Other	5.0	0.0	0.0	9.0	0.0	0.7	0.0
Open Access: Incidental Groundfish	0.8	1.7	0.0	15.0	0.0	3.3	0.3
Recreational Groundfish e/							
WA		20.9					5.4
OR						1.0	
CA	67.3	22.9	0.3			6.2	2.7
EFPs	11.0	1.3	0.2	1.5	0.1	11.0	0.2
Research: Includes NMFS trawl shelf-slope surveys, the IPHC halibut survey, and expected impacts from SRPs and LOAs.							
	2.0	4.5	0.2	2.0	2.0	5.7	0.5
TOTAL	111.5	92.5	1.0	270.2	131.8	366.5	13.7
2010 OY f/	288	105	4.0	330	200	509	14
Difference	176.5	12.5	3.0	59.8	68.2	142.5	0.3
Percent of OY	38.7%	88.1%	25.0%	81.9%	65.9%	72.0%	97.9%
Key		= either not applicable; trace amount (<0.01 mt); or not reported in available data sources.					
a/ Non-tribal whiting values for canary, darkblotched, and widow reflect bycatch limits for the non-tribal whiting sectors. All other species' impacts are projected from the GMT's whiting impact projection model. The Council may elect to change these bycatch limits when setting final whiting management measures in March 2010 or under any inseason action at any of their future meetings.							
b/ South of 40°10' N. lat.							
e/ For California, values in scorecard represent projected impacts for all species except canary and yelloweye rockfish, which are the prescribed harvest guidelines. For Washington and Oregon, the canary value represents the HG. For yelloweye, the value represents projected impacts for the Oregon fishery (2.8 mt) under no action and the Washington share of the HG (2.6 mt).							
f/ 2009 and 2010 OYs are the same except for darkblotched (291 mt in 2010), POP (200 mt in 2010), and widow (509 mt in 2010).							
g/ Regulations specify a commercial harvest guideline of 288 mt (see 75FR39178)							

PFMC  
09/14/10

----- Original Message -----

**Subject:** yelloweye rockfish ,depoe bay boats deepwater lingcod bubble fishing zone

**Date:** Thu, 02 Sep 2010 08:15:41 -0700

**From:** Lars Robison <[lars@broadstripe.net](mailto:lars@broadstripe.net)>

**To:** [pfmc.comments@noaa.gov](mailto:pfmc.comments@noaa.gov)

My request is to allow fishing for ling cod and yellowtail rock fish near a wreck that is located 11 miles west of depoe bay in 85 fathoms of water. My charterboats are all rigged with devices to send yelloweye back to depth and release them. our previous trips to this wreck have been very profitable due to the ling cod catch there, yellow tail rockfish are also caught there. I am asking for a bubble fishery type thing .allowing 2 ling cod, 7 rockfish and that all participants carry a device to send any yelloweye caught back to depth. this is not a rocky area, it is a shipwreck known as the tugboat located at 44.54' 80 north, 124.19' west. this area if allowed to fish it is usually not too heavily fished due to winter weather, but definatly is important to us financially. our coho salmon season will close early this year with no chinook either. there is another area that is within 5 miles of this spot at 44.56 north and 124.20 west that is a small area known as the processor another ship wreck site 100 fathoms deep. Bycatch of yelloweye for this type of fishery would be very small due to weather and time of year  
thankyou , Lars Robison , Dockside Charters Depoe Bay, oregon phone 541 921 0414

## PRELIMINARY REVIEW OF EXEMPTED FISHING PERMITS (EFPs) FOR 2011

Exempted fishing permits (EFPs) provide a process for testing innovative fishing gears and strategies to substantiate methods for prosecuting sustainable and risk-averse fishing opportunities. Applications for EFPs proposed for 2011 are provided as Agenda Item I.3.a, Attachments 1 and 2.

The first proposed EFP is one sponsored by the Oregon Department of Fish and Wildlife that seeks to collect biological data from yelloweye rockfish encountered in the Oregon sport charter fishery (Attachment 1). The second proposed EFP is one sponsored by Mr. Steve Fosmark that seeks to test the ability of trolled longline gear to selectively harvest chilipepper rockfish in waters off central California (Attachment 2). The Nature Conservancy, in collaboration with the ports of Morro Bay and Port San Luis and others, have provided a report on the implementation of their 2009 EFP testing the efficacy of a community fishing association in Attachment 3. A report of the 2009 Oregon Recreational Yellowtail Rockfish EFP is provided in Attachment 4.

Under this agenda item, the Council should review these EFP applications, consider public and advisory body comments, and consider moving the 2011 EFP applications forward for public review. Any recommended modifications to these EFP applications will be communicated to the EFP sponsors and the public. The Council is scheduled to decide their final recommendations for 2011 EFPs at the November meeting in Costa Mesa, California.

### **Council Action:**

**Consider EFP applications for 2011 and provide preliminary recommendations for public review.**

### **Reference Materials:**

1. Agenda Item I.3.a, Attachment 1: Application to the Pacific Fishery Management Council (PFMC) for an Exempted Fishing Permit (EFP) to collect biological information from yelloweye rockfish encountered in the Oregon sport charter fishery.
2. Agenda Item I.3.a, Attachment 2: Exempted Fishing Permit – Trolled Longline for Chilipepper Rockfish.
3. Agenda Item I.3.a, Attachment 3: Morro Bay/Port San Luis Exempted Fishing Permit: Progress Report for the Pacific Fishery Management Council.
4. Agenda Item I.3.a, Attachment 4: Oregon Recreational Yellowtail Rockfish EFP 2009 Activities Report.

### **Agenda Order:**

- a. Agenda Item Overview
- b. Reports and Comments of Advisory Bodies and Management Entities
- c. Public Comment
- d. **Council Action:** Adopt Preliminary Recommendations for EFPs

**John DeVore**

**Application to the Pacific Fishery Management Council (PFMC) for an Exempted Fishing Permit (EFP) to collect biological information from yelloweye rockfish encountered in the Oregon sport charter fishery.**

**Date of Application**

8/25/2010

**Applicants**

Oregon Department of Fish and Wildlife  
Marine Resources Program  
2040 SE Marine Science Drive  
Newport, OR 97365

Contact: Troy Buell  
541-867-0300 x225

**Statement of purpose and goals**

The purpose of this EFP is to improve the quantitative assessment of U.S. west coast yelloweye rockfish stocks by collecting biological information such as length, weight, age, sex, and maturity from yelloweye rockfish encountered in Oregon's recreational groundfish fishery. This will be achieved by allowing a select group of Oregon charter vessels to retain a limited number of yelloweye rockfish while conducting groundfish trips under the current regulatory structure. The retained yelloweye rockfish will be surrendered to an Oregon Department of Fish and Wildlife (ODFW) biologist at the point of landing for biological sampling. Yelloweye rockfish will be donated to food share programs after data collection whenever possible.

This EFP application is similar to an application initially submitted by ODFW in June 2009 (Agenda Item E.8, Attachment 8, June 2009), and approved by the PFMC in September 2009 for the 2010 recreational groundfish season. However, the National Marine Fisheries Service (NMFS) has not issued the actual permits for 2010 as of August 20, 2010, due to increased workload associated with the implementation of the trawl rationalization program. Due to the seasonal nature of the fishery, if permits are issued at this late date it is unlikely that sampling will be successful in 2010.

If the project is successful in 2011, data collections maybe expanded to include samples from the commercial nearshore fishery.

**Justification for EFP**

Bycatch of overfished yelloweye rockfish currently constrains utilization of healthy groundfish stocks in many U.S. west coast fisheries, including recreational, commercial fixed gear, and shelf trawl fisheries. It is anticipated that ACLs will remain relatively low for the foreseeable future, and that as the stock recovers fishery encounter rates will increase leading to additional constraints in these and other fisheries. Retention of yelloweye rockfish has been prohibited in most fisheries since 2004, which has extremely limited the catch-at-age data available for this important species. Considering the lack of

any fishery independent survey that is adequate for indexing the abundance or describing the age distribution of this species, it may be very difficult to detect stock rebuilding if and when it does occur. Novel methods of data collection are needed to address the wholesale lack of recent data informing age structured stock assessments of yelloweye rockfish. While we recognize that the data collected under this EFP will represent only part of the geographic and depth range of the species, we will attempt to design this project to adequately describe the age distribution of yelloweye rockfish encountered in Oregon's recreational groundfish fishery. Consultations with NMFS stock assessment scientists familiar with yelloweye rockfish indicated that even limited catch-at-age data may be valuable for detecting population trends considering the current lack of data.

### **Broader significance and fleetwide applicability**

Fleetwide application may be unnecessary if precise and unbiased information can be obtained using a select group of vessels. However, this data collection method could be expanded to other States and fishing fleets if the information proves valuable in assessing the status of yelloweye rockfish.

### **Number of vessels covered under this EFP**

No more than 15 vessels would be invited to participate under this EFP in the first year. This number of vessels was selected to allow participation of 2-3 vessels in each major recreational fishing port or port group on the Oregon coast, with the goal of providing geographic coverage of the major recreational groundfish fishing grounds shoreward of the 40 fathom regulatory closure.

### **Description of species and amounts**

Although an EFP is legally required to carry out this research, this project is outside the traditional uses of EFPs. The additional yelloweye rockfish mortality associated with this project is most appropriately categorized as research mortality. ODFW requests that the Groundfish Management Team (GMT) explore the feasibility of counting additional mortality from this project against the research set aside for yelloweye rockfish rather than the EFP set aside.

Vessels fishing under this EFP will target primarily black rockfish and lingcod, and are likely to have incidental catches of blue, canary, china, copper, quillback, yellowtail, vermillion, and other nearshore rockfishes, cabezon, and kelp greenling. Catch per angler statistics from Oregon charter vessel observer data indicate 125-150 trips will be needed to achieve the sampling goal of 100 yelloweye. Since vessels fishing under this EFP will be subject to all concurrent regulations except for the prohibition of retention of yelloweye rockfish, catches of all other species will be estimated by standard creel surveys and counted against the appropriate state or federal harvest caps. Projected catches of these species are provided for reference (Table 1). Because yelloweye rockfish landed under this EFP would presumably have been encountered and released in the absence of the EFP, we estimate the EFP impacts to yelloweye rockfish as the additional mortality resulting from retaining (100% mortality rate) rather than releasing (64% mortality rate) the fish and use this as the overfished species bycatch cap.

Table 1. Estimated catch and increased mortality over status quo by species for 150 EFP trips.

Species	Est. catch (mt)	Est. increased mortality (mt)
Black rockfish	8.30	0.00
Blue rockfish	1.03	0.00
Cabazon	0.57	0.00
Canary rockfish	0.27	0.00
China rockfish	0.11	0.00
Copper rockfish	0.15	0.00
Kelp Greenling	0.13	0.00
Lingcod	3.45	0.00
Quillback rockfish	0.18	0.00
Vermilion rockfish	0.30	0.00
Widow rockfish	0.02	0.00
<b>Yelloweye rockfish</b>	<b>0.18</b>	<b>0.06</b>
Yellowtail rockfish	0.56	0.00

### **Duration, location, and gear**

#### **Duration**

Due to lag-time experienced in the issuance of EFPs in 2010, ODFW requests this EFP be effective for one year from the date of issuance by NFMS. Sampling is most likely to occur from April 1 through September 30, as this time frame includes the vast majority of recreational fishing activity, and is commensurate with the implementation of the annual recreational groundfish fishery closure in waters deeper than 40 fathoms. If the approach is found to be successful for the purpose of informing assessments of the status of yelloweye rockfish, we would likely seek renewal until such time as retention is allowed in the fishery and catch-at-age data can be obtained through standard creel surveys.

#### **Location**

The EFP will take place in ocean waters off the coast of Oregon shoreward of the 40 fathom regulatory closure line.

#### **Gear**

No modification of fishing gear is contemplated under this EFP. Captains and crew will be instructed to use the same gear as they would for any other similar fishing trip.

### **Criteria for vessel selection**

Vessels will be selected by applicants, focusing on vessels and captains with a history of cooperation with existing sampling programs, substantial historical participation in the sport groundfish fishery, and no groundfish prohibited species related violations within the past 5 years. Vessels will be selected to provide the greatest geographic coverage possible by selecting 2 or 3 vessels from each major recreational fishing port or port group on the Oregon coast. If more than the desired number of vessels from a single port qualifies under these criteria, applicants will use their personal knowledge of the fleet and operators to make vessel selections most likely to result in a successful project.

**Monitoring**

Vessels fishing under this EFP will be met at the point of landing by an ODFW sampler dedicated to this project. Vessels will notify the sampler of their estimated time and location of landing when they have yelloweye rockfish on-board, and the sampler will make every effort to arrive at that location prior to the vessel. Upon arrival of the vessel, all yelloweye rockfish will be immediately surrendered in a whole and intact condition to the sampler. In the event that the sampler cannot arrive at the point of landing prior to the vessel, the EFP will require that all yelloweye rockfish be held on-board the vessel until such time as the fish can be surrendered directly to appropriate ODFW or Oregon State Police (OSP) personnel. If yelloweye rockfish are removed from an EFP vessel without ODFW or OSP personnel present, the responsible party will be considered in violation of the EFP and subject to all applicable laws governing prohibited species catches. Catch of all other species will be accounted for under ODFW's standard catch accounting programs.

**Data collection and analysis**

Biological data such as length, weight, age, sex, and maturity status will be collected by the dedicated ODFW sampler after transporting specimens to the Newport lab. For each retained yelloweye rockfish, captains of participating vessels will provide a unique mark and record the depth and area of capture. Initial data analysis will be conducted by applicants and will consist of point estimates with 95% CI of the proportion of recreational catch in each age class using an area and/or depth weighted approach, and an assessment of how well the selected vessels represent the spatial and temporal characteristics of the recreational fleet as a whole. Final analysis and evaluation of the project will occur in the context of the next yelloweye rockfish stock assessment and should include participation and feedback from the stock assessment team. The project will be considered successful if the stock assessment team finds the data useful in their analysis of stock status.

**Report preparation**

An initial report authored by the applicants will be drafted following the completion of sampling during the 2011 fishing season. This report will focus on the success of the EFP in meeting the goal of collecting biological samples from 100 yelloweye rockfish from Oregon's sport groundfish fishery, and provide summary statistics including sample sizes for all data types, age and size distribution of the sample, and estimated age and size distribution of yelloweye rockfish encountered in the sport groundfish fishery. We expect the initial report could be completed by the June, 2012 Council meeting. A secondary reporting mechanism will be the first yelloweye stock assessment following the EFP, in which we expect the utility of this data for assessing stock status to be reported.

**Signatures**

A handwritten signature in black ink, appearing to read 'Troy Buell', with a stylized, cursive script.

Troy Buell



## EXEMPTED FISHING PERMIT – TROLLED LONGLINE FOR CHILIPEPPER ROCKFISH

Request for an exempted fishing permit (EFP).

Project Title: Evaluation of an epibenthic trolled longline to selectively catch chilipepper rockfish (*Sebastes goodei*).

Date of Application: August 23, 2010

Applicant:	Steven Fosmark	Analysis:	NMFS Santa Cruz Laboratory
	PO Box 1338		110 Shaffer Rd. Santa Cruz, CA 95060
	Pebble Beach, CA 93953		Phone: (831) 420-3931
	Phone: 831-601-4074		Fax: (831) 420-3980
	Email: <a href="mailto:fvseeadler@aol.com">fvseeadler@aol.com</a>		

### Purpose and Goals

Chilipepper rockfish stocks on the west coast are considered healthy. However, because of weak stock management, the OY for this species cannot be taken. In 2006, chilipepper landings were 39.7 mt (<http://www.psmfc.org/pacfin/data/r001.p06>) of a 2000 mt OY. Area closures to protect overfished rockfish species have effectively closed access to this resource. The Council's annual chilipepper set aside for 2011- 2012 (ACL) South of 40.10 N lat. is 1,882.

The long-term objective of this project is to describe and evaluate the effectiveness of a species-selective longline technique, which if proven effective, will allow commercial fishermen access to chilipepper rockfish, a relatively abundant species of rockfish. This fishery is constrained by the current rockfish area closures (Rockfish Conservation Areas, RCA), implemented to protect overfished rockfish species. Despite the depressed condition of some west coast groundfish stocks, there are other stocks that remain healthy. These healthier stocks could safely sustain increased harvest levels if they could be fished more cleanly and without bycatch of more depleted stocks. If stronger stocks could be targeted without increasing fishing mortality on depressed stocks, the California commercial fishing fleet would have alternative fishing opportunities that would provide some economic relief to the industry while providing the public with a highly desirable product.

The objective of the research for which we are requesting an EFP would be to establish the performance characteristics of the gear and to rigorously document the catch and bycatch when deployed in areas where chilipepper are abundant and bycatch species are not, under commercial fishing conditions. The objectives would be: 1) to test the trolled gear and fishing strategy with vertical lines and artificial flies, and 2) determine Groundfish Fishing Areas that are abundant with chilipepper rockfish, and that correspond to low densities of overfished species. The second

objective may better help to answer the question of how EFP results can potentially be translated into future fleet-wide fishing opportunities.

The location, gear characteristics (number of hooks, length of mainline, etc.), species composition, size distribution, and sex ratio (of chilipepper) of each set of gear will be recorded by onboard observers. In addition, a camera may be used to show fishing operations at the discretion of the operator.

The EFP that we are requesting would allow up to three (3) vessels. Each would be allowed to fish inside the current RCA using otherwise legal open access fixed gear. Full retention applies to rockfish species (as defined in Federal regulations), and retention of non-rockfish species will be governed by applicable open access limits, and may be released once documented by an observer. Due to the fact this is a research project there should be no trip limit. Existence of a trip limit would bias the results of the study as fishing effort needs to be standardized and not effected by catch rates. Therefore, we do not want to bias it by the sets with bad days.

This EFP for chilipeppers is a mid-water project and will also be using a test line with no more than twenty hooks. Prospecting is to avoid bocaccio. Line will be an off the bottom longline with corks attached close to the skate line, consisting of drop line, linked (skates) main line, and wire attached to a reel, (Diagram 1. and 2., Pages 4,5). The gear will consist of a maximum of 1000 hooks per set. Gear consists of open access troll fly and vertical hook and line gear that is set and fished in a unique way such that the hooks sink to near, but not hard on bottom (see Diagram). Prior to setting the gear, a test set will be made with vertical gear in which the gear is set vertically. This will be with no hooks closer than 3 fm of the bottom, based on acoustic soundings, to ensure that the target species is present and to minimize the chance of encountering any of the overfished rockfish species.

Once the test set establishes the presence of chilipepper rockfish, the gear will be deployed as follows: The vessel moves slowly ahead as the gear is deployed. The gear remains attached to the vessel at all times. Artificial “flies” are used in lieu of bait. The mainline consists of 200-800 lb. test monofilament, and may be spooled to a drum. One end, with buoy and weight attached in such a way that the gear does not touch the bottom is sent overboard as the boat moves slowly ahead, and the remaining gear is deployed. The weighted buoy line length is adjusted in such a way that does not have bottom contact to reduce the likelihood of bycatch and to prevent the hooks from hanging up on bottom. Hooks on leaders are spaced approximately 13” apart on 12” monofilament gangions/leaders with swivel (approximately 60 lb test). Hooks are tied with artificial flies, and no bait is used. This gear is reported by the fisherman to selectively catch chilipepper rockfish when properly deployed (Steve Fosmark, Moss Landing, CA, F/V SeeAdler, Phone: 831-373-5238; cell phones: 831-601-4074; or Boat 831-601-7934 email: [FVSeeAdler@aol.com](mailto:FVSeeAdler@aol.com)).

The research would be conducted off central California (38 to 36 degrees), at depths of approximately 80-120 fm (chilipepper rockfish tend to get smaller in size and schools are thinner in shallow depths). Fishing effort will be concentrated in areas with canyon edges and walls, smooth hard bottom, with no rocks (example: canyon south of Año Nuevo). This depth range is currently within the non-trawl RCA established to protect overfished rockfish species.

To ensure that this experimental fishery has a minimal impact on overfished rockfish species, the Council recommended aggregate catch limits on the fishery for overfished species as follow:

Bocaccio: 3.300 mt  
Canary: 0.027 mt (20 fish)  
Cowcod: 0.015 mt ( 3 fish)  
Darkblotched: 0.400 mt  
POP: none  
Widow rockfish: 3.000 mt  
Yelloweye: 0.005 mt (3 fish)

Under the terms of this EFP, each vessel will carry an observer with the cost of observer coverage borne by the EFP participants. All species will be retained. Catch of species other than the above are expected to be uncommon although some yellowtail and perhaps other rockfish may be encountered in small numbers. Attaining any of the above aggregate catch limits will terminate the EFP for all vessels.

We anticipate that fishing as described in this EFP will not be constrained by these caps.

Chilipepper rockfish caught under this EFP will be retained and sold by the permitted vessel.

We request that NMFS issue this EFP for one year, or 12 calendar months.

This EFP will incorporate a standardized data collection and reporting format as determined by the NMFS Northwest Fisheries Science Center. All vessels participating in this EFP fishery will be required to carry an observer. The observer will record all fish caught and ensure that aggregate bycatch limits are not exceeded. Vessel captains will keep records of catch by species by set for all sets under this EFP. As it is possible that the catch and bycatch will change seasonally,

The applicant and the scientist will be responsible for data analysis. Data analysis will consist of statistical analysis of catch and bycatch of all species by set, trip, and month. Catch rates will be expressed as catch per hook, per set, per day, and per trip. Value of the catch will be recorded following sale. The final report will provide an estimate of fishing effort and total catch; absolute and relative species composition summarized by set, trip, and month; size composition of catch and bycatch; and sex ratio and stage of maturity for chilipepper.

Vessels to participate in this EFP fishery will be chosen on their ability to accommodate an observer, their willingness to maintain detailed catch data and their willingness to participate during months when fish are available to this fishery.

Areas to be selected for high-density target species will be between 38.0 degrees (Pt. Reyes) and 36 degrees (Point Lopez).

#### Equipment needed:

Hydraulic puller, conveyor belting or wide runner, fly-hooks, line, wire, snaps, small buoys, one large buoy, 3 and 5 lb. weights.

#### Description:

200 leader hooks per skate at 5 skates with sets from sunrise to sunset; 1,000 hooks would be the best as the sets are limited to available time. Time to fish short at daybreak and late evening

#### Design:

Determine depth: if 90 fm deep, use 85-89 fm of drop line, deployed first and 5 pound weight at the end with attached long line to drop line 1 fathom above weight. Buoy attached to line at surface to sustain depth. Longline is approximately 1000 - 1,083 feet, 1000 leaders at 12-13 inches apart with about 20 small floats attached to longline at 50 hook intervals between leaders. Floats have short tethers and are attached to the long line with snaps.

Time to fish is short. During the day chilipepper come off the bottom and once they are mid-water they are difficult to catch by this method. Therefore the morning and evening are the best times.

Diagram 1.: Trolled Longline Gear may be deployed by reel to reel over a belt. Forward reel has coiled line gear over a conveyor belt and can be deployed over stern by a powered stern reel or by hand. Belt is coiled from the forward reel over a stern reel and line spools off into water. Pull line back with powered forward reel by rolling line and conveyor belt onto forward reel. Line revolves over stern reel onto belt and forward reel, the conveyor belt is moving with it. Line is never coiled onto stern reel, only over the conveyor belt. The line always goes from water over the stern reel, and coiled back onto the forward reel. Belt acts as a protection from entanglement for gear separation. Stern reel acts as a roller to hold coiled belt. This operation is reversed for pulling.

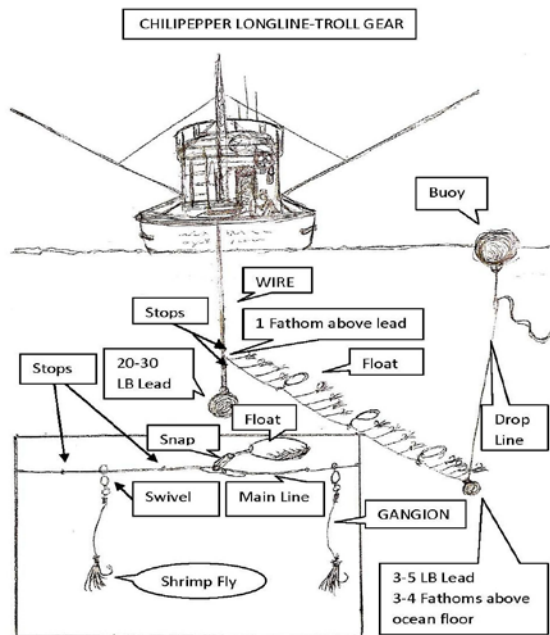
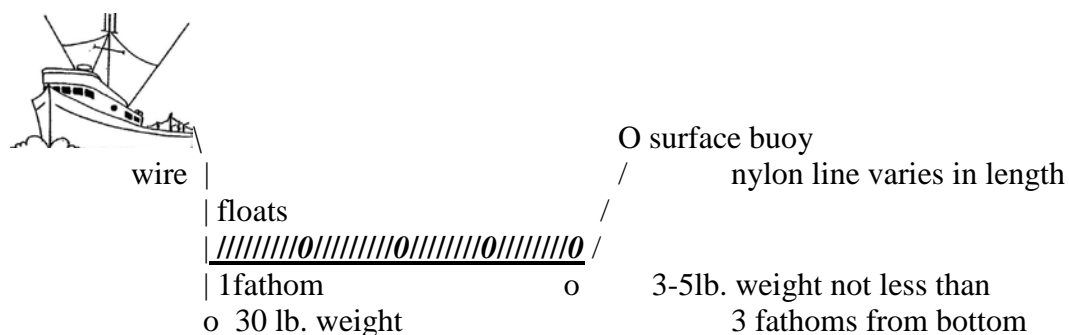


Diagram 2.



Line is approximately 1,000 feet long and the weight is 3 fathoms from the bottom to provide control. When the line reacts to bites, take the boat out of gear and fish will climb the line to the floats as they do with vertical gear on up and as line is pulled, line rises to the surface. Boat must be going ahead while pulling to keep the fish on. The terminal drop line remains at 85 fathoms. As the boat moves forward the drop line moves close to the end of the boat tight and fish continue to climb the line. As the line is towed in, fish stay in area of line where school is, (pull through spot of fish). As line is pulled on board it becomes vertical and can be alternatively stacked in basket gear.

# Morro Bay/Port San Luis Exempted Fishing Permit

## Progress Report for the Pacific Fishery Management Council

*Prepared by Michael Bell and Steve Rienecke, The Nature Conservancy  
and Dwayne Oberhoff, Lisa Wise Consulting, Inc.*



### EFP Sponsors:

The Nature Conservancy  
The City of Morro Bay  
Port San Luis Harbor District  
Morro Bay Commercial Fishermen's Organization  
Port San Luis Commercial Fisherman's Organization  
California Department of Fish and Game  
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Cover photos by Lisa Wise Consulting, Inc.



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## I. Introduction

This Exempted Fishing Permit (EFP) is an undertaking of the Central Coast Groundfish Project (CCGP), a fishery reform effort lead by a partnership of fishermen, community representatives, policy makers, and conservationists. Specifically, this EFP is testing whether establishing a cooperatively managed, Community Fishing Association (CFA) that employs commercial trawl permits to use longline, trap, pot, and hook-and-line gear off the central California coast, under shared aggregate catch limits for target and bycatch species, can provide several important economic, social and environmental performance benefits. More information on the purposes and goals of this project are included in the 2009 EFP application in the November PFMC briefing book.

In 2005, The Nature Conservancy (Conservancy) partnered with regulatory agencies and trawl fishermen in California Central Coast communities to jointly petition the Pacific Fishery Management Council (PFMC) for the protection of 3.8 million acres of marine habitat, (Essential Fish Habitat, "EFH") making it off-limits to bottom trawl gear. Simultaneously, the Conservancy purchased federal permits and vessels from local fishermen interested in leaving the economically strained trawl groundfish industry.

After these acquisitions, the Conservancy, representatives of the local groundfish industry, fishing communities, conservation groups, and representatives from fishery management developed a project that would test new harvest and market approaches to improve the economic and environmental performance of the fishery. As part of that effort, a new partnership was formed to pursue an Exempted Fishing Permit (EFP) through the PFMC process that would allow for six of the groundfish trawl permits, originally acquired from Morro Bay fishermen, to be fished with hook-and-line and trap gear and under collectively managed catch limits. The intention of this EFP, which was first submitted to the PFMC in 2007 and approved in 2008, was to:

- Test how a community traditionally reliant on groundfish could use a Community Fishing Association to help protect its access to the fishery (particularly in ITQ management structure);
- Improve local fishery economic and environmental performance through better harvest planning and collaboration; and,
- Explore the potential benefits for a fishing community that traditionally landed groundfish via bottom trawling, to diversify its harvest approach through gear-switching.

Throughout the 1990s, with the emergence of increasing fishery regulation and stricter catch limits aimed at rebuilding overfished species populations, the fishing ports of Morro Bay and Port San Luis witnessed a dramatic reduction in landings and an erosion of fishery infrastructure (processors, buyers, related services, boats, physical infrastructure, etc.). The migration and reduction of fishery infrastructure coupled with increasing restraining fishery regulation, led to the erosion of the economic viability of the traditional bottom trawling groundfish business model in the region. Soon the west coast trawl sector began to consolidate due to participants moving their operations to regions with better infrastructure, lower associated business costs, and participants who decided to sell their permits during the federally supported industry buy-out program.

Today, in response to the many challenges facing the trawl sector of the fishery, the Pacific Fishing Management Council (PFMC) is in the process of transitioning the fishery to an Individual Transferable

Quota management (ITQ). From a macro perspective, the ITQ has been designed to address many of the interrelated economic and environmental problems plaguing the fishery. However, many representatives from smaller scale fishing communities expressed concern that an ITQ would erode traditional fishing regions by displacing small-scale harvesting operations, disrupting coastal processing, escalating entry cost, and lessening fishing activity in ports historically reliant on the fishery.

This EFP was designed to explore tools and approaches that could be implemented in the new ITQ fishery to address the community stabilization concerns described above, however, many of the key lessons learned were related to the potential of collective arrangement strategies to resolve fleet wide ITQ challenges such monitoring costs and overfished species management. This CFA structure tested in this EFP has facilitated the development of critically-needed innovation such as collective harvest planning, electronic monitoring, “eCatch” – an online database that provides fishermen with real time spatial catch information, and observer sharing protocols.

Between June 3 and December 31, 2009, under the EFP, 84 fishing trips took place. In addition to landings under the EFP in 2009, two California Fisheries Fund loans were made to increase processing capacity and other shoreside infrastructure in Morro Bay, and a new baiting business was established to serve fishermen. These new investments serve as an indication that maintaining and increasing access and fishery landings can stimulate investment in fishery-related businesses. In addition to these advances, a number of other major tasks were accomplished in 2009:

- EFP fishermen participant selection process was revised and implemented;
- EFP data collection protocols were revised from 2008 based on feedback from participants and project managers and a new online database, “eCatch” was developed and implemented, allowing fishermen to share information more easily;
- A harvest plan was developed and periodically revised with EFP fishermen, including weekly review by all participants on the performance of the project;
- Prohibitive costs for CFAs such as human observer coverage were identified and the potential performance of several possible solutions were researched; and,
- A new local groundfish industry association, the Central Coast Sustainable Groundfish Association, was formed by a group of local commercial fishermen, including EFP participants.

Project managers and EFP fishermen hope that the information in this EFP report will help inform future management decisions and may clear the path for similar partnerships and innovations for the larger West Coast groundfish fishery and beyond.

## II. 2009 EFP Catch Report Performance

Eighty four (84) trips were conducted by four (4) fishermen in the 2009 EFP, which resulted in 141 individual sets and the deployment in a total of 424,075 horizontal hooks and 200 vertical hooks. A total of 259,033 pounds of target species were landed, which resulted in a catch average of 0.61 pounds per hook. Table 1 provides a summary of the total landings and aggregate catch limits for the 2009 EFP.

Three (3) EFP observers collected catch data using West Coast Groundfish Observer Program (WCGOP) protocols in addition to collecting data for an EFP project-specific observer summary log (refer to

Three (3) EFP observers collected catch data using West Coast Groundfish Observer Program (WCGOP) protocols in addition to collecting data for an EFP project-specific observer summary log (refer to Appendix A). Total landings for all non-rockfish species were calculated from species weights from fish tickets and the EFP project-specific observer summary logs. Observer summary logs were completed by each observer for each trip to record the weights of non-rockfish target species (sablefish, thornyheads, lingcod, and other species) that are not retained and discarded at sea by a skipper, but are counted against the EFP's aggregate catch limits. This data is not collected for rockfish since there is 100 percent (%) retention on rockfish.

**Table 1. 2009 EFP total landings and aggregate catch limits.**

Species		2009 EFP Landings		Total Landings (Fish Tickets)+Observer Discard Data (mt)*	Aggregate Catch Limit for EFP (mt)
		Lbs	mt		
Sablefish (all sizes)		244,599	110.95	114.47	158.4**
Southern Slope Rockfish***	Aurora Rockfish	217	0.08	0.10	50
	Darkblotched Rockfish	34	0.02	0.02	
	Redbanded Rockfish	6	0.00	0.00	
Blackgill Rockfish		6,734	3.05	3.09	20
Shortspine Thornyhead		7,431	3.37	3.56	60
Longspine Thornyhead		3	0.00	0.08	60
Lingcod		0.00	0.00	0.00	15
Chillipepper Rockfish		0.00	0.00	0.00	20
Spiny Dogfish		0.00	0.00	0.99	10
Splitnose Rockfish		2	0.00	0.00	0.45
Dover Sole		5	0.00	0.19	10
Petrale Sole		2	0.00	0.00	10
Other Flatfish		0.00	0.00	0.00	10
Totals		<b>259,033</b>	<b>117.50</b>	<b>122.47</b>	

Source: EFP fish tickets and observer logs and EFP terms and conditions

\*Observer data are from the project-specific observer summary logs, which summarizes all rockfish (retained, drop-offs, predated) and skipper discards of non-rockfish species from each trip.

\*\*The 2009 EFP aggregate catch limit for sablefish was reduced from 165 metric tons to 158.4 metric tons to account for open access landings that occurred during the month of May, which was during the May/June bi-monthly period and prior to the start of the EFP in early June – as per NMFS EFP terms and conditions.

\*\*\*No more than 20 metric tons of southern slope rockfish could be blackgill rockfish.

### III. Exempted Fishing Permit Project Organization

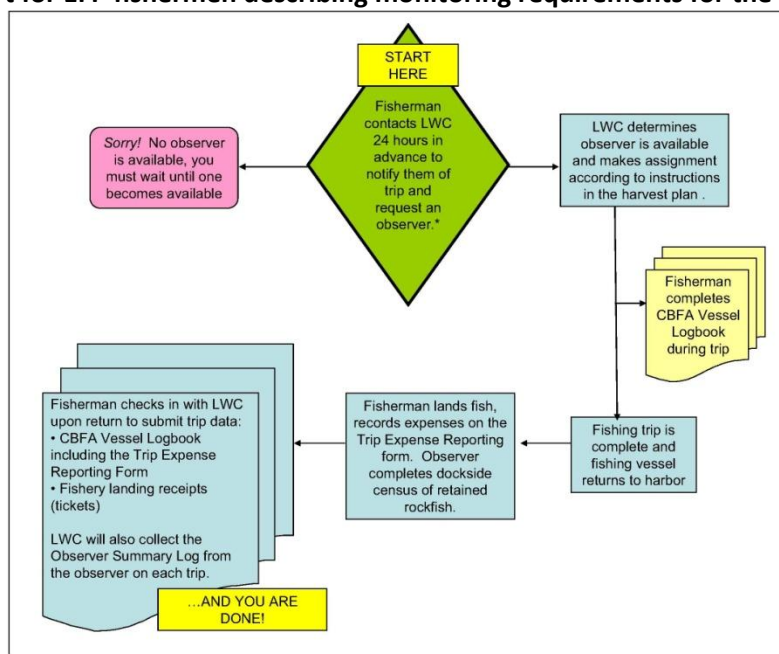
Implementation of the EFP is overseen by the Community Based Fishing Association (CBFA), which is comprised of representatives of the partners on the EFP proposal. The CBFA met approximately every two months to review progress on the project, and offer recommendations and advice for the direction of the project. Development of the harvest plan has been led by a team that includes the participating fishermen and project managers.

The second tier of the CFA organizational structure was composed of project managers and fishermen who were responsible for determining how to conduct fishing operations in compliance with the terms of the EFP and guidance from the CBFA. It is at this level of management that most of the work, time, and costs to run the EFP were expended. Duties of this group included harvest plan development, observer contracting and management, observer sharing protocol development, data collection and management, compliance enforcement, and NMFS reporting.

Figure 1 below illustrates an example of the EFP project organization prepared by the project managers for the EFP fishermen. The flowchart was placed in each of the fishermen's EFP logbook and it describes the process of the observer assignment protocol used in the EFP. Specifically, the flowchart depicts the timing, roles of all involved parties, and the documentation that must be completed and submitted to project managers following each EFP trip.

**Findings and Recommendations.** As described in this report, this EFP was guided by the Community Based Fishing Association (CBFA), while day-to-day EFP operations were managed by a smaller project management team and the EFP fishermen participants. The proponents of this project believe that this two-tiered structure is an effective manner of carrying out the operations of a CFA. The top level governance by diverse fishery stakeholder representation provides an opportunity for the development of clear goals and objectives for the CFA. This division allowed the governance structure to focus on big picture questions related to how a CFA can best help develop the local fishery. Meanwhile, day-to-day operations were conducted by fishermen and project managers.

**Figure 1. Flowchart for EFP fishermen describing monitoring requirements for the EFP.**



#### IV. Exempted Fishing Permit Selection Process

Participants were identified through a competitive selection process, funded by a grant from the Central Coast Joint Cable / Fishery Liaison Committee (CCJCLC) to the Morro Bay Commercial Fishermen's Organization. The process was managed by a local consulting firm, Lisa Wise Consulting, Inc. An application package (refer to Appendix B) describing the details of the EFP project and the selection requirements were distributed to fishermen who fish primarily out of Morro Bay and Port San Luis.

Project managers announced details of the EFP opportunity in local newsletters and attended and presented the details of the project at general meetings for each commercial fishing organization in early 2009 and held two public meetings to answer questions. Eleven fishermen submitted applications. The applications were reviewed by an independent four-member selection panel composed of community leaders. The Conservancy interviewed the top candidates and made the final decision to invite four fishermen to participate.

*Findings and Recommendations.* The selection process proved to be one of the most sensitive steps in carrying out the EFP. There was a history of local selection processes (fishery management allocation of permits, contracts awarded for seafloor cable laying, disaster mitigation payments, etc.) that were highly controversial and created significant rifts in the community. The proponents and sponsors of the EFP believed it to be critical to carry out a transparent and unbiased participant selection process. For this reason, a contractor was hired to develop the application and unrelated selection committee process described earlier in the report.

The experiences in managing this EFP have enabled project managers and commercial fishing stakeholders to consider how a local CFA and a participant selection process could be structured to address limitations to long term local fishery development and constraints surrounding new entrant opportunities. A concept that seems to have wide support is, to require each lease candidate (fisherman) to present a business plan that outlines how he will utilize a CFA quota lease to create a stable and independent fishing operation. In this way, fishermen could leverage their lease (secured access and projected fishing revenue) to secure financing to acquire their own asset base (permit, quota, vessel, etc.). Such an arrangement would allow the fisherman to reduce their dependence on CFA quota over time and make room for new entrants. It has been suggested that another feature of the CFA structure could be an apprenticeship program to attract and cultivate new participants for the local fishery.

A lesson from this EFP is that the selection process needs to be more than transparent and unbiased. While a “fair” selection process is of high importance, especially for a short term experimental project like this EFP, of greater importance for any longer term CFA effort, is the need to align the terms of the selection process with the goals and objectives of the project.

#### V. Monitoring the Exempted Fishing Permit

EFP catch hard caps are very similar to the concept of fishing under an ITQ management, which allowed this project to test how monitoring requirements can be met through the collective action of a CFA. The overall goals for monitoring the EFP included:

- Ensuring that all fishing was conducted in compliance with EFP Terms and Conditions;
- Complying with monitoring and reporting requirements including at-sea observers, vessel logbooks, landings reports, vessel monitoring systems, and other reporting requirements;
- Providing full catch accountability for fishing activity under the EFP;
- Finding ways to make monitoring more efficient and less costly; and
- Providing a “two-way street” for fishery data, by making reports and data available to fishery managers and fishermen to inform harvest level and fishing trip planning.

Every fishing trip taken under the 2009 EFP was monitored by a human observer (100 percent (%) coverage) and fishermen were required to retain all rockfish species caught, regardless of condition. Fishermen were required to complete a project-specific logbook for each trip, recording the date, time, location, and catch disposition for each species caught (retained and discard), along with the expenses associated. Observers provided bycatch and discard information associated with EFP fishing efforts. The

data from logbooks, fish tickets, trip expenses, and observer summary logs were entered into a web-based database, known as “eCatch”, along with data from other Conservancy fishing projects (including a zoned small footrope trawl operation in Morro Bay and a Scottish seine operation in Half Moon Bay). These data are used to monitor the fishery, prepare catch reports for NMFS, and provide information in a user-friendly forum to project managers and fishermen.

a. Observers

Three observers were employed to meet the monitoring requirement of 100 percent (%) observer coverage for the EFP. Two observers were dedicated to covering EFP fishing trips on a full-time basis and followed all WCGOP observer protocols. The third observer covered some EFP trips in addition to providing observer coverage for another Conservancy fishing demonstration project. A shared communication system was developed that allowed the observer protocol to adapt to allow sharing of the third observer between the EFP and the other Conservancy project.

The protocol used to assign an observer to a fishing vessel under the EFP was part of the harvest plan and was subject to change by the harvest planning team, as necessary. A priority ranking system was created based on the timing of the landings by the individual fishermen, i.e. the EFP fisherman with the most recent landing received the lowest priority rank for the next available observer; other fishermen who had not recently landed moved up in priority. Observer requests from fishermen in a lower priority rank would only be assigned an observer if the higher ranking fishermen did not want the available observer. All requests for an observer were required to be made with at least 24 hours notice to the project manager for scheduling and to provide the observers with as much notice as possible. Observer requests could not be guaranteed and were dictated by other fishermen’s use of an observer, priority ranking of the requesting fisherman, and observer personal schedules (requested time off, vacations, sick leave, injuries, etc.). Fishermen wanting to conduct a “turn-around” trip (conduct a second trip immediately following first trip) were constrained by other higher priority participants’ observer requests and thus assignments for turn-around trips were not always available.

*Findings and Recommendations.* Overall, all EFP fishing operations were conducted in compliance with federal fishing regulations and the terms and conditions specified for this EFP.

**2010 EFP Highlight**

In the 2010 EFP, due to the increase in EFP participants and inclusion of different fishing operations, the EFP participants and project managers developed a new observer sharing protocol: the “20/10 Observer Sharing Protocol.” The four observers were assigned to four (primary fishermen) of the six fishermen for 20 day periods. After the 20 day period, the four observer’s assignments would rotate to another fisherman, thus always leaving two fishermen (secondary fishermen) without observers. The secondary fishermen without observers could be assigned an observer if a primary fisherman would not be utilizing their observer in order to maximize observer usage.

Challenges in meeting 100 percent (%) human observer accountability for the EFP came primarily from issues associated with the land-side management of an observer pool. EFP fishermen had some experience hosting observers on their vessels; however, no one involved in the project had any background in managing a contracted observer pool to meet the 100 percent (%) monitoring coverage required by the terms of the EFP. Below is a list of key findings and recommendations related to observer coverage, learned through the EFP project.

- Creating local observer pools (less observers vs. fishing operations) is feasible and can reduce a small fleet’s monitoring costs, however, doing so presents a management challenge;

- Coordinating and scheduling fishing efforts so that all boats are not competing for observers at the same time provides for efficiencies. In the EFP, close communication of a participant's activity in other fisheries, boat maintenance, and other personal/professional business provided opportunities for more efficient scheduling;
- A larger observer pool managed to cover a fleet of fishermen from several ports will likely provide greater cost savings than a small pool;
- Under a 100 percent (%) observer requirement, retention of the local pool of observers is critical. Losing an observer from a local pool has large negative impact on all fishing operations. Fishermen and project managers should take steps to ensure that the needs of the observers are met;
- Creating a single point of contact for observer scheduling minimized confusion and prevented the double booking of observers; and
- A small-scale groundfish fleet may not be able to afford the financial costs (described quantitatively in other sections of the report) of a 100 percent (%) human observer coverage requirement through landing revenue, even with the cost savings of an observer sharing pool.

b. Electronic Monitoring (EM)

In the 2008 EFP, project sponsors partnered with the NOAA/NWFSC FRAM division to test the feasibility of electronic monitoring (EM) on fixed gear vessels using trawl sector quota. Each EFP vessel was outfitted with EM while also being subject to 100 percent (%) human observer coverage. The results of the experiment were described in a report prepared by Archipelago Marine Research Ltd.

Unfortunately, the short EFP fishing season and the lack of NOAA funding to continue the EM experiment resulted in a small amount of new information to help guide the development of EM for the larger fishery. However, EFP project managers and fishermen identified important areas of focus to continue to assess the appropriateness of EM for fishing of trawl sector quota with vessels using fixed gear.

It is assumed by EFP project managers that EM would be used as a way to verify the accuracy of fishermen logbooks, and ensure compliance with the requirement of 100 percent (%) retention of rockfish species, as is done in the British Columbia Groundfish longline ITQ fishery. In such a monitoring system it is essential that captains independently record detailed and accurate catch logbooks. Several improvements were made to the EFP logbook form in 2009 to make it more comparable to EM than was possible in 2008 (refer to Appendix C). This included curtailing the sharing of information between the observer and fishermen, defining a set into three separate events (start, haul, end), and recording dates and times for set related events. These improvements to the logbook, along with not having observers share their information with fishermen, created appropriate conditions for a future experiment to test whether EM is a feasible alternative to 100 percent (%) human observers.

*Findings and Recommendations.* Due to the great uncertainty surrounding the financial viability of a small groundfish fleet paying for 100 percent (%) human observer coverage, the EFP project proponents believed it important to invest in and test alternative monitoring methods. EFP organizers and fishermen launched an EM pilot project in the 2008 EFP in partnership with the NOAA NW Science Center. In 2010, the EM pilot was restarted, funded through privately raised capital, as part of the 2010 EFP underway at the time of this report. EFP project proponents opted to run this pilot to generate fishery-specific data related to the effectiveness and costs benefits of EM in providing 100 percent (%) catch accountability.



Given the high costs of human observer coverage and the potential of that cost to drive smaller scale operations out of the fishery, it is critical that the fishery explore the potential of using technology to achieve catch accounting requirements. EFP project proponents intend to deliver to the PFMC and NMFS a report outlining the results of the current EM pilot research and hope to participate with other interested fishery stakeholders in the development of an EM monitoring program for the West Coast Trawl Groundfish ITQ.

c. eCatch

Under the EFP, and likely under ITQ management, fishermen, particularly those working in any sort of collective (CFA, Co-op, depleted species quota risk pool, etc) will greatly benefit from the collection of information on the location and amount of overfished and target species caught by all fishing operations in a given area. To address this need in the EFP and to maintain data integrity and efficiency in monitoring and reporting, the project managers developed and deployed a secure, password protected, web-based database application, known as “eCatch” (refer to Figure 2). This application allows project managers, staff, and fishermen to monitor current, collective progress toward aggregate catch limits, assess revenue, and visualize the spatial behavior<sup>1</sup> of the fleet. The one-way flow of these fishery data from fishermen to fishery managers was viewed as a shortcoming and a missed opportunity in traditional monitoring. eCatch allows for the sharing of data among all collaborators and partners in the project.

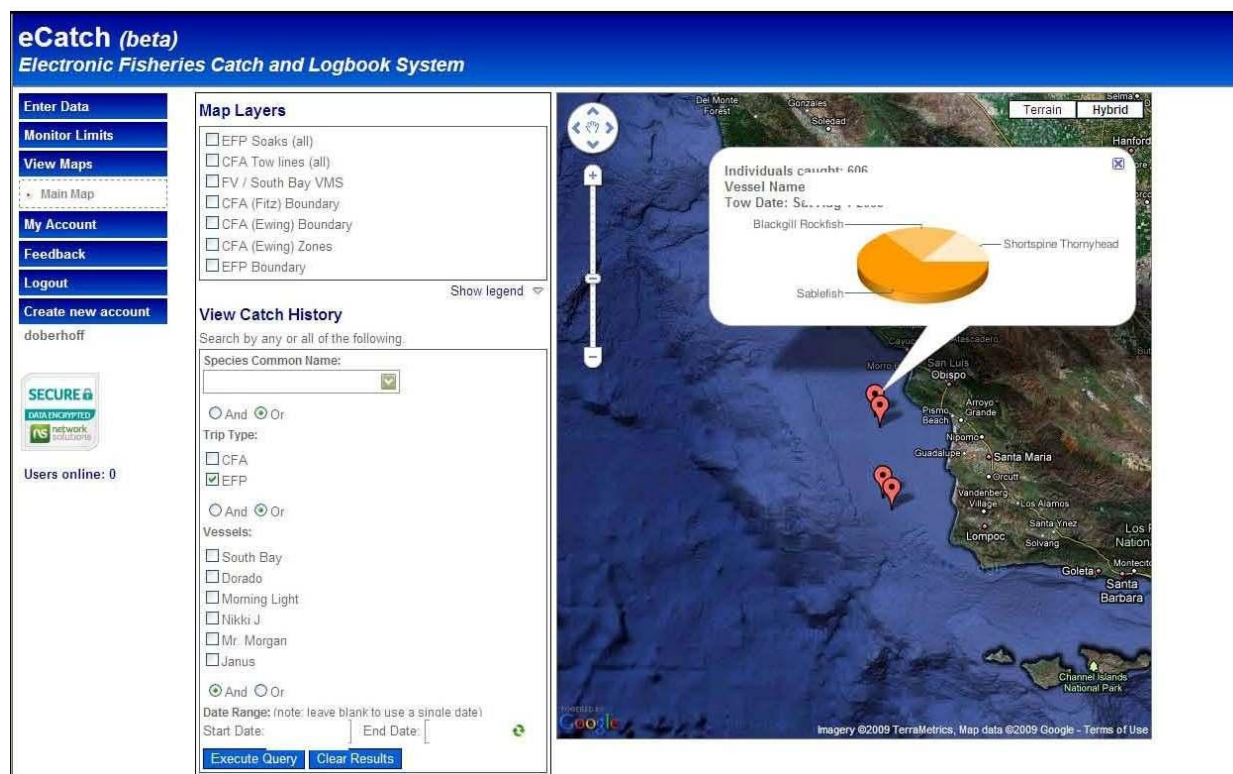
EFP fishermen were given access to the online eCatch database and used the database to plan upcoming fishing trips, view maps of recent trips, and assess the EFP fishing grounds to identify those areas with the greatest potential to catch target species or to avoid areas in which depleted species are likely to be caught. Feedback was regularly solicited from the fishermen on ways to increase the functionality of the database. Many of the recommendations were centered on increasing the information for each trip and set (i.e. time of day, geographic coordinates, number of fish per set, and tide and moon phase). Additional suggestions from project management and staff included making expense data, such as the Federal Buyback Rate and lease rate calculations, available to fishermen so they can keep track of and assess their personal expenses.

*Findings and Recommendations.* At first, sharing data was a challenging shift for highly independent fishing participants; however, after using eCatch, the overall sentiment from the EFP participants has been very positive. The consensus is that eCatch will be instrumental in assisting fishermen in the avoidance of overfished species and there is also much potential in fishermen using the system to harvest target species more efficiently.

From a project management perspective, the development of eCatch has reduced the cost of monitoring and data collection and would be highly useful in a CFA structure where joint reporting could be required. The designers of the database have and will continue to share lessons from the development and use of eCatch with other interested parties to bring better technology into efforts to improve the performance of fishery.

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<sup>1</sup> Spatial information from EFP fishermen is from latitude/longitude for each set reported in trip logbooks. For trawl operations, a subscription for Vessel Monitoring System data was purchased.

**Figure 2. Screenshot of eCatch database interactive mapping tool showing set locations.**

Source: eCatch Database

\*Note that each set has an associated pop-up that will show the date, name of vessel, quantity of fish caught per set, and catch composition. Data is available to fishermen and project managers for EFP/fixed gear operations, trawl and Scottish seine operations. Note: this example uses a fictionalized trip and set locations so as to protect confidential business information of EFP participants.

#### d. Compliance with EFP Terms and Conditions

Under the terms and conditions of the EFP (refer to Appendix D), participating fishermen and the Conservancy share responsibility for abiding by aggregate catch limits, and creating a strong shared incentive to ensure compliance with these limits. Catches were reported to NMFS every other week by the Conservancy, acting in the place of an association.

Participants in the EFP were required to comply with harvest caps for their fishery – for the group and individually, as well as by-catch limits, geographic restrictions, full retention of all rockfish, and human observer coverage requirements for every trip. All of the restrictions were specified in the terms and conditions of the EFP that each fisherman received prior to the start of fishing efforts. In addition, EFP fishermen were required to participate in the iterative development of the harvest plan. The terms of the lease agreement required compliance with all terms and conditions, as well as with the harvest plan specifications which offered flexibility in adaptively managing the harvest plan and changing how fishing was regulated without requiring a contract amendment each time a change was made.

*Findings and Recommendations.* In general, all fishing was conducted in compliance with the EFP terms and conditions, the lease agreements, and the harvest plan. All fishermen fully complied with 100 percent (%) rockfish retention requirements as specified in the EFP terms and conditions.

Compliance challenges were related to the adherence of protocols agreed to by the EFP fishermen and project managers. For instance, there were several instances in which trip logs and fishing tickets were submitted incomplete or with mistakes, lease payments were submitted late, and fishermen did not properly comply with observer assignment communications. These issues may seem less critical than compliance with terms of the EFP permit and lease agreements; however, the extra work generated by non-compliance adds significant costs to the management of the EFP and threatens the economic viability of the collective arrangement. The relationship between the EFP terms and conditions, compliance and enforcement is described in Figure 3.

Improvements were made by sharing information on the costs associated with fixing these problems. Participants responded well when they understood and felt ownership of the protocol and performance of the EFP. Participants that are invested and hold a clear understanding of the operations of the EFP (or CFA) are more likely to perform their work in a manner that will help create an economic efficiency in the collective arrangement.

**Figure 3. EFP compliance and enforcement relationship.**



\*Arrows indicate areas of connection between the three agreements. This type of legal arrangement allowed the CBFA to flexibly manage harvest operations under an adaptable harvest plan without costly or time consuming changes to the lease or EFP terms. Joint responsibility for catch limits and a shared responsibility for harvest planning encourage participants to work cooperatively.

## VI. Harvest Planning Challenge

The major challenge addressed by the EFP harvest plan was to fish within the low overfished species catch limits. A secondary challenge was to promote a more economically viable collective fishing arrangement by catching a diversity of species with fixed gear. The EFP was structured under shared aggregated catch limits; therefore, harvest planning was conducted as a collaboration between EFP project managers and all fishermen.

In an effort to avoid overfished species, EFP fishermen agreed to share all catch information (locations, catch composition, etc) through the eCatch database, which depicted this information on maps that were available to all fishermen in near real time (refer to Figure 2). Furthermore, EFP fishermen developed a harvest plan that limited all harvest activity to waters deeper than 170 fathoms as an additional measure to avoid overfished species (EFP terms and conditions stipulates fishing must occur in waters deeper than 150 fathoms). Finally, during biweekly EFP planning meeting, fishermen and managers discussed incidents of overfish species and made adjustments to the harvest plan intended to reduce this risk.

Several iterations of the harvest plan were developed by the participating fishermen and project managers. The harvest plan was intended to be managed adaptively as circumstances dictated so that it could evolve as fishing under the EFP moved forward. The harvest planning document also outlined the lease rate for each permit license agreement between the Conservancy and participating fishermen. Changes in the structure of the lease rates were used as a test of incentives that could be used to direct fishing efforts toward desirable and potentially underutilized target species.

In the first iteration of the harvest plan (June 3 to August 20, 2009) six positions (six permits were available) were established in the EFP and 27.5 metric tons of sablefish were allocated to each (165 metric ton aggregate catch limit total for sablefish). The 20 metric ton aggregate catch limit of blackgill rockfish was divided into five allocations of four metric tons (4 mts). In order to pace landings throughout the EFP, sablefish was dispersed to the fishermen in 10,000 sub-allocations. All four fishermen received allocations of sablefish and blackgill rockfish and the remaining portions of the aggregate limits for these two species were retained by project managers for additional participants or reward/incentive plans.

Thirty eight fishing (38) trips were conducted under this harvest plan term, and it was evident that the incentive was for each fisherman to maximize his catch of sablefish, rather than to diversify efforts toward the harvest of other species. For this reason, the entire team considered other results-based diversity incentive ideas.

In the second iteration of the harvest plan (August 21 to October 12, 2009), the project instituted the "Thornyhead/Bank Rockfish Incentive Plan", which rewarded fishermen with additional sablefish from cumulative landings of 500 pounds of thornyheads or 100 pounds of bank rockfish. Under this harvest plan, twenty three (23) trips were conducted and the non-sablefish species landings increased from 2.84 percent (%) to 5.30 percent (%).

In the third iteration of the harvest plan (October 13 to December 31, 2009), the project team addressed concerns regarding the concentration of fishing efforts in one area and poor catch diversity. Changes to the harvest plan were implemented that instituted lease rates based on three geographically zoned fishing areas (refer to Figure 4). The basis of this harvest plan was the assumption that greater diversity of harvest locations would result in greater catch diversity. Under the revised harvest plan twenty three (23) trips were conducted and non-sablefish species landings increased to 10.80 percent (%).

**Table 2. Total overfished species in 2008 and 2009.**

Table 2 shows the total pounds of overfished species caught compared to their associated aggregate catch limits for the 2009 EFP. A total of 34 pounds of overfished species, darkblotched rockfish, were caught during the 2009 EFP.

#### *Findings and*

*Recommendations.* This EFP, like the larger west coast groundfish fishery, faces significant harvest constraints in the very limited availability of overfished species quota (or catch limits), and the constraints must be addressed effectively in order to achieve a profitable and stable fishery.

The EFP revealed two advantages provided by the collective structure and collective harvest planning. First, the collective creates a “risk pool” of overfished species catch allowances. This provides greater insurance to the individual participating fisherman in the case he has a “disaster set” (a fishing event that results in a high and unexpected catch of overfished species), access to the risk pool means it will be less likely for an individual fisherman to be shut down. Directly related to risk pools is the strong incentive they create for participating fishermen to share catch information and develop harvest guidance that will minimize the potential of any participant to catch overfished species, which is perceived as both a threat to the individual and the collective.

With the severe constraints associated with low overfished species availability, collective harvest planning could provide important opportunities in establishing greater stability for the individual fisherman and accelerating knowledge and innovation to limit the catching of overfished species.

Overfished Species	2008 EFP Landings (pounds)		2009 EFP Landings (pounds)	
	Aggregate Catch Limits	EFP Landings	Aggregate Catch Limits	EFP Landings
Canary Rockfish	50	0	50	0
Yelloweye Rockfish	150	0	150	0
Widow Rockfish	4,409	0	4,409	0
Darkblotched Rockfish	1,000	26.5	1,000	34
Pacific Ocean Perch	300	0	300	0
Cowcod	300	0	440	0
Bocaccio	11,023	0	11,023	0
<b>Total</b>	-	26.5	-	34

Source: 2008 and 2009 EFP observer data

**Figure 4. Zoned Incentive Plan Map.**



## VII. EFP Economics

### a. Financial Performance of EFP

The two major expenses of the 2009 EFP were:

- Human Observers Contract = \$190,052
- Project Management Contract = \$117,202

Sources of income included:

- EFP fishermen lease payments = \$79,371
- Fundraising (components of several grants made up project cost shortfall)

*Findings and Recommendations.* There were several factors unique to the 2009 EFP that affected the financial performance and potential feasibility of a collective fishing arrangement. Those factors included:

- The need to enter into high cost one year observer contracts, rather than shorter duration payment structures (example: day rate) anticipated in the IFQ fishery;
- Low catch limits, and therefore low lease income (small scope of project);
- The need to set highly competitive lease rates (low) in order to attract fishermen from other economic opportunities to participate in a high effort short-term project; and
- The experimental nature of the EFP and the learning curve of participating managers and fishermen.

While the 2009 EFP income fell short, EFP proponents are confident that a collective fishing arrangement could be viable with reductions in key costs and increases in revenue, such as:

- Decreased monitoring costs through more leveraged observer pools, establishment of electronic monitoring, and identification of new sources of funding to cover monitoring costs.
- Increased scale of the collective with higher catch limits or quota. Any CFA would be required to meet a certain threshold (measured most simply in lease revenue) to be viable.
- Competitive lease rates. Lease rates should be commensurate with fair market rates. Although discounts in CFA lease rates are expected to account for unique requirements, such as landing all fish in the community, lease income will be critical for CFA viability and rates should be set carefully.
- Develop higher value markets for fish. Lease rate income will be positively influenced by higher fish prices.
- Decrease project management costs. The EFP represented an experiment with a significant learning curve and much of the responsibility for working out logistics and problem solving was addressed by an independent consultant. Under a CFA startup scenario, it is likely that fishermen and other participants would be incentivized to develop as efficient and low cost project management structure as feasible.

### b. Observer Costs

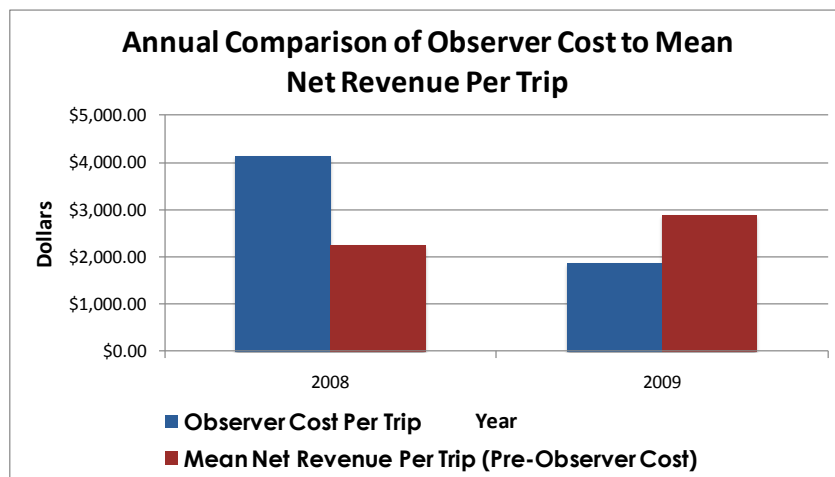
As with all EFPs (and similar to the IFQ program structure), 100 percent (%) human observer coverage was required. In 2009, the observer costs were subsidized by public and private grants. Total expenses for the three NMFS observers in 2009, was \$190,052. The observer contract was based on a pre-described time period and the total cost was independent of the number of trips. As a result, \$2,263 was accrued for observer coverage per trip for 84 EFP trips. Table 3 compares 2008 and 2009 EFP observer expenditures and costs per trip.

In a future CFA, observer costs will need to be supported by project revenues. Table 3 illustrates how potentially profitable fishing trips were compromised by observer costs. If fishermen had to cover those costs in 2008, they would have lost an average of \$2,280 per trip. While observer costs were greatly reduced in 2009, the profit margin was approximately \$709 per trip if fishermen had covered those costs.

**Table 3. Average net profit per fishing trip; with and without observer costs in 2008 and 2009.**

EFP Years	Observer Cost Per Trip	Total Number of Trips	Number of Observers	Total Number of Fishermen	Mean Net Profit Per Trip (Pre-Observer Cost)	Average Net Profit Per Trip (Including Observer Costs)
2008	\$4,132	29	2	3	\$1,852	(\$2,280)
2009	\$2,263	84	3	4	\$2,972	\$709

**Figure 5. Annual comparison of observer cost to mean net revenue per trip.**



*Findings and Recommendations.* The largest cost in administering the EFP is human observer coverage and it is expected to be the same for participants of the new IFQ management structure. Unfortunately, under this scenario, small scale fishing operations will likely be unable to afford the costs of human observers, and could be left with no choice but to sell their permits and quota, thereby driving fishery consolidation and a loss of fishing access in several traditional groundfish fishing communities. For this reason, it is crucial for the groundfish trawl sector to identify cost sharing strategies, technologies and other tools and approaches that can help reduce this cost.

Below are findings and recommendations related to observer costs that were derived from the experience of this EFP:

- For any fishery operation to afford observer costs, a certain threshold of revenue needs to be achieved. The cost and revenue findings of this project indicate that while a single small fishing operation may lack the individual revenue scale to afford an observer, he or she could reach the required scale by working with others in a collectively managed observer pool.
- A 100 percent (%) human observer requirement places intense importance on observer availability. In the EFP, the utilization of an observer pool allowed for the management of availability issues with any one observer. For example, if one observer became ill, the remaining pool could be directed to cover his or her assignments to some degree. On the other hand, if a single operation is dependent on one observer, there is little recourse when that observer is not available.
- Significant costs savings are available by moving from annual observer contracts to some other shorter term fee structure, such as a day rate.
- Although the proponents of the EFP do not challenge the need for full catch accountability in IFQ management structure, the complete reliance on human observers overlooks the potential of using technologies, such as electronic monitoring, to provide a more affordable monitoring program.
- Sponsors of the EFP are supportive of the fishery's efforts to secure federal appropriation support to help pay for observer costs during the transition period of the IFQ. Such support would create an opportunity to develop methods to make full accountability more affordable for the fleet. For this reason, it is crucial that the fishery take full advantage of this transition time and funding support to create tools, such as observer pooling systems and electronic monitoring that will improve the fleet's economic viability for the long run.
- In this EFP, observer costs were paid for through grants. Communities engaged in the federal groundfish fishery should explore creative funding sources to assist in the financing of catch accounting. Such creative funding sources might include bond funding established to help preserve local fishing industries and/or research or academic institutions interested in utilizing catch data in fisheries-related studies.

c. Economics of Individual Fishing Operations

Table 4 illustrates direct expenses associated with individual EFP trips. Fixed costs such as slip fees, maintenance, and vessel monitoring systems are paid by fishing operations regardless of EFP participation and are not included in this analysis.

In 2009, average gross revenue of an EFP trip was \$5,889. The average direct expense was \$2,999. The largest expenses were crew share and EFP lease payment. Lease payments made up an average of 33 percent (%) per trip expense and were directly related to the amount of fish landed and the fishing location (refer to Section VI. Harvest Planning Challenge). Other expenses included the Federal vessel buyback tax, which

**Table 4. Average net profit per fishing trip.**

<b>Average Trip EVV</b>	<b>\$5,889</b>
<b>Average Trip Expenses</b>	
Crew Share	(\$1,201)
Supplies (fuel, groceries, ice and bait)	(\$458)
Federal Buyback Tax	(\$345)
EFP Lease Payment	(\$996)
<b>Total Average Trip Expenses</b>	<b>(\$2,999)</b>
<b>Average Net Profit per Trip</b>	<b>\$2,890</b>



accounted for 10 percent (%) of the average trip expense. The average net profit per fishing trip was \$2,890 (refer to Table 4).

*Findings and Recommendations.* In 2009, net profitability was improved due to a June start date (versus an August start in 2008), a greater aggregate catch limit of sablefish (165 mts in 2009 versus 50 mts in 2008), an additional participant, more efficient communication protocols, and a greater collective understanding of the project.

A fisherman's participation in the EFP carries a variety of additional obligations not typical of an independent operation. This includes more detailed record keeping, data reporting, biweekly meetings to assist in harvest planning and other project management issues, and a general need to be mindful of a collective program that extends beyond an individual operation. The cost of this "extra work" is not easily assessable through quantitative metrics, as are the costs listed in Table 4. Project managers believe that the return of the three original 2008 EFP fishermen to the 2009 EFP and the return of the four fishermen from 2009 to participate in the 2010 EFP, indicates that the value of the secured access is perceived as worth the extra efforts. Project managers also believe that as the EFP moves on, fishermen are becoming more accustomed to the collective structure and find their participation less costly than at the start of the EFP.

d. Employment and Expenditures in the Community

Employment opportunities generated by the 2009 EFP include hook-baiting, crew positions, gear building, product transport, fish processing/offloading, and project management positions (refer to Table 5).

**Table 5. Jobs created from 2009 EFP.**

<b>Jobs Created, 2009 EFP</b>				
	<b>Hours worked in a typical week**</b>	<b>Quantity</b>	<b>Gross Annual Wages</b>	<b>Mean Wage Per Employee</b>
Crew	17.98	4	\$53,809	\$13,452
Baiters	5.26	11	\$43,409	\$3,946
Truck Driver	11	1	\$2,500	\$2,500
Processors	30.4	10	\$96,720	\$9,672
Gear Builder	1	1	\$1,000	\$1,000
<b>Total Fishing Related Jobs</b>		<b>27</b>	<b>\$197,438</b>	<b>\$7,313</b>
Data Management	13.3	3	\$23,940	\$7,980
Project Management	25	4	\$60,000	\$15,000
<b>Total EFP Related Jobs</b>		<b>34</b>	<b>\$281,378</b>	<b>\$30,293</b>

\*\*during the 6 month EFP season

Table 5 does not include the jobs created for the four EFP participants or the wages associated with these four jobs. Refer to Table 4 for the average net profit per fishing trip in the 2009 EFP.

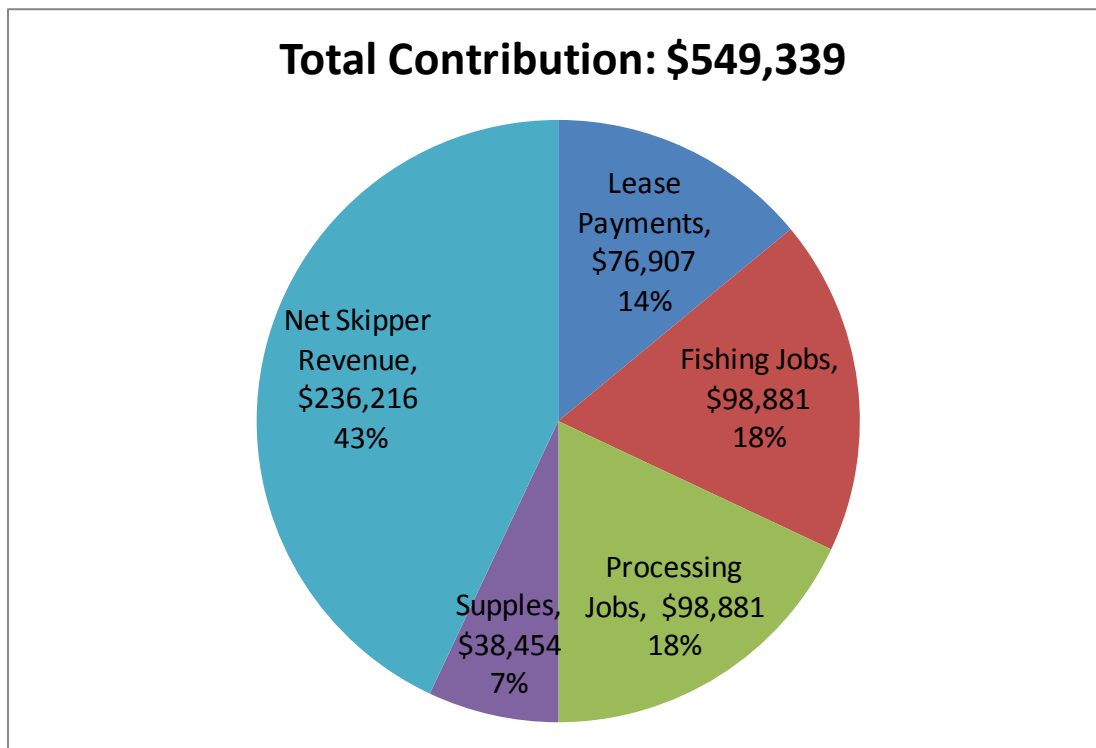
Truck driver's compensation was \$100 per trip, and it was assumed that there was an average of one trip per week for the six month EFP. Wages for processors and the long-line gear builders were based on interviews with EFP participants, processors and buyers. Wages generated by the 2009 EFP totaled \$281,378.

*Findings and Recommendations.* In 2009, the EFP injected approximately \$549,339 into the local economy (refer to Figure 6). That financial contribution was based on lease payments that were

reinvested in the project, net skipper profits, and wages (refer to Table 5). A total of 34 jobs were created by the project (refer to Table 5).

Historically, the groundfish trawl sector represented a significant component of the Morro Bay and Port San Luis economies and their commercial fishing heritage. As indicated in the above table, and as is true in every fishing community, commercial fish landings set in motion an economic chain effect that results in jobs and revenue creation. The job and revenue findings discussed in this section represent the hope held by many fishery stakeholders that a local collective fishing arrangement can help secure trawl sector quota share and retain local groundfish fishing activity.

**Figure 6. Financial Contribution to the community of Morro Bay.**



Note: the economic impacts of the project do not include those generated after the processor, such as distribution to the retailer or ultimate consumer, retail sales and employment and distributor-to-distributor sales.

#### VIII. Conclusion

In this EFP, the local community, industry representatives, conservation organizations, and management agencies participated in a test of how a local CFA can be utilized to meet the trawl rationalization objectives of increasing individual economic stability and minimizing impacts on communities. EFP fishermen, project managers, and project sponsors believe that the project has been successful in developing a tool to help protect fishing access in communities, and in exploring how collective fishery structures and approaches can be used to address the challenges facing the IFQ fishery such as observer costs and overfished species management.

In the past 15 years, Morro Bay and Port San Luis have witnessed a dramatic decline in groundfish vessels, landings, earnings, physical infrastructure, markets, and jobs. As the fishery moves toward ITQ management, the depressed fishery infrastructure places it in a poor position to attract and retain

landings of groundfish quota share (pounds) and pay for the costs associated with the new management program. These same challenging circumstances now face many west coast groundfish fishing communities.

Community leaders are rightfully concerned that if fishermen with groundfish access leave their port, all related economic activity will follow. However, while local government leaders are often supportive of the fishing businesses in their communities, they have neither the capacity nor the authority to manage or represent the industry. Creating an entity that can promote and act on behalf of the local industry is a logical way to address this need. The CFA structure used in this project – with its management committee made up of local community and industry leaders – has been an excellent way for these leaders to participate in an enterprise that seeks to sustain the fishery in their community.

Through acquisition, leasing, or Adaptive Management Program allocations, a CFA can acquire quota share to serve a banking function in a local community. As was practiced in this EFP, a CFA governed by a board of diverse stakeholders, including fishermen, regulators, local government, conservation, and processors, can determine how to make quota available to support and preserve its local groundfish industry. Quota in these arrangements might be used to help bolster the accounts of local permit holders until they can acquire or lease it from others, or as described earlier in the report, quota could be made available to new entrants as a stepping stone toward securing financing and acquiring their own fishery assets. In each of these and many other potential arrangements, the bank of local quota share managed by the CFA will be instrumental in preserving and enhancing the local fishery.

The collective management structure of a CFA allows for other important advances in local fishery management, and risk and cost sharing. As is well known by trawl permit holders, the ITQ related responsibility of industry financed 100 percent human observer coverage will be a significant burden on individual fishing operations. The EFP allowed for the testing a variety of observer pooling and sharing arrangements that can be practiced by a collective of fishermen to reduce observer costs. The EFP did prove that a group of independent fishermen and stakeholders could work together to develop and adaptively manage a cost saving human observer pool. Furthermore, the collective structure and commitment to common objectives proved to be a strong platform on which to test the electronic monitoring pilot project currently under way as part of the EFP. It is this type of research that can pave the way for technology to be integrated into the fishery to help achieve catch accountability goals through more affordable means.

The limited quota of many overfished species is likely the most constraining factor facing the fishery as it prepares to move to ITQ management. As the implementation of the ITQ nears, many stakeholders have realized the great need for overfished species management alternatives. This project tested the potential for an overfished species “risk pool” to provide greater insurance to the individual fisherman from the risk of exceeding his quota holdings for these constraining species. In this EFP, participants agreed to share their limited catch limits of overfished species and to take collective action in their harvest planning and data sharing to reduce their overfished species catch risk. This type of collective action presents strategic opportunities to establish greater stability for the individual fisherman and accelerate learning and innovation to limit the catch of overfished species.

A community fishing association is an approach to co-management that may benefit fishery managers and fishing communities. The CBFA was able to monitor fishing operations closely and respond rapidly to make changes in how fishing and management tasks were carried out. Although compliance with the 2009 EFP terms and conditions was excellent and no sanctions were necessary, the possibility of the CFA being vested with the responsibility to act under the terms of a private agreement may simplify or augment the agency’s enforcement responsibility. The CFA could identify the problem, recommend a

response and notify the agency of the action. The agency could then determine whether further enforcement action is needed. If the terms and conditions of the CFA charter (or EFP) required full compliance in enforcement activities then a strong incentive is created for the organization to take responsibility and hold each member accountable.

Over the course of this EFP, project participants and managers identified key insights as to what will be required to create and preserve a viable local groundfish fishery. The EFP demonstrated that fishermen will work cooperatively with nontraditional partners to develop a harvest plan and manage a local fishery within the context of a CFA; share observers and carry EM systems; share fishing opportunities to enable profitable trips; and can achieve fishery objectives such as the avoidance of overfished species. The sponsors of this EFP hope that the information and lessons contained within this report will be of use to fishery stakeholders and managers as they work to finalize the design and implement the ITQ management structure for the trawl sector of the west coast groundfish fishery.



APPENDIX A

EFP Observer Summary Log



**CBFA Observer Summary Log - Morro Bay/Port San Luis EFP**

Vessel Name: _____	Observer: _____
Skipper Name: _____	Trip Unique ID#: _____
Trip Dates (MM/DD/YYYY): _____ to _____	
LWC will fill in Trip Unique ID#	

*Instructions for Rockfish Section below: EFP terms and conditions require retention of ALL rockfish caught on trips taken under the EFP, regardless of condition. Observer please record the estimated pounds of rockfish retained by the skipper, unrecoverable drop-offs lost prior to reaching the vessel and/or unrecoverable predated fish lost prior to reaching the vessel.*

	Rockfish Spp. (Overfished/Rebuilding species in <b>bold</b> )	<u>At-Sea Census (in lbs)</u> <small>To be completed by observer with data collected from at-sea observations</small>			<u>Dockside Census (in lbs)</u> <small>To be completed by observer for <b>overfished/rebuilding species</b> based on dockside census of retained rockfish</small>
		Retained by Skipper (pounds)	Drop-off Prior to Reaching Vessel (pounds)	Predated Prior to Reaching Vessel (pounds)	
	<b>Bocaccio</b>				
	<b>Canary RF</b>				
	<b>Cowcod</b>				
	<b>Widow RF</b>				
	<b>Yelloweye RF</b>				
	<b>Darkblotched RF</b>				
	<b>Pacific Ocean Perch</b>				
	Aurora RF				
	Bank RF				
	Blackgill RF				
	Redbanded RF				
	Rougheye RF				
	Sharpchin RF				
	Splitnose RF				
	Chilipepper Rockfish				
	Other Rockfish:				
	Other Rockfish:				

**ALL ROCKFISH CAUGHT UNDER THE EFP MUST BE RETAINED AND LANDED. NO ROCKFISH CAN BE DISCARDED AT SEA REGARDLESS OF THEIR CONDITION.**

*Instructions for Other Target Species Section Below: The following target species can be discarded by the skipper, but are counted against the EFP's aggregate catch limits in addition to predated and drop-off individuals. Observer, please record the combined total estimated pounds of each species discarded. This includes discards handled by the skipper, drops-off lost prior to reaching the vessel, and any predated fish that are discarded.*

Other Target Spp.	Non-Retained/Discarded at Sea (pounds)	
Shortspine Thornyhead		
Longspine Thornyhead		
Sablefish		
Lingcod		
Spiny Dogfish		
Dover Sole		
Petrale Sole		
Other flatfish		
Other:		





## Appendix B

### EFP Selection Package Application



Selection of Participating Fishermen  
**Morro Bay/Port San Luis 2009 Exempted Fishing Permit**  
*Community Based Fishing Association*

January 2009

**RE: EFP Fishing Opportunities**

Thank You for Your Interest in Exempted Fishing Permit (EFP) Fishing Opportunities,

With this package, please find a **Description of Selection of Participating Fishermen** and an **EFP Selection Application**.

- Please review the **Description of Selection of Participating Fishermen**. This document is intended to answer questions regarding the 2009 EFP fishing opportunity.
- Please answer all of the questions on the **EFP Selection Application** to the best of your ability and return (postmark or hand-deliver) the completed application by **February 14** to:

Henry Pontarelli  
Lisa Wise Consulting, Inc.  
983 Osos Street  
San Luis Obispo, CA 93401

Completed applications will be submitted to a selection committee for review and evaluation. The selection committee will consist of at least three people that have no personal, financial or familial relationship with the Community Based Fishing Association (CBFA) or its partners, or the local fishing industry. Selection committee members will possess a good standing in the community, a leadership role in their field and be debriefed regarding the project. Applications and evaluations will then be passed to The Nature Conservancy for final review. **Applications and evaluations will be handled in the strictest confidence.**

**Overview** In November of 2006, the Pacific Fisheries Marine Council (PFMC) recommended approval of an EFP to seven sponsors representing the Morro Bay and Port San Luis commercial fisheries. The EFP allows six federal groundfish trawl permits owned by The Nature Conservancy (TNC) to be fished using non-trawl gear under pooled catch limits. In September of 2008, the PFMC granted an extension of the EFP for the calendar year of 2009.

In the 2008 EFP, three local fishermen conducted 29 trips over four months, landing almost 70,000 pounds of, primarily sablefish, as well as blackgill rockfish and thornyheads.

The project is being coordinated and administered by the Community Based Fishing Association (CBFA) that is made up of representatives from the Morro Bay Commercial Fishermen's Organization (MBCFO), Port San Luis Commercial Fisherman's Association (PSLCFA), the City of Morro Bay, Port San Luis Harbor District, TNC, and Environmental Defense Fund (EDF). The CBFA sets the direction of the project, and reviews decisions, while TNC administers those decisions, and the project.

The CBFA seeks to enlist the participation of up to six qualified fishermen and up to four alternates. Lisa Wise Consulting, Inc. (LWC) has been hired to facilitate a fair, unbiased selection process for the CBFA and TNC to choose the most qualified participants from a group of fishermen that submit EFP Selection Applications (enclosed). The selection process is being funded by a Central Coast Joint Cable Fishery Liaison Committee grant.

An important criteria is each fishermen's willingness and ability to work together to achieve consensus. A goal of this program is that participating fishermen play an increasingly greater role in the harvest plan, revenue-sharing decisions and build on the EFP opportunity.

**Minimum required criteria include:**

- Experience using horizontal longline and/or vertical hook and line gear.
- Willingness and ability to land in Morro Bay and Port San Luis.
- Hold a valid California commercial fishing license.
- Willingness and ability to accommodate an observer, which includes access to a vessel with valid registration that has a valid Commercial Fishing Vessel Safety Examination decal, carries current safety equipment that is required for the decal, and adheres to all U.S. Coast Guard and other rules pertaining to safe vessel operations.
- Willingness to share information on landings, economic expenditures and performance.
- Vessel must meet requirements for installation of electronic monitoring system.
- No violations of past EFP provisions, no violation of fishing regulations which the applicant was fined more than \$1,000 for a criminal penalty or \$5,000 for a civil penalty, or falsification of fish receiving tickets.

Again, please complete the EFP Selection Application to the best of your ability and return it to:

Henry Pontarelli  
Lisa Wise Consulting, Inc.  
983 Osos Street  
San Luis Obispo, CA 93401

Thank You,

*Community Based Fishing Association*

## Description of Selection of Participating Fishermen

### Morro Bay/Port San Luis 2009 Exempted Fishing Permit

The Exempted Fishing Permit (EFP) project will allow a partnership of fishermen, The Nature Conservancy (TNC), and a local community-based fishing association (CBFA) that will work together to coordinate the fishing of six federal groundfish trawl permits owned by TNC. This opportunity requires the use of non-trawl gear (fixed-gear) under pooled catch limits. From this, we hope to find ways to help strengthen marine resources stewardship, encourage collaboration that will protect local access to groundfish, identify and address conservation needs, improve monitoring efforts and data collection. This EFP project is designed to provide federal fishery managers with practical experience and data that could inform decisions relevant to future management of the limited entry groundfish trawl fishery.

Gear-switching and community-based fishing associations could help reduce the unintended consequences of coast-wide management measures that may impact small, remote fishing communities that have long relied on access to groundfish. In this project, we have the opportunity to test how gear switching and local management may be used to build a more environmentally sustainable and economically viable groundfish industry in Morro Bay and Port San Luis.

This is the second year of the EFP project. In mid-September of 2008, the Pacific Marine Fisheries Council (PFMC) granted the extension of EFP for the calendar year of 2009. Last season, three local fishermen conducted 29 trips and landed approximately 70,000 pounds of primarily, sablefish as well as blackgill rockfish and thornyheads. The three fishermen cooperated and communicated amongst themselves, TNC and project managers to share two observers with little or no delay in fishing. The three fishermen also participated in meetings to make changes to the harvest plan and then subsequently abided by measures that sought to target a diversity of species and share financial opportunities fairly. The harvest plan established individual allocations, pacing fishing and restrictions and ratios on gear. The 2008 EFP fishermen also successfully deployed electronic monitoring equipment, met 100% observer requirements and contributed to real-time mapping efforts. In 2008, fishing began in August and ended in late November. In 2009, the plan is to begin fishing in late March or April. In 2008, there was a 50 metric ton aggregate catch limit for sablefish. For the 2009 EFP, the sablefish aggregate catch limit has been increased to 165 metric tons.

In 2009, the CBFA intends to enlist the participation of up to 6 fishermen and up to four alternates. The project is a collaborative effort to build a more reliable, local groundfish industry as opposed to providing a short-term fishing opportunity. It is imperative that the participating fishermen hold EFP objectives as high a priority as securing revenue from their fishing efforts.

Below is a list of the pooled target and overfished species aggregate catch limits for the 2009 EFP, which must be shared among the participants. Hitting the aggregate catch limit for either a target or overfished species will end fishing for all species and will shut the 2009 EFP project down. One of the key CBFA objectives is to maximize catch and value of all target species

while avoiding catches of overfished species. Developing and adapting a successful and equitable harvest plan over the year to achieve that objective will continue to be a key challenge for the project participants.

Target Species	Catch Limit
Sablefish	165 metric tons
Slope Rockfish	50 metric tons <i>(no more than 20 metric tons may be blackgill rockfish)</i>
Longspine thornyhead	60 metric tons
Shortspine thornyhead	60 metric tons
Lingcod	15 metric tons
Chilipepper rockfish	20 metric tons
Spiny dogfish	10 metric tons
Splitnose Rockfish	1000 pounds
Dover sole	10 metric tons
Petrale sole	10 metric tons
Other flatfish	10 metric tons

Overfished Species	Catch Limit
Canary Rockfish	50 pounds
Yelloweye	150 pounds
Widow	2 metric tons
Darkblotched	1,000 pounds
Pacific Ocean Perch	300 pounds
Cowcod	440 pounds
Bocaccio	5 metric tons

### What are the restrictions for the EFP?

- Fishing must occur deeper than 150 fathoms
- Fishing must occur north of Pt. Conception and south of Pt. Lopez
- All fishing trips will include a human observer(funded by the CBFA)
- Fishermen must agree to carry electronic monitoring equipment on their vessels (funded by the CBFA)
- 100% retention of all rockfish is required and prohibited rockfish species must be surrendered upon landing
- All fishing efforts will use horizontal and vertical longline gear.
- Participants fishing under the EFP may not fish for groundfish under open access or another federal limited entry permit during the same 2-month cumulative limit period. Participation in other, non-groundfish fisheries will be unaffected.
- Through the Harvest Plan, harvest limits, pacing, individual allocations, gear restrictions and lease rates will be coordinated and managed by the CBFA, and participating fishermen and administered by TNC. All participants must abide by these limits and restrictions.

### How will participation in the EFP work?

- Fishermen will enter into permit license agreements with TNC and will be issued an EFP from NMFS – both will be required for participation in the project.
- License revenue will be allocated to help fund the EFP project.
- CBFA will establish a lease rate and may vary depending on the CBFA and participating fishermen's input and species harvested.
- Fishermen will be involved in final revenue sharing and lease structure decisions.
- A 5% federal trawler buyback fee will be collected for all landings.

- Fishermen are expected to participate in regular CBFA meetings and contribute to the development and adaptation of the harvest plan and other local management measures to achieve CBFA objectives.
- Fishermen will be expected to provide trip-level data including copies of fish tickets, EFP logbooks, surveys and self-reporting of: daily effort, expenditures, expectations, gear and location-specific harvest, etc.
- Exceeding catch limits for any target or overfished species will result in the end of the 2009 EFP. Special attention will be paid to canary rockfish and yelloweye rockfish landings due to their very small catch limits.

### **EFP Fishermen Participant Selection Criteria**

The following is required criteria that will be used to guide a selection committee evaluation of ranking up to six fishermen and up to four alternates from the group of fishermen who submit applications.

### **Required Criteria for Participation in the 2009 EFP**

- Agrees to comply with restrictions and obligations listed above.
- Experience using specified gear and knowledge fishing marine waters between Lopez Point and Point Conception.
- Willingness and ability to land in Morro Bay or Port San Luis.
- Holds a valid California commercial fishing license
- Access to a vessel that has 1) adequate space and weight capacity to carry an observer (in addition to crew, gear and catch), 2) a Commercial Fishing Vessel Safety Examination decal and carries current required safety equipment that is required for the decal and 3) maintains safe conditions including adherence to all USCG and other applicable laws, regulations or statutes pertaining to safe operations of the vessel.
- Willingness and ability to accommodate electronic monitoring equipment, that includes dry interior space for the EM control box, sufficient electrical supply (110V AC or 12V DC), a 1/4" National Pipe Thread female port (identical to what is required for mounting a pressure gauge) for the EM transducer, willingness to have the EM equipment aboard and provide for its proper operation, and to make any modifications to provide these conditions and to accommodate for the wiring system.
- No violations of past EFP provisions, no violations of fishing regulations which the applicant was fined more than \$1000 for a criminal penalty or \$5,000 for a civil penalty, or falsification of fish receiving tickets.

### **Additional Required Criteria for Participation in the 2009 EFP**

- Desire and willingness to land species other than sablefish.
- Willingness and demonstrated ability to work in cooperation with other participating fishermen and CBFA in efforts to meet EFP project objectives.
- Good reputation regarding fishing ability and ability to work well with others.
- Willingness to compromise in order to meet EFP objectives and bring about project results.



- Willingness to place equal importance on EFP project objectives as well as individual financial benefit.
- Commitment to stewardship of marine resources by promoting innovation in fishing business models, fishing techniques, cooperative structures, etc.
- Strong time commitment to the EFP project, including, fishing, attending meetings, communicating with fellow fishermen, TNC and project managers and recording and reporting required information.
- Significant experience fishing in local waters.
- Sound references

## Selection Committee

A committee of at least three people will be chosen to review the submitted applications, evaluate each applicant according to their responses and provide those evaluations on a confidential basis to TNC in a final package. Selection committee candidates will be identified and selected by their good standing in the community and leadership role in their particular field. The selection committee members will be chosen by the CBFA. Every reasonable effort will be made to ensure that selection committee members have no real or perceived personal, financial or familial relationships with any of the applicants, TNC, Environmental Defense Fund, or any individual members of the CBFA partners, or a direct financial interest in the groundfish industry in Morro Bay and/or Port San Luis. Selection committee members will be debriefed by the CBFA on the history of the project, goals, objectives and priorities.

## Fishermen Selection Application

### The Nature Conservancy 2009 Exempted Fishing Permit

Name \_\_\_\_\_ Phone \_\_\_\_\_

Address \_\_\_\_\_ Cell \_\_\_\_\_

\_\_\_\_\_ Email \_\_\_\_\_

#### Current Employment

1. What is your current employment? \_\_\_\_\_
- 
2. Do you intend on retaining present employment should you receive an EFP?      Yes      No

#### Eligibility

3. Do you meet the required eligibility as described in Description of Selection of Participating Fishermen, included in this package?      Yes      No
- 
4. Are you in violation of past EFP provisions, fishing regulations in which you were fined more than \$1000 for a criminal penalty or \$5,000 for a civil penalty, or violations including falsification of fish receiving tickets?      Yes      No
- 
5. Do you presently own your vessel?      Yes      No
- 
6. Does your vessel meet Coast Guard safety requirements?      Yes      No
- 
7. Does your vessel meet requirements for installation of an Electronic Monitoring System or are you willing to modify it to meet those requirements?      Yes      No

#### Fishing Experience

8. Total years in commercial fishing industry (actively fishing). \_\_\_\_\_
- 
9. Total years fishing within local Morro Bay/Port San Luis waters. \_\_\_\_\_
- 
10. On average, percent of the year typically having fished in local waters: (e.g. 10% - 100%). \_\_\_\_\_
-

11. Describe your experience with longline equipment:

length of time used \_\_\_\_\_

percent of time used compared to total gear use \_\_\_\_\_

species targeted \_\_\_\_\_

12. Primary landing port over the past ten years. \_\_\_\_\_

13. Species predominantly pursued over the past ten years. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

14. If you were granted an EFP, how much time would you be able to give to the experiment, including time spent fishing and CBFA regular meetings? \_\_\_\_\_ 100%

\_\_\_\_\_ 75%

\_\_\_\_\_ 50%

\_\_\_\_\_ 25%

\_\_\_\_\_ 10%

## Self-Rating

15. Should you be granted an EFP, to what extent would you be willing to engage in close and ongoing interaction and decision-making with TNC and CBFA? \_\_\_\_\_ Very Willing  
\_\_\_\_\_ Willing  
\_\_\_\_\_ Not Willing

16. Should you be granted an EFP, to what extent would you be willing to provide trip-level data through TNC administered survey and/or self-reporting of: daily effort, expenditures, expectations, and location-specific harvest? \_\_\_\_\_ Very Willing  
\_\_\_\_\_ Willing  
\_\_\_\_\_ Not Willing

17. The EFP requires 100% observer coverage on all trips. Observer coverage is being funded by TNC and NOAA. Up to three observers will be shared by the six fishermen. Scheduling and coordination of observers is a collaborative effort between participating fishermen, project managers and TNC. To what extent are you willing to have an observer on your vessel for each trip conducted under the EFP? \_\_\_\_\_ Very Willing  
\_\_\_\_\_ Willing  
\_\_\_\_\_ Not Willing

18. To what extent is your vessel capable of handling an observer on board in addition to your crew and catch?	_____	Very Capable
	_____	Capable
	_____	Not Capable

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19. To what extent are you willing to follow all protocols of the West Coast Groundfish Observer Program to ensure the safety of the observer on your vessel?	_____	Very Willing
	_____	Willing
	_____	Not Willing

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20. If granted an EFP you will NOT be able to fish ANY other federal groundfish permit OR open access, until the EFP is transferred from your vessel. To what extent are you willing to comply with this measure?	_____	Very Willing
	_____	Willing
	_____	Not Willing

---

21. To what extent are you familiar with the construction and deployment of horizontal long lines and/or vertical long lines?	_____	Very Familiar
	_____	Familiar
	_____	Not Familiar

---

22. To what extent would you be willing to utilize horizontal and vertical longlines during the 2009 EFP?	_____	Very Willing
	_____	Willing
	_____	Not Willing

---

23. To what extent are you familiar with fishing for slope rockfish (i.e. blackgill, bank, etc.) using longline equipment along the central coast of California?	_____	Very Familiar
	_____	Familiar
	_____	Not Familiar

---

24. Is your vessel currently or easily equipped to fish with:			
Horizontal longlines	Yes	No	
Vertical longlines	Yes	No	
Traps/pots	Yes	No	

---

25. Do you currently own or have access to the following fishing equipment:			
Horizontal longlines	Yes	No	
Vertical longlines	Yes	No	
Traps/pots	Yes	No	

## Written Responses

In a paragraph, please answer the following questions.

26. In what ways do you think the EFP project could benefit the community in the long run?

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27. In what ways do the EFP project objectives match or conflict with your own objectives?

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This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There is no handwriting or other markings on the paper.

Please list three people who would recommend you as an EFP fisherman.

Sign \_\_\_\_\_ Date \_\_\_\_\_

Henry Pontarelli  
Lisa Wise Consulting, Inc.  
983 Osos Street  
San Luis Obispo, CA 93401



## Appendix C

### EFP Participant Logbook and Logbook Instructions





## **CBFA Vessel Logbook Instructions – 2010 Morro Bay/Port San Luis EFP**

The following applies for each fishing trip conducted under the Morro Bay/Port San Luis Exempted Fishing Permit.

- Record all information requested for every set even if no marketable fish were caught.
- Please make your record as accurate as possible, using standard PacFin codes (included) or species names for species caught and discarded on the logbook sheets.
- Please **do not** invent your own codes.
- PRINT clearly and legibly.
- Use a new logbook page for each trip. One trip may use several logbook pages. Fill out logbook page for trips that are terminated at sea due to weather conditions.
- Please complete BOTH SIDES of the logbook page for each trip. Instructions for the trip expense report are included on each trip expense page.

**Vessel Name:** Record the flagged name of the fishing vessel.

**Name of Skipper:** Record the name of the captain of the fishing vessel.

**Trip Departure Date and Time:** Record the date (MM/DD/YYYY) and time (in 24-hour format) when the vessel leaves the harbor.

**Trip Return Date and Time:** Record the date (MM/DD/YYYY) and time (in 24-hour format) when the vessel arrives in port.

**Trip ID# (YYMMDD\_VesselID#):** The trip ID# contains 2 things: 1) date the vessel leaves the harbor, and 2) vessel's ID#. An example for July 30, 2008 with a vessel ID of 42516 is: 080730\_42516.

**Fish Ticket #s:** Record the fish ticket numbers associated with the logbook for a trip. In cases where fish from a trip were sold to more than one buyer list all fish ticket numbers. The definition of a set is broken down for horizontal, vertical, and pot/trap gear. A set consists of 3 events (Start, Haul, and End, defined below).

**Horizontal Gear** – A set is defined as a string of gear, regardless of the number of hooks, tied together to fish as one complete horizontal line on or near the bottom. A typical horizontal set will include an anchor and associated radar buoy at each end of the string of hooks.

**Vertical Gear** – A set is defined as string of hooks, regardless of the number of hooks, tied together to fish as one vertical line off the bottom in the water column. A typical vertical set will include one anchor and radar buoy per string of hooks.

**Pot/Trap Gear** – A set is defined as one or more pots or traps tethered together on a single string of gear. Multiple pots/traps are attached and are set and retrieved together.

**Start/Haul/End:** The row 'Start' refers only to columns 'Date' and 'Time' for each set & the rows 'Haul/End' correspond to the columns: Date, Time, Lat. & Lon. for each set.

**Date (mm/dd):** Record the date for 3 events during the set: Start, Haul, and End. An example for July 30, 2008: 07/30.

**Time, 24 hour:** Record time (24-hour format) for 3 events during the set: (Start) first buoy deployed overboard, (Haul) when the winch starts hauling gear, and (End) when the last buoy is retrieved from the water.

**Latitude/Longitude:** Record latitude and longitude to the hundredth of a minute for the 'Haul' and 'End'. An example would look like: latitude 35° 20.68 and longitude 121° 59.33.

**Depth of catch (fm) at retrieval:** Record the depth (fathoms) for each set at the start of gear retrieval.

**Gear Type:** Record the gear type for each set (H-Horizontal, V-Vertical, T-traps/pots).

**# Hooks or Pots:** Record the number of hooks per horizontal or vertical set. If traps or pots are used, record the number that are tied together to form the string.

**Target Strategy:** Using the PacFin codes describe the species or complex targeted with each set that is deployed.

**List Species by PacFin Code:** Using the PacFin codes list the number of fish that are retained (R) and/or discarded (D) for each species from each set.

**The "Other Discards" Section is for discards of species for which no individuals are retained on that trip.**

**Species/Description:** Using the PacFin codes or full species names, describe the species that are only discarded from each set.

**Quantity:** Record the # of fish for each species that are discarded from each set.

**Set # when caught:** Provide the set # during which the discard was caught.



# Catch Categories and Target Strategies – PACFIN Codes

Catch Category	Code	Catch Category	Code	Target Strategy	Code	Gear Type Categories include:
Albatross Lure	ALBC	Rax Sole	REX	Bottom Rockfish Shelf	BRSH	H - Horizontal Hook and Line
Arrowtooth Flounder	ARTH	Rock Greenling	RCKG	Bottom Rockfish Slope	BRSL	V - Vertical Hook and Line
Aurora Rockfish	ARRA	Rock Sole	RSOL	Dover/Thornyheads/Schistfish	DTS	T - Traps or Pots
Bank Rockfish	BANK	Rockfish Unspecified	URCK	Deepwater Dover	DWD	
Big Skate	BSKT	Rockfish W/A or CA	RCKC	Miscellaneous	MSCZ	
Blackgill Rockfish	BLGL	Roxy Rockfish	ROXY	Nearshore Max	NSM	
Blackgill Rockfish	BLGL	Rougheye Rockfish	REYE	Unknown	UNKN	
Bocaccio Rockfish	BOCA	Sablefish	SABL			
Bronzeopistod Rockfish	BRNZ	Salmon Unspecified	SAMN			
Butter Sole	BSOL	Sand Sole	SDAB			
Cabezon	CBZN	Sand Sole	SDAB			
California Halibut	CHLB	Sand Sole	SDAB			
California Skate	CSKT	Sand Sole	SDAB			
Canary Rockfish	CNRY	Shark Other	OSRK			
Chinook Rockfish	CLPR	Shark Other	OSRK			
Cowcod Rockfish	CWCD	Shark Other	OSRK			
Crab Other	OCRB	Shark Other	OSRK			
Curlin Sole	CSOL	Shark Other	OSRK			
Darkeel Rockfish	DBRK	Shark Other	OSRK			
Dover Sole	DOVR	Shark Other	OSRK			
Dungeness Crab	DCRB	Shark Other	OSRK			
English Sole	EGLS	Shark Other	OSRK			
Flag Rockfish	FLAG	Shark Other	OSRK			
Flatfish Other	OFLT	Shark Other	OSRK			
Flathead Sole	FSOL	Shark Other	OSRK			
Greenblotched Rockfish	GBLC	Shark Other	OSRK			
Greenstriped Rockfish	GSRT	Shark Other	OSRK			
Greenstriped Rockfish	GSRT	Shark Other	OSRK			
Grenadier Unspecified	GRDR	Shark Other	OSRK			
Haitian Rockfish	HBRK	Shark Other	OSRK			
Kelp Greenling	KLPG	Shark Other	OSRK			
Large Rockfish (OH)	LGRK	Shark Other	OSRK			
Lingcod	LCOD	Shark Other	OSRK			
Longspine Thornyhead	LSPN	Shark Other	OSRK			
Macklen Unspecified	UMCK	Shark Other	OSRK			
Marine Mammal	ZMRM	Shark Other	OSRK			
Miscellaneous	ZMIS	Shark Other	OSRK			
Nearshore Rockfish N	NSHR	Shark Other	OSRK			
Nearshore Rockfish S	NSHR	Shark Other	OSRK			
Ocean Whitefish	OWFS	Shark Other	OSRK			
Octopus Unspecified	OCUP	Shark Other	OSRK			
Pacific Angel Shark	ASPK	Shark Other	OSRK			
Pacific Cod	PCOD	Shark Other	OSRK			
Pacific Halibut	PHLB	Shark Other	OSRK			
Pacific Hake	PHAK	Shark Other	OSRK			
Pacific Ocean Perch	POPP	Shark Other	OSRK			
Pacific Whiting	PWHT	Shark Other	OSRK			
Petrale Sole	PTSL	Shark Other	OSRK			
Pollock	FLCK	Shark Other	OSRK			
Redband Rockfish	REBD	Shark Other	OSRK			
Redstripe Rockfish	REDS	Shark Other	OSRK			

## Aggregate Catch Limits for the 2010 Morro Bay/Port San Luis EFP

Sablefish	300 mt
Slope rockfish (south of 40°10' N. latitude)	60 mt
(except that no more than 40 mt of that may be blackgill rockfish)	
Longspine thornyhead	30 mt
Shortspine thornyhead	60 mt
Lingcod	15 mt
Chilipepper rockfish	20 mt
Spitnose rockfish	1 mt
Spiny dogfish	10 mt
Dover sole	10 mt
Petrale sole	2 mt
Other flatfish	10 mt

## Rebuilding Species Aggregate Catch Limits

Canary rockfish**	50 lbs
Yelloweye rockfish**	150 lbs
Widow rockfish	2 mt
Darkblotched rockfish	1 mt
Pacific Ocean perch	300 lbs
Cowcod**	440 lbs
Bocaccio	5 mt

\*\*May NOT be sold.

Note that achieving any one of the target limits listed here will trigger shutdown of fishing under the EFP. Under the terms of the EFP, all participants share responsibility for any incidence of exceeding an aggregate catch limit.

Each fisherman is responsible for knowing where catches are in relation to the hard caps. Be sure to get this information before you go to sea.

In the event that your trip causes an overage for any species, contact Dwayne Oberhoff immediately at (805) 440-6137.

CBFA VESSEL LOGBOOK - Morro Bay/Port San Luis EFP

Vessel Name:

Trip Departure Date (MM/DD/YYYY):

Time (24-hour):

Trip ID# (YYMMDD\_Vessel ID#):

Name of Skipper:

Trip Return Date (MM/DD/YYYY):

Time (24-hour):

Fish Ticket #s

Set #	Date (mm/dd)	Time (24-hour)	Latitude		Longitude		Depth of catch (m) at retrieval	Gear Type	# Hooks or Pots	Target Species	List Species by the Fish code		Other Remarks		Field Station Number	
			degrees	minutes (tenths 21.5)	degrees	minutes (tenths 21.5)					Species Description	Quantity				
	Start															
	Mid															
	End															
	Start															
	Mid															
	End															
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# **CBFA Trip Expense Reporting Form - Morro Bay/Port San Luis EFP**

**Instructions:** The expenses reported on this form should correspond with the trip reported on the other side - one logbook page per trip. This form will be used to track all per trip costs associated with fishing under the Morro Bay/Port San Luis Exempted Fishing Permit and will be used to prepare reports on the economic viability of this project required by NMFS. Please report all costs associated with each trip in the appropriate space provided. **Please do not fill out the lease payment and federal buyback rate section. This will be completed by Dwayne and returned to fishermen after it's entered into eCatch.** Please use blank space provided (marked "Comments") to note other or unanticipated costs to provide a complete report of costs incurred on each trip. If you have any questions or have to turn in a trip log, please contact Dwayne Oberhoff at (805) 440-6137. Please note that all trip logs must be submitted within 48 hours of the completion of each fishing trip and before the start of the next trip.

Item	# Units	Total Item
General Costs	Quantity	Cost (\$)
Fuel ----->	gallons	\$
Ice ----->	pounds	\$
Hooks: Number of Hooks Baited <u>and</u> Costs: Replacement Hooks and Labor Costs to Bait Hooks	hooks	\$
Bait: Quantity (pounds) and Costs for Bait Used on Trip	pounds	\$
Bait Type: SQUID - ANCHOVY - OTHER _____		
Groceries ----->		\$
<b>Crew costs</b>		<b>Totals</b>
Number of Crew ( <u>not including captain</u> ) on Vessel for Fishing Trip ----->		# crew
Crew Share Percentage(s) ----->	% of revenue	\$
<b>Lease Payment(s) Due to TNC</b>		
Species	Total (\$) from Fish Ticket for Species	Lease Rate %
		Lease Payment Due to TNC
<b>TOTALS</b>		
Federal Buyback Rate (5% of total value from Fish Ticket Landings)		\$
	Gear Used:	<input type="checkbox"/> Own <input type="checkbox"/> TNC

**Comments:**

## Appendix D

### EFP Terms and Conditions



## EXEMPTED FISHING PERMIT

TO TEST WHETHER THE ESTABLISHMENT OF A COMMUNITY BASED FISHING ASSOCIATION EMPLOYING COMMERCIAL FISHERS USING FIXED GEAR OFF THE CENTRAL CALIFORNIA COAST FOR SHARED SPECIES CATCH LIMITS WILL PROVIDE COMMUNITY AND ECONOMIC BENEFITS

### TERMS AND CONDITIONS

#### A. PURPOSE.

The purpose of this exempted fishing permit (EFP) is to test whether establishing a cooperatively managed, community based fishing association that employs commercial trawl permits to use fixed gear to fish off the Central California coast, under shared catch limits for target and bycatch species, can provide important economic and environmental performance benefits. The research objectives are as follows:

1. Demonstrate the effectiveness of community-based fishing association – TNC will document and report on the process used to develop and implement the community based fishing association (CBFA). Such information may be useful in developing regulations for regional fishing associations and trawl rationalization.
2. Evaluate the social and economic performance of the fishery under gear switching effort and cooperative local management – The Nature Conservancy (TNC) will collect economic information about the EFP fishery (revenue and cost). All participants will maintain and provide this information to TNC.

#### B. BACKGROUND.

In recent years, TNC purchased several limited entry trawl permits (LEPs) from fishermen that operated trawl vessels along the central California Coast. Under current federal regulations, bottom trawl LEPs cannot be converted to LEPs for harvesting groundfish with other gear types, such as hook and line and pot gears. This issue was identified by TNC when they purchased bottom trawl permits, and they have been exploring ways to mitigate the negative economic effects of the bottom trawl LEP purchases, while exploring a shift to other harvest mechanisms. The commercial fishery operating out of Morro Bay, CA and Port San Luis, CA has been much reduced in recent years, causing economic hardship on these fishing ports and the reduction of commercial fishing infrastructure, including processors and ice dealers.

In addition, the Pacific Fishery Management Council (Council) has begun development of a trawl rationalization and individual fishing quota (IFQ) program. As the Council moves forward with planning and analysis, it will need practical information on how rationalized fisheries would operate in the Pacific Coast groundfish fishery. Fishing under this EFP is expected to provide valuable information on how to structure a more cost-effective monitoring system that emphasizes individual accountability in a rationalized fishery and also on the costs of managing a rationalized fishery.



TNC will work with central California Coast fishery participants to form a community based fishing association that would cooperatively manage fishing operations to maintain harvests within a total catch amount for target and incidental species, rather than under the cumulative trip limit structure in current Pacific Coast groundfish regulations. The collaborators with TNC include: City of Morro Bay Harbor Department; Port San Luis Commercial Fishermen's Association; Port San Luis Harbor District; California Department of Fish and Game; Morro Bay Commercial Fishermen's Organization, Inc.; and Environmental Defense Fund.

This EFP will allow TNC to temporarily convert bottom trawl LEPs into longline, trap, pot, and hook and line gear LEPs. Also, TNC and designated vessels will land some groundfish species in excess of trip limits so that they may structure their fishing operation to better meet the needs of the community based fishing association. Without an EFP, these activities are otherwise prohibited by Federal regulations and TNC would not be able to test the usefulness of a community based fishing association and gear switching mechanisms to mitigate the impact of trawl effort reduction on communities and promote conservation of fishing resources. Data collected during this project are expected to have a broader significance to the management of the Pacific Coast groundfish fishery by providing insight into the challenges and successes of managing a community based fishing association under a rationalized fishery, as well as informing fishery monitoring provisions that would need to accompany an IFQ program for which individual accountability is a key component.

For purposes of this project, NMFS will issue an EFP to TNC which provides terms and conditions which specify how it will carry out and oversee the project described above. Additionally, NMFS will issue EFPs to each of the vessels selected by TNC to participate in the project and they will be bound by these terms and conditions while fishing as part of the TNC project. Finally, TNC will register these same vessels under individual EFPs with NMFS to their trawl endorsed LEPs. References to TNC limited entry permits below are specifically those that will be registered to vessels participating under an EFP with NMFS. In recognition of the differing roles of TNC and the participating vessels in this project, the terms and conditions provided below have been organized such to address the specific requirements for both TNC and participating vessels. If there is no reference to TNC or vessel for any one term and condition, that term and condition applies equally to both entities.

### C. SCOPE.

1. The EFPs issued to both TNC and to vessels participating in the TNC project apply to all fishing activities in the Pacific Coast groundfish fishery during the effective dates of these EFPs.
2. The EFPs exempt both TNC and the vessels registered to TNC LEPs as part of this project from all Pacific Coast groundfish regulations in 50 CFR Part 660 that apply to trawl endorsed limited entry permits, unless otherwise stated in the terms and conditions, during the effective dates of these EFPs.
3. This EFP requires both TNC and the vessels participating in the TNC project to follow Pacific Coast groundfish regulations that apply to limited entry fixed gear, unless otherwise stated in the terms and conditions, during the effective dates of these EFPs.

#### D. DEFINITIONS.

1. Authorized Fishing Trip: An authorized fishing trip is a fishing trip taken by a vessel during the project period in support of the above research objectives and is simultaneously registered to a TNC LEP and the vessel's EFP.
2. Vessel Exempted Fishing Permit ("vessel EFP"): A vessel EFP is the EFP issued to the individual vessel participating in The Nature Conservancy's EFP (D.3.) project as described in Section B which specifies the terms and conditions to which individual vessel owners must adhere. The vessel EFP is only valid for a vessel that is also registered to an LEP owned by TNC. No more than 6 vessel EFPs will be issued at any given time.
3. TNC Exempted Fishing Permit ("TNC EFP"): The TNC EFP is the EFP issued to The Nature Conservancy, describing the terms and conditions to which TNC and participating vessels (i.e., those holding a "vessel EFP") must adhere in carrying out the project described in Section B.

#### E. PERMIT CONDITIONS.

1. Vessel: This Vessel EFP is valid only for the vessel registered to it. All qualified fishing trips by the registered vessel taking and retaining groundfish must be conducted in accordance with this EFP.

TNC: TNC shall require that all qualified fishing trips by the registered vessel taking and retaining groundfish must be conducted in accordance with this EFP. TNC will register a vessel participating in the TNC EFP project to a trawl endorsed Pacific Coast Groundfish limited entry permit owned by TNC.

2. Vessel: The vessel registered to a vessel EFP must also be registered to a trawl endorsed Pacific Coast Groundfish Limited Entry Permit owned by TNC in order to participate in the EFP project. If the vessel registered to a vessel EFP is not registered to a TNC limited entry permit, the EFP is invalid.

TNC: If a vessel owner terminates its EFP with NMFS, TNC will submit to NMFS a transfer form removing the permit holder and vessel from the limited entry permit.

3. Vessel: A vessel EFP is not transferrable to another vessel or vessel owner.

TNC: The TNC EFP is not transferrable to another entity. TNC limited entry permits used for this project may be transferred to more than one vessel during the exempted fishing project period. The TNC limited entry permits registered EFP vessels may not be registered to any other vessel at the same time. After the initial registration of a vessel to any TNC limited entry permits and a vessel EFP, subsequent transfers will be effective at the beginning of the next cumulative limit period, as currently prescribed at 50 CFR 660.335(e)(2).



## F. EFFECTIVE DATES.

1. **Vessel:** The vessel EFP is effective when signed by the NMFS Regional Administrator and the vessel EFP holder (i.e., the vessel owner or authorized representative of vessel owner) and when the vessel is simultaneously registered to Pacific Coast Groundfish limited entry permit owned by TNC. If the vessel EFP is signed by the NMFS Regional Administrator and the vessel EFP holder on different dates, the effective date is the later of the two signature dates.

**TNC:** The TNC EFP is effective when signed by the NMFS Regional Administrator and the EFP holder. If the EFP is signed by the NMFS Regional Administrator and TNC authorized representative on different dates, the effective date is the later of the two signature dates.

2. **Vessel:** The vessel EFP is valid while the vessel is participating in the 2009 Pacific Coast Groundfish Limited Entry fishery, and expires on December 31, 2009 at 11:59 pm PST, unless cancelled at an earlier date by one of the following actions:

- a. At the request of the vessel owner, in which case the vessel must return to port, remove and return the vessel EFP by mail to NMFS. Concurrently, the vessel EFP holder will immediately inform TNC that it is terminating its participation under the EFP and return the limited entry permit to TNC.
- b. When the NMFS NWR Regional Administrator determines it is necessary to issue an amended TNC EFP or vessel EFP containing additional or revised restrictions, in which case termination of this EFP occurs upon NMFS receipt of a signed amended EFP, or seven days after the NMFS mailing date of the amended permit to the EFP holder, whichever occurs first.
- c. When any of the catch limits are projected to be reached for the target or depleted species described in G.1 or G.2 below, NMFS may cancel the vessel EFPs.

**TNC:** The EFP is valid for the 2009 Pacific Coast Groundfish limited entry fishery and expires on December 31, 2009 at 11:59 pm PST, unless cancelled at an earlier date by one of the following actions:

- a. If the owner of the vessel participating in EFP project elects to terminate their vessel EFP, TNC will submit a transfer request to NMFS that either places the permit in unidentified status or will transfer it to another vessel.
- b. If TNC decides to terminate their EFP with NMFS, it will submit a letter to NMFS stating that they have elected to terminate the EFP and return their EFP.
- c. When the NMFS NWR Regional Administrator determines it is necessary to issue amended EFP containing additional or revised restrictions, in which case cancellation of this EFP occurs upon NMFS receipt of a signed amended permit, or seven days after the NMFS mailing date of the amended permit, whichever occurs first.

d. When any of the catch limits are projected to be reached for the target or depleted species described in G.1. and G.2 below, NMFS may cancel the TNC EFP.

#### G. EXEMPTIONS AND FISHING RESTRICTIONS.

##### 1. Species to be harvested:

**Vessel:** The rockfish species listed below may be caught by the vessel registered to the EFP. These rockfish species must not be discarded and will count against the aggregate catch limit amounts for each of the species given below.

##### **ROCKFISH AGGREGATE CATCH LIMITS:**

Southern slope rockfish	50 mt
(except that no more than 20mt may be blackgill rockfish)	
Longspine thornyhead	60 mt
Shortspine thornyhead	60 mt
Chilipepper rockfish	20 mt
Splitnose rockfish	1000 lbs

The non-rockfish species may be caught by the vessel registered to the EFP. The flatfish species include: Dover sole, petrale sole, English sole, rex sole and sandabs. These non-rockfish species may be discarded but any discarded species counts against the catch limit amounts given below.

##### **NON-ROCKFISH SPECIES AGGREGATE CATCH LIMITS:**

Dover sole	10 mt
Petrable sole	10 mt
Other flatfish	10 mt
Sablefish	165 mt
Lingcod	15 mt

If the aggregate catch of rockfish or non-rockfish species by the vessels registered to the vessel EFP are such that TNC projects the aggregate catch limits to be achieved or exceeded, all vessels registered to a vessel EFP must cease fishing. Any vessel that catches species other than those listed above must harvest such species in the amounts and frequencies allowed for the open access fishery. The vessels registered to this EFP will comply with the harvest plan developed by TNC that directs fishing activities for species listed above and must cease fishing when directed by TNC and/or NMFS.

Vessels registered to the EFP may catch (including both retained and discarded) spiny dogfish in amounts that comply with the spiny dogfish open access trip limits. If the aggregate catch of spiny dogfish by EFP vessels is projected to reach or exceed 10 mt, vessels will cease fishing until NMFS, in consultation with TNC, provides further direction on future fishing activities involving spiny dogfish. All retained and discarded dogfish will count against the 10 mt limit.

The aggregate catch limit for sablefish available to EFP vessels is 165 mt. When the aggregate catch limit for sablefish is projected to reach or exceed 165 mt, all



vessels registered to the EFP will cease fishing. This catch limit for sablefish will be available as of the effective date of the EFP.

**TNC:** The rockfish and non-rockfish species and the associated aggregate catch limit amounts for the TNC EFP are the same as those referenced above for participating EFP vessels. TNC must prepare a harvest plan that limits fishing activities such that the above catch limit amounts for rockfish and non rockfish species are not collectively exceeded by participating vessels. TNC must require EFP vessels registered to TNC limited entry permits to adhere to such plan. If the aggregate catch of vessels under their EFPs for rockfish or non-rockfish species results in the catch limits are projected to be reached or exceeded, TNC must direct all vessels registered to a TNC limited entry permit to cease fishing immediately and notify NMFS immediately. Any vessel registered to a TNC LEP that catches species other than those listed above in G.1, will harvest such species in amounts and frequencies allowed for in the open access fishery.

TNC will track and monitor the catch (including discards) of spiny dogfish by vessels registered to TNC limited entry permits. TNC will require that these vessels abide by the open access trip limits for spiny dogfish. If the aggregate catch of spiny dogfish by the vessels registered to TNC limited entry permits reaches or exceeds 10 metric tons (mt), it will immediately notify NMFS and consult on an appropriate course of action. TNC will direct that vessels cease fishing under the EFP until such time that NMFS and TNC agree to an appropriate course of action regarding future catch of dogfish. NMFS may revise the EFP to reduce impacts on dogfish.

TNC will track and monitor the aggregate catch limit for sablefish of 165 mt. When the aggregate catch limit for sablefish is projected to reach or exceed 165 mt, TNC will notify the vessels registered to TNC limited entry permits to cease fishing and immediately notify NMFS. This aggregate catch limit for sablefish will be available as of the effective date of the EFP.

## 2. Depleted species:

**Vessel:** Vessel EFP holders must adhere to EFP terms and conditions and the TNC harvest plan in an effort to avoid incidental catches of the depleted species listed below. Vessel registered to this EFP shall retain all depleted species and must not discard any of the species listed below. Aggregate catch of overfished species under this EFP are limited to the following amounts:

Canary rockfish	50 lbs
Yelloweye rockfish	150 lbs
Widow rockfish	2 mt
Darkblotched rockfish	1000 lbs
Pacific Ocean perch	300 lbs
Cowcod	440 lbs
Bocaccio	5 mt

The vessel registered to the EFP must cease all fishing activity when it is informed by TNC or NMFS that one or more of these catch limits is projected to

be reached or exceeded. Canary rockfish, yelloweye rockfish, cowcod, and bronzespotted rockfish must be retained, if caught, but may not be sold, as they are prohibited species.

If the aggregate catch of darkblotched rockfish by the vessels registered to this EFP is projected to be reached or exceeds 1,000 pounds, TNC must notify NMFS and consult on an appropriate course of action. At the same time, TNC must direct that EFP vessels to cease fishing immediately. NMFS, in consultation with TNC will decide on an appropriate course of action regarding any future catch of darkblotched rockfish. NMFS may revise the terms and conditions of vessel EFP to include provisions to further protect darkblotched rockfish.

**TNC:** TNC will track and monitor the amount of catch by vessels registered to TNC limited entry permits for the depleted species listed above in order to avoid exceeding the catch limits. TNC will require that vessels registered to TNC limited entry permits conduct fishing activities in such a manner so that participants will not exceed the established catch limits given above for depleted species. If a particular catch limit for a depleted species is projected to be reached or exceeded TNC must notify each participating vessel immediately to cease fishing and notify NMFS immediately. TNC may require vessels to reduce fishing effort or direct that fishing occur in areas to minimize incidental catch of depleted species.

If the aggregate catch of darkblotched rockfish by the vessels registered to TNC limited entry permits is projected to reach or exceed 1,000 pounds, TNC must notify NMFS immediately and consult with NMFS on an appropriate course of action. At the same time, TNC must immediately direct that vessels cease fishing under the EFP until NMFS decides on an appropriate course of action regarding future catch of darkblotched rockfish. NMFS may revise the terms and conditions of the EFP to include provisions to further protect darkblotched rockfish.

3. **Exemptions:** In combination with the exemptions and requirements stated above, both the TNC EFP and vessels registered to EFPs, NMFS authorizes for limited purposes the following activities which would otherwise be prohibited:

a. **Trip Limits:** Vessels registered to a trawl endorsed TNC limited entry permit are allowed to land amounts of groundfish in excess of the limited entry trip limit and frequency and cumulative limit specifications for species subject to a total catch limit specified below in G.1 and G.2, while the EFP is valid unless otherwise noted in the terms and conditions.

b. **Permit Gear Endorsement:** Vessels registered to a trawl endorsed TNC limited entry permit are allowed to use other non-trawl fishing gears (see G.5) while the EFP is valid. TNC may further restrict vessels registered to their limited entry permits to use certain non-trawl fishing gears as they deem appropriate.

c. **Permit Size Endorsement:** Vessels registered to a trawl endorsed TNC LEPs are allowed to be greater than 5 feet of the size endorsement of the LEP or more the 5 feet below the size endorsement given on the limited entry permit while



their EFP is valid. The limited entry permit will retain its original size endorsement (that given prior to the effective date of the EFP) after the EFP activities are concluded.

d. Permit Transfers: TNC may register more than one vessel to each of its limited entry permits during effective period of their EFP for purposes of carrying out the exempted fishing activities. The above term does not imply or mean that multiple vessels may be registered to a single limited entry permit at one time. TNC may register a vessel to a limited entry permit after the beginning of the May-June cumulative limit period for purposes of initiating the TNC project at the earliest possible time.

#### 4. Location of fishing and landings:

**Vessel**: All fishing under a vessel EFP must take place south of 36° North latitude (Point Lopez) and north of 34°10' North Latitude (Point Conception). All fish retained under this EFP must be landed in Morro Bay, CA or Port San Luis, CA. Split offloads are prohibited by the state of California; therefore the entire delivery will be offloaded at a single port.

**TNC**: TNC must require participating vessels registered to TNC limited entry permits conduct all fishing south of 36° North latitude (Point Lopez) and north of 34°10' North Latitude (Point Conception). Further, TNC must require that participating vessels land all fish retained in Morro Bay, CA or Port San Luis, CA. Split offloads are prohibited by the state of California, therefore, TNC must require that the entire delivery of any vessel registered to their limited entry permit will be offloaded at a single port. TNC will terminate lease agreements for the LEPs if a vessel does not comply with this provision.

#### 5. Gear:

**Vessel**: Vessels registered to the EFP will fish using types of fixed gears or nontrawl gear described at 50 CFR 660.302 and subject to the restrictions for limited entry fixed gear in 50 CFR 660.382(b). TNC may require vessels registered to TNC LEPs and a vessel EFP to use only certain fixed or nontrawl gears.

**TNC**: TNC must require vessels registered to TNC limited entry permits to fish using either fixed gear or nontrawl gear as described at 50 CFR 660.302 and subject to the restrictions for limited entry fixed gear in 50 CFR 660.382(b). TNC may require vessels registered to TNC LEPs and a vessel EFP to use only certain fixed or nontrawl gears.

#### 6. Retention/Discard Requirements:

**Vessel**: The vessel EFP holder will be required to retain on board all rockfish caught while fishing under a vessel EFP. Such species will not be discarded. All other harvestable species may be discarded but such discards must be recorded by an observer and count towards the catch limits given in G.1. All overfished species listed in G.2 must be retained on board and not discarded.

Any catch of Pacific halibut or any species of salmonid, must be discarded at-sea and such discards must be recorded by the observer. The vessel operator and crew will cooperate with the observer to account for all species retained or discarded.

**TNC:** TNC will require that any vessel registered to a TNC LEP to retain on board all rockfish species caught while fishing under the EFP project. TNC will require that observers record all discards of non rockfish species including any species not listed in G.1. TNC will terminate the registration of any vessel to their limited entry permit if it does not adhere to the retention/discard requirements. Further, any owner of a vessel registered to a TNC limited entry permit will be required to discard at-sea any prohibited species as defined at 60 CFR 660.370(e) and will require that observers record all discards of prohibited species.

7. Participation in Open Access or Limited Entry Fisheries:

**Vessel:**

**Before participating in the EFP:** Before a vessel is registered to a limited entry permit that is owned by TNC, the vessel may participate in any other fishery that it is authorized to participate in under any other applicable laws. Once the vessel is registered to a limited entry permit that is owned by TNC, it may not be registered to any other limited entry permit (not owned by TNC) and may not participate in the open access fishery.

**Initial Cumulative Limit Period of the TNC EFP:** If the effective date of the TNC EFP falls within a cumulative limit period, NMFS will allow any vessel registered to a TNC LEP and registered to EFP to begin fishing on a date within that initial cumulative limit period. However, any landings of sablefish made during the initial cumulative limit period in which the vessel fishes under the EFP will be counted towards the EFP sablefish catch limit specified in paragraph G.1. Once a vessel is registered to an EFP, all fishing conducted by that vessel must be in accordance with the Terms and Conditions of the EFP.

**During the EFP:** After the initial cumulative limit period following the start date of the TNC EFP, any vessel beginning participation in the ongoing EFP fishery must start their participation at the start of the cumulative limit period. Any vessel registered to this EFP shall not simultaneously participate in the open access groundfish fishery. Any vessel while registered to a vessel EFP may not be registered to any Pacific Coast Groundfish limited entry permit other than that owned by TNC.

**After participating in the EFP:** In general, if NMFS or a vessel EFP holder cancels this EFP, the vessel registered to this EFP shall not fish in either the open access groundfish fishery or a groundfish limited entry permit fishery prior to the beginning of the next cumulative limit period. However, upon request by a vessel EFP holder, NMFS may at its own discretion authorize a vessel to fish in the current cumulative limit period if such fishing is not inconsistent with the EFP goals or other legal requirements. After ending their participation in the EFP project and removing their vessel from registration on the TNC LEP and EFP, the vessel owner may reregister his/her vessel to a Pacific Coast Groundfish limited



entry permit owned by the vessel owner. The registration of the vessel to his/her limited entry permit will be effective at the beginning of the next cumulative limit period or the beginning a subsequent cumulative limited period in 2009.

**TNC:** TNC will obtain fish ticket information for landings made by a vessel during a cumulative limit period if that vessel begins fishing in the EFP after the start of that cumulative limit period. Any sablefish landed by that vessel, during the cumulative limit period in which they begin fishing under the EFP, will be deducted from the sablefish catch limit specified in paragraph G.1.

TNC will require that any vessel registered to a TNC limited entry permit shall not: be registered to another limited entry permit (not owned by TNC) while participating in the TNC EFP project; or participate simultaneously in the open access fishery while registered to the limited entry permit.

8. Trip limits:

**Vessel:** The vessel registered to this EFP will not be subject to the trip limits for non-whiting groundfish for the species given in G.1 and G.2. However, the vessel registered to this EFP is limited by the current Open Access trip limit amounts and frequencies for any target species not named in G.1.

**TNC:** Any vessel registered to a TNC LEP is not subject to the trip limits for non-whiting groundfish for the species given in G.1 and G.2. However, any vessel registered to a TNC LEP is limited by the current trip limit amounts and frequencies for any harvestable species not named in G.1.

9. Other: NMFS Northwest Regional Administrator may place additional limits on either the TNC EFP or any vessel EFP. If such restrictions are necessary, the Regional Administrator will issue an amended permit containing the additional restrictions on groundfish regulations as determined necessary by NMFS. NMFS will notify TNC in advance of such action.

## H. MONITORING REQUIREMENTS.

1. At-sea observations

**Vessel:** Any vessel making an authorized fishing trip must carry a NMFS trained observer. The vessel operator and crew must cooperate fully with the observer to carry out his/her monitoring and reporting responsibilities.

**TNC:** TNC will assign to vessels making a fishing trip under this EFP a NMFS trained observer. TNC will require observers to monitor and record catch data, including species composition of all retained and discarded catch as well as biological data such as fish length, sex, and weight for every fishing trip taken under this EFP and to provide such data to TNC in timely fashion.

2. Landings reports

**Vessel:** The vessel EFP holder is required to provide to TNC all fish tickets and vessel logbook information within 48 hours following each authorized EFP fishing trip.

**TNC:** TNC is required to obtain a completed tally sheet and logbook from the observer for the vessel registered to the EFP within 48 hours following each authorized fishing trip. TNC will collect the vessel logbook completed by an operator of a vessel registered to the EFP within 48 hours following each authorized fishing trip. TNC is required to provide bi-weekly reports of total landings (by weight and species) to NMFS for both target and depleted species. At the time that TNC finds that 90% of the listed target or depleted species catch limits provided for in G. 1 and G.2 are reached, TNC must provide NMFS with weekly reports detailing total landings by species. If any target or depleted species catch limits are projected to be exceeded, TNC must notify all EFP holders to cease fishing immediately and must immediately notify NMFS. Failure to provide or to obtain such information in the time prescribed may be the basis of cancellation of this EFP.

### 3. Public Release of Information.

**TNC and Vessel:** The fishing activities carried out under the EFP which are otherwise prohibited, are for the purpose of collecting catch information. Both TNC and vessel EFP holder agree to the public release of aggregated information obtained as a result of activities conducted under this permit.

### 4. Vessel Monitoring Systems (VMS)

**TNC and Vessel:** Any authorized fishing trip taken by a vessel registered to the EFP and registered to a TNC limited entry permit must comply with all of the Vessel Monitoring System requirements given at 50 CFR 660.312. Failure to comply with VMS regulations may be the basis for NMFS to cancel the EFP. The TNC will require all vessels registered to a TNC limited entry permit and undertaking an authorized fishing trip to comply with all VMS requirements.

## I. REPORTING REQUIREMENTS.

**Vessel:** It is unlawful to fail to report catches as required while fishing pursuant to an exempted fishing permit. Failure to maintain the required documents may result in a vessel's inability to obtain an EFP permit in the future, may be grounds for revocation, suspension, or modification of this EFP as well as civil or criminal penalties under the Magnuson-Stevens Act with respect to all persons and vessels conducting activities under the EFP (See section K.) Any vessel registered to this EFP will provide to TNC all information in a timely fashion as required by TNC to meet their reporting requirements. The vessel EFP does not relieve any person from any other state or federal reporting requirements.

**TNC:** TNC is required to provide the following written reports to NMFS: Interim Report due no later than October 18, 2009 and a Final Report due by March 15, 2010. These reports will include information as outlined in TNC's EFP application. TNC will provide full disclosure of observer data, cost and revenue information, information about the



formation, activities, and management of the regional fishing association and electronic monitoring data associated with fishing under the EFP to NMFS. Failure to provide NMFS with the above reports may be the basis of terminating the EFP and may be the basis for disapproval of future EFP applications.

#### J. CLOSURES.

**Vessel:** If any of the catch limits for harvestable species given in G.1 or any of the catch limits for depleted species given in G.2 is projected to be reached or exceeded the vessel registered to a vessel EFP must cease fishing immediately.

**TNC:** If any of the catch limits for harvestable species given in G.1 or any of the catch limits for depleted species given in G.2 is projected to be reached or exceeded, TNC must instruct all participating vessels to cease fishing immediately.

#### K. SANCTIONS.

Failure of the vessel owner, operator, EFP holder, or any person to comply with the terms and conditions of this permit, a notice issued under 50 CFR Part 660 any other applicable provision of 50 CFR Parts 600 and 660, the Magnuson-Stevens Act, or any other regulations promulgated thereunder, may be grounds for revocation, suspension, or modification of this permit as well as civil or criminal penalties under the Magnuson-Stevens Act with respect to all persons and vessels conducting activities under the EFP (50 CFR 600.745(b)(8)).

All owners and operators (EFP Holders) of the individual vessels and TNC participating in this exempted fishing project are jointly and severally liable for exceeding the aggregate catch limits specified in this EFP.

#### L. WAIVER.

The EFP holder on his/her own behalf, and on behalf of all persons conducting activities authorized by the permit under his/her direction, waives any and all claims against the United States or the State, and its agents and employees, for any liability whatsoever for personal injury, death, or damage to property directly or indirectly due to activities under this permit.

**Oregon Recreational Yellowtail Rockfish EFP**  
2009 Activities Report  
April 24, 2010

The Oregon yellowtail rockfish EFP officially got underway on June 21, 2009 with a trip by the charter vessel Norwester. During 2009 thirteen trips were completed. All have been monitored and recorded by on board PSMFC observers. The EFP was originally planned for thirty trips. The reduced number was due to a later than planned startup and minimal participation in the south coast sector. This EFP is currently in process for renewal for 2010. If permits are received soon a full schedule is anticipated for 2010.

The results to date are in excess of expectations. The purpose of this EFP is to avoid or minimize bycatch of prohibited species while targeting abundant offshore midwater stocks. To date the most constraining species, yelloweye rockfish, is yet to be encountered using this EFP gear. The other, canary rockfish, are being impacted at rates well below that using common bottom gear. The EFP impact rate for canary rockfish is at 8% of yellowtail rockfish by weight. It is approximately 6% of all rockfish landed. The impact rate for canary to yellowtail was 113% by weight during the period 1993-1999 (ODFW) using traditional bottom gear when all depth access was open full season.

Following is the catch accounting for 2009:

Oregon  
Yellowtail  
EFP Trip  
Report

9/18/09

Trip Date	Vessel Name	# of Anglers	weight in kg				by number
			Yellowtail	Widow	Canary	Yellow eye	Other Rkfsh
6/21/2009	Norwester	10	157	0	8	0	0
7/17/2009	Miss Raven	12	128	46	2	0	8
7/19/2009	D & D	11	100	54	13	0	0
7/20/2009	Umatilla II	8	112	14	0	0	1
7/25/2009	Miss Raven	11	167	4	0	0	4
7/28/2009	Norwester	9	130	4	13	0	3
8/2/2009	Miss Raven	11	125	43	0	0	0
8/11/2009	D & D	11	147	17	13	0	0
8/16/2009	Umatilla II	12	128	37	0	0	6
8/21/2009	Prowler	11	62	0	32	0	5

8/23/2009	D & D	9	131	9	8	0	0
9/4/2009	Norwester	12	161	4	40	0	0
9/13/2009	Umatilla II	10	109	34	0	0	4

All Trips Total	137	1657	266	129	0	31
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EFP Species Caps (kg)	3000	2600	200
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The level of participating angler expertise encompasses the full range. Novice and expert anglers participated in this EFP. Angler selection was on a first come first served basis. No expertise selection took place. While the charter operators are considered to be experts, no area selection took place to avoid known concentrations of canary or yelloweye rockfish. The only area selection used was based on known concentrations of yellowtail rockfish without regard to any other species. Some trips took place within a federally recognized Yelloweye Rockfish Conservation Area.

A survey of angler intent was conducted and is summarized in Attachment 1. A majority indicated that they would participate in this fishery if it were put into regulation in both the charter and private sportboat level. Although 15 fish bag limit was preferred, a lower number would be acceptable down to a level of seven fish or greater.

John Holloway  
RFA-OR

## **Oregon Recreational Yellowtail Rockfish EFP**

2009 Activities Report

### **Attachment 1**

**The number of responses to each answer is indicated in brackets.**

**A total of 111 anglers responded to the questionnaire.**

## **Oregon Yellowtail EFP Angler Questionnaire**

The National Marine Fisheries Service, the issuing agency of the permits for this experiment is asking for participant feedback. Your help is greatly appreciated and will be a factor in determining whether this fishery will become available to all recreational anglers. Please answer all questions that apply to your experience today. Please check all that apply.

1. For what of any of the following reasons did you choose to participate in this trip today?

[66] 15 rockfish bag limit

[57] A chance to participate in an experiment

[27] A desire to fish further offshore

2. Is there a bag limit size that would cause you not to participate?

[70] Six fish or less

[16] Seven to ten fish

[21] Eleven to fourteen fish

3. If this fishery were adopted as a recreational fishery open to all, with an acceptable bag limit, how likely would you be to participate in the future?

[76] Very likely

[23] Somewhat likely

[ 9] Occasionally, no more than other trips

[ 2] Not likely

4. If you fish aboard your own or another's private sport boat how likely would you be to participate if this were available to all?

[69] Very likely

[17] Somewhat likely

[14] Occasionally, no more than other trips

[10] Not likely



**Oregon State Chapter**

Mr. Mark Cedergreen, Chairman  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 101  
Portland, Oregon 97220-1384

Re: RFA Oregon Yellowtail Rockfish EFP Application

Mr. Cedergreen,

This letter accompanies our application for a 2011 EFP. This EFP is a continuation of activities which began in 2009.

While our on water activities have been very successful, the process within management has not. The only concern is the issuance of permits in a timely manner. Our permits for 2009 did not arrive until late June halfway through the season. The permits for 2010 have yet to arrive as of September 3, 2010. Our best time of activity for this EFP fishery is the months of April-June. We have not had permits available for that period.

A solution to this problem would be to have the permits valid for 365 days from date of issuance. If our 2010 permits were for 12 months duration subject to any inseason adjustments to fit a calendar year cycle, it would resolve our concerns.

Sincerely,

John Holloway  
Recreational Fishing Alliance, Oregon  
[RFAoregon@comcast.net](mailto:RFAoregon@comcast.net)  
503.201.3861



# **Oregon Recreational Yellowtail Rockfish EFP**

## **Application**

A. Date of application  
Sept. 3, 2010

B. Applicants  
Southern Oregon Sport Fishermen  
Contact: Wayne Butler  
P.O. Box 674  
Bandon, OR 97411  
(541) 347-9126

Recreational Fishing Alliance, Oregon Chapter  
Oregon Anglers  
Contact:  
John Holloway  
6823 SW Burlingame Ave.  
Portland, OR 97219  
(503) 452-7919

C. Statement of purpose and goals  
This is an application for a renewal with minor changes to an existing EFP. The existing is either running or in the late stages of permitting. This EFP will test the possibility of conducting a recreational fishery targeting an underutilized species using special gear. This gear will be designed to avoid and/or minimize impacts on species of concern. Full retention of all rockfish species will be required.

D. Justification for EFP  
In the next few years recreational fishing depth and area closures are to become the most constraining in history. This is due primarily to one species, yelloweye rockfish. These closures apply to the entire water column for most groundfish FMP species. Yelloweye reside near the bottom in select habitats. Midwater species exist in relative abundance, yet are inaccessible. It is believed that special gear can be developed which can provide access to midwater species without causing any additional impacts to yelloweye rockfish. Bottom habitat is all that needs protection from hooking impacts. This could provide increased opportunity for recreational fisheries and relieve fishing pressure on nearshore species. Increased opportunity is something that has been lacking for many years of incremental constraints on all fisheries. This EFP will allow legal retention of prohibited species for comprehensive utilization of limited data sources.

E. Broader significance and fleetwide applicability  
Recreational midwater specific gear can be used by anglers to access underutilized fish stocks without undue complication for enforcement. Only a longer leader and a float differentiate this gear from standard practice

F. Duration of EFP

One year with a possible renewal application in June of 2010 if necessary.

G. Number of vessels covered under this EFP.

There will be a total of 10 recreational charter vessels covered. They are as follows:

1. Capt. Ken Butler, *Prowler*, Bandon, OR (541) 347-3508
2. Capt. Jon Brown, *Kerri-Lin*, Garibaldi, OR (503) 355-2439
3. Capt. Darrel Harper, *Umatilla II*, Newport, OR (541) 867-4470
4. Capt. Lars Robison, *Sampson*, Depoe Bay, OR (541) 765-2545
5. Capt. Mick Buell, *Norwester*, Garibaldi, OR (503) 322-0007
6. Capt. Wayne Butler, *Mis-Chief*, Bandon, OR (541) 347-9126
7. Capt. Joe Ockenfels, *Siggi-G*, Garibaldi, OR (503) 322-3285
8. Capt. Mike Sorenson, *Miss Raven*, Newport, OR (541) 867-4470
9. Capt. Bob Bales, *D&D*, Garibaldi, OR (503) 322-0007
10. Capt. Bill Whitmer, *Shamrock*, Charleston, OR (541) 888-9021

Alternate Vessel

Capt. Bill Whitmer, *Betty Kay*, Charleston, OR (541) 888-9021

H. Description of species and amounts.

Target species are yellowtail rockfish. Expected encounters of overfished species include widow, canary, and yelloweye rockfish. A bag limit of 15 rockfish will be used and this quantity is the base for impact estimates.

There will be 10 vessels and 12 anglers average per trip. There will be 30 trips. This will result in 360 angler-days.

Total estimated impacts (caps):

Widow = 3.0 mt

Canary = 1.0 mt

Yelloweye = 0.1 mt

The above impacts by weight will be the total caps for this EFP. A reference catch rate by average number of fish per angler per trip will be monitored for the duration of this project.

I. Monitoring

At-sea on board observers will be used on all trips. These observers will be PSFMC certified groundfish observers. They will be provided through ODFW sampling and observer programs.

J. Data collection and analysis methodology

Monitoring and data.

Direction of observer coverage will be under Ms. Lynn Mattes ODFW Marine Resources Program. ODFW will monitor, through observers, catch rates and progress toward project caps. Data will be recorded at a “drift” level. Drift level recording will make statistical comparison with existing ODFW long leader research easier. All overfished species will be “lengthed and sexed.” Observers will gather species needed for biological analysis. Individual trips will not proceed if observer coverage is unavailable. Observer bookings must be made in advance of anticipated trips. If the bycatch caps are reached the project will be terminated. If the bycatch rate is being exceeded the project will be suspended until needed changes allowed within this EFP can be determined and implemented. Timely observer communication regarding ongoing catch rates will be a top priority.

#### Analysis.

Direction of data collection and analysis will be under Mr. Bob Hannah ODFW Marine Resources Program. Bycatch rates resulting from prosecution of this EFP will be compared to similar data from fisheries, fisheries projection models, and ODFW long leader research. This can be done geographically and/or using nonparametric statistical testing. The success criteria would be for the bycatch rates for overfished species to be significantly less than the nearshore fishery.

#### K. Criteria for vessel selection

Vessels have been chosen based on the individual owner/ captain history of successful participation with prior fishery management monitoring and special projects and no known fishery violations.

#### L. Time, place and gear.

##### Time

Fishing will take place between late spring and early fall. This is the normal weather friendly window and also in between the possible all depth recreational seasons.

##### Location

Fishing will be conducted offshore of Oregon between 42° 00.00' N lat. and 46° 18.00' N lat. Where possible, trips will be evenly distributed between the ports. Some port bias may be necessary due to availability of participating resources.

##### Depth

The project will be conducted in any area seaward of 40 fathoms.

##### Gear.

The gear to be used will be designed to locate hooking gear in a midwater location to avoid bottom dwelling species. The proposed gear for this fishery will employ the use of a long leader between sinker and hooks. The purpose will be to elevate the hooking gear above the bottom a sufficient distance to avoid and or minimize contact with species of concern. Leader lengths of 30, 40

and 60 feet may be tested. A starting point will be a leader of 30 feet. A change of length will only be made if incidental impacts are high or access to target species is low without high incidental impacts. A float will be affixed to the upper end of the leader. The purpose of this float is to prevent hooking gear from descending below the upper level of the leader. The float must have sufficient buoyancy to support all hooking gear and line above equivalent to leader length. Current tests show that a buoyancy of 2.25 ounces would be sufficient. Floats must be constructed of solid material. They can be either wood or closed cell high density foam. No hollow floats allowed. Maximum number of hooks is to conform to current regulation (3). Small plastic worms and flies will be used. Weighted hooks, bait and large lures will be prohibited.  
(note): The leader length is for reference purposes only. The determinant shall be the distance between the sinker and the lowest hook. It is this dimension that will be the rule.

#### M. Signatures

Wayne Butler

John Holloway

## **West Coast Sanddab EFP**

### A. Date of application

September 3, 2010

### B. Applicant

Contact:

Brad Pettinger

Oregon Trawl Commission

16289 Hwy 101 S. Suite C

Brookings, Oregon 97415b

(541) 469-7830

### C. Statement of purpose and goals

This EFP will test the possibility of minimizing the Trawl RCA to target underutilized species, such as Pacific Sanddabs, between the months of November through April.

Trips will be 100% observed, as the trawl fishery will be fully rationalized on January 1, 2011.

### D. Justification for EFP

Since the advent of the RCA in the early 2000's, the harvest of many healthy stocks of groundfish, such as Sanddabs, has been severely restricted. The structure of the current management system and its inability to monitor and control catch of certain overfished species precipitated the under harvest of these healthy stocks. With the Groundfish trawl fishery scheduled to be rationalized in 2011 with 100% observer coverage, the case can now be made that the RCA can be modified further to enable the harvest of these healthy stocks, while maintaining the catch of overfished species within their harvest guidelines. Additional pounds of quota will not have to be set aside, as the trawl vessels will utilize the quota pounds allocated to them and they will be able to additional pounds through the trawl rationalization program.

### E. Broader significance and fleetwide applicability

While the Council has been very conservative managing the RCA to reduce the catch of overfished species, this EFP will allow the Council a glimpse into how the trawl RCA's may be modified in the future under a rationalized fishery.

There is support for this type of proposed RCA changes during periods 1, 2, and 6 as shown by the GMT Supplemental Report B7b, (Page 37, 2nd paragraph under Shoreward RCA Considerations):

*For canary rockfish north of 40o 10' N. latitude, bycatch rates increase when the shoreward RCA is specified at 100 fm relative to the 75 fm line and shallower depths (Figure 6), especially during the summer and fall months (Periods 3, 4, and 5) in the north. As such, if the Council desires to implement a 100 fm RCA boundary for the rationalized trawl fishery in the north to provide more fishing opportunities while reducing the risk of encounters with canary rockfish, it might consider doing so during Periods 1, 2, and 6 when canary-bycatch rates are lowest (Figure 6).....We note that industry feedback indicates potential target species (e.g., Sanddabs) could be accessed between 75 and 100 fm with low bycatch interactions (e.g., Sanddabs). Note that north of Cape Alava, RCAs would need to be set at the 75 fm line to minimize canary rockfish interactions as bycatch rates increase dramatically deeper than 75 fm (Figure 7).*

#### F. Duration of EFP

One year (periods 1, 2, and 6) with a possible renewal application in 2011 if necessary.

#### G. Vessels covered under this EFP

All trawl permitted vessels operating under the Groundfish rationalization program, who agree with the required protocols of this EFP, that are yet to be determined,

#### H. Description of species and amounts.

As mentioned earlier, no set asides need to occur for this EFP. All fish caught will be accounted for under the normal operation of the rationalized groundfish trawl fishery.

#### I. Monitoring

All trips will be 100% monitored by on-board observers under the trawl rationalization.

#### J. Data collection and Analysis Methodology

##### Monitoring and Data Collection

This EFP will be conducted under normal IFQ fishing operations for each EFP participant. Each EFP trip will be declared and approval from enforcement will be received before trips begin (i.e., enforcement will be notified prior to each trip). As described above, vessel participants will apply their personal Quota Pounds (QP) and Individual Bycatch Quota (IBQ) to all catches; no additional allowances are sought. These trips will also be observed as normal by monitors under the West Coast Groundfish Observer Program (WCGOP). As such, all data collected for these EFP trips by the West Coast Groundfish Observer Program (WCGOP) will be requested by participating vessel owners. The applicants will work with the WCGOP to develop queries that will provide needed data. These data will then be forwarded by the vessel owners to the EFP

applicants. Hence, data such as fishing location, depth, gear, tow duration, catch and discard (on a tow-by-tow basis) will be made available to the EFP applicants by the EFP participants for each trip conducted under this EFP.

Additional data that may be required for the successful conduct of this EFP but not collected by the WCGOP will be recorded by each EFP participant during these trips. For example, it will be imperative to record target species or species groups for each tow. Other information may include “bottom type”. If data such as this are not recorded by the WCGOP, then a supplemental log will be developed the additional data will be recorded by the skippers. The EFP participants will consult with each other and with researchers (e.g., Mr. Robert Hannah, ODFW) to determine whether a simple supplemental logbook will be required.

During a single trip, participating vessels will conduct tows (a) shoreward of the 75 fm RCA (the regulated shoreward RCA) and (b) between 75 fm and 100 fm (for which we seek exemption) while targeting similar species (e.g., mixed flatfish and Sanddabs) near similar latitudes. Towing within both of these depth strata during a single trip will be necessary to perform comparative analyses both between and within EFP trips. It must be pointed out that this does not prohibit these vessels from targeting other species during these declared EFP trips. For example, a portion of these EFP trips could be made seaward of the 200 fm RCA to catch Dover sole, Sablefish, and Thornyheads.

#### Analysis

A preliminary design and analytical plan is described herein. However, the applicants will seek additional direction from experts in this field to apply necessary adjustments to this preliminary design (e.g., Mr. Robert Hannah, ODFW Marine Resources Program). We also seek advice from the Council and its advisory bodies to improve upon this preliminary design.

Catch rates resulting from the prosecution of this EFP will be analyzed within the EFP project as well as between EFP project and data from other fisheries (e.g., bycatch rates provided by the WCGOP total mortality reports, the ODFW long leader research results, etc.).

Analyses within the EFP Project: Catch of target species and catch of overfished species (i.e., yelloweye and canary rockfish) will be analyzed for all EFP trips. The response variable will be catch (kg) per towing hour (CPUE) for each species or species groups. Response variables will be log transformed as  $\log_e(\text{CPUE} + a)$ , where  $a$  is the minimum nonzero value. Analysis of Variance (ANOVA) will be used to identify significance of potential explanatory variables. Potential explanatory variables that will be included in the model are expected to be Depth strata (< 75 fm vs 75 – 100 fm), latitude strata (to be determined later), period, and vessel. In addition, nonparametric statistics will be used to verify significance of potential explanatory variables. Examples of nonparametric statistics that we anticipate applying include Cochran-Mantel-Haenszel row mean score statistics and Fishers protected least-significant-difference.

Comparison of EFP Results with other Data: Catch rates of overfished species calculated under this EFP will be compared to catch rates provided by the WCGOP for the trawl

fleet as well as catch rates provided by other sources (e.g., the ODFW long-leader research). Catch rates using the EFP data will be provided for (a) tows < 75 fm and (b) tows > 75 fm and < 100 fm). Catch rates obtained from other sources will be constrained by area and depth (e.g., < 75 fm) to best emulate areas and depths fished by vessels participating in this EFP. In addition, for these comparisons, catch rates will be calculated using the methods shown by the other data sources (e.g., we will calculate catch rates using the same methods as shown by the WCGOP for direct comparisons).

#### K. Criteria for vessel selection

Vessels have been chosen based on the individual owner/ captain history of successful participation with prior fishery management monitoring and special projects and no known fishery violations.

#### L. Time, place and gear.

##### Time

Fishing will take place during Periods 1, 2, and 6.

##### Location Lat/Long

Fishing will be conducted offshore between 40° 10.00' N lat. and 46° 18.00' N lat. Where possible, trips will be evenly distributed between the ports. Some port bias may be necessary due to availability of participating resources.

All tows between 75 and 100 fm will target mixed flat fish, primarily Pacific Sanddabs. Sanddab-directed tows shoreward of 75 fm will be identified before sets are made to assist with direct comparison of catch rates

##### Depth

The project will be conducted shoreward of the 100 fathom line.

##### Gear

The gear to be used will be selective flatfish trawls, which is consistent with current regulations



ENFORCEMENT CONSULTANTS REPORT ON  
PRELIMINARY REVIEW OF EXEMPTED FISHING PERMITS (EPF's) FOR 2011

The Enforcement Consultants (EC) reviewed all pending Exempted Fishing Permit (EFP) proposals before the Council for consideration. We have a number of general concerns.

Regarding the Trolled Longline Chilipepper Rockfish EFP, the EC would like further clarification for the gear proposed. While the EFP gear to be used is well described with a diagram, the test line gear with 20 hooks and vertical gear test set are not. We would like a better description of all gear to be used.

The EFP requires that the three participating vessels have 100% observation. We want to remind the participants that the Vessel Monitoring System will be required for this fishery consistent with current regulations.

Consistent with recognizing that EFP opportunities are a special privilege, the EC recommends that the Council consider language that would exclude those with certain kinds of recent violation history.

We are having difficulty reconciling two sentences in the 3<sup>rd</sup> paragraph of Page 2 of the proposal: "Full retention applies to rockfish species and retention of non-rockfish species will be governed by applicable open access limits and may be released once documented by an observer. Due to the fact that this is a research project there should be no trip limit". The EC requests clarification with respect to what will and will not be governed by a trip limit.

With regard to the West Coast Sanddab EFP, EC representatives discussed some initial concerns with Mr. Pettinger. He assured us that he would address those concerns with an amended EFP proposal.

The ODFW EFP, being continued from last year, is acceptable to the EC.

PFMC  
09/13/10

GROUND FISH ADVISORY SUBPANEL REPORT ON  
PRELIMINARY REVIEW OF EXEMPTED FISHING PERMITS (EFPs) FOR 2011

The Groundfish Advisory Subpanel (GAP) received brief overviews about exempted fishing permit (EFP) applications for potential public review and recommends that all of the EFPs go forward.

Furthermore, the GAP suggests the duration of any EFP be for one year from the date of permit issuance instead of issued for a calendar year. Applicants would then have the opportunity to make plans for fishing, get observers, and be able to fish year-round. For instance, one applicant received a permit with a duration from September to December – well past the prime season for fishing and obtaining qualified information.

As an alternative, the GAP suggests the Council consider beginning discussion on changes to EFP operating procedures so permits are in effect for two years and match the biannual harvest specification cycle. The two-meeting EFP process could be started in March and culminate with a final Council decision in June, at the same time the final specifications are made. There are several advantages to this:

- Annual staff workload would be reduced
- Observers would be available after their March training sessions
- Applicants could make plans for any fishing season
- Spex cycle and permits would be in sync

However, the GAP also recognizes there is at least one issue that must be addressed for this option to move forward. Set-asides would have to be adjusted through in-season management, something that cannot be done now due to restrictions in Amendment 21. For example, if an applicant receives a permit good for two years but cannot use the EFP due to unforeseen circumstances, the set-asides allowed for that permit would be stranded. Under Amendment 21, those set-asides cannot be transferred back to the fishery. The GAP also will be bringing this issue up under I.6, trailing amendments.

If the Council would like to pursue this option, there is time to do this and finish it in time for the 2013-14 specifications cycle.

The GAP also suggests that if an application and permit is issued for an EFP that is clearly scientific in nature – as opposed to an EFP for testing fishing innovation – the fish for that EFP should come out of the research set-aside instead of that particular sector's allocation.

**Oregon Department of Fish and Wildlife Yelloweye Rockfish in Sport Charter Fishery EFP**

This EFP, in our opinion, needs no modifications. This is the only way to obtain any yelloweye information – information sorely needed for future analysis and stock assessments.

### **Chilipepper Rockfish Trolled Longline EFP**

The GAP recommended this in November 2009 and still recommends it go forward as outlined in the application.

### **West Coast Sanddab EFP**

Designed to test areas to minimize the Rockfish Conservation Area (RCA) footprint, this EFP poses no more risk for catching overfished species than does fishing outside the RCA. Since this will take place after the Trawl Individual Quota program is implemented, all trips will be observed and vessels will use their own quota pounds to cover target and bycatch.

However, the GAP suggests further consideration of caps on other species to prevent targeting of other species in the RCA and encourage targeting on sanddabs. Changing the vessel selection criteria also may allow for greater participation.

PPMC  
09/14/10

## GROUND FISH MANAGEMENT TEAM REPORT ON PRELIMINARY REVIEW OF EXEMPTED FISHING PERMITS (EFPS) FOR 2011

The Groundfish Management Team (GMT) reviewed the technical merit of the exempted fishing permit (EFP) applications relative to the evaluation criteria in Council Operating Procedure (COP) 19. The following discussion focuses on the technical merits of the EFPs. The Council's final decision will have to consider the availability of overfished species relative to the 2011 harvest specifications, among other things.

We provide a table of impacts by species for each EFP (Table 2). The amounts shown in Table 2 were taken from the EFP applications or directly from the applicants.

### 2010 EFP

The GMT was notified that the applicant for Agenda Item I.3.a, Supplemental Attachment 5 (Rockfish Conservation Area [RFA]-Oregon) has withdrawn their application for a 2011 EFP. The applicants withdrew their application because the 2010 application was issued on August 31, 2010 and is effective for 12 months. This 12-month period is sufficient to cover the proposed fishing activities in 2011.

We note also that the EFP's bycatch caps were set for fishing activities in 2010 and 2011. Based on discussions with Oregon Department of Fish and Wildlife (ODFW) sampling staff and the applicant, few trips are likely to occur during the remainder of 2010, primarily due to weather conditions. This means that the majority of the trips—and the bycatch impacts—will occur in 2011. The yelloweye rockfish cap set for this EFP was 0.1 mt. This amount is equivalent to the entire yelloweye set-aside for all EFPs for 2011.

### EFP Renewals

There are two EFP renewal applications (Agenda Item I.3.a, Attachment 1 [ODFW] and Attachment 2 [Fosmark]), both approved in September 2009. The applications in Attachments 1 and 2 are, for the most part, essentially unchanged from what the Council adopted in September 2009. We discuss each below.

The applications in Attachments 1 and 2 request their EFPs be effective for twelve months from date of issue, rather than a calendar year.

*Oregon Department of Fish and Wildlife Yelloweye Data Collection EFP, ODFW (Agenda Item I.3.a., Attachment 1).*

Our view of the ODFW EFP's merits under COP-19 also remains unchanged. **We recommend that the Council forward it for public review.**

We highlight also that this project does not fit the typical definition of an EFP. The project is much more akin to a scientific research activity. **The GMT recommends that the Council consider and request clarification from National Marine Fisheries Service (NMFS) on whether the yelloweye impacts (0.06 mt) from the ODFW project might better be applied to the research set-aside.**

NMFS required an EFP for this project because the fish are being collected during the course of regular fishing by anglers aboard selected charter vessels without scientific research personnel onboard. We recognize that the vessels and anglers participating in this EFP need an exemption from the retention regulations. Yet the type of regulatory exemption needed to authorize the project is a separate matter from the project's objective.

This EFP's objective is to obtain biological data to inform stock assessments. This purpose is much different than those the Council listed in COP 19 (e.g., test innovative gear, fishing methods, seek to promote increased utilization of underutilized species, explore ways to reduce effort on depressed stocks, etc.). The Council typically considers priorities for scientific research and EFPs separately, and to us, the bycatch from this EFP would be more appropriately attributed to research. The benefit is additional biological information on the stock; benefits do not flow directly to the EFP participants. All yelloweye retained will be immediately surrendered to ODFW or Oregon State Police upon returning to the dock. The additional yelloweye mortality for this EFP arises because fish that would survive when discarded would instead be retained for research. Table 1 identifies the current projected research impacts.

Further, the GMT notes that there is not enough yelloweye available in the current set-aside for all of the proposed EFPs. Changing the set aside through revision to the proposed rule would also require revision of trawl and non-trawl allocations. This would in turn require revision of initial issuance of quota for yelloweye. Accounting for this catch as research avoids these complications.

Table 1. Yelloweye projected research impacts used to estimate the 2011-2012 SPEX EIS set-aside.

Research Project	Projected Impact (mt)
IPHC Halibut Stock Assessment Survey	1.1
WDFW Enhanced Rockfish Survey	1.0
ODFW Enhanced Rockfish Survey	1.0
Other (including NMFS trawl survey)	0.2
<b>Total</b>	<b>3.3</b>

*Fosmark Trolled Chilipepper Longline EFP, Steven Fosmark (Agenda Item I.3.a., 1 Attachment 2).*

**Our view of the Fosmark EFP's technical merits has also not changed.**<sup>1</sup> However, as with the RFA-Oregon EFP, the application is missing the full "description of the species (target and incidental) to be harvested under the EFP and the amount(s) of such harvest necessary to complete the experiment."

Given the Council's EFP set asides for 2011-12, the applicant has identified the estimated take of non-overfished species. Per past practice, last cycle we only gave close scrutiny to the overfished species caps and did not request that the applicant provide the full "description of the species (target and incidental) to be harvested under the EFP". We only notified the applicants of this requirement yesterday afternoon and thank them for the quick turnaround.<sup>2</sup>

*New EFP for 2011 - Oregon Trawl Commission's (OTC) West Coast Sanddab EFP, Brad Pettinger (Agenda Item I.3.a., Supplemental Attachment 6).*

The one new application for 2011 proposes a test of the Trawl RCAs within the shoreside individual fishing quota (IFQ) program. The exemption sought is to the configuration of the RCAs in periods 1, 2, and 6. The objective is to target underutilized species such as Pacific sanddabs, mixed flatfish when these species aggregate between 75 and 100 fm during the months of November through April. EFP participants would use their own quota pounds for all species encountered. They would also be fishing with an IFQ observer.

The applicant for this EFP has requested that the permit be valid for twelve months from date of issue. If approved, the GMT suggests that this EFP be handled in the same manner as discussed for the renewals above issued for a 12-month period instead of the calendar year basis.

The COPs focus on the question of operator experience, skill or ability. EFPs that rely too much on these factors are not desirable because the catch rates that result may not be reproducible or enforceable on a larger scale. For this reason, we suggest that the EFP include a minimum number of participants so as to cover a wider range that would be representative of operator experience levels. **We request the applicant bring more information on minimum participation and the operator effect prior to the briefing book deadline for the November Council meeting.**

The GMT sees technical merit in this EFP. Once an area is closed to fishing, we lose information on bycatch. The information gained from this EFP could inform the Council's consideration of the appropriate RCA configuration in the IFQ fishery.

With 100 percent observer coverage, the EFP will produce data on bycatch. We see an opportunity to incorporate habitat data into the EFP design. **The EFP is well situated for data collection, yet the applicant will also need to provide for data analysis.** We understand the applicant is in discussion with ODFW on this matter. We also highlight the increased workload

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<sup>1</sup> See June 2008, Agenda Item F.3.c, Supplemental GMT Statement; September 2008, Agenda Item I.6.c, Supplemental GMT Statement, September 2009, Agenda Item E.8.b.

<sup>2</sup> We extend the same thanks to the applicants of the Oregon-RFA EFP.

for the WCGOP under the IFQ program. **The applicant should consider how bycatch data will be analyzed and reported on the timely basis required for EFPs.**

We also discussed the potential risk this EFP poses to the IFQ fishery. The individual accountability of the IFQ program does not eliminate the possibility of “lightning strike” tows. Such tows of constraining stocks (e.g., yelloweye and canary) may be large enough to affect the sector allocation. The Council considered this risk when setting the configuration of the RCAs for the start of the IFQ program.

**The GMT finds technical merit in the purpose, goals and justifications of this application.** With further development, this EFP could be a reasonable, incremental approach to producing more information on individual accountability and the RCAs. **We would request the applicant produce more information on past bycatch rates in the proposed fishing area.** Canary, yelloweye, and petrale sole are the stocks of most concern.

Lastly, we highlight that elements of the COP were not followed. The application was not received by the Council for review “at least two weeks prior to” the first Council meeting addressing EFPs, as is required by COP 19. It is also missing certain details such as: specific number of vessels to be covered under the EFP; a description of how vessels will be chosen to participate in the EFP; and for each vessel covered by the EFP, the approximate time(s) and place(s) fishing will take place.

#### Set Asides

The Council adopted EFP set asides for both overfished and non-overfished species in June 2010 under the 2011-2012 harvest specifications and management measures process (Table 2). These set asides will be published in the proposed 2011-2012 specifications rule, which is anticipated in late September or early October. The GMT notes that there were no set asides for chilipepper, yet the Fosmark EFP, if approved, will need a chilipepper set aside along with set asides for other co-occurring non-overfished species. The current application does not estimate the set asides requested yet the applicant provided estimates at the meeting. The Oregon RFA EFP will need set asides of 3.8 mt of yellowtail, which is not accommodated by the proposed set aside (2 mt). The ODFW yelloweye EFP does not require non-overfished species set asides as the goal is to sample yelloweye rockfish only. The Pettinger EFP would not require a set aside, as the applicants propose to operate under their existing quota pounds, which ultimately come from the trawl allocation.

To modify non-overfished species set asides, the Council will need to comment on the proposed rule and recommend that the EFP set asides be modified to sufficiently accommodate the potential approval of the Fosmark EFP and existing Oregon RFA. **To coordinate with the timing of the proposed SPEX rule, the Council would need to adopt preliminary set asides for non-overfished species at this meeting.** In the event that certain EFPs are disapproved in November, the set aside would remain in regulation and go unharvested.

As the GMT noted under the 2011-2012 harvest specifications and management measures process, it is difficult to predict the potential EFPs during the SPEX process and provide appropriate set asides. The GMT will work with NMFS Northwest Region and Council staff to recommended solutions to this problem for future SPEX cycles.



**GMT Recommendations:**

- 1. The Council will need to consider the yelloweye impacts of the 2010 RFA-OR permit when deciding on EFP applications for 2011.**
- 2. The GMT recommends the ODFW impacts should be accounted for as research rather than EFP set-aside.**
- 3. The GMT acknowledges the technical merit of the ODFW EFP application and recommends adopting for public review.**
- 4. The GMT finds technical merit in the Fosmark renewal application; however, elements of the COP were not followed and may need to be addressed by the Council prior to adopting for public review.**
- 5. The GMT finds technical merit in the purpose, goals and justifications of Oregon Trawl Commission application; however, elements of the COP were not followed and may need to be addressed by the Council prior to adopting for public review.**

Table 2. Exempted Fishing Permit application overfished and non-overfished species impacts, total EFP impacts and the 2011 set aside.

	Species	ODFW	Fosmark	2010 RFA-OR <sup>1</sup>	OTC	EFP Total	2011 Set-Aside
Overfished Species	Bocaccio	-	3.30	-	-	3.30	11.00
	Canary	-	0.03	1.00	-	1.03	1.30
	Cowcod	-	0.02	-	-	0.02	0.20
	Darkblotched	-	0.40	-	-	0.40	1.50
	POP	-	-	-	-	0.00	0.10
	Widow	-	3.00	3.00	-	6.00	11.00
	Yelloweye	0.06	0.01	0.10	-	0.17	1.00
	Petrale	-	-	-	-	0.00	2.00
Non-Overfished Species	Lingcod N of 42° N lat. (OR & WA)	-	-	-	-	0.00	0.00
	Lingcod S of 42° N lat. (CA)	-	0.40	-	-	0.00	0.00
	Pacific Cod	-	-	-	-	0.00	0.00
	Sablefish N. of 36° N lat. <sup>2</sup>	-	4.54	-	-	0.00	39.00
	Sablefish S. of 36° N lat.	-	-	-	-	0.00	26.00
	Dover Sole	-	-	-	-	0.00	0.00
	English Sole	-	-	-	-	0.00	0.00
	Arrowtooth Flounder	-	-	-	-	0.00	0.00
	Starry Flounder	-	-	-	-	0.00	0.00
	Other Flatfish	-	-	-	-	0.00	0.00
	Chilipepper S. of 40° 10' N lat.	-	272.23	-	-	0.00	0.00
	Splitnose S of 40° 10' N. lat.	-	-	-	-	0.00	0.00
	Yellowtail N of 40° 10' N. lat.	-	-	3.80	-	3.80	2.00
	Shortspine Thornyhead N. of 34° 27' N. lat.	-	-	-	-	0.00	0.00
	Shortspine Thornyhead S. of 34° 27' N. lat.	-	-	-	-	0.00	0.00
	Longspine Thornyhead N. of 34° 27' N. lat.	-	-	-	-	0.00	0.00
	Longspine Thornyhead S. of 34° 27' N. lat.	-	-	-	-	0.00	0.00
	Minor Slope Rockfish N. of 40° 10' N. lat.	-	-	-	-	0.00	2.00
	Minor Slope Rockfish S. of 40° 10' N. lat.	-	0.20	-	-	0.00	2.00
	Minor Shelf Rockfish N. of 40° 10' N. lat.	-	-	-	-	0.00	4.00
	Minor Shelf Rockfish S. of 40° 10' N. lat.	-	0.20	-	-	0.00	2.00
	Black Rockfish N. of 46° 16' N. lat. (WA)	-	-	-	-	0.00	0.00
	Black Rockfish S. of 46° 16' N. lat. (OR & CA)	-	-	-	-	0.00	0.00
	Pacific Whiting	-	0.09	-	-	0.00	0.00
	Cabazon N. of 42° N. lat. (OR)	-	-	-	-	0.00	0.00
	Cabazon S. of 42° N. lat. (CA)	-	-	-	-	0.00	0.00
	Shortbelly	-	-	-	-	0.00	0.00
	California Scorpionfish	-	-	-	-	0.00	0.00
	Longnose Skate	-	-	-	-	0.00	0.00
	Other Fish	-	-	0.07	-	0.00	None

- = no impacts requested

<sup>1</sup> 2010 permit issued for August 31, 2010 through August 30, 2011

<sup>2</sup> 39 mt includes EFPs, research and Inc. OA

PFMC  
09/14/10

## NATIONAL MARINE FISHERIES SERVICE REPORT

National Marine Fisheries Service (NMFS) Northwest Region will briefly report on recent regulatory developments relevant to groundfish fisheries and issues of interest to the Pacific Fishery Management Council (Council).

NMFS Northwest Fisheries Science Center (NWFSC) will also briefly report on groundfish-related science and research activities.

### **Council Task:**

#### **1. Discussion.**

#### **Reference Materials:**

1. Agenda Item I.4.a, Attachment 1: *Federal Register Notices* Published Since the Last Council Meeting.
2. Agenda Item I.4.c, WDFW Report: Washington Department of Fish and Wildlife White Paper on the Setting of 2011-2012 Harvest Specifications for Stocks Managed Under a Rebuilding Plan.

#### **Agenda Order:**

- a. Regulatory Activities including Update on Biennial Specifications and Management Measures, Amendment 16-5, and Amendment 23
- b. Fisheries Science Center Activities
- c. Reports and Comments of Advisory Bodies and Management Entities
- d. Public Comment
- e. Council Discussion

**Frank Lockhart**  
**Jim Hastie**

PFMC  
08/26/10

**FEDERAL REGISTER NOTICES**

**Groundfish and Halibut Notices  
5/26/2010 through 8/25/2010**

**Documents available at NMFS Sustainable Fisheries Groundfish Web Site**  
**[http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-  
Management/index.cfm](http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/index.cfm)**

75 FR 32994. Fisheries off West Coast States; Pacific Coast Groundfish FMP; Amendments 20 and 21; Trawl Rationalization Program. NMFS proposes measures to initiate implementation of Amendments 20 and 21 to the Pacific Coast Groundfish FMP - 6/10/10

75 FR 33196. Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Suspension of the Primary Pacific Whiting Season for the Shore-based Sector South of 42 degrees North Latitude - 6/11/10

75 FR 37744. Fisheries off West Coast States; Pacific Coast Groundfish FMP; Amendments 20 and 21; Trawl Rationalization Program; Correction. NMFS is correcting dates referenced in the preamble to the proposed rule for Amendments 20 and 21 - 6/30/10

75 FR 38030. Fisheries off West Coast States; Pacific Coast Groundfish Fishery; 2010 Harvest Specification for Yelloweye Rockfish and In-Season Adjustments to Fishery Management Measures - 7/1/10

75 FR 39178. Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures. This final rule revises the OY in the 2010 Specifications for Darkblotched and Yelloweye Rockfish, and Cowcod - 7/8/10

75 FR 41383. Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Inseason Adjustments to Fishery Management Measures. This final rule makes inseason adjustments to trawl fishery management measures for Petrale Sole - 7/16/10

75 FR 51684. Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Inseason Adjustments to Fishery Management Measures. Final Rule makes inseason adjustments to commercial fishery management measures for several groundfish species – 8/23/10



State of Washington  
Department of Fish and Wildlife

48 Devonshire Road, Montesano, Washington 98563-9618 (360) 249-4628 FAX (360) 249-1229

August 25, 2010

Pacific Fishery Management Council  
7700 Northeast Ambassador Place, Suite 101  
Portland, Oregon 97220-1384

Dear Council Members:

The Washington Department of Fish and Wildlife (WDFW) offers the enclosed white paper in supplement to the analyses included in the *Draft Environmental Impact Statement for Proposed Harvest Specifications and Management Measures for the 2011-2012 Pacific Coast Groundfish Fishery and Amendment 16-5 to the Pacific Coast Groundfish Plan to Adopt a Rebuilding Plan for Petrale Sole* (DEIS).

The paper's focus is the Council's rebuilding policies. Our purpose is to describe the connection between those policies and the conservation mandate of the Magnuson-Stevens Act in one place, and in a manner intended to be readily understood by the public. With the many decisions we take up each biennial cycle, and the many detailed analyses we use to inform those decisions, we have perhaps neglected to articulate this basic connection as fully, directly, and clearly as we could. The connection, however, is fundamental.

The connection is also complicated. We revisited this connection and were reminded of its complexity multiple times during development of Amendment 23 and the 2011-12 harvest specifications. The Council's key conservation policies are found in the harvest control rules and biological reference points that we apply under the advisement of the Science and Statistical Committee (SSC). These control rules and biological reference points are based on a large and highly technical body of scientific theory and analysis, as are the stock assessment methods we use to apply them to specific stocks. The science of estimating past, current, and future stock abundance is inherently uncertain and the estimates we rely on to evaluate how well we are meeting our conservation objectives inevitably shift around from stock assessment to stock assessment, further complicating our task.

With the rebuilding groundfish stocks, we are facing circumstances where our past—and in the case of petrale sole, our current—harvest policies led to undesirable outcomes. However, in correcting for these outcomes, our fundamental conservation objectives do not change. We are still managing for the long-term achievement of optimum yield, as mandated by National Standard 1 of the Magnuson-Stevens Act.

In managing for the long-term, we rely on the science of our harvest control rules. The  $F_{MSY}$  control rule represents the best scientific estimate of the harvest rate that achieves the Council's optimum yield policy. When rebuilding, we employ harvest control rules that are highly conservative with respect to  $F_{MSY}$ . We do so in part because of our legal mandate to rebuild in a time period that is as short as possible. We do so also out of a risk-averse approach to scientific uncertainty. Of note, it is with this same conservative approach that the Council has consistently applied the 40-10 harvest control rule for precautionary zone stocks.

With the rebuilding rockfish, the Council departs substantially from  $F_{MSY}$  out of a conservation ethic that calls for a precautionary, highly risk-averse approach to management of these long-lived, erratically productive fish species. It was therefore surprising to us that the recent court finding that our 2009-10 harvest specifications for darkblotched, yelloweye, and cowcod had overemphasized short-term economic needs at the expense of conservation. As the Groundfish Management Team (GMT) suggested to us in one of their June reports, it may be that the rebuilding times for these three stocks do not seem conservation oriented when evaluated against the standard we have set with widow, canary, Pacific ocean perch, and bocaccio. Yet this is a very high standard and one we are able to achieve because of the specific characteristics of these stocks.

The circumstances presented to us by darkblotched, yelloweye, and cowcod are certainly more challenging. Nonetheless, in our view, the rebuilding plans for these stocks are also highly conservation oriented and represent an appropriate exercise of the discretion afforded to the Council by the Magnuson-Stevens Act.

As a maker of the motion setting 2011-12 harvest specifications for several of the rebuilding stocks, we appreciated the GMT's evaluation of the court's ruling and their recommendations for comparing times to rebuild between stocks and considering changes in estimates of status and biology from the past assessment cycles. The team's approach to analyzing petrale sole, in particular, provided us with a straightforward look at the potential long-term costs of accommodating short-term harvesting opportunities. As the team highlighted, those long-term costs appeared negligible in contrast to the yield that would be lost by rebuilding the stock with either a fishing moratorium or a minimal bycatch strategy like we use for rebuilding rockfish.

In June, the team performed the same analysis for yelloweye and concluded that the Council's rebuilding plans were not likely to jeopardize population viability, overemphasize short term economic return, or differ appreciably in how they affect the marine environment. The team's finding gave us further confidence that our approach to rebuilding maintains conservation risk at very low levels.

In particular, with petrale and yelloweye the GMT showed clear instances of where the fastest times to rebuild are not necessarily those that best achieve our long-term conservation objectives. And importantly, by comparing the most productive rebuilding stock with our least productive stock, the GMT illustrated how our harvest control rules account for differences in biology and address tradeoff between short- and long- term yield. Perhaps surprising to many, the GMT's analysis—further supported by Appendix G of the DEIS—indicated that the Council's approach to rebuilding is likely forgoing yield that could be harvested by rebuilding slower with less risk averse harvest rates.

In closing, the DEIS again contains the many analyses we used in our attempt to minimize bycatch of rebuilding rockfish and equitably distribute management restrictions. We crafted the white paper, structured around the reports the GMT submitted to us in April and June, to help place those analyses within the broader conservation context. We view long-term conservation as the most appropriate metric for considering the weight given to the needs of fishing communities during rebuilding and therefore encourage the GMT to pursue and refine their analysis of the long-term benefits and costs of rebuilding for development of the 2013-14 harvest specifications.

Lastly, I will provide a brief explanation of the white paper at the September meeting during the Council's discussion of the National Marine Fisheries Service's report on groundfish activities.

Sincerely,



Michele K. Culver  
Region 6 Director

Enclosure

cc: Phil Anderson  
Corey Niles



WASHINGTON DEPARTMENT OF FISH AND WILDLIFE (WDFW) WHITE PAPER ON THE  
SETTING OF 2011-12 HARVEST SPECIFICATIONS FOR STOCKS MANAGED UNDER A  
REBUILDING PLAN

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**1. Introduction**

This white paper describes and discusses the Council’s approach to setting 2011-12 annual catch limits (ACLs) and annual catch targets (ACTs) for stocks managed under a rebuilding plan. The intent is to directly address the connection between the Council’s approach to setting those ACLs and ACTs and the conservation objectives of the Magnuson-Stevens Fishery Conservation and Management Act (the “MSA”).

The Groundfish Management Team (GMT)—the Council’s primary technical advisory body for administration of the Groundfish FMP—used a new approach for evaluating this fundamental connection during the 2011-12 harvest specifications process. The GMT first offered the approach to the Council with the analysis of petrale sole rebuilding in April. The team then used the same general framework in

June to advise the Council on the court ruling, *Natural Resources Defense Council v. Locke* (N.D.Ca April 23, 2010) (“*NRDC v. Locke*”).

The *NRDC v. Locke* ruling invalidated the Council’s 2009-10 harvest specifications for darkblotched, cowcod, and yelloweye as having overemphasized the short-term economic interests of current fishery participants at the expense of long-term conservation. In evaluating this finding, the GMT remarked that the court’s rationale appeared to have been based “on certain misperceptions and misunderstandings that [could] and should be addressed” by the Council in setting harvest specifications for 2011-12.<sup>1</sup>

Responding to the court’s specific finding that the Council was sacrificing long-term economic return that could be earned if stocks were rebuilt faster, the GMT remarked that its evaluation suggested that the Council’s rebuilding plans were “more likely to do the opposite and sacrifice long-term economic return for faster rebuilding.”<sup>2</sup>

The remainder of this paper explains how the GMT arrived at these conclusions and provides perspective on the Council’s approach for rebuilding stocks not biologically capable of rebuilding within the 10 year timeframe established by section 304(e)(4) of the MSA.

## **2. Analysis of Petrale Sole Rebuilding**

The GMT analysis of petrale sole rebuilding used the best available projections of stock abundance and annual allowable catch over the rebuilding period to provide a direct view of the long-term impact associated with allowing various levels of harvest during the rebuilding period. Table 1 summarizes that analysis.

The team presented the analysis to the Council in April for the setting of preliminary preferred ACLs with minimal accompanying explanation.<sup>3</sup> The team summarized the findings of the analysis in the following manner:

The rebuilding projections—reflecting the status and biology of the stock—do not show a tradeoff between expected yield in the short-term yield [sic] and yield over the long-term. In fact, the rebuilding analysis projects that the alternative that would be expected to produce the most yield over the rebuilding period is also the alternative that causes the most delay in rebuilding under both [the year-round fishery and winter closure] scenarios.

The team’s report also included figures depicting the probability of the stock having rebuilt by year to highlight that the rebuilding analysis did “show some contrast between the alternatives in terms in their probabilities of recovery.”

In view of the analysis and findings, the Council added a new alternative that Table 1 represents as Alternative 3. This alternative begins with the Council’s standard ABC harvest control rule in 2011 and then transitions to the standard 40-10 harvest control rule with the full transition occurring in 2013. The Council maintained Alternative 3 as the final preferred alternative in June 2010 with one change: the 2011 ACL was set using the standard P-star adjusted ABC control rule used for all Category 1 stocks.

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<sup>1</sup> Agenda Item B.3.b, Supplemental GMT Report 2, June 2010 at p. 1.

<sup>2</sup> Agenda Item B.3.b, Supplemental GMT Report 2, June 2010 at p. 5.

<sup>3</sup> Agenda Item I.4.b, Supplemental GMT Report 3, April 2010

Although brief, the two statements made by the GMT in the context of the rebuilding projections conveyed substantial information to the Council. As described below, their full import arises from the manner in which the Council has established and tracks conservation objectives using biological reference points and harvest control rules.

**Table 1.** Projected rebuilding ACLs (mt) and probability of reaching  $B_{MSY}$  by year for the three alternative rebuilding strategies considered by the Council in June 2010 plus the  $F=0$  (“no fishing”) and  $F_{MSY}$  harvest control rule. The analysis assumes the stock is declared rebuilt the year after the rebuilding analysis projections predict  $B_{MSY}$  has been obtained with at least a 50 percent probability (shading indicates this median estimate for each scenario). The ACL at  $B_{MSY}$  is assumed to be 2,080 mt.<sup>4</sup>

No Fishing Strategy	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Total
ACL	0	0	0	0	2,080	2,080	2,080	2,080	2,080	2,080	2,080	14,560
P(rebuilt)	0%	0%	25%	75%	100%	100%	100%	100%	100%	100%	100%	--
Alt 1	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Total
ACL	459	624	791	945	2,080	2,080	2,080	2,080	2,080	2,080	2,080	17,379
P(rebuilt)	0%	0%	25%	75%	76%	100%	100%	100%	100%	100%	100%	--
Alt 2	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Total
ACL	776	1,160	1,481	1,720	1,883	1,981	2,080	2,080	2,080	2,080	2,080	19,401
P(rebuilt)	0%	0%	0%	25%	25%	56%	67%	74%	79%	84%	87%	--
Preferred - Alt 3	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Total
ACL	976	1,160	1,432	1,680	1,853	1,963	2,080	2,080	2,080	2,080	2,080	19,464
P(rebuilt)	0%	0%	25%	25%	25%	50%	63%	70%	76%	82%	86%	--
F <sub>MSY</sub> harvest	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Total
ACL	1,021	1,279	1,507	1,690	1,824	1,919	1,984	2,080	2,080	2,080	2,080	19,544
P(rebuilt)	0%	0%	0%	25%	25%	38%	56%	65%	73%	79%	84%	--

### 2.1. Considering the Tradeoff in Yield

The GMT’s choose the particular method of analysis for petrale sole because long-term yield is a primary conservation objective of fisheries management. The tradeoff between harvesting yield in the short-term and the yield that will be available over the long-term is the central focus of the science and policy of MSY management.<sup>5</sup> The overfishing and overfished concepts are built on concern about this tradeoff, and it is this tradeoff that the Council’s biological reference points and harvest control rules are intended to resolve in favor of the long-term. It was thus with this tradeoff in mind that the GMT conceived of and presented the analysis of alternative rebuilding strategies for petrale sole.

With overfished stocks it has been commonly assumed that the tradeoff between short and long-term yield is best served by rebuilding as quickly as possible.<sup>6</sup> Delays may be warranted based on short-term considerations, yet those delays presumably come at a cost to long-term yield. However, this assumption has been shown to not hold true for every circumstance, at least where the optimal rebuilding trajectory

<sup>4</sup> The estimated ACL at  $B_{MSY}$  is derived from Table i, “Yield with  $SPR_{MSY}$ -proxy at  $SB_{SPR}$  (mt)” in Agenda Item E.2.a, Attachment 1: Entire Report “Draft Status of the U.S. Petrale Sole Resource in 2008,” September 2009.

<sup>5</sup> Walters and Martell (2004) (“Easily the single most difficult and pervasive trade-off issue in fisheries management is between catching fish now versus leaving them in the water to produce surplus for harvesting in the future.”).

<sup>6</sup> See Holland, D. S. (2010):

As is well known (e.g. Clark 1990), when prices and marginal cost are constant so that the profit function is linear, the optimal rebuilding approach is the fastest possible, often referred to as the bang-bang solution. Harvest is set at zero until the fish stock has risen to the optimal level. . .

factors in economic considerations like changes in prices, the marginal cost of harvesting, and the discount rate.<sup>7</sup>

The analysis reproduced in Table 1 clearly showed the Council and GMT that the assumption does not hold for petrale, even without consideration of economic factors other than expected yield. As explained further below, rebuilding under the quickest time possible does produce larger yields in future years than the slower to rebuild alternatives. Yet the benefit of those larger yields is only incremental to what is harvestable under the slower to rebuild alternatives. And with petrale, those incremental benefits are not large enough to make up for the yield lost by banning harvest during rebuilding. Based on the metric of cumulative yield, the shortest rebuilding period performs the worst of all the alternatives. It was this fact that the GMT was highlighting to the Council with the statement that the slowest to rebuild alternatives were expected to produce more yield over the long-term than the quicker to rebuild alternatives.

With no expected long-term cost associated with rebuilding under the standard  $F_{MSY}$  harvest control rule, petrale rebuilding posed interesting circumstances. As Hilborn and Stokes (2010) had pointed out in article published during the team's development of the April 2010 petrale analysis, rebuilding petrale at anything but the standard  $F_{MSY}$  harvest control rule raised a potential incongruity with the major rationale for rebuilding. If the primary objective of rebuilding is to correct for the yield being lost by the stock not being at its target biomass level, it would then appear incongruous to rebuild in manner that was expected to forgo more yield from the stock. With long-term yield as the major metric of conservation performance, the benefit of rebuilding more quickly becomes questionable.

The GMT's emphasis on the probabilities of rebuilding highlighted the primary countervailing objective the Council could use to address this facial incongruity. Projections of the annual yield that would be available for harvest during rebuilding are based on the median estimates from the rebuilding analysis. Median estimates, i.e. the 50th percentile or "even odds", are typically provided to the Council as the best available, risk-neutral scientific estimate. Tolerance for risk is therefore a typical factor considered by the Council when setting harvest specifications. Preference for less risk—i.e., for a higher probability that stock will rebuild over the relevant time period—is another policy basis with the Council considers risk-neutral estimates of long-term yield.

And it was essentially a preference for the more risk-averse 40-10 harvest control rule that the Council chose Alternative 3 as its final preferred alternative. As shown in Table 1, Alternative 3, is expected to produce slightly less yield (less than 1%) over the ten year rebuilding period than the  $F_{MSY}$  rebuilding scenario and yet to perform slightly better with the annual probability of having rebuilt as the metric.

## *2.2. Considering Long-term Economic Return*

The other important contrast in petrale rebuilding is between the Council's preferred Alternative 3 and Alternative 1. Alternative 1 is basically indistinguishable from the quickest to rebuild—the no fishing scenario—in terms of expected times to rebuild. Significantly, Alternative 1 was proposed based on the

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<sup>7</sup> Id. See also., Larkin, S. L. et al. (2006):

Our analysis demonstrates that extending the rebuilding timeframe (as allowed under the New Zealand Act) could increase the net present value of commercial harvests from small to very significant levels depending on input and output prices, technology, productivity of the stock, and the discount rate.

same rebuilding philosophy used for rockfish: providing a minimal harvest for incidental bycatch or petrale by vessels targeting of non-rebuilding groundfish stocks.

Implementing Alternative 1 would involve cost to the non-whiting fleet. That cost would arise from the lost revenue from lower harvest and sale of petrale and from the additional constraints and lowered harvest of other stocks needed to keep petrale harvests within in the ACL. This second component of cost can be substantial. Yet as is demonstrated by the integrated holistic analysis used to consider rockfish rebuilding, it is indirect and difficult to predict and measure. With the GMT's analysis of petrale, it was unnecessary to quantify these indirect costs. The first component of cost provided information enough and was easily considered by comparing Alternative 1 to the other alternatives, again, using the projections summarized in Table 1. The result of the comparison was clear: based on the metric of yield, the costs of quicker rebuilding are not accompanied by offsetting long-term benefits.

Table 2 focuses in on the comparison between Alternative 1 and Alternative 3. Based on the risk-neutral projections, Alternative 1 holds the fishery to minimal bycatch for the four years it takes the stock to rebuild. During those four years, Alternative 3 provides the fishery with, on average, 607 mt more yield per year. Alternative 1 rebuilds two years quicker, and in those two years, provides the fishery with 227 mt and 117 mt more yield than would Alternative 3. This incremental benefit is not enough to offset the better performance of Alternative 1 in the first four years and Alternative 3 produces an expected 2,085 mt more yield to the fishery over the rebuilding period. Although unnecessary to the weighing of benefit and costs, this 2,085 mt would translate to over \$5 million based on an average ex vessel price per pound of \$1.14 per lb.

More sophisticated analysis that factor in indirect costs, net present value, etc. were unnecessary to reach the conclusion that Alternative 1 was inferior to the slower rebuild alternatives based on overall yield provided to the fishery. The fact that petrale was the third most economically important stock to the non-whiting trawl fleet prior to overfished status is largely immaterial to the question of long-term economic return. Alternative 3 would appear superior to Alternative 1 if petrale were the least valuable stock in the fishery. No realistic economic assumption can make Alternative 1 equivalent to Alternative 3 in terms of long-term economic value to fishing communities. A preference for Alternative 1 would therefore have to be based on considerations other than long-term yield and economic considerations.

**Table 2.** Projected rebuilding ACLs (mt) from Table 1 for the Council's final preferred rebuilding alternative (Alternative 3) and Alternative 1, with the annual and cumulative difference between the two expressed in both terms of harvestable yield and ex-vessel value (\$1,000s). Dollar values are based on an ex-vessel price of \$1.14 per lb (the 2007-09 coastwide average for trawl landings in the PacFIN database).

Expected ACL	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Alt 3 (Final Preferred)	976	1,160	1,432	1,680	1,853	1,963	2,080	2,080	2,080	2,080	2,080
Alt 1	459	624	791	945	2,080	2,080	2,080	2,080	2,080	2,080	2,080
Annual +/- (mt)	517	536	641	735	-227	-117	0	0	0	0	0
Annual +/- (\$ thou)	\$1,299	\$1,347	\$1,610	\$1,848	-\$569	-\$294	\$0	\$0	\$0	\$0	\$0
Cumulative +/- (mt)	517	1,053	1,694	2,429	2,202	2,085	2,085	2,085	2,085	2,085	2,085
Cumulative +/- (\$ thou.)	\$1,299	\$2,646	\$4,257	\$6,104	\$5,535	\$5,241	\$5,241	\$5,241	\$5,241	\$5,241	\$5,241

### 3. Rebuilding and Yield

As noted in the introduction, *NRDC v. Locke* raised fundamental questions about the conservation merits of three of the Council's rebuilding plans. A few months prior to the issuance of *NRDC v. Locke*, the Council's rebuilding policies were questioned by Hilborn and Stokes (2010) in the journal *Fisheries* based on concerns quite different than those expressed by the court. Both gave the GMT cause to look closely at the bigger picture goals and objectives of rebuilding overfished stocks when advising the Council on 2011-12 rebuilding harvest specifications.

#### 3.1. Rebuilding and Yield

The review of Hilborn and Stokes examined the performance of rebuilding policies across jurisdictions employing modern fisheries management techniques. The authors generally criticize the policies for having "little if any basis in the science or the legislation" on which they are based. Most striking was this conclusion: "[i]n practice, rebuilding times have often/usually been dictated arbitrarily, with no underlying justification being given."

The crux of Hilborn and Stokes' critique relates to fisheries management's "traditional concern about yield lost from overfishing." They argue that the biological reference points created to prevent the loss of yield have not been configured appropriately. In fact the authors found that the threshold used to define overfished status in many jurisdictions is placed near to the abundance level where MSY is expected for many stocks. The implication of this finding is that:

many stocks now (or potentially) classified as overfished, depleted, or collapsed are producing at very close to their maximum sustainable yield and meeting the intent of national and international legislation.

Hilborn and Stokes commented specifically on the biological reference points of the Groundfish Fishery Management Plan (FMP):

If the purpose of definitions of "overfished," and associated thresholds, is to identify stocks that are at levels where potential yield is being lost, the "sin" that Larkin referred to earlier, then thresholds such as the 25% B<sub>0</sub> adopted by the Pacific Fisheries [sic] Management Council for groundfish are inappropriate.

Hilborn and Stokes also remarked on how overfished status might affect public perception:

We have no doubt the general public perceives overfished stocks as having been fished so hard that they are not producing near their sustainable yield. It seems ironic that many agencies choose high thresholds for defining stocks as overfished and then use these thresholds to evaluate their own performance, making themselves look bad as a result.

The GMT echoed this same perception issue to the Council in June 2010, suggesting that the Council had been evaluated against a very high standard that it had set with the rebuilding of rockfish. The result was that the Council was viewed as not being conservative enough by the court and as being arbitrarily conservative by the Hilborn and Stokes article.

### 3.1. Yield and Scientific Uncertainty – Pretty Good Yield

The divergent views of the Council’s rebuilding policies can be explained, at least in part, by the scientific uncertainty inherent in estimating and applying biological reference points and harvest control rules. As described in the Groundfish FMP, the Council uses a proxy  $B_{MSY}$  biological reference point and  $F_{MSY}$  harvest control rule. Proxies are necessary because the “true”  $B_{MSY}$  and  $F_{MSY}$  for a stock are unknown.

The Council revisited proxy  $B_{MSY}$  and  $F_{MSY}$  estimates for petrale sole and flatfish this cycle. In making their recommendation to adopt species proxies for flatfish, the SSC reminded the Council that proxies were intended as best available estimates that “perform at least adequately for each member of the group” for which they are designed (e.g., flatfish). By “perform at least adequately,” the SSC was referring to performance in terms of the long-term yield expected from the stock.

With respect to yield objectives, the SSC advised that proxy harvest rates should not be characterized as “overly aggressive” or “too precautionary”. The reason for this advice was explained in a workshop on groundfish harvest policies earlier this decade (Ralston, S. et al. 2000):

For less resilient stocks, [the Council’s  $F_{MSY}$  proxy harvest rate of]  $F_{40\%}$  will reduce biomass to a lower level, possibly much lower, while still providing a yield near MSY. That is possible because yield is not very sensitive to equilibrium biomass over a wide range of biomass levels, so a yield near MSY can be obtained even when biomass is well below  $B_{MSY}$ . It is this feature of yield curves that makes it possible for a rate like  $F_{40\%}$  to perform well in terms of yield over a wide range of spawner-recruit productivity curves. For some curves  $F_{40\%}$  is well above  $F_{MSY}$  and for some of the curves it is well below, but in none of the cases considered is it so far below  $F_{MSY}$  that yield is much lower than MSY.

Hilborn (2010) describes this relationship between harvest rates, stock size, and sustainable yield as Pretty Good Yield (PGY) and explains how improved scientific understanding of the relationship has surprised even many experts.<sup>8</sup> Echoing the advice given to the Council by the SSC in simpler terms, Hilborn summarizes PGY with the statement that “good yields can be obtained over a range of stock sizes that might result from management imprecision or natural variation.”

Importantly, PGY is the reason for the putative incongruities noted with the Council’s rebuilding policies and rebuilding policies in general.<sup>9</sup> Stocks that are at lower abundances can be harvested sustainably still

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<sup>8</sup> Hilborn (2010) attributes the origination of PGY to Alec MacCall, a NMFS fisheries scientist involved with advising the Council on the Groundfish FMP harvest control policies:

The location of the optimal stock size and harvest rates in relation to different values of compensation in the stock recruitment relationship are widely recognized among scientists working in population dynamic, but it is not recognized how broad the range of PGY is. Indeed, the idea that good sustainable yields could be obtained at stock sizes below 10% of unfished levels will shock many fisheries scientists and managers as such stocks are often referred to as “collapsed”. Admittedly this occurs only for stocks with high steepness, but many stocks do display such intense compensation and have produced high sustainable yields for long periods at high levels of depletion.

<sup>9</sup> {Hilborn, R., 2010} explain the likely novel perspective PGY provides to most fisheries management professionals:

To scientists who have spent many hours exploring model responses to alternative harvest regimes the basic results in this paper will be familiar. However, most people involved in fisheries management are less familiar with the robustness of yield to stock abundance levels, and these results will prove enlightening and help them to evaluate the consequences of alternative management policies.



sustainably produce yield. As shown with petrale, PGY means that considerations of long-term yield in rebuilding are not as straightforward as perhaps commonly assumed.

As consequence, the PGY that can be obtained for many stocks over a wide range of abundance levels—including levels currently considered overfished or in need of rebuilding—undermines long-term economic return as a compelling justification for rebuilding quickly. In such situations, the “payoff” from quick rebuilding will likely be smaller than the cost of achieving that payoff.<sup>10</sup> If no other justifications are provided, then the reasons for rebuilding in a time period that is as short as possible, as required by MSA §304(e)(4)(A), can take on the appearance of being—in the words of Hilborn and Stokes—“dictated arbitrarily.”

### *3.2. Analyzing Benefits and Costs*

Yield is not the only consideration in fisheries management, or in rebuilding. The MSA’s rebuilding requirements are ultimately intended to achieve optimum yield, with the concept of optimum defined based on consideration of multiple social, economic, and ecological policy objectives. MSY is the foundation—and a prerequisite—of optimum yield. From the perspective gained from PGY, Hilborn (2010) explains that:

the primary concern in fisheries policy is biological sustainability and production of goods and services, and that producing optimum yield is distinctly less important than producing yields that are reasonably high, or indeed “pretty good”. Part of this recognition comes from the multiple objective nature of most fisheries management; a broad a range of harvest policies provide good yield while also producing other desired outputs, be they biological or economic.

All “desired outputs” from a fish stock are ultimately a function of the stock’s abundance. PGY suggests that higher abundance levels may be where the multiple objectives are best balanced.<sup>11</sup>

Stocks managed under rebuilding plans, however, are already “at lower abundance than we would choose to operate if we had our choice.”<sup>12</sup> Overfished status is undesirable, yet the costs of not being at higher abundances are now irrelevant in the analysis of the best path forward.<sup>13</sup>

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<sup>10</sup> Hilborn (2010):

This may explain, for instance, why fishing groups are reluctant to engage in rebuilding plans when stocks fall into those ranges. Intuitively they might feel, and the analysis presented in this paper confirms, that there are few gains in yield to be had from increasing the stock abundance from 20% of unfished abundance to the widely accepted target ranges of 35–40% and yet there is considerable short-term cost in foregone yield during the rebuilding.

<sup>11</sup> Hilborn (2010):

this analysis also suggests that PGY can be obtained at quite high stock sizes, and there is little long term yield to be lost by keeping most stocks at 50% of unfished stock size. Given the growing social acceptance of more intact ecosystems as an objective of fisheries management, higher target stock size ranges than 35–40% should be considered desirable. Furthermore, it is generally expected that fisheries will be more profitable at the higher end of stock sizes, and economic arguments would favor aiming at or above the 35–40% target levels.

<sup>12</sup> Hilborn and Stokes (2010).

<sup>13</sup> See also Anderson, L.G. (2010):

The formal analysis of how an appropriate control rule . . . is a policy decision based upon, among other things, tradeoffs between present and future benefits and the desired time in which to achieve [the target stock size].”

Rebuilding stocks back to higher abundances inevitably involves costs as well. As phrased by Hilborn and Stokes, the two fundamental questions for examining benefits and costs in rebuilding thus become:

- (1) What is the value of rebuilding to higher stock abundances given we are at lower abundance, and
- (2) How quickly should this rebuilding take place?

The first question serves as a point of reference with which to evaluate second. It is not aimed at a choice of whether or not to rebuild, especially under the MSA where rebuilding is mandated. Instead, taken together the two questions describe the benefit-cost approach used by the GMT for petrale sole. Costs and benefits are a function of the trajectory back to the rebuilding target and will differ for each stock based on the stock's status and biology.

Hilborn and Stokes recommend examination of costs and benefits “on a case-by-case basis.” They encourage management agencies to evaluate the “legitimacy” of biological reference points and to “distinguish between stocks that are losing yield due to overfishing, and stocks that are at lower biomass than would be desired for ecological or economic reasons.” On the advice of the SSC, the Council did the former with petrale sole. As for the latter, they recognize policy preferences that “seek to hold stocks, on average, at high stock sizes for economic, ecological, or social reasons.” While they acknowledge that this is “a perfectly viable approach,” they warn that justifications based on considerations other than sustainable yield “must be recognized as totally arbitrary unless supported with an underlying quantitative basis.” In light of this potential arbitrariness, Hilborn and Stokes underscore the “need to be very clear what it is that causes larger stock sizes to be socially desirable.”

#### **4. Conservation and the Groundfish FMP**

As has been described, the underlying rationale for the MSA's overfished mandate is that rebuilding produces long-term conservation benefits. Delays in rebuilding are thought to delay attainment of those benefits at some future cost. The court's evaluation in *NRDC v. Locke* considered fisheries conservation to have two major benefits: (a) “providing long-term economic return” and (b) “improving the environment.” In their reports to the Council in June, the GMT further divided these benefits into consideration of: (i) long-term yield from a stock; (ii) population viability risk; and, (iii) ecological function. All three are somehow a function of a stock's abundance and fundamental issues in fisheries science and policy. The team was therefore able to consider the three factors either quantitatively, using the estimates from the rebuilding analyses, or qualitatively, based on the team's understanding of the scientific basis for the Council's harvest control rules and biological reference points.

##### *4.1. The Council's Biological Reference Points.*

Punt and Smith (2001) provide a review of the modern MSY-based fisheries management. They describe how the MSY concept has transformed  $F_{MSY}$  from “a management target to an ‘upper limit’” and operationalized the achievement of MSY based on “three closely linked concepts: fisheries reference points, the precautionary approach and feedback-control decision rules.”

Restrepo et al. (1998) describe the connection between the modern MSY paradigm and the overfishing and overfished requirements added to the MSA and the NS1 guidelines after the Sustainable Fisheries Act of 1996:

A common element in the application of the precautionary approach to fisheries management worldwide is the definition of “limits” intended to safeguard the long-term productivity of a stock. . . The Magnuson-Stevens Act encompasses this concept in that it constrains OY to be no greater than MSY.

The NSGs identify two limits for fishery management (referred to as “thresholds”) that are necessary to maintain a stock within safe levels, capable of producing MSY: A maximum fishing mortality threshold (MFMT) and a minimum stock size threshold (MSST). The MFMT and MSST are intended for use as benchmarks to decide if a stock or stock complex is being overfished or is in an overfished state. In the NSGs, these two limits are intrinsically linked through an “MSY Control Rule” that specifies how fishing mortality or catches could vary as a function of stock biomass in order to achieve yields close to MSY.

The Groundfish FMP describes in more detail how the Council has operationalized the NS1 guidelines and technical guidance of Restrepo et al. In brief, the MFMT demarcates the overfishing limit and the MSST the overfished threshold. The MFMT is defined by the  $F_{MSY}$  harvest control rule, which again, is intended to keep stocks at the MSY stock size ( $B_{MSY}$ ). For all groundfish except flatfish,  $B_{MSY}$  has been set at 40 percent of the estimated unfished abundance ( $B_{40\%}$ ). For flatfish,  $B_{MSY}$  has been revised on the advice of the SSC to 25 percent of the estimated unfished abundance ( $B_{25\%}$ ) beginning with this 2011-12 harvest specification cycle. The MSST is set at 50 percent of the MSY stock size for flatfish ( $B_{12.5\%}$ ) and 62.5 percent of the MSY stock size ( $B_{25\%}$ ) for all other stocks.

#### 4.2. Harvest Control Rules and Population Viability

Both *NRDC v. Locke* and an earlier precedent setting case, *Natural Resources Defense Council v. NMFS*, made reference to the “dire” condition of certain overfished stocks.<sup>14</sup> The GMT noted that “dire” was more commonly used with reference to species facing an appreciable risk of extinction or extirpation and that the best estimates of status and biology before the Council did not reflect such risks. The team’s conclusion follows directly from the science of harvest control rules.

As Restrepo et al. describe, the harvest control rules are designed primarily to “safeguard the long-term productivity of a stock” and to “maintain a stock within safe levels, capable of producing MSY.” Maintaining stocks at such safe levels presupposes that stocks are also kept viable.

The scientific consensus is that stocks can be sustainably managed with the biological reference points and feedback decision rules employed in the Groundfish FMP.<sup>15</sup> The consensus derives from the

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<sup>14</sup> The early case, discussed more below, was *Natural Resources Defense Council v. National Marine Fisheries Service*, 421 F.3d 872 (9th Cir. 2005). The perception seemed to factor into both courts’ reasoning. As phrased in *NRDC v. Locke*: “This Court has made its ruling and the ruling should be implemented, due to the dire circumstances of several of the species.”

<sup>15</sup> See Walters and Martell (2004) at p.15-16 (emphasis in original):  
the only possible long-term (“sustainable”) outcome of harvesting given only density-independent variation . . . is extinction. Thankfully, this outcome is not what has been observed in virtually every case in which populations have been monitored during harvest development . . . What we have seen, in fact, is at least some “density-dependent” or “compensatory” change . . . leading to improved survival and/or fecundity in

theoretical foundations of population biology and the study of density dependence. Density dependence describes how per capita rates of survival and reproduction vary in response to changes in population abundance, i.e. density. Population viability concerns relates to the uncertainty in how those rates of survival and reproduction behave at low stock size. It is a key concern in the question of how a particular stock will respond to a rate of harvest over time.

Harvest rates have been evaluated extensively in the scientific literature and in their application to the Groundfish FMP. The review of Punt and Smith (2001) refers to the harvest rate at which population viability concerns arise as  $F_{\text{crash}}$ , which they describe “as the lowest fishing mortality, which if fishing continued at that level, would eventually render the resource extinct.” Mace’s (2001) review, referring to that rate as  $F_{\text{extinction}}$ , explains how some scientists believed it would be a more appropriate limit harvest rate than  $F_{\text{MSY}}$  for implementing the precautionary approach because  $F_{\text{MSY}}$  is actually the best estimate of the rate that achieves the MSY objective. Mace, and Punt and Smith, both discuss the probability that  $F_{\text{MSY}}$  could equal  $F_{\text{crash}}$  and conclude that  $F_{\text{MSY}}$  is likely much more conservative (i.e. harvests at a lower rate) than  $F_{\text{crash}}$  for the vast majority of fish populations. With fishing rates appropriately adjusted to stock size, the theoretical foundations of fisheries science suggests that fish stocks can be harvested sustainably even at relatively low abundance. And rates at or below  $F_{\text{MSY}}$  are expected to allow the stock to increase back toward  $B_{\text{MSY}}$ .

Worm et al. (2009) assessed the status of fish stocks in ten marine ecosystems around the world and concluded that their assessment “provide[s] hope that despite a long history of overexploitation marine ecosystems can still recover if exploitation rates are reduced substantially.” It was such consensus that GMT echoed to the Council with the statement that “[f]ishing pressure is the major threat faced by these stocks [and if] fishing pressure is set appropriately, the stocks are expected to increase” in abundance.<sup>16</sup>

#### 4.3. Population Viability and Uncertainty

Although the theory of fishing is well established, there is still considerable uncertainty in applying the theory to actual fish populations. As described by Punt and Smith (2001), we have limited “ability to estimate MSY given uncertainty regarding models and data.” They caution that it “would be naïve to believe that all . . . [concerns] have been overcome by the use of  $F_{\text{MSY}}$  and  $B_{\text{MSY}}$  as limit rather than target reference points and by developing management plans that include decision rules whose performance has been evaluated by simulation.”

Whether the scientific theory bears out in practice depends on whether its main assumption—compensatory density dependence—holds true. This assumption can break down if the amount of compensation is overestimated or where a stock’s biology shows depensation.<sup>17</sup> Depensation, or

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response to a reduction in [stock abundance]. For modest [harvest rates], such compensatory change tends to return [the population growth rate] to a mean of 1.0, i.e., to stop the decline. *Hence, compensatory change in survival rates and/or fecundity is the fundamental ecological basis of sustainable harvesting.* So, if someone argues that a given population exhibits no density-dependent or compensatory rate changes, . . . , then that person is, in fact, asserting that the population is incapable of producing a sustainable yield (and is incapable of exhibiting any sort of stable population size under natural conditions either).

<sup>16</sup> Agenda Item B.3.b, Supplemental GMT Report 2, June 2010.

<sup>17</sup> As Walters and Martell (2004) characterize this uncertainty: the “theory tells us that there should be a compensatory response, but it does not tell us how strong that response should be.” Punt and Smith (2001) describe the fundamental scientific uncertainty in the yield-per-recruit approach taken to develop the harvest control policies in the Groundfish FMP:

depensatory density-dependence, is the opposite of compensatory density-dependence and describes the situation where per capita rates of survival or reproduction or both decrease at low stock sizes. Punt and Smith (2001) report that  $F_{MSY}$  and  $F_{crash}$  can be similar under depensatory stock dynamics.

Depensation is a key focus of fisheries and conservation biology because of the risk it poses to population viability in all organisms. Hilborn and Stokes (2010) reviewed studies of depensatory dynamics in fish stocks and concluded “that there remains little evidence for depensatory dynamics as a frequent phenomenon in exploited fish populations,” and although there is “good evidence that recruitment declines at low stock abundance,” it does not decline “in a depensatory fashion that could lead to collapse.”

Even absent depensatory dynamics,  $F_{MSY}$  rates are estimates that may overestimate the amount of compensatory density dependence in a stock. As described above, the Council’s proxy harvest rates are designed to account for this uncertainty and be robust to varying levels of compensation. And Hilborn (2010) explains how  $B_{MSY}$  reference points established in the range of 30–40% are “robust to any uncertainty” in the stock-recruitment relationship.

Yet overestimation of stock abundance poses another risk. The estimate of the appropriate harvest rate has to be applied to an uncertain estimate of stock size. Regular monitoring, assessment, and adjustment can account for such errors, yet when stocks are at low abundance there is less margin for error. It is largely on account of the potential for overestimating stock abundance that the Council’s rebuilding strategy for rockfish combines the Cowcod Conservation Area and the Rockfish Conservation Area closures in combination with the conservative harvest rates.<sup>18</sup>

#### *4.4. Harvest and Ecological Considerations*

As highlighted above, the MSA concept of optimum yield involves consideration of ecological factors. Also highlighted above was the warning of Hilborn and Stokes (2010) on the potential arbitrary nature of justifying rebuilding on ecological considerations and other non-consumptive considerations. That potential for arbitrariness, as the GMT advised the Council in June, is at least partly an artifact of the state of the science and the technical difficulties of quantifying the ecological impacts associated with stock abundance.

The MFMT and MSST biological reference points of modern MSY management do not explicitly factor in the ecosystem effects of harvesting.<sup>19</sup> Evaluation of the ecosystem effects of harvesting is an increasing focus of fisheries management and analytical techniques for doing so are being advanced under scientific efforts referred to as either ecosystem-based fisheries management or ecosystem approaches to

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The problem that  $F_{crash}$  may be similar to  $F_{MSY}$  for some species is exacerbated by uncertainty regarding the estimation of  $F_{MSY}$  and current fishing mortality from actual fisheries data. Imprecision in these estimates could lead to the estimate of  $F_{MSY}$  greatly exceeding  $F_{crash}$  for stocks for which  $F_{MSY}$  is really similar to  $F_{crash}$ . Unfortunately,  $F_{MSY}$  (and  $F_{crash}$ ) is often poorly estimated using fisheries data because to estimate  $F_{MSY}$  accurately requires good information not only on growth rates but also on the shape of the stock-recruitment relationship. The latter is, however, seldom well determined because of uncertainty regarding estimates of spawner stock size and recruitment, and lack of contrast in spawner stock size.

<sup>18</sup> See Walters and Martell (2004) at p. 69 (identifying “time-area closures and other measures that provide bounds on the exploitation rate independent of the annual stock-size estimate” as one tactical option for reducing the risks posed by depensation.).

<sup>19</sup> See, e.g., Walters and Martell (2004) at p. 18 (Explaining that losses from natural mortality “are not just disappearances from ecosystems,” but instead, at least in part, “represent ‘trophic support’ provided by [the stock] to higher trophic levels” that the modern MSY paradigm has treated as either “having no economic or social value, or [pretended] that there is ample supply” of other species to compensate.).

fisheries. As described by Walters and Martell (2004), such ecosystem approaches are focused on improved understanding of trophic interactions in the marine environment with the aim of “provid[ing] a capability for fisheries scientists to respond to a broader set of policy questions and predictive demands than can single-species analysis.” This broader set of policy questions will involve a complicated set of tradeoffs and likely disagreement between those that primarily value consumptive use of fish stocks and those more concerned with biodiversity and existence value.<sup>20</sup>

Although the  $B_{MSY}$  and  $F_{MSY}$  biological reference points are established primarily on considerations of sustainable yield, the Council certainly may choose to justify faster rebuilding timeframes on ecological considerations. A recent international symposium on the multiple objectives of rebuilding, however, suggested a differentiation between stock “recovery” and stock “rebuilding” with the former referring to broader ecological concerns and out of necessity, requiring a longer timeframe.<sup>21</sup> Accounting for some of the considerations discussed in the context of stock “recover” may require the Council to revisit the policy objectives currently incorporated in to the Groundfish FMP’s  $B_{MSY}$  and  $F_{MSY}$  biological reference points.

## 5. Considering Rockfish

In past cycles, the Council has not taken a direct look at long-term tradeoffs with rockfish. Detailed economic analysis is difficult because of the complexities caused by the many interrelationships between fisheries and the long time horizons involved with rebuilding. In June, the GMT used the same approach as used for petrale to consider the basic tradeoffs of individual rockfish. When the different productivity of each stock, the tradeoffs are not substantially different than those seen with petrale, they just occur over a longer period of time. Despite the longer time periods, the rockfish plans are similar to petrale in their long-term conservation impacts.

As highlighted above, the inferences that can be made based on the scientific foundations of  $F_{MSY}$  apply equally to rockfish. Rockfish, being less productive and showing sporadic recruitment, are rebuilt with much more precautionary, risk averse harvest rates than  $F_{MSY}$ . The harvest rate for yelloweye rockfish, for example, is less than half of  $F_{MSY}$ . A few of the rockfish are being rebuilt using harvests closer to 15 percent of  $F_{MSY}$ . There are many sources of uncertainty that create risk with respect to the achievement of long-term conservation objectives. Using the best available science, the Council is able to judge those

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<sup>20</sup> See Walters and Martell (2004) at p. 32:

we cannot convincingly argue that the maintenance of a natural community structure is a win-win option for everyone, including fishers as well as people who value creatures (and diversity itself) for other reasons (or who feel that other creatures have some intrinsic right to existence and protection). Producing catch is damaging to other ecosystem values, and we have to face this trade-off more and more often today as people demand consideration of these other values.

<sup>21</sup> See comments attributed to Dr. Steve Murawski, NMFS Director of Scientific Programs and Chief Science Advisor in Hammer, C. et al (2010):

[Dr. Murawski] concluded that the most successful recovery programmes are characterized by immediate, measurable, and drastic reductions in fishing mortality, instead of gradual, long-term reductions, but emphasized that a distinction should be made between “recovery” and “rebuilding”; the former referring to a straightforward increase in stock biomass, whereas the latter implies fulfilling a suite of additional criteria, including the restoration of age structure, evolutionary mechanisms, and behavioural traits. Murawski’s message, echoed by subsequent presenters, clarified that “rebuilding” has a much longer time horizon than “recovery”. Moreover, these two terms reflect different philosophies. The typical prime objective of fishery management is to restore stocks to some target fishable biomass, largely ignoring specific biological features, such as age structure or size- and/or age-at-maturity. However, when put into a broader, ecological context, it is important to restore a stock to such a condition that it again fulfils its original ecological role in the ecosystem.

risks. And as the GMT showed the Council in June with yelloweye rockfish, the Council's rebuilding plans are more likely to be forgoing yield that could be harvested under a less risk averse approach while safely increasing stock abundance over the long term.

### 5.1. *Biology and Time to Rebuild*

In advising the Council, the GMT referenced the mean generation time based approach recommended by the National Standard 1 (NS1) guidelines. In revisiting guidelines after the recent reauthorization of the MSA, NMFS declined to revise this mean generation time standard.

NMFS received public comment specific to potential interpretations of *NRDC v. NMFS*, which the agency characterized as taking the position that:

per *NRDC v. NMFS*, 421 F.3d 872 (9th Cir. 2005),  $T_{\text{target}}$  should be as close to  $T_{\text{min}}$  as possible without causing a short-term disaster; rebuilding timeframes should only be extended above  $T_{\text{min}}$  where “unusually severe impacts on fishing communities can be demonstrated, and where biological and ecological implications are minimal.”<sup>22</sup>

In response to these specific comments, NMFS disagreed that the guidelines “should be revised to focus on ‘short-term disasters’ or ‘unusually severe’ community impacts, as the MSA provides for several factors to be considered.”<sup>23</sup> The several factors NMFS was making reference to are the factors named in §304(e)(4)(A)(i), including the “needs of fishing communities.” And the guidelines were left with the statement that the Councils should choose a “target time for rebuilding ( $T_{\text{target}}$ ) [that] shall be as short as possible, taking into account [the factors in MSA §304(e)(4)(A)(i)].”<sup>24</sup> NMFS continued to recommend that the delay associated with a particular  $T_{\text{target}}$  should still be evaluated on mean generation time.

On the question of the magnitude of delay associated with particular  $T_{\text{target}}$ , the GMT emphasized that one year of delay for a species like petrale was not equivalent, biologically speaking, to one year of delay for a species like yelloweye. To demonstrate this point, the GMT presented the Council with the information reproduced in Table 3. The shortest time to rebuild can be examined using the expected rate of increase with no fishing mortality from the rebuilding projections. That estimated rate can be used to compare the rebuilding alternatives for each stock and then be compared

As shown in Table 3, when compared against this benchmark the amount of delay involved for yelloweye rockfish looks quite similar to the amount of delay involved with petrale. With petrale, reducing the expected rate of increase from the fastest possible by half only results in a delay of a few years. With yelloweye, it becomes a few decades. This does not answer the question what the difference long-term conservation impacts might be. It simply helps illustrate and explain why the concept of mean generation time forms the basis for the NS1 guidelines.

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<sup>22</sup> Agency Response to Comments, Comment 86; *NMFS final action amending the guidelines for MSA National Standard 1*. 74 Fed. Reg. 3178, 3200 (January 16, 2009).

<sup>23</sup> *Id.*

<sup>24</sup> 50 C.F.R. § 600.310(j)(3).



**Table 3.** Projected annual rates of increase per year by rebuilding alternative for six rebuilding rockfish stocks and petrale sole. The rate of increase was calculated as  $(B_{MSY}/Current\ Status)^{1/n} - 1$ , where  $n$  is the projected number of years to  $T_{Target}$ . The bottom panel expresses the rate of increase as a percentage of the rate of increase to the shortest biologically possible time to rebuild ( $F=0$  scenario).

Projected rate of increase to $T_{Target}$ (%/year)	Canary	Yelloweye	Darkblotched	POP	Cowcod	Petrale	Bocaccio
F=0	3.4%	1.7%	3.8%	3.8%	4.0%	25.1%	4.0%
Alt 1	3.1%	1.2%	2.8%	3.8%	4.0%	25.1%	4.0%
Alt 2	2.9%	1.0%	1.9%	3.8%	3.7%	16.1%	3.6%
Alt 3	2.8%	0.9%	1.3%	3.4%	3.5%	13.7%	3.0%
Projected rate as a % of the rate at F=0	Canary	Yelloweye	Darkblotched	POP	Cowcod	Petrale	Bocaccio
Alt 1	93%	67%	75%	100%	100%	100%	100%
Alt 2	87%	58%	50%	100%	93%	64%	90%
Alt 3	82%	50%	35%	90%	88%	54%	75%

## 5.2. Long-term Economic Return and Yelloweye

The GMT choose to present the results of its analysis of yelloweye to the Council because yelloweye represents the opposite end of the spectrum compared to petrale in terms of length of rebuilding. Despite the long mean generation time for a stock like yelloweye, the long-term conservation impacts associated with rebuilding appear similar to petrale.

In terms of annual yield available from the stock, in 2011 the  $F_{MSY}$  yield is already more than 80 percent of the expected yield at  $B_{MSY}$  (which is not expected to be reached for decades). And if there were no rebuilding requirement and the Council employed the standard 40-10 harvest control rule instead, the 2011 ACL would be set at over 30 mt instead of at 20 mt. The yelloweye rebuilding analysis illustrates the Pretty Good Yield concept rather well.

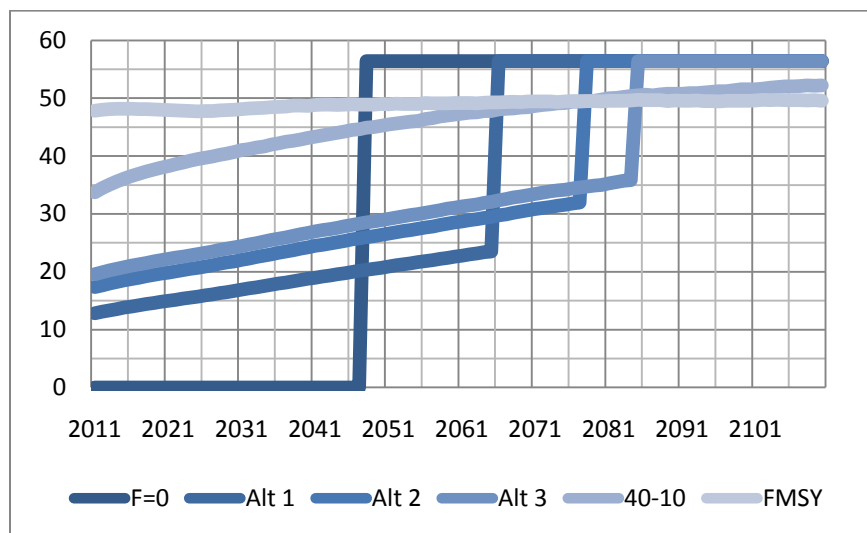
The GMT depicted this to the Council with the estimates shown in Table 4. As shown, the trajectory set by the Council's preferred alternative produces more than 600 mt of yield overall before the shortest time possible to rebuild begins allowing harvest during the 2050s. The same data is presented graphically on an annual basis in Figure 1. And the corresponding estimates of stock abundance are shown by Figure 2. The  $F_{MSY}$  rebuilding trajectory stabilizes the stock near current abundance levels and yet produces the most overall yield of all the alternatives.

**Table 4.** Expected cumulative yield, by decade, based on the annual median catch estimates from the yelloweye rockfish rebuilding analysis.

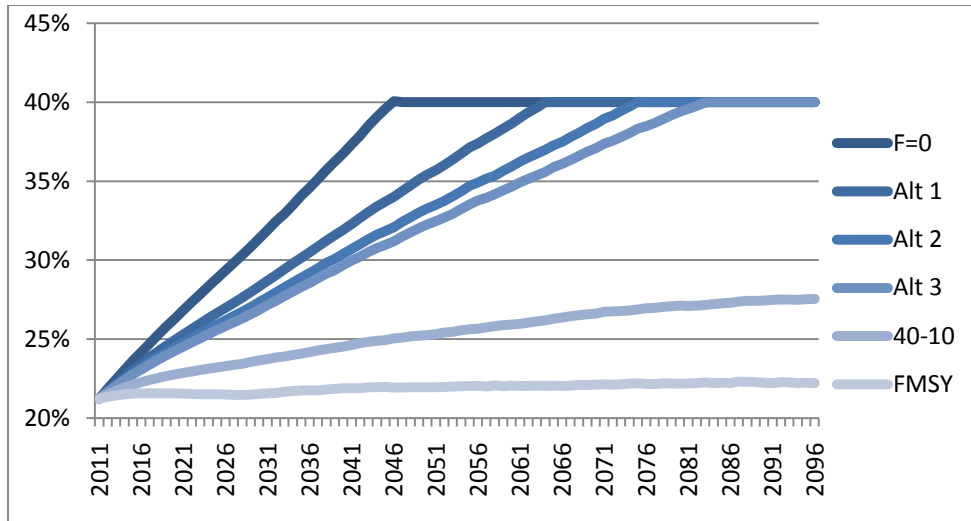
Year	F=0	Alt 1	Alt 2	Alt 3	40-10	FMSY
2020	0	139	186	209	361	481
2030	0	297	394	440	757	959
2040	0	475	625	696	1,177	1,444
2050	169	674	880	976	1,621	1,933
2060	733	891	1,155	1,277	2,083	2,423
2070	1,297	1,289	1,452	1,599	2,563	2,916
2080	1,861	1,853	1,840	1,942	3,055	3,410
2090	2,425	2,417	2,404	2,423	3,559	3,906
2100	2,989	2,981	2,968	2,987	4,071	4,402

As with petrale, a benefit-cost analysis would be performed on an annual basis. Appendix G of the draft environmental impact statement (DEIS) for the 2011-12 harvest specifications contains such an analysis for yelloweye and canary rockfish. That analysis shows that rebuilding yelloweye as quick as possible is not in the best long-term economic interests of fishing communities. As indicated by the negative discount rates needed to improve the net present value of faster rebuilding, any economic justification for fast rebuilding strongly favors the economic interests of future fishery participants.

The analysis in Appendix G of the DEIS does not take into account that the fact that the economic value of yelloweye is derived from the harvesting opportunities yelloweye constrains. Yelloweye ceases to become constraining to other fisheries at some point so that the marginal value of additional yield shows a decreasing relationship. The 30 mt that could be harvested in 2011 under the 40-10 harvest control rule in 2011 may well be enough to allow the fisheries that the stocks constrain to be prosecuted at levels that produce their full economic value.

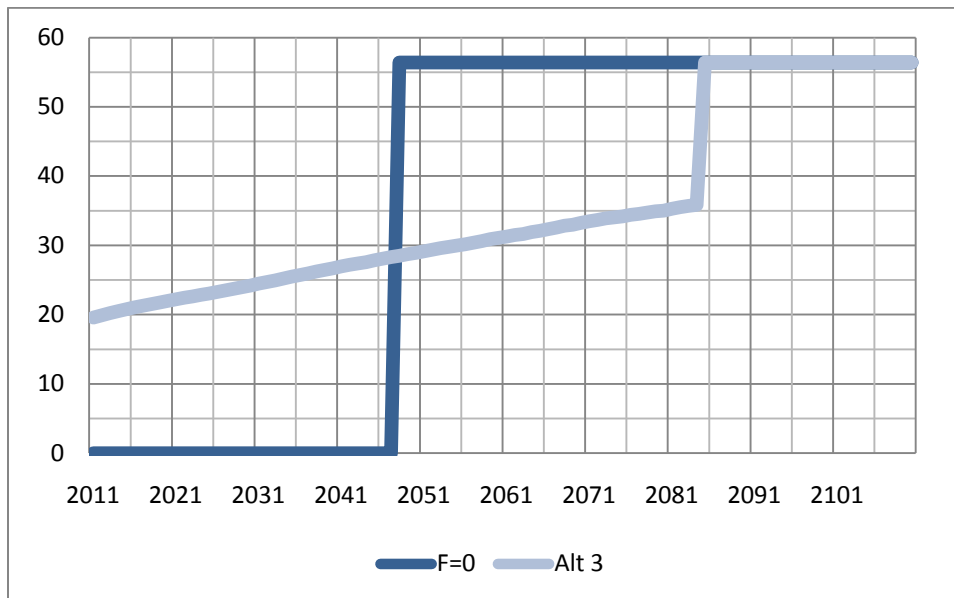


**Figure 1.** Rebuilding analysis median catch estimates (mt) by year for yelloweye rockfish.

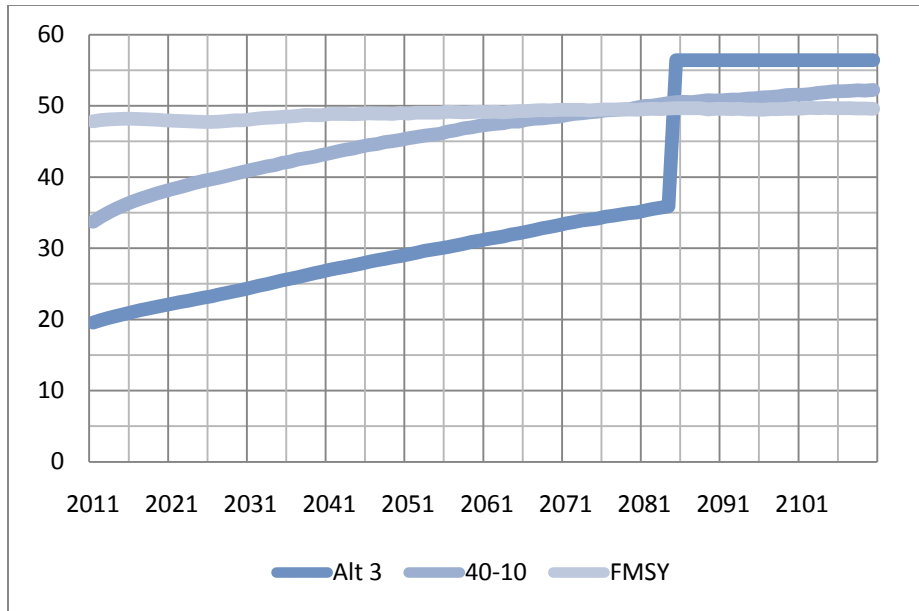


**Figure 2.** Rebuilding analysis projections of yelloweye relative abundance by year.

Figure 3 depicts in the comparison between the Council’s final preferred rebuilding trajectory and the fastest possible rebuilding trajectory. Considering the costs necessary to achieve the fastest possible trajectory, the slightest of positive discount rates, and the likely marginal value relationship for yelloweye, the economic payoff of rebuilding under the F=0 strategy is not enough to outperform the Council’s preferred rebuilding trajectory. Only those with no interest in the fishery until the 2050s would prefer the F=0 trajectory based on economic considerations. For perspective, Figure 4 depicts the same comparison between the Council’s preferred alternative and the  $F_{MSY}$  and 40-10 harvest control rules.



**Figure 3.** Same annual median catch estimates (mt) shown by year in Figure 1 for F=0 and Council’s preferred alternative only.



**Figure 4.** Same annual median catch estimates (mt) shown by year in Figure 1 for the Council's preferred alternative and the 40-10 and  $F_{MSY}$  rebuilding trajectories.

The same data is available from the rebuilding analyses for the remaining rebuilding species, as summarized in Table 5.

**Table 5** Cumulative yield summary for bocaccio, canary, cowcod, darkblotched, and POP rebuilding plans. projected ACL from the respective rebuilding analyses. The intervals for reporting cumulative yield are set by the various  $T_{\text{Target}}$  estimates for each stock. The basic methodology for estimating cumulative yield for each stock was the same used for petrale and yelloweye rockfish described above.

Bocaccio

	F=0	Alt 1	Alt 2	Alt 3	40-10	FMSY
$T_{\text{MIN}} / \text{ALT1 } T_{\text{TARGET}} (2024)$	0	657	1,326	3,047	6,831	7,745
Alt2 $T_{\text{TARGET}} (2020)$	1,258	1,915	2,584	3,479	7,732	8,701
Alt3 $T_{\text{TARGET}} (2022)$	3,774	4,431	5,100	5,184	9,614	10,663
$T_{\text{MAX}} (2031)$	15,096	15,753	16,422	16,506	18,731	19,844

Canary

	F=0	Alt 1	Alt 2	Alt 3	40-10	FMSY
$T_{\text{MIN}} (2024)$	0	903	1,716	1,850	7,847	9,187
Alt1 $T_{\text{TARGET}} (2025)$	959	987	1,873	2,020	8,508	9,892
Alt2 $T_{\text{TARGET}} (2026)$	1,918	1,946	2,035	2,194	9,180	10,606
Alt3 $T_{\text{TARGET}} (2027)$	2,877	2,905	2,994	2,374	9,869	11,329
$T_{\text{MAX}} (2046)$	21,098	21,126	21,215	20,595	24,341	25,767

Cowcod

	F=0	Alt 1	Alt 2	Alt 3	40-10	ABC
$T_{\text{MIN}} (2060)$	0	289	460	609	1,110	1,400
Alt1 $T_{\text{TARGET}} (2064)$	428	340	527	712	1,358	1,602
Alt2 $T_{\text{TARGET}} (2068)$	856	768	600	825	1,626	1,820
Alt3 $T_{\text{TARGET}} (2071)$	1,177	1,089	921	916	1,838	1,992
$T_{\text{MAX}} (2097)$	3,959	3,871	3,703	3,698	3,984	3,793

Darkblotched

	F=0	Alt 1	Alt 2	Alt 3	40-10	FMSY
$T_{\text{MIN}} (2016)$	0	801	1,340	1,964	2,742	2,915
Alt1 $T_{\text{TARGET}} (2019)$	1,752	1,233	2,045	2,968	4,087	4,334
Alt2 $T_{\text{TARGET}} (2022)$	3,504	2,985	2,793	4,018	5,470	5,786
Alt3 $T_{\text{TARGET}} (2027)$	6,424	5,905	5,713	5,884	7,901	8,298
$T_{\text{MAX}} (2037)$	12,264	11,745	11,553	11,724	13,098	13,529

POP

	F=0	Alt 1	Alt 2	ACT	Alt 3	40-10	OFL
$T_{\text{MIN}} (2018)$	0	679	946	1,318	1,520	7,096	7,692
Alt1&2 $T_{\text{TARGET}} (2019)$	1,124	773	1,076	1,498	1,727	7,950	8,616
ACT $T_{\text{TARGET}} (2020)$	2,248	1,897	2,200	1,682	1,939	8,810	9,538
Alt3 $T_{\text{TARGET}} (2021)$	3,372	3,021	3,324	2,806	3,063	9,670	10,459
$T_{\text{MAX}} (2045)$	30,348	29,997	30,300	29,782	30,039	30,895	32,777

### 5.3. Population viability and ecological considerations

The abundance trajectories shown in Figure 2 also demonstrate how the best available scientific estimates suggest that the Council's rebuilding plans are sufficiently protective of population viability for yelloweye and unlikely to differ in how they affect the marine ecosystem. As shown, the  $F_{MSY}$  rebuilding trajectory is expected to stabilize population abundance. All others show an increasing trend. And on ecological factors, when Alternative 1 rebuilds to  $B_{MSY}$ , Alternative 3 is near 35 percent of the estimated unfished level. The difference in marine ecosystem impact between these alternatives cannot be quantified.

### 5.4. Changing Estimates of Status and Biology

Estimates of stock status and biology change from cycle to cycle, making the evaluation of long-term conservation impacts difficult. Punt and Ralston (2007) advise that scientific uncertainty will result in the need for frequent revisions to rebuilding plans, with revisions likely requiring adjustments to harvest rates and expected rebuilding times. Many of the changes in estimates of stock status seen from biennial cycle to biennial cycle may be more attributable to scientific uncertainty than to real changes in stock status. The 2009-10 cowcod harvest specifications considered in *NRDC v. Locke*, provide an extreme example in which past estimates of stock status and biology had been produced in error and did not represent a valid estimate of stock status and biology.<sup>25</sup>

In considering changes from cycle to cycle, the GMT advised the Council to consider three major dimensions of stock status and biology: (1) stock productivity, (2) absolute stock abundance (or stock "scale"), and (3) relative stock abundance (or stock "status"). Each dimension is subject to uncertainty and all influence rebuilding projections. These estimates are not mutually exclusive, but can act in concert to change the perception and interpretation of how catches interact with stock persistence.

When evaluating long-term conservation impacts, the most current stock assessment and rebuilding analysis offers the Council the best available scientific estimates and projections of stock status and biology.

## 6. Conclusion

Prior to *NRDC v. Locke*, the Council was operating under legal precedent set forth by *NRDC v. NMFS*. *NRDC v. NMFS* established the rule that:

the needs of fishing communities may still be taken into account even when the biology of the fish dictates exceeding the 10-year cap—so long as the weight given is proportionate to the weight the Agency might give to such needs in rebuilding periods under 10 years. This interpretation would allow the Agency's rebuilding periods to account for short-term concerns such as bycatch in the same manner whether the rebuilding period exceeds 10 years or not.

The determination of how much weight was proportionate and disproportionate was largely left an open question. The court's suggestion, however, was that the weight given to short-term economic interests

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<sup>25</sup> Agenda Item B.7.b, Supplemental GMT Report, June 2010 at p. 7.

should be measured against the conservation mandate of the MSA. The court of *NRDC v. Locke* applied this same rule to evaluate the Council's 2009-10 harvest specifications.

The GMT's analysis of petrale sole was an attempt to directly examine the impact of short-term harvests on conservation objectives for a stock that was able to rebuild within the 10 year cap. The same technique proved useful for the rebuilding rockfish after the issuance of *NRDC v. Locke*, providing insight into some of the court's concerns about the long-term conservation impacts of rebuilding. The analysis framework can be furthered for the Council's reconsideration of rebuilding plans in the 2013-14 harvest specifications cycle.

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STATUS AND FOLLOW-UP ON IMPLEMENTATION OF AMENDMENT 20  
(TRAWL RATIONALIZATION AND  
AMENDMENT 21 (INTERSECTOR ALLOCATION))

On August 9, 2010, the National Marine Fisheries Service (NMFS) approved Amendments 20 and 21 to the Groundfish Fishery Management Plan (FMP) with the exception of a few technical and conforming aspects (Agenda Item I.5.a, Attachment 1). None of the disapprovals were significant enough to prevent moving the catch share program forward for implementation January 1, 2011. Attachments 2 and 3 provide the amended fishery management plan (FMP) language implementing Amendments 20 and 21, respectively. A decision on approval of the accompanying implementing rule on allocations is scheduled for late August or early September (Agenda Item I.5.a, Supplemental Attachment 4).

In addition to the rule on allocation, implementation of the trawl catch share program will require approval of the Amendment 20 components rule, which covers other aspects of the program. The components rule is expected to publish on August 31 with the public comment period on the rule closing on September 30 (Agenda Item I.5.a, Attachment 5). In the pre-ambles to the rule, NMFS is specifically seeking public comment on nine areas of the proposed rule. Excerpts from the proposed rule pre-ambles pertaining to these issues are provided in Agenda Item I.5.a, Attachment 6. If the Council desires, it could submit comments on these issues to the U.S. Secretary of Commerce (Secretary). These comments would be considered by the Secretary in making his final decision on the proposed components rule. If, in the process of reviewing the preamble and proposed rule, Council members identify areas in which they would like to see an adjustment but the adjustment requires an FMP amendment, these issues should be identified under Agenda Item I.6. Final Secretarial action on the components rule is expected in November.

Under Agenda Item I.5.b, NMFS will provide a progress report on catch share program approval and implementation, including a review of the list of technical and conforming aspects of Amendments 20 and 21 that were disapproved and are provided as an attachment to the NMFS approval letter (Agenda Item I.5.a, Attachment 1). With respect to the disapproved elements of Amendments 20 and 21, if it desires, the Council may amend its previous recommendation on the disapproved items and resubmit them to the Secretary. If the Council does decide to amend and resubmit disapproved recommendations, these should be added to the list of trailing actions to be discussed in Agenda Item I.6.

Other Amendment 20 related issues on which Council action is still required, e.g., cost recovery and adaptive management program provisions, will be addressed under Agenda Item I.6.

**Council Action:**

- 1. Determine whether or not to amend and resubmit any of the disapproved recommendations.**

2. **Determine whether or not to comment on proposed components rule issues highlighted in the preamble to the rule.**
3. **Provide guidance on any other implementation related matters.**

Reference Materials:

1. Agenda Item I.5.a, Attachment 1: Letter from Will Stelle Approving Amendments 20 and 21 (August 9, 2010).
2. Agenda Item I.5.a, Attachment 2: Amendment 20 to the Groundfish FMP.
3. Agenda Item I.5.a, Attachment 3: Amendment 21 to the Groundfish FMP.
4. Agenda Item I.5.a, *Supplemental* Attachment 4: Final Initial Allocation Rule.
5. Agenda Item I.5.a, Attachment 5: Proposed Components Rule.
6. Agenda Item I.5.a, Attachment 6: Excerpts from the Preamble of the Proposed Components Rule.

Agenda Order:

- a. Agenda Item Overview
  - b. National Marine Fisheries Service Report
  - c. Reports and Comments of Advisory Bodies and Management Entities
  - d. Public Comment
  - e. **Council Action:** Discussion and Follow-up Action as Necessary
- Jim Seger**  
**Frank Lockhart**

PFMC  
08/26/10



**UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration**

NATIONAL MARINE FISHERIES SERVICE  
Northwest Region  
7600 Sand Point Way NE  
Seattle, Washington 98115

Agenda Item I.5.a  
Attachment 1  
September 2010

August 9, 2010

Mr. Dave Ortmann, Chairman  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 101  
Portland, Oregon 97220-1384

Dear Chairman Ortmann:

By this letter, I am approving Amendments 20 and 21 to the Pacific Coast Groundfish Fishery Management Plan (FMP) in large part, with a partial disapproval on certain technical and conforming aspects of the amendments, as explained below. As you know, Amendment 20 establishes the trawl rationalization program, a limited access privilege program (LAPP) under the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Amendment 21 establishes fixed allocations for limited entry trawl participants.

The National Marine Fisheries Service (NMFS) appreciates the Pacific Fishery Management Council's (Council's) hard work over the last six years to develop, analyze, and adopt a major restructuring of our west coast trawl groundfish program. The groundfish trawl fishery has been struggling for many years and NMFS strongly supports the Council's efforts with these amendments to increase net economic benefits, create individual economic stability, provide for full utilization of the trawl sector allocation, consider environmental impacts, and achieve individual accountability of catch and bycatch.

NMFS has determined that, except for the minor items listed below for disapproval, Amendments 20 and 21 are consistent with the national standards and other provisions of the MSA and other applicable laws.

### **Items for Disapproval**

NMFS has identified certain minor items for disapproval in Amendment 20. These are further explained in attachment 1. We have determined that these items can be disapproved without affecting our ability to implement the Amendments.

We are addressing in more detail in this letter the provisions of Amendment 21 that we are disapproving. As with the minor items referred to above, we have determined that our disapproval of these provisions does not affect our ability to implement the Amendments. We have disapproved the following provisions that address Amendment 21's effect on limited entry/open access allocations established in the FMP:



1) Section 6.3.2.3 Limited Entry Trawl Allocations for Amendment 21 Species

Delete the sentence, “Amendment 6 limited entry and open access allocations are superseded by these allocation percentages.”

2) Section 11.2.2 Allocations Between the Limited and Open Access Fisheries and Management of the Open Access Fishery

Delete the sentence in paragraph 1, “For those species, species groups and areas covered by the trawl/non-trawl allocations provided in Table 6-1 and for which the Council determines an allocation is necessary, open access allocations will be established as needed through the biennial specifications process.”

Reject the edit to the first sentence in paragraph 2. The edit reads: “For those species for which trawl-/non-trawl allocations are not established in Table 6-1,”

We have determined that there are ambiguities in the record associated with the relationship of Amendment 21 to the limited entry/open access allocations, generating a potentially serious procedural issue which could be a convenient target for litigation. Thus, we concluded that it is necessary and prudent to partially disapprove Amendment 21 so the ambiguity can be addressed in an open and timely manner through a technical and conforming amendment.

The assertion that Amendment 21 overrides the limited entry/open access allocations must be supported in the record. The 1994 FMP amendments established that these allocations could only be changed by a plan amendment. The relationship of Amendment 21 to these other underlying allocations was not clearly and unambiguously described during the development of Amendment 21 or in the DEIS or the FMP language during the development. When the Council adopted the FMP language in March 2010, there was no express description that it overrode the open access/limited entry allocation; in fact, it did not even directly amend the FMP language that established the open access/limited entry allocation. Therefore, the record is ambiguous on the question of whether the Council took this action in its Amendment 21. While there is no apparent disagreement amongst the members of the Council on the intent of the Council in its design of Amendment 21, the procedural issue relates most directly to the question of the adequacy of the notice to the public of the intended effect of Amendment 21 on these underlying allocations and the adequacy of the opportunity for meaningful public review and comment. Members of the open access fishery may assert that they have had insufficient notice that their long-standing allocations were being eliminated for the newly allocated species, so had no opportunity to comment on this issue. Members of the public may also make similar claims of lack of adequate notice. A major procedural requirement of the MSA is public notice and participation.

We are partially disapproving the Amendment 21 override of the limited entry/open access allocations to ameliorate an administrative deficiency in the supporting record. However, based

on the Council staff's statement that limited entry/open access allocations have not been and are not being implemented because of the constraints of the rebuilding plans, we also fully expect that this deficiency can be rectified through the proposing of a closely tailored additional technical amendment and public review that will not delay or otherwise disrupt the anticipated schedule of implementation for the program in early 2011. With this partial disapproval, NMFS is recommending that the Council follow up with a specific amendment to override Amendment 6 allocations.

### **Technical Edits**

In addition to the items identified for disapproval, NMFS has identified several technical edits to both Amendments 20 and 21 (see attachment 2). It is NMFS' understanding that NMFS staff and Council staff are working together to ensure that these edits are completed prior to the incorporation of the two amendments into the FMP.

### **Rulemakings**

As you are aware, and consistent with Council direction, implementation of the program has been separated into three separate rulemakings. The first rule (75 FR 4684, RIN 0648-AX98, final rule published January 29, 2010) established data reporting and collection requirements used to determine the initial allocations of quota shares; the second rule (75 FR 32994, RIN 0648-AY68, proposed rule published June 10, 2010) would cover initial issuance of allocations of quota shares according to the formulas in Amendments 20 and 21, specify appeal procedures, and implement other related measures. The third rule (RIN 0648-AY68, currently in review and scheduled to be published as a proposed rule on August 18, 2010) would complete the measures necessary to implement the program and includes specific program details, such as requirements for tracking and monitoring, permits, Individual Fishing Quota and Coop programs, economic data collection, and other measures. In addition, the notice of availability for Amendments 20 and 21 published on May 12, 2010 (75 FR 26702, RIN 0648-AY68).

In addition, it is NMFS' understanding that the trawl rationalization program will continue to be modified through trailing regulatory and FMP amendments, including but not limited to an adaptive management program, community fishing associations, cost recovery methodology, and potential "safe harbors" for control language. In addition, as you are aware, the MSA requires the Council and NMFS to review LAPPs to determine their progress in meeting the goals of the program and the MSA. Amendment 20 specifies that the Council will conduct a formal review of the trawl rationalization program no later than five years after implementation and every four years thereafter. Within the first 5 years of the trawl rationalization program, the Council must also conduct further analyses of the effects of allocation on nontrawl fisheries and the potential use of allocation among gear types as a tool to promote conservation goals as stated in a NMFS report at the April 2009 Council meeting (Agenda Item F.3.b, Supplemental NMFS Report, April 2009). We look forward to working with the Council on these future actions.

Again, NMFS appreciates the Council's ongoing efforts to promote sustainable fisheries and fishing communities on the west coast.

Sincerely,

A handwritten signature in black ink, reading "William W. Stelle, Jr." in a cursive style.

William W. Stelle, Jr.  
Regional Administrator

cc: Mark Cedergreen

Attachments:

1. Disapproval List
2. Technical Edits

## Attachment 1

## DISAPPROVAL LIST

NMFS has identified 3 minor items for disapproval in Amendment 20, and 2 items for disapproval in Amendment 21 (both relating to the same issue). Each of these, and their rationales for disapproval, are discussed below.

## AMENDMENT 20

For Amendment 20, the following items are listed for disapproval:

1. Language at Appendix E of the FMP, B-2.3.3(a), regarding mothership coop contracts should be deleted as follows: **“Co-op permit and agreement.** Federal co-op permits will be issued for co-op agreements approved by NMFS. Signed copies of the cooperative contracts must be filed with ~~the Council and NMFS and available for public review~~ before the co-op is authorized to engage in fishing activities.”

*Rationale:* Public review of coop contracts, which may contain private information, may violate MSA confidentiality. In addition, it would prolong issuance of coop permits each year before the primary whiting season, with no benefit being gained by allowing public review. Therefore, NMFS is disapproving this specific language because it is not necessary and appropriate for the conservation and management of the fishery, pursuant to section 303(a) and 304(a)(3) of the MSA.

2. Language at Appendix E of the FMP, B-2.3.3(a), regarding a letter to the Department of Justice should be deleted as follows: **“Letter to Department of Justice.** ~~Co-ops must also file with the Council and NMFS a copy of a letter from the co-op requesting a business review letter on the fishery cooperative from the Department of Justice and any response to such request.”~~

*Rationale:* Compliance with antitrust laws is a separate and distinct obligation of each and every participant and does not need to be a requirement specified in the FMP. Therefore, NMFS is disapproving this specific language because it is not necessary and appropriate for the conservation and management of the fishery, pursuant to section 303(a) and 304(a)(3) of the MSA.

3. Language at Appendix E of the FMP, B-2.3.3(e)(7), regarding mothership coop agreement contents should be deleted as follows: **“A requirement that agreement by at least a majority of the members is required to dissolve a co-op (During council discussion this was flagged by NOAA GC as a potential legal problem).”** Language at Appendix E, B-2.3.3(f)(2) should also be deleted to reflect this change as follow: “The requirements of Sections 2.3.3.a-2.3.3.e apply to the inter-co-op agreement, ~~except that for the purpose~~

~~of Section 2.3.3.e., subparagraph 7, the members of the inter co-ops are the co-ops and not the participants in each co-op.”~~

*Rationale:* This provision interferes with private parties’ ability to contract and should not be a Federal requirement in the FMP or in regulation. Private parties can agree to the terms of dissolution that are appropriate for their coop. Therefore, NMFS is disapproving this specific language because it is not necessary and appropriate for the conservation and management of the fishery, pursuant to section 303(a) and 304(a)(3) of the MSA.

## AMENDMENT 21

For Amendment 21, the following items are listed for disapproval:

1. In Section 6.3.2.3 of the FMP, “Limited Entry Trawl Allocations for Amendment 21 Species,” NMFS is deleting the sentence, “Amendment 6 limited entry and open access allocations are superseded by these allocation percentages.”
2. In Section 11.2.2 of the FMP, “Allocations Between the Limited and Open Access Fisheries and Management of the Open Access Fishery,” NMFS is deleting the sentence in paragraph 1. that reads: “For those species, species groups and areas covered by the trawl/non-trawl allocations provided in Table 6-1 and for which the Council determines an allocation is necessary, open access allocations will be established as needed through the biennial specifications process.” NMFS is also rejecting the edit to the first sentence in paragraph 2. The edit reads: “For those species for which trawl-/non-trawl allocations are not established in Table 6-1,”

*Rationale:* The rationale is described in the body of this letter. The disapproval of these items is pursuant to section 303(a) and 304(a)(3) of the MSA.



## Attachment 2

## TECHNICAL EDITS

In addition to the items identified for disapproval, NMFS has identified several technical edits to both Amendments 20 and 21.

**For Amendment 20, the following items are listed for technical edits:**

1. Language at Appendix E of the FMP, B-2.3.3(e)(1), regarding mothership coop agreement contents should be edited to read as follows: “A list of all vessels, permit holders participating in the coop and their share of allocated catch and which must match the amount distributed to individual permit owners by NMFS.”

*Rationale:* This was an inadvertent omission from the FMP language that if left out results in a sentence that is unclear. The added text clarifies the sentence.

2. Language at Appendix E of the FMP, Table 2, should be edited to delete the row labeled “Other fish” and to update the table header to delete the reference to “options” and “Council preferred alternative.”

*Rationale:* “Other fish” was not adopted by the Council as an Individual Fishing Quota species, and should therefore be deleted. The title to the table should no longer reflect alternatives or options from the environmental impact statement analysis.

3. Some “explanatory” footnotes in Appendix E of the FMP should be deleted because they are out of date. We will work with council staff to determine which footnotes.

**For Amendment 21, the following items are listed for technical edits:**

4. Language in Section 6.3.2.3 of the FMP, should be edited as follows: “The provision to temporarily suspend the ~~LE, open access~~formal allocation if a species is declared overfished (see Section 4.6.1(5) of the FMP) is maintained under Amendment 21.

*Rationale:* The record on this issue in the EIS refers both to suspending formal allocations, and suspending the limited entry/open access allocation. Therefore, the record is ambiguous. The motion in writing that was passed by the Council, however, refers to suspending formal allocations if a stock is declared as overfished. This decision makes sense, since once a stock is overfished the priority must be rebuilding in as short a time as possible, taking into account the appropriate factors, rather than a preexisting allocation. Therefore, we believe it is reasonable to make this technical change to the language of the FMP as submitted.

5. In Section 6.3.2.3 of the FMP, Limited Entry Trawl Allocations for Amendment 21 Species, first paragraph, revise the third sentence to read as follows, “The OYs/ACLs are then reduced by deducting the estimated total mortality of these species in research, tribal, and non-groundfish fisheries, and the ~~bycatch limits specified in adopted~~ estimated exempted fishing permits set-asides.”

*Rationale:* As explained in NMFS’ clarifications document at the April Council meeting (Agenda Item I.1.b, Supplemental NMFS Report 4, April 2010, Issue 1), ‘the bycatch limits specified in adopted EFPs’ are not yet available when the Council is finalizing its action on the harvest specifications and reductions from OY. It is NMFS’ understanding that EFP projects and their associated catch limits for the following year are tentatively adopted at the June Council meeting. The final catch limits for EFPs are adopted in November and are sometimes different than the tentative catch limits from June. The June meeting (in even numbered years) is also when the Council takes final action on OYs and harvest guidelines for the next biennium. Therefore, the deduction to the OY for the next biennium would be from the estimated mortality from EFPs that may occur in the next biennium. The mortality from future EFPs is estimated assuming that similar catch limits are adopted as were adopted in the current year (i.e., the catch limits that are specified in the adopted EFPs). NMFS’ technical edit would make deductions from the OY better follow the amounts for EFPs that will be available at that time in the harvest specifications process.

**PROPOSED  
GROUNDFISH FISHERY MANAGEMENT PLAN  
AMENDMENT 20  
(TRAWL RATIONALIZATION)**

***(PORTIONS DISAPPROVED BY NMFS AND  
TECHNICAL EDITS HIGHLIGHTED WITH SHADED  
STRIKEOUT AND SHADED UNDERLINE)***

**PREPARED BY  
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**APRIL 2010**

## Summary of Proposed Changes to the Content of the Groundfish FMP

As part of implementing the trawl rationalization program, the Groundfish FMP has been amended (Amendment 20 to the FMP). Amendment 20 modified parts of Chapters 1, 6, and 11 of the FMP. In addition, an appendix was added to the FMP containing a detailed description of the IFQ and co-op programs. The specific changes to FMP text are shown in the next section and summarized below. **For alternatives considered and analysis, see the Amendment 20 draft and final environmental impact statements.**

Under Amendment 20, a brief description of the amendment was added to Chapter 1, along with a reference to Appendix E to the FMP. Appendix E was added to the FMP and contains a detailed description of trawl rationalization program provisions.

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. Amendment 20 modified these sections as follows:

- Section 6.9.1 describes general provisions for permits. A section was 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. Under Amendment 20, it was 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. Amendment 20 modified that language 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. Amendment 20 resulted in a revision to paragraph 6 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.
- Amendment 20 added a new section “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. Amendment 20 modified this section 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. Amendment 20 added a new paragraph 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 expired with the creation of a trawl rationalization program for the Pacific whiting fishery. Therefore, Amendment 20 resulted in the removal of this language.

## Changes to the Groundfish FMP Incorporated by Amendment 20

*Relevant FMP text is excerpted below. Insertions are marked by underline and deletions by strikeout. Double underline marks text stricken elsewhere and moved to a new location. Ellipses (...) indicate unchanged text omitted below.*

### 1.0 INTRODUCTION

...

Amendment 20 was approved in [2010] and establishes the groundfish trawl rationalization program. Under this program groundfish limited entry trawl vessels making shoreside deliveries are managed with individual fishing quotas. Motherships and associated catcher-vessels in the at-sea Pacific whiting sector are managed under a system of regulated cooperatives. Pacific whiting catcher processors fish within a voluntary cooperative; the amendment establishes provisions to strengthen this cooperative. As noted above, Amendment 20 supersedes provisions in Amendment 15; corresponding text was replaced.

### 1.2 How This Document is Organized

...

- Appendix E contains a detailed description of the trawl rationalization program (see Section 6.9.3.1).

*[N.B. Appendix D to the Trawl Rationalization EIS would become Appendix E to the Groundfish FMP.]*

...

## 6.0 MANAGEMENT MEASURES

...

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

...

#### 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 that will be implemented in Federal regulations.

The trawl rationalization program described in Appendix E 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, 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).

...

## **11.0 GROUND FISH LIMITED ENTRY**

### **11.1 Introduction**

...

### **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**

...

#### ***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

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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

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*

...

#### *11.2.3 Initial Issuance of LE Permits*

...

#### *11.2.4 Ownership Restriction and Changes in Ownership*

...

#### *11.2.5 Gear Endorsements*

...

*[N.B. In the following, double underline indicates insertions corresponding to the deleted text in 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.~~

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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:

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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.



- 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.
- c. 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.

...

#### 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 36°N 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,<sup>4</sup> ~~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. 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>

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*

...

#### *11.2.10 Loss of a Vessel*

....

#### *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

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<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.

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.
5. 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

...

### 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**

...

#### **11.75 Implementation, Application and Appeals Process**

...

#### **11.86 Council Review and Monitoring**

...

# **PACIFIC COAST GROUND FISH FISHERY MANAGEMENT PLAN**

**FOR THE CALIFORNIA, OREGON, AND  
WASHINGTON GROUND FISH FISHERY**

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## E.1 Overview of Recommendations by Sector

The Pacific Fishery Management Council's (Council) sector specific recommendations for rationalizing the trawl fishery are provided here and will be finalized and forwarded to the National Marine Fisheries (NMFS) for approval later in 2009. The recommendations were adopted at the Council's November 2008 meeting. In general, the Council recommends the following:

### **Shoreside Trawl Sector** (nonwhiting groundfish species and whiting):

Manage with individual fishing quotas (IFQs).

Provide 90 percent of the initial allocation of nonwhiting IFQ to holders of vessel permits; and

set aside 10 percent of the initial allocation for an adaptive management program that may benefit processors and communities, among others.

Provide 80 percent of the initial allocation of whiting IFQ to holders of vessel permits; and

provide 20 percent of the initial allocation of whiting to processors.

### **Mothership Trawl Sector** (whiting and groundfish bycatch species):

Manage with a harvester co-op system and limited entry for mothership processors.

Require that vessels declare preseason the mothership processor for which they will fish in a coming year.

### **Catcher Processor (CP) Sector** (whiting and groundfish bycatch species):

Create a permit endorsement to prevent expansion of the number of participants.

Allocate whiting and bycatch to the existing voluntary co-op.<sup>6</sup>

<sup>6</sup> When the Council took final action, NMFS indicated its preliminary intent to license the voluntary co-op. However, this was not part of the Council's final action.

Provide an IFQ program if the voluntary co-op fails (initially allocate IFQ equally among all permit holders).

The amount of allocation available for these sectors will be determined through the intersector allocation process. IFQ for the shoreside fishery may not be delivered to at-sea processors, nor may quota allocated to the mothership or catcher-processor sectors be delivered shoreside.

The following sections provide a general summary of the program for each sector, followed by a complete description that also identifies trailing actions the Council has been working on in 2009. These actions will be completed prior the time it submits the package to NMFS for approval.<sup>7</sup> *The trailing actions pertain to eligibility to own IFQ, accumulation limits, and adaptive management. Implementation is not expected earlier than 2011.*

## **E.2 Shoreside Trawl Sector: IFQ Program (Appendix A of the Environmental Impact Statement [EIS])**

This section details the IFQ program that the Council is recommending for the shoreside sector of the groundfish fishery. The first part of the section describes major components of the program. Table 1, which starts on page 6, presents complete details on elements of the recommended IFQ program.

### **E.2.1 Overview of the IFQ Program Elements**

Under this program, most status quo management tools would remain in place. The main exceptions are cumulative landing limits for nonwhiting groundfish species and a closure period to control whiting harvest at the start of the year.<sup>8</sup> Other measures, such as Rockfish Conservation Area (RCA) boundaries, may be adjusted as experience is gained with the IFQ program.

An IFQ will grant an entity the privilege to catch a specified portion of the trawl sector's allocation. Within the IFQ program, vessels will be allowed to use a variety of directed groundfish commercial gear (including nontrawl gear) to take the shoreside trawl sector allocation, which will thus allow for "gear switching." IFQs will be created for most species of groundfish under the Groundfish Fishery Management Plan (FMP) (although some will still be managed collectively at the stock complex level, e.g. remaining minor slope rockfish). Some groundfish species rarely caught by trawl gear and dogfish will be excluded from the IFQ program. To ensure that optimum yields (OY) for species not covered by IFQ are not exceeded, catch of those species will be monitored and deductions made from the OY in anticipation of the expected level of shoreside trawl sector catch. ~~For trips targeted on whiting, IFQ will be required only for whiting and the main bycatch species.~~<sup>9</sup>

Halibut individual bycatch quota (IBQ) will be required to cover the incidental catch<sup>10</sup> of Pacific halibut in the groundfish trawl shoreside fishery. Under an IBQ program, retention would not be allowed.

The following sections describe the major provisions of the IFQ program.

<sup>7</sup> ~~During its March and April 2009 meetings the Council also clarified a number of its recommendations. These clarifications are reflected in the version of the trawl rationalization recommendation provided here.~~

<sup>8</sup> This closure period is necessary because of Endangered Species Act concerns related to salmon.

<sup>9</sup> This is a conforming deletion to bring the summary into alignment with the program as described in Table 1, and is authorized as per the last paragraph of Section 6.9.3.1. of the FMP.

<sup>10</sup> ~~At its June meeting, the Council will consider a recommendation by the Groundfish Allocation Committee to interpret previous Council action under Amendment 21 as creating an IBQ program to cover incidental mortality rather than catch.~~



### **E.2.1.1 Initial Allocation**

The program will initially allocate IFQ as quota share (QS) to fishery participants based mainly on their historic involvement in the fishery. Following the initial allocation, transfers (described below) will allow for others to also participate in the fishery as quota holders. The initial allocation can be viewed in two segments:

First, in developing its recommendation the Council considered the groups that should be included in the initial allocation, and the proportional split among the groups. The Council recommended that harvesters (those holding limited entry permits for trawl vessels) be given an initial allocation of 90 percent of the nonwhiting QS and 80 percent of the whiting QS. Ten percent of the QS for nonwhiting species would be made available for an adaptive management program and processors would receive 20 percent of the whiting QS.

Second, the Council considered specific allocation formulas that will determine the amount of QS each eligible entity will receive. These calculations are based primarily on the delivery history associated with a vessel permit or processing company over a set number of years. For the allocation to permits, the QS associated with the history of permits retired in the buyback program will be distributed equally among the remaining qualified permits (about 44 percent of the QS will be allocated in this fashion). A special calculation is provided for incidentally caught overfished species. For these species the allocation will be based on the QS recipient's need to cover incidental catch under current fishing practices (as measured by bycatch rates, individual permit logbooks for recent years, and the amount of target species QS that an entity receives). None of the QS for overfished species will be allocated equally among harvesters, with the exception of canary rockfish. A similar approach would be used for the allocation of halibut IBQ.

### **E.2.1.2 Stock Management Units for IFQs**

QS will be issued for the species groups and areas for which there are OYs (management units). However, QS will not be required for some rarely-caught species. Catch of these species would be monitored to ensure they don't exceed any established allocations. There may be further area subdivisions for species for which there is an area specific precautionary harvest policy. There are also provisions that provide for both species group and area subdivision of QS after initial allocation.

### **E.2.1.3 Annual Issuance, Holding Requirements and Transfer Rules**

In designing the management regime for the IFQ program, the Council is balancing the benefits of flexibility and individual accountability with program costs and the constraints of the very low allowable catch levels of overfished species. Prior to the start of each fishing year, NMFS will issue quota pounds (QP) to entities based on the amount of QS they hold and the shoreside trawl sector allocation. The QP would have to be transferred to a vessel account in order to be used. When a vessel goes fishing under the IFQ program, all catch must be recorded (including discards) and must be matched by an equal amount of QP from the vessel's QP account. If there is not enough QP to cover the catch from a trip, there is a 30-day grace period during which adequate QP must be transferred into the vessel's account. A vessel's fishing will be limited, and its permit cannot be sold, until the overage is covered. A carryover provision will allow for an overage in one year to be covered by up to 10 percent of the following year's QP; likewise, the provision also will allow QP that were not used in one year to be carried over into the following year, up to 10 percent.

Bycatch reduction and greater efficiency are expected to occur in the groundfish fishery under the IFQ program because of the transferability of QS and QP. Through the transfer of QS/QP (bought and sold or

“leased” through private contract), it is anticipated that those best able to avoid catching overfished species, and those who are most efficient, will increase the amount of QS/QP registered to them, while those who consistently have high bycatch rates or operate less efficiently might choose to sell their QS and leave the fishery. Generally, anyone eligible to own a U.S.-documented fishing vessel could also acquire QS and QP, and the QS and QP could be acquired in very small increments.<sup>11</sup> These provisions will allow for new entrants into the fishery; for example, a crew member could slowly purchase amounts of quota. They also allow for ownership of QS by entities that do not otherwise participate in the fishery. *In early 2009, during its trailing actions the Council considered but rejected substantially modifying provisions pertaining to who is eligible to own the QS.*

While transferability is an important component, in order to protect against unintended consequences some provisions limit transferability. For example, there will be accumulation limits on the amount of QS or QP that can be controlled by an entity, and accumulation limits on the amount of QP registered to a vessel. The intent of these limits is to prevent excessive control of quota by a participant. *The exact percentages which will be used in these limits will be determined through a trailing action.*

An adaptive management provision will allow the Council to use 10 percent of the trawl allocation to provide incentives, support, or other compensation to offset adverse impacts of the program. This program may benefit communities and processors, among others. *Details will be the subject of a trailing action.*

#### **E.2.1.4 Tracking and Monitoring**

A tracking and monitoring program is necessary to assure that all catch (including discards) is documented and matched against QP. At-sea observers would be required on all vessels and shoreside monitoring during all off-loading (100 percent coverage). Cameras may be used to augment the observers and assure compliance. Compared to status quo monitoring, this will be a significant increase for a large portion of the trawl fleet, particularly nonwhiting shoreside vessels. More accurate estimates of total mortality will benefit stock conservation goals. Discarding will be allowed, though all fish discarded will also have to be covered by QP. There would be 100 percent shoreside monitoring; and there may be limited landing hours to control costs. Additionally, a program for the mandatory submission of economic data is included to facilitate monitoring program performance.

#### **E.2.1.5 Costs and Fee Structure**

Program costs are of concern and ongoing Federal administrative costs are estimated in the EIS at \$2.4 to \$2.9 million per year for the entire trawl rationalization program, including the co-ops for the at-sea segment of the fishery (see Section 3). Program benefits are expected to significantly exceed costs. The costs listed here do not include initial implementation costs or the costs that industry will bear for observers. Fee structures will be proposed to recover program costs from industry, up to the limit of three percent of exvessel value.

#### **E.2.1.6 Program Monitoring, Review and Future Auction**

The Council will conduct a formal review of program performance no later than five years after implementation and every four years thereafter. The result of the evaluation could include dissolution of the program, revocation of all or part of quota shares, or other fundamental changes to the program. At the time of its first review, the Council will consider also the use of an auction or other nonhistory based method when distributing quota share that may become available after the initial allocation.

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<sup>11</sup> To be eligible to own QS the person need not actually own a U.S. documented fishing vessel.

### E.3 Detailed Specification of IFQ Program Elements and Options

Table 1 provides a complete description of the IFQ program.

**Table 1. Full description of the IFQ Program for shoreside trawl deliveries.**

	Element	SubElement	
<b>A. <u>Trawl Sector Management</u></b>			
A-1.1	Scope for IFQ Management, Including Gear Switching		<p>For trips delivered shoreside, QP will be required to cover catch of all groundfish (including all discards) by limited entry (LE) trawl vessels with certain gear and species exceptions.</p> <p>Gear Exception: Vessels with an LE trawl permit using the following gears would not be required to cover their groundfish catch with QP: exempted trawl, <sup>a</sup> gear types defined in the coastal pelagic species FMP, gear types defined in the highly migratory species FMP, salmon troll, crab pot, and LE fixed gear when the vessel also has a LE permit endorsed for fixed-gear (longline or fishpot) AND has declared that they are fishing in the LE fixed-gear fishery.</p> <p>Species Exception: The following would be an exception from the QP requirement longspine thornyheads south of 34°27' N latitude, minor nearshore rockfish (north and south), black rockfish (WOC), California scorpionfish, cabezon, kelp greenling, shortbelly rockfish, and the "Other Fish" category of groundfish.</p> <p><i>This definition of the scope allows an LE trawl vessel to switch between trawl and nontrawl groundfish gears, including fixed-gear, for the purpose of catching their QP ("gear switching"). It also allows a nontrawl vessel to acquire a trawl permit, and thereby use trawl QP to catch the LE trawl allocation using nontrawl gear.<sup>b</sup></i></p>

**Table 1. Full description of the IFQ program (continued).**

	Element	SubElement	
A-1.2	IFQ Management Units, Including Latitudinal Area Management		<p>QS will carry designations for the species/species group, area, and trawl sector to which it applies (see A-1.3 for the list of trawl sectors). The QP will have the same species/species group, area, and sector designations as the QS on the basis of which the QP was issued. QP will not be used in a trawl sector other than that for which it was issued,<sup>c</sup> and will not be used in a nontrawl sector (i.e. by vessels without trawl permits).<sup>d</sup> QP will not be used in a catch area or for a species/species group other than that for which it is designated.</p> <p>For those species within the scope of the program, the QS/QP species groupings and area subdivisions will be those for which OYs are specified in the acceptable biological catch (ABC)/OY table that is generated through the groundfish biennial specifications process and those for which there is an area-specific precautionary harvest policy<sup>e</sup> QS for remaining minor rockfish will be aggregated for the shelf and slope depth strata (nearshore are excluded from the scope, see Section A-1.1).</p> <p>Changing the management units. After initial QS allocation the Council may alter the management units by changing the management areas or subdividing species groups. Section A-2.1.6 provides methods for reallocating QS when such changes are made after initial implementation of the program.<sup>f</sup> <i>Hereafter, all references to species include species and species group, unless otherwise indicated.</i></p>
A-1.3	General Management and Trawl Sectors		<p>Unless otherwise specified, status quo regulations, other than trip limits for species within the scope of the IFQ program, will remain in place.<sup>g</sup> If individual vessel overages (catch not covered by QP) make it necessary, area restrictions, season closures, or other measures will be used to prevent the trawl sector (in aggregate or the individual trawl sectors listed here) from going over allocations.<sup>h</sup> The IFQ fishery may also be restricted or closed as a result of overages in other sectors.</p> <p>There will be three trawl sectors: shoreside, mothership, and catcher-processors. However, as per Section A-1.1, IFQ will be required only for the shoreside trawl sector. The mothership and catcher-processor sectors will be managed using co-ops, as specified in the co-op section of the trawl rationalization program. If the industry organized voluntary co-op program for the catcher-processor sector collapses, IFQ will be required for the catcher-processor sector, as specified in the co-op program described for that sector.</p> <p><i>Allocation among trawl sectors has been determined in FMP Amendment 21. Those allocations not covered by Amendment 21 will be addressed in the biannual specifications process. Trawl vessels fishing IFQ with nontrawl gear will be required to comply with the RCA lines applicable for that gear. Such restrictions, as necessary, will be determined in a separate process.</i></p>
A-1.4	Management of NonWhiting Trips		<p>Nonwhiting trips are those with less than 50 percent whiting. No changes to management measures, other than those identified in Section A-1.3, have been identified at this time.</p>
A-1.5	Management of Whiting Trips <sup>i</sup>		<p>Whiting seasons will not be changed under the IFQ program, and so the current spring openings will be maintained to control impacts on ESA-listed salmon.<sup>j</sup> When the primary whiting season is closed for shoreside deliveries, cumulative whiting catch limits will apply and shoreside QP will be required to cover whiting incidental catch.</p>

**Table 1. Full description of the IFQ program (continued).**

	Element	SubElement	
A-1.6	Groundfish Permit Length Endorsements		Length endorsement restrictions on LE permits endorsed for groundfish gear will be retained; however, the provision that requires that the size endorsements on trawl permits transferred to smaller vessels be reduced to the size of that smaller vessel will be eliminated (i.e., length endorsements will not change when a trawl-endorsed permit is transferred to a smaller vessel).
<b>A-2. <u>IFQ System Details</u></b>			
A-2.1	<b>Initial Allocation and Direct Reallocation</b>		
A-2.1.1	Eligible Groups	a Groups and Initial Split of QS	<p><b>Eligible Groups</b> The initial allocation of QS will be made either only to permit owners and processors, as follows.</p> <p>Whiting QS: 80 percent to permits, 20 percent to processors and zero percent for adaptive management. Nonwhiting QS: 90 percent to permits, zero percent to processors, and 10 percent for adaptive management.</p> <p><i>After initial allocation, trading will likely result in changes in the distribution of shares among permit owners and processors. Additionally, entities that are neither permit owners nor processors may acquire QS (see below: "IFQ/Permit Holding Requirements and IFQ Acquisition").</i></p>
		b Permits	Landing history will accrue to the permit under which the landing was made. The owner of a groundfish LE permit at the time of initial allocation will receive the QS issued based on the permit. (Also, see Section A-2.1.4 on permit combinations and other exceptional situations.)
		c Processors and Processing Definition	A special definition of "processor" and "processing" will be used for initial QS allocation. A main intent of the definition is to specify that only the first processor of the fish be credited for the history of that delivery when the initial allocation formula is applied (see footnote for definition). <sup>k</sup>
		d Attributing and Accruing Processing History	<p>For an allocation for <b>shoreside processors (applies only to whiting)</b>: attribute history to the receiver reported on the landing receipt (i.e. the entity responsible for filling out the state fishticket), except history may be reassigned to an entity not on the landings receipt, if parties agree or through an agency appeals process. <i>The intent of this option is to provide an opportunity for catch history to be assigned to the entity that actually processed the fish.</i></p> <p>For shoreside processors, allocations go to the processing business and successor-in-interest will be recognized. NMFS will develop criteria for use in determining the successor in interest with respect to the entities listed on the landings receipts or otherwise eligible for an initial QS allocation based on being the first processor of the fish.<sup>l</sup></p>
A-2.1.2	Recent Participation	a Permits (including CP permits)	Recent participation is not required in order for a permit to qualify for an initial allocation of QS.
		b Processors (motherships)	Not applicable because a co-op program was provided for this sector rather than IFQs. <i>(This header is being left in the document so that paragraph numbering will correspond to numbering in the analysis.)</i>

**Table 1. Full description of the IFQ program (continued).**

	Element	SubElement	
		c Processors (shoreside)	Recent participation is required to qualify for an initial allocation of whiting QS: 1 mt or more of deliveries from whiting trips in each of any two years from 1998-2004.
A-2.1.3	Allocation Formula	a Permits with catcher vessel history	<p>QS will be issued for all fish management units within the scope of the program (see Section A-1.2) based on equal division and permit history, as follows:<sup>m</sup></p> <p><b>Equal Division:</b> There will be an equal division of the buy-back permits' pool of QS among all qualifying permits (<i>except the incidentally caught overfished species other than canary</i>). Qualifying permits include all catcher vessel permits, including those that have been used only in the mothership sector. (The QS pool associated with the buyback permits will be the buyback permit history as a percent of the total fleet history for the allocation period. The calculation will be based on total absolute pounds with no other adjustments and no dropped years.)</p> <p><b>Permit History:</b> The remaining QS (<i>the QS left after setting aside amounts for equal allocation</i>) will be allocated based on each permit's history (see following formulas).</p> <p><b>For the portion of the allocation based on each permit's history.</b></p> <p>For <b>nonwhiting</b> trips, permit history used for QS allocation will be calculated:</p> <p><b>For nonoverfished species:</b> using an allocation period of 1994-2003. Within that period use relative history and drop the three worst years.<sup>n</sup></p> <p><b>For overfished species taken incidentally:</b><sup>o</sup> using target species QS as a proxy based on the following approach: Apply fleet average bycatch rates to each permit's depth and latitude distributions and target species QS allocations. Fleet average bycatch rates for latitudinal areas<sup>p</sup> divided shoreward and seaward of the RCA will be developed from West Coast Observer Program data for 2003-06. For the purposes of the allocation, a permit's QS for each target species will be distributed shoreward and seaward of the RCA and latitudinally based on the permit's logbook information for 2003-06. If a permit does not have any logbooks for 2003-06, fleetwide averages will be used.<sup>q</sup></p> <p>For <b>whiting</b> trips, permit history used for QS allocation will be calculated as follows:</p> <p><b>For whiting,</b> use an allocation period of 1994-2003. Within that period, use relative history and drop the two worst years.<sup>r</sup></p> <p><b>For bycatch species</b> (if IFQ is used for bycatch species): use the whiting history as a proxy (i.e., allocation will be pro rata based on the whiting allocation).</p> <p><b>Area Assignments:</b> Landings history will be assigned to catch areas based on port of landing.<sup>s</sup></p> <p><b>Relative history (percent).</b> For each sector, the permit history for each year is measured as a percent of the sector's total for the year.</p> <p><b>Initial allocations will be constrained by accumulation limits.</b> See Section A-2.2.3.e for a discussion of the limits and divestiture requirements.</p>

**Table 1. Full description of the IFQ program (continued).**

	Element	SubElement	
		b Permits with catcher-processor history	Not applicable because a co-op program was provided for this sector rather than IFQs. <i>(This header is being left in the document so that paragraph numbering will correspond to numbering in the analysis).</i>
		c Processors (motherships)	Not applicable because a co-op program was provided for this sector rather than IFQs <i>(This header is being left in the document so that paragraph numbering will correspond to numbering in the analysis).</i>
		d Processors (shoreside)	For whiting: <ul style="list-style-type: none"> <li>Allocate whiting QS based on the entity's history for the allocation period of 1998 -2004 (drop two worst years) and use relative history.</li> </ul> <b>Initial allocations will be constrained by accumulation limits.</b> See Section A-2.2.3.e for a discussion of the limits and divestiture requirements.
A-2.1.4	History for Combined Permits and Other Exceptional Situations		Permit history for combined permits will include the history for all the permits that have been combined. For history occurring when two or more trawl permits were stacked, split the history evenly between the stacked permits. History for illegal landings will not count toward an allocation of QS. Landings made under nonwhiting Experimental Fishing Permits (EFPs) that are in excess of the cumulative limits in place for the nonEFP fishery will not count toward an allocation of QS. Compensation fish will not count toward an allocation of QS.
A-2.1.5	Initial Issuance Appeals		There will be no Council appeals process on the initial issuance of IFQ. NMFS will develop a proposal for an internal appeals process and bring it to the Council for consideration. Any revisions to an entity's fishtickets must be approved by the state in order to be accepted. Any proposed revisions to fishtickets should undergo review by state enforcement personnel prior to finalization of the revisions.

**Table 1. Full description of the IFQ program (continued).**

	Element	SubElement	
A-2.1.6	Direct Reallocation and Future Allocations After Initial Issuance		<p><b>Reallocation With Change in Overfished Status:</b> When an overfished species is rebuilt or a species becomes overfished there may be a change in the QS allocation within a sector (allocation between sectors is addressed in the intersector allocation process). When a stock becomes rebuilt, the reallocation will be to facilitate the re-establishment of historic target fishing opportunities. When a stock becomes overfished, QS may be reallocated to maintain target fisheries to the degree possible. That change may be based on a person's holding of QS for target species associated with the rebuilt species or other approaches deemed appropriate by the Council.</p> <p><b>Reallocation With Changes in Area Management</b> (Changes in management lines are expected to be rare; however, when they occur the following provides for the reallocation of QS in a manner that will give individual QS holders with the same amounts of total QP before and after the line changes.)</p> <p><b>Area Subdivision:</b> If at any time after the initial allocation an IFQ management unit is geographically subdivided, those holding QS for the unit being subdivided will receive an amount of QS for each newly created area that is equivalent to the amount they held for the area before it was subdivided.</p> <p><b>Area Recombination:</b> When two areas are combined, the QS held by individuals in each area will be adjusted proportionally such that (1) the total QS for the area sums to 100 percent, and (2) a person holding QS in the newly created area will receive the same amount of total QP as they would if the areas had not been combined.</p> <p><b>Area Line Movement:</b> When a management boundary line is moved, the QS held by individuals in each area will be adjusted proportionally such that they each maintain their same share of the trawl allocation on a coastwide basis (a fishing area may expand or decrease, but the individual's QP for both areas combined wouldn't change because of the change in areas). In order to achieve this end, the holders of QS in the area being reduced will receive QS for the area being expanded, such that the total QP they would be issued will not be reduced as a result of the area reduction." Those holding QS in the area being expanded will have their QS reduced such that the total QP they receive in the year of the line movement will not increase as a result of the expansion (nor will it be reduced).</p> <p><b>Reallocation With Subdivision of a Species Group:</b> If at any time after the initial allocation an IFQ management unit for a species group is subdivided, those holding QS for the unit being subdivided will receive an amount of QS for each newly created IFQ management units that is equivalent to the amount they held for the species group before it was subdivided. For example, if a person holds one percent of a species group before the subdivision, that person will hold one percent of the QS for each of the groups resulting from the subdivision.</p> <p><b>Future Allocation of Groundfish Outside the Scope of the IFQ Program:</b> For the "Other Fish," category of groundfish, if at some time in the future the Council adds it to the IFQ system, the initial allocation would be determined using the same history criteria as was used for other IFQ species (i.e. 1994-2003 history), unless otherwise specified by a future Council action.</p>



**Table 1. Full description of the IFQ program (continued).**

	Element	SubElement	
A-2.2	<b>Permit/IFQ Holding Requirements and Acquisition (after initial allocation)</b>		
A-2.2.1	Permit/IFQ Holding Requirement		<ol style="list-style-type: none"> <li>1. Only vessels with LE trawl permits are allowed to fish in the trawl IFQ fishery.</li> <li>2. For a vessel to use QP, the QP must be in the vessel's QP account.</li> <li>3. All catch a vessel takes on a trip must be covered with QP within 30 days of the time that data or documentation from the trip shows there is an overage unless the overage is within the limits of the carryover provision (Section A-2.2.2.b), in which case the vessel has 30 days or a reasonable time (to be determined) after the QP for the following year are issued, whichever is greater.<sup>v</sup></li> <li>4. For any vessel with an overage (catch not covered by QP), fishing that is within the scope of the IFQ program (Section A-1.1) will be prohibited until the overage is covered, regardless of the amount of the overage. Vessels which have not adequately covered their overage within the time limits specified in paragraph 3, must still cover the overage before resuming fishing, using QP from the following year(s), if necessary. If a vessel covers its overage, but coverage occurs outside the specified time limit (paragraph 3), the vessel may still be cited for a program violation.</li> <li>5. For vessels with an overage, the LE permit may not be sold or transferred until the deficit is cleared.</li> </ol>
A-2.2.2	IFQ Annual Issuance	a Annual Quota Pound Issuance	<p>QP will be issued annually to QS holders based on the amount of QS held.<sup>w</sup></p> <p><i>As specified above, QS holders will have to transfer their QP to a vessel account in order for those QP to be used.</i></p>

**Table 1. Full description of the IFQ program (continued).**

	Element	SubElement	
		b Carryover (Surplus or Deficit)	<p>To the extent allowed by the conservation requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), a carryover allowance will allow surplus QP in a vessel's QP account to be carried over from one year to the next or allow a deficit in a vessel's QP account for one year to be carried over and covered with QP from a subsequent year. Surplus QP may not be carried over for more than one year.</p> <p>A vessel with a QP <b>surplus</b> at the end of the current year will be able to use that QP in the immediately following year, up to the limit of the carryover allowance (see below). However, if there is a decline in the OY, the amount of QP carried over as a surplus will be reduced in proportion to the reduction in the OY.</p> <p>A vessel with a QP <b>deficit</b> in the current year will be able to cover that deficit with QP from the following year without incurring a violation if</p> <ul style="list-style-type: none"> <li>(1) the amount of QP it needs from the following year is within the carryover allowance (see below), and</li> <li>(2) the QP are acquired within the time limits specified in A-2.2.1.<sup>x</sup></li> </ul> <p><b>Carryover Allowance:</b> Limit of up to 10 percent carryover for each species. This applies to both nonoverfished species and overfished species. The percentage is calculated based on the total pounds (used and unused) in a vessel's QP account for the current year. The percentage used for the carryover provision may be changed during the biennial specifications process.</p>
		c QS Use-or-Lose Provisions (Deleted)	<i>This section has been deleted but the numbering is being maintained as a placeholder so as not to change section numbering and corresponding references in the analysis.<sup>y</sup></i>
		d Entry Level Opportunities	Under the MSA, the Council is required to consider entry level fishermen, small vessel owners, and crew members, and in particular the possible allocation of a portion of the annual harvest to individuals falling in those categories. No special provisions have been identified for analysis. New entry is addressed indirectly by allowing crew, captains and others to acquire QS in small increments.
A-2.2.3	IFQ Transfer Rules	a Eligible to Own or Hold	No person can acquire quota shares or quota pounds other than 1) a United States citizen, 2) a permanent resident alien, or 3) a corporation, partnership, or other entity established under the laws of the United States or any State, that is eligible to own and control a U.S. fishing vessel with a fishery endorsement pursuant to 46 USC 12113 (general fishery endorsement requirements and 75 percent citizenship requirement for entities). However, there is an exception for any entity that owns a mothership that participated in the west coast groundfish fishery during the allocation period and is eligible to own or control that U.S. fishing vessel with a fishery endorsement pursuant to sections 203(g) and 213(g) of the AFA.

**Table 1. Full description of the IFQ program (continued).**

	Element	SubElement	
		b Transfers and Leasing	<p>QS/QP will be transferable and transfers must be registered with NMFS. NMFS will not differentiate between a transfer for a lease and a permanent transfer.<sup>z</sup></p> <p>Each year, all QP must be transferred to a vessel account. A penalty for not meeting this transfer requirement has not been recommended; however, this requirement is intended to encourage its availability for use by the fleet.</p> <p>QP can only be transferred into vessel accounts. Once in a vessel account QP can be transferred from one vessel account to another.</p>
		c Temporary Transfer Prohibition	<p>NMFS may establish temporary prohibitions on the transfer of QS, as necessary to facilitate program administration.</p> <p>QS will not be transferred in the first two years of the program (QP will be transferable).</p>
		d Divisibility	<p>QS will be highly divisible and the QP will be transferred in whole pound units (i.e. fractions of a pound may not be transferred).</p>

**Table 1. Full description of the IFQ program (continued).**

	Element	SubElement	
		e Accumulation Limits (Vessel and Control)	<p>Limits<sup>aa</sup> may vary by species/species group, areas, and sector. The values for the limits are provided in Table 2. The vessel unused QP limits may be revisited in the first biennial specifications process after implementation of the program.</p> <p><b>Vessel Use Limit (Vessel Limit):</b> A limit on the total QP that may be registered for a single vessel during the year. This element will mean that a vessel could not have more used and unused quota pounds registered for the vessel than a predetermined percentage of the QP pool.</p> <p><b>Vessel Unused QP Limit:</b> A limit on the amount of unused QP that may be registered to the vessel at any time. This limit applies only for overfished species and Pacific halibut.</p> <p><b>QS Control Limit:</b> A person, individually or collectively, may not control QS in excess of the specified limit (because there is no the grandfather clause). QS controlled by a person shall include those registered to that person, plus those controlled by other entities in which the person has a direct or indirect ownership interest, as well as shares that the person controls through other means.<sup>bb</sup> The calculation of QS controlled by a person will follow the “individual and collective” rule.</p> <p>Individual and Collective Rule: The QS that counts toward a person's accumulation limit will include 1) the QS or QP owned by them, and 2) a portion of the QS owned by any entity in which that person has an interest. The person's share of interest in that entity will determine the portion of that entity's QS that counts toward the person's limit.<sup>cc</sup></p> <p><b>Grandfather Clause and Divestiture:</b> There will not be a grandfather clause for the QS control limits, however, an adjustment period is provided through the following divestiture rules. QS will be issued for amounts in excess of aggregate and species control limits only for holders of permits transferred by November 8, 2008, if such transfers have been registered with NMFS by November 30, 2008. The holder of any permit transferred after that time will be eligible to receive an initial allocation for that permit of only those QS that are within the aggregate and individual species control limits. Anyone who qualifies for an initial allocation of QS in excess of the control limits will be allowed to receive that allocation but required to divest themselves of that excess QS sometime during years three and four of the IFQ program (the two years after the QS transfer moratorium specified in Section A-2.2.3.c). Holders of QS in excess of the limits may receive and use the QP associated with that excess, up to the time their divestiture is completed. However, QP for year five of the program will not be issued for QS held in excess of the limits. At the end of year four, any QS still held in excess of the species or aggregate limits in place at the time of the initial QS allocation will be revoked and redistributed to the remainder of the QS holders in proportion to their QS holdings. No compensation will be due for any revoked shares. Divestiture transfers will be allowed in accordance with the provisions established here and the transfer rules and processes implemented by NMFS. Permit transfers will not be limited or required by the divestiture provision.</p> <p><b>Calculation of Aggregate Nonwhiting QS Holdings:</b> To determining how much aggregate nonwhiting QS an entity holds, an entity's QS for each species will be converted to pounds. This conversion will always be conducted using the trawl allocations applied to the 2010 OYs, until such time as the Council recommends otherwise. Specifically, each entity's QS for each species will be multiplied by the shoreside trawl allocation for that species. The entity's pounds for all nonwhiting species will then be summed and divided by the shoreside trawl allocation of all nonwhiting species to get the entity's share of the aggregate nonwhiting trawl quota.</p> <p><i>Note: QS that is not allocated because of the accumulation limits and absence of the grandfather clause will be distributed to other eligible recipients in a manner that maintains the distribution among groups specified in A-2.1.1 and based on the allocation formulas specified in A-2.1.3.</i></p>

**Table 1. Full description of the IFQ program (continued).**

	Element	SubElement	
A-2.3	<b>Program Administration</b>		
A-2.3.1	Tracking, Monitoring and Enforcement		<p>It is the Council intent to provide NMFS flexibility sufficient to design and implement a tracking and monitoring program that will achieve the goals and objectives of the trawl rationalization program.</p> <p style="text-align: center;"><b>Discarding by Shoreside Sector</b></p> <p>Nonwhiting – Discarding of IFQ species allowed, discarding of IBQ species required, discarding of nongroundfish species allowed.</p> <p>Whiting  Maximized retention vessels:  Discarding of fish covered by IFQ or IBQ, and nongroundfish species prohibited.  Vessels sorting at-sea:  Same as for nonwhiting.</p> <p style="text-align: center;"><b>At-Sea Catch Monitoring for Shoreside Sector</b></p> <p>Nonwhiting – The sorting of catch, the weighing and discarding of any IBQ and IFQ species, and the retention of IFQ species must be monitored by the observer.</p> <p>Whiting  For maximized retention vessels: video monitoring as proposed under Amendment 10. Observers would be required in addition to or as a replacement for video monitoring.  For vessels that sort at-sea: The sorting, weighing and discarding of any IFQ or IBQ species must be monitored by an observer with supplemental video monitoring.</p> <p style="text-align: center;"><b>Shoreside Landings Monitoring</b></p> <p>The sorting, weighing and reporting of any IFQ species must be monitored by a shoreside landings monitor (IBQ will have been discarded at sea).</p> <p>(Description continued on next page.)</p>

**Table 1. Full description of the IFQ program (continued).**

	Element	SubElement	
			<p>(...continued from previous page)</p> <p><b>Catch Tracking Mechanisms for Shoreside Sector</b></p> <p><b>Electronic vessel logbook report</b> VMS-based electronic logbook required to be transmitted from vessel. At-sea entry by vessel personnel required including catch weight by species and if retained or discarded.</p> <p><b>Vessel landing declaration report</b> Mandatory declaration reports.</p> <p><b>Electronic ITQ landing report</b> Mandatory reports completed by processors and similar to electronic fishticket report.</p> <p><b>Processor production report</b> Mandatory reports (possible inclusion of proprietary data included to be recommended as option is fleshed out).</p> <p><b>Cost Control Mechanisms for Shoreside Sector</b></p> <p><b>Shoreside landing hour restrictions</b> Landing hours may be restricted.</p> <p><b>Shoreside site Licenses</b> Mandatory license for shoreside deliveries. License can be issued to any site that meets the monitoring requirements.</p> <p><b>Vessel Certification</b> Mandatory certification. Certificate can be issued to any vessel that meets the monitoring requirements.</p> <p><b>Program Performance Measures for Shoreside Sector</b> Integrate into the tracking and monitoring program the collection of data on cost, earnings and profitability; economic efficiency and stability; capacity measures; net benefits to society; distribution of net benefits; product quality; functioning of quota market; incentives to reduce bycatch; market power; spillover effects into other fisheries; contribution to regional economies (income and employment); distributional effects/community impacts; employment in seafood catching and processing; safety; bycatch and discards; administrative, enforcement, and management costs. (See A-2.3.2)</p>
A-2.3.2	Socio-Economic Data Collection		The data collection program will be expanded and submission of economic data by harvesters and processors will be mandatory. Random and targeted audits may be used to validate mandatory data submissions. See footnote <sup>dd</sup> for a full description. Information on QS transaction prices, will be included in a central QS ownership registry. <i>NOTE: Data collection started before the first year of implementation would be beneficial, in order to have a baseline for comparison.</i>
A-2.3.3	Program Costs	a Cost Recovery	Fees up to three percent of exvessel value, consistent with 303A(e) of the MSA may be assessed. Cost recovery shall be for costs of management, data collection, analysis, and enforcement activities.
		b Fee Structure	To be determined. The TIQC recommended a fee structure that reflects usage. A fee structure that allows for equitable sharing of observer costs for smaller vessels may be developed.

**Table 1. Full description of the IFQ program (continued).**

	Element	SubElement	
A-2.3.4	Program Duration and Modification		<p>The Council shall begin a review of the IFQ program no later than 5 years after implementation of the program. The review will evaluate the progress the IFQ program has made in achieving the goal and objectives of Amendment 20. The result of this evaluation could include dissolution of the program, revocation of all or part of quota shares, or other fundamental changes to the program. Holders of quota shares should remain cognizant of this fact when making decisions regarding their quota shares, including buying selling, and leasing of these shares.</p> <p>The Council shall consider the use of an auction or other nonhistory based methods when distributing quota share that may become available after initial allocation. This may include quota created when a stock transitions from overfished to nonoverfished status, quota not used by the adaptive management program, quota forfeited to “use it or lose it” provisions, and any quota that becomes available as a result of the initial or subsequent reviews of the program.</p> <p>The specific form of the auction or other method of distribution shall be designed to achieve the goals of Amendment 20, specifically including minimizing the adverse effects from an IFQ program on fishing communities to the extent practical.</p> <p>After the initial review, there will be a review process every four years. A community advisory committee will take part in the review of IFQ program performance.</p>

**Table 1. Full description of the IFQ program (continued).**

	Element	SubElement
A-3	<b><u>Adaptive Management (also see Section A-9)</u></b>	<p>Ten percent of the nonwhiting QS will be reserved to facilitate adaptive management in the shoreside nonwhiting sector. Therefore, each year 10 percent of the shoreside trawl sector nonwhiting quota pounds will be available for use in adaptive management (adaptive management QP). The set aside will be used to address the following objectives.</p> <ul style="list-style-type: none"> <li>○ Community stability</li> <li>○ Processor stability</li> <li>○ Conservation</li> <li>○ Unintended/Unforeseen consequences of IFQ management.</li> <li>○ Facilitating new entrants.</li> </ul> <p><b>Years One and Two.</b> During the first two years in which the IFQ program is in place, the method to be used in distributing QP in years three through five will be determined, including.</p> <ul style="list-style-type: none"> <li>○ The decision making and organization structure to be used in distributing the QP set aside<sup>ee</sup></li> <li>○ The formula for determining community and processor eligibility, as well as methods for allocation, consistent with additional goals.</li> <li>○ The division of QP among the states.</li> <li>○ Whether to allow the multi-year commitment of QP to a particular project.</li> </ul> <p><b>Years Three through Five.</b> QP will be distributed through the organizational structure, decision process, formulas and criteria developed in years one and two and implemented through subsequent Council recommendation and NMFS rule making processes. Consideration will be given to the multiyear commitment of QP to particular projects (three year commitments).</p> <p><b>Review and Duration.</b> The set aside of QP for the identified objectives will be reviewed as part of the year five comprehensive review and a range of sunset dates will be considered, including 10, 15, 20 year and no sunset date options.</p>
A-4	<b><u>Pacific Halibut IBQ—nonretention</u></b>	<p>IBQ for Pacific halibut bycatch in the trawl fishery will be established. The IBQ will be required to cover legal and sublegal sized Pacific halibut bycatch mortality in the area north of 40°10' N latitude. It is the intent of the Council that halibut IBQ mortality be estimated on an individual vessel basis. Such IBQ will be issued on the basis of a bycatch rate applied to the target species QS an entity receives in a manner similar to that described in Section A-2.1.3.a, for overfished species caught incidentally. Area-specific bycatch rates may be used for allocation but halibut IBQ will not be geographically subdivided.</p>

<sup>a</sup> California halibut gear of 7.5" or greater used in state waters ~~would be~~ is exempted.

<sup>b</sup> Mandatory gear conversion (the permanent switching from trawl to some other gear) was considered but not included ~~at this time~~.

<sup>c</sup> Since the shoreside trawl sector covers all shoreside deliveries, this implies that IFQ issued for the shoreside trawl sector may not be used for at-sea deliveries (i.e. may not be used to cover deliveries made to motherships or catch by catcher-processors).



**Table 1. Full description of the IFQ program (continued).**

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- <sup>d</sup> Notwithstanding this provision, a vessel with a LE trawl permit may catch the trawl QP with a nontrawl gear, as per Section A-1.1.
- <sup>e</sup> At present there are no ~~groundfish species fish management units within the scope of the program~~ for which the harvest in the trawl fishery is managed differently by geographic area. An example of an area specific precautionary policy from outside trawl fishery management is the geographic differential recommended by the Scientific and Statistical Committee for lingcod. Lingcod is monitored and managed differently in different geographic areas though there is a single coastwide ABC and OY for lingcod. Since there are no geographic subdivisions in the trawl management measures for lingcod, it is assumed that lingcod trawl IFQ will not be geographically subdivided.
- <sup>f</sup> Such changes in latitudinal area management may occur as a result of changes in the management areas for species/species complexes in the ABC/OY table or as a result of separate Council action to change the trawl QS by area. In either case, specific Council action will be required to change the management areas and such action will be accompanied by appropriate supporting analysis and public comment opportunity.
- <sup>g</sup> The Council authority to establish or modify RCAs will not be changed by this program.
- <sup>h</sup> ~~The Council authority to establish or modify RCAs will not be changed by this program.~~ (footnote location moved)
- <sup>i</sup> A whiting QP rollover provision was considered but rejected from further analysis. This provision would have allowed unused QP to be reclassified so that they could be used in any whiting sector.
- <sup>j</sup> The current process for changing the whiting fishery opening dates involves a regulatory amendment developed under the FMP through a framework process. Implementation of an IFQ program should not change this process.
- <sup>k</sup> **“Processors”** are defined as follows:  
**An at-sea processor** is a vessel that operates as a mothership in the at-sea whiting fishery or a permitted vessel operating as a catcher-processor in the at-sea whiting fishery.
- A shoreside processor** is an operation, working on US soil, that takes delivery of trawl-caught groundfish that has not been “processed at-sea” and that has not been “processed shoreside”; and that thereafter engages that particular fish in “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 QS allocations.
- “Shoreside Processing”** is defined as either of the following:
1. Any activity that takes place shoreside; and that involves: cutting groundfish into smaller portions; OR freezing, cooking, smoking, drying groundfish; OR packaging that groundfish for resale into 100 pound units or smaller for sale or distribution into a wholesale or retail market.
- OR
2. The purchase and redistribution into a wholesale or retail market of live groundfish from a harvesting vessel.
- <sup>l</sup> Transfer of physical assets alone should not be considered a basis for successor in interest. Business relationships such as transfer of the company name and customer base might be reasonable evidence of successor in interest.

**Table 1. Full description of the IFQ program (continued).**

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- <sup>m</sup> Due to the divestiture provision of Section A-2.3.2.e, it is relatively unlikely that accumulation limits will constrain the amount of QS an entity receives in the initial allocation. However, if an entity qualifies for QS in excess of accumulation limits and ~~is~~ does not qualify to receive that QS under the divestiture provision, the initial allocation will be constrained by first applying the aggregate limits and then, if necessary, the individual species limits. In using this approach, the entity's QS allocation should not be scaled back more than necessary to stay within limits and any QS not allocated will be reallocated to other QS recipients.
- <sup>n</sup> State landings receipts (fishtickets) will be used to assess landings history for shoreside deliveries. In some cases, fishticket records do ~~does~~ not identify species to the same level of detail used for the IFQ management units (e.g. reports "unspecified rockfish"). Under such circumstances standard species composition routines usually used at the port level have been applied to vessel level data to estimate the species composition of such landings. In some instances, even after applying species composition information there may be some fishticket records with a species groundfish categorization that does not match with one of the IFQ management units. Under such circumstances, when the initial allocations are made, other information on the landings records and in logbooks might be used to assign the landing to its most probable species category.
- <sup>o</sup> The intent is to provide an allocation method for QS for overfished species which addresses the vessel's need to have the QS to cover incidental catch in fisheries that target healthy stocks. The method would attempt to allocate the species to those who will be receiving QS for related target species. By allocating overfished species QS to those most in need of it, such an allocation would be expected to reduce transition costs. Currently, the list of overfished species that fall into this category is as follows: canary rockfish, darkblotched rockfish, Pacific Ocean perch, widow rockfish, and yelloweye rockfish. This list may change by the time the program is ready to be implemented. If a major target species became overfished, it would not be intended that such a species would be allocated via an alternative method (for example species such as Dover sole, sablefish, or Pacific whiting).
- <sup>p</sup> The four areas are as follows: (1) north of 47°40 N latitude; (2) between 47°40 N latitude and 43°55 N latitude; (3) between 43°55 N latitude and 40°10 N latitude; and (4) south of 40°10 N latitude.
- <sup>q</sup> In order to determine an amount of aggregate target species to which bycatch rates will be applied, each vessel's QS will be multiplied by the trawl allocation at the time of implementation.
- <sup>r</sup> State landings receipts (fishtickets) will be used to assess landings history for shoreside deliveries.
- <sup>s</sup> Catch area data on fishtickets are not considered appropriate for this purpose. The catch area field is often filled out by fish receivers that do not know the area in which the vessel fished. Additionally catch area is often left unspecified. Therefore, it will be assumed that all catch comes from ocean areas near the port of landing.
- <sup>t</sup> ~~March 2010. Changed from 1994-2004 to 1998-2003 to reflect Council action of November 2008.~~
- <sup>u</sup> Unless there is a change in the total OY or other factors affecting trawl allocation for the areas involved, in which case their change in QP would be proportional to the change in the trawl allocation.
- <sup>v</sup> QP from a subsequent year may not be accessed until such QP have been issued by NMFS.
- <sup>w</sup> Including for the first four years of the program, QS that an entity received in excess of accumulation limits in place at the time of initial allocation (see Section A-2.2.3.e).

**Table 1. Full description of the IFQ program (continued).**

<sup>x</sup> Carryover of deficits provides some flexibility to use pounds from a year to cover a deficit from a previous year. Without a carryover provision, a vessel would still need to use pounds in a subsequent year to cover an overage but would incur a violation.

<sup>y</sup> The following is the text deleted from this section: “No QS use-or-lose provision has been specified.. The need for this provision will be evaluated as part of program review process, and the provision could be added later, if necessary. *Section A-2.2.3.b contains a provision mandating the transfer of QP to vessels each year. This is intended to encourage QP use.*”

<sup>z</sup> QS may be transferred on a temporary basis through private contract (leased) but NMFS will not track lease transfers differently than any other transfer.

<sup>aa</sup> The “vessel” accumulation limit was originally termed a “permit” limit. The term “permit” was changed to “vessel” to be consistent with Section A-2.1.3, which indicates that QP go into vessel accounts, not permit accounts. The term “own or control” was shortened to “control” for simplicity. “Control” includes ownership and therefore is inclusive of “ownership.”

<sup>bb</sup> It is the Council intent that control limits should not constrain the formation of risk pools to help the fishermen deal with overfished species constraints, so long as the pools do not undermine the effectiveness of the accumulation limits. A risk pool is one in which two or more people enter into an agreement whereby if one person does not have the QP the others would agree to provide the QP, if they have them. Whether these kinds of agreements are informal or formal, as other considerations and conditions are added to the agreements they may begin to constitute control. It is the Council intent to allow for these pooling agreements, so long as they do not become control.

<sup>cc</sup> For example, if a person has a 50 percent ownership interest in that entity, then 50 percent of the QS owned by that entity will count against the individual's accumulation limit unless it is otherwise determined that have effective control of a greater or lesser amount.

<sup>dd</sup> **Expanded data collection** would include:

mandatory submission of economic data for LE trawl industry (harvesters and processors),

voluntary submission of economic data for other sectors of the fishing industry,

transaction value information in a centralized registry of ownership, and

formal monitoring of government costs.

**Mandatory Provisions:** The Pacific Fishery Management Council and NMFS shall have the authority to implement a data collection program for cost, revenue, ownership, and employment data, compliance with which will be mandatory for members of the west coast groundfish industry harvesting or processing fish under the Council's authority. Data collected under this authority will be treated as confidential in accordance with Section 402 of the MSA.

A mandatory data collection program shall be developed and implemented as part of the groundfish trawl rationalization program and continued through the life of the program. Cost, revenue, ownership, employment and other information will be collected on a periodic basis (based on scientific requirements) to provide the information necessary to study the impacts of the program, including achievement of goals and objectives associated with the rationalization program. These data may also be used to analyze the economic and social impacts of future FMP amendments on industry, regions, and localities. The program will include targeted and random audits as necessary to verify and validate data submissions. Additional funding (as compared to status quo) will be needed to support the collection of these data. The data collected would include data needed to meet MSA requirements (including antitrust).

**Table 1. Full description of the IFQ program (continued).**

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The development of the program shall include: a comprehensive discussion of the enforcement of such a program, including discussion of the type of enforcement actions that will be taken if inaccuracies are found in mandatory data submissions. The intent of this action will be to ensure that accurate data are collected without being overly burdensome on industry in the event of unintended errors.

**Voluntary Provisions:** A voluntary data collection program will be used to collect information needed to assess spillover impacts on nontrawl fisheries.

**Central Registry:** Information on transaction prices will be included in a central registry of QS owners. Such information will also be included for LE permit owners/lessees.

**Government Costs:** Data will be collected and maintained on the monitoring, administration, and enforcement costs related to governance of the trawl rationalization program.

<sup>ee</sup> The following are three options for the sequences of agency involvement in decision making for the distribution of adaptive management QP after year 2.

1. NMFS
2. State → Council → NMFS
3. Council → NMFS

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**Table 2.** Control and vessel limits ~~options: Council preferred alternative.~~

Species Category	Vessel Limit (Applies to all QP in a Vessel Account, Used and Unused)	Vessel Unused QP Limit	QS Control Lim
Nonwhiting Groundfish Species	3.2%		2.7%
Lingcod - coastwide	3.8%		2.5%
Pacific Cod	20.0%		12.0%
Pacific whiting (shoreside)	15.0%		10.0%
Pacific whiting (mothership)	30.0%		20.0%
Sablefish			
N. of 36° (Monterey north)	4.5%		3.0%
S. of 36° (Conception area)	15.0%		10.0%
PACIFIC OCEAN PERCH	6.0%	4.0%	4.0%
WIDOW ROCKFISH *	8.5%	5.1%	5.1%
CANARY ROCKFISH	10.0%	4.4%	4.4%
Chilipepper Rockfish	15.0%		10.0%
BOCACCIO	15.4%	13.2%	13.2%
Splitnose Rockfish	15.0%		10.0%
Yellowtail Rockfish	7.5%		5.0%
Shortspine Thornyhead			
N. of 34°27'	9.0%		6.0%
S. of 34°27'	9.0%		6.0%
Longspine Thornyhead			
N. of 34°27'	9.0%		6.0%
COWCOD	17.7%	17.7%	17.7%
DARKBLOTCHED	6.8%	4.5%	4.5%
YELLOWEYE	11.4%	5.7%	5.7%
Minor Rockfish North			
Shelf Species	7.5%		5.0%
Slope Species	7.5%		5.0%
Minor Rockfish South			
Shelf Species	13.5%		9.0%
Slope Species	9.0%		6.0%
Dover sole	3.9%		2.6%
English Sole	7.5%		5.0%
Petrale Sole	4.5%		3.0%
Arrowtooth Flounder	20.0%		10.0%
Starry Flounder	20.0%		10.0%
Other Flatfish	15.0%		10.0%
Other Fish	7.5%		5.0%
Pacific Halibut	14.4%	5.4%	5.4%

\* If widow rockfish is rebuilt before initial allocation of QS, the vessel limit will be set at limit will be 1.5 times the control limit.

#### **E.4 Whiting At-sea Trawl Sector: Cooperative Program (Appendix B of the EIS)**

The at-sea whiting sector co-op program is described generally below. Table 3 provides an outline of the sections of the program. A full description of the co-op programs follows Table 3, beginning with a section on management of the whiting fishery and followed by sections on the mothership and catcher-processor sectors of the whiting fishery (the “at-sea” sectors).

The Council considered but did not adopt a co-op program for the shoreside whiting fishery. Instead, the shoreside whiting sector was merged with the nonwhiting sector, both to be managed with IFQs. However, section place holders for the shoreside whiting co-op program are maintained in this document to maintain a numbering system that will correspond to the numbering of the alternatives and sections of the analysis as they are laid out in the EIS.

#### **E.5 Overview of Co-op Program Elements**

##### ***E.5.1 At-sea Whiting Sector Management under Co-ops***

While co-ops will be used to control the harvest within the at-sea whiting sectors, a number of management measures will still be required to control competition between the whiting sectors. This section covers those measures along with other measures which will apply to all sectors managed under co-ops, such as observer requirements and mandatory submission of economic data. The description of the co-op management program for each at-sea whiting sector starts in Section E.5.2.

The existing allocation of whiting between the shoreside, mothership, and catcher-processor (CP) sectors will not change under the rationalization program (42, 24, and 34 percent, respectively).

Provisions also address bycatch in the at-sea whiting fishery (particularly that of certain overfished species). The Council is recommending incidental groundfish species caps for each of the whiting sectors, for the co-op and nonco-op fisheries within the mothership sector, and for the co-ops within the mothership sector. Within sectors, bycatch allocations would be pro rata, based on the amount of whiting allocated to that sector.

Area closures may be used to control the pace of the fishery. For the mothership sector, the fishery will be divided into a co-op fishery and a nonco-op fishery (for those who do not desire to take part in a co-op). Participants in the nonco-op fishery will not have a claim to a particular amount of the fish allocated to that fishery; therefore the vessels will likely race to harvest the available allocation.

NMFS will close the whiting fishery, a particular sector, the co-op or nonco-op fishery within a sector, or individual co-ops, as appropriate, when it is projected that a whiting catch or bycatch limit will be reached. With respect to co-ops, inseason monitoring and closure will be needed only at the highest level of aggregation of the co-ops. For example, if individual co-ops join together to form an inter-co-op that covers the entirety of one of the whiting sectors, then NMFS will track and close at the sector level. Nevertheless, vessel level monitoring will still be required to ensure that catch is accurately recorded.

Given the high level of monitoring already in place in the whiting fishery, only moderate changes in monitoring are needed to implement this program for the at-sea whiting fishery. For the at-sea

segment of the fishery, 100 percent coverage aboard mothership and catcher processors will continue. A program for the mandatory submission of economic data is also included, to facilitate monitoring program performance.

### ***E.5.2 Co-ops for Catcher Vessels Delivering to Motherships***

Under this program, those who hold whiting-endorsed permits for catcher vessels in the mothership sector will choose each year whether to be part of a co-op or to register to fish in the nonco-op portion of the fishery. The holders of catcher vessel permits with mothership whiting endorsements will form the co-ops. Based on its catch history, each permit that qualifies for a mothership whiting endorsement will be capped at a portion of the history (endorsement share) of the mothership sector allocation of whiting and bycatch species. Each year, NMFS will distribute a catch allocation to each catcher vessel co-op based on the sum of the endorsement shares for the permits registered to that co-op. NMFS will also distribute a catch allocation each year to the nonco-op portion of the fishery, based on the collective endorsement shares of the permits opting to participate in the nonco-op fishery.

The co-op organization will coordinate harvest by its members. Although co-op agreements will include a mandatory clause that the catch allocation made to a member must equal the amount that the member brings into the co-op, co-op members may transfer catch allocations among themselves. Similarly, if multiple co-ops join together in an inter-co-op, one co-op will be allowed to transfer catch allocation to another co-op within that inter-co-op. NMFS will not necessarily need to track transfers among co-op members or within an inter-co-op.

The class of motherships will be closed by creating a LE permit for mothership vessels. There will be restrictions limiting a vessels ability to both catch and operate as a mothership in the whiting fishery in the same year. This will limit the ability of processing vessels to move between the catcher processor and mothership sectors.

Prior to the start of each season, each catcher vessel permit desiring to participate in the co-op fishery will obligate itself to deliver its catch to a particular mothership. The obligation to a particular co-op or mothership will not carry-over from one year to the next, it may be changed at the catcher vessel permit owners discretion based on its preseason declaration. While catch may be transferred among participants in a co-op or inter-co-op, such transfers would not change the mothership to which the catch is obligated, unless a mutual agreement is reached.

As in the IFQ program, accumulation limits will be imposed to prevent excessive concentration of catch allocations. They will cap the proportion of whiting that an individual or entity can process, cap the proportion of whiting an individual or entity could accumulate via ownership of catcher vessel permit(s), and cap the amount that can be landed by any one catcher vessel.

### ***E.5.3 Co-ops for Catcher-Processors***

Under the catcher-processor (CP) co-op program, as under status quo, a voluntary CP co-op may continue to be formed by CP permit holders. This system will continue as long the existing co-op system continues to operate successfully or until the FMP is otherwise amended. If the voluntary co-op system fails, it will be replaced with an IFQ system. Currently the co-op operates under a private contract that includes division of the harvest among participants according to an agreed schedule. In the event the co-op system fails, IFQ will be allocated equally to each CP permit (equally divided among all CP endorsed permits).



Under the catcher-processor (CP) co-op program, the main Council recommendations are the creation of a CP endorsement to close the CP fishery to new entrants and the assignment of an allocation to the voluntary CP co-op. The endorsement will be granted to LE permits registered to CP vessels if the vessels meet specified qualification criteria. Only vessels with a CP LE permit will be allowed to harvest fish from the CP sector's allocation. LE permits with CP endorsements will continue to be transferable. NMFS will not establish an allocation of catch or catch history among CP permits unless the co-op fails. NMFS will specify in regulation the assignment of the CP sector allocation to the CP sector co-op. If necessary, a closure will be used to keep the CP sector from exceeding its allocation of whiting and bycatch species.

## E.6 Detailed Specification of Co-op Program Elements

**Table 3 Overview of the co-op program.**

<b>B.1</b>	<b><i>Whiting Sector Management Under Co-ops</i></b>
B-1.1	Whiting Management
B-1.2	Annual Whiting Rollovers
B-1.3	Bycatch Species Management
B-1.4	At-sea Observers/Monitoring
B-1.5	Mandatory Data Collection
B-1.6	Adaptive Management—Not included in recommendation. <i>(This section header is being maintained as a place holder so that numbering will correspond to that of the alternatives and analysis in the EIS).</i>
B-1.7	Length Endorsement
<b>B-2</b>	<b><i>Whiting Mothership Sector Co-op Program</i></b>
B-2.1	Participation in the Mothership Sector
B-2.2	Permits/Endorsement Qualification and Characteristics
B-2.3	Co-op Formation and Operation Rules
B-2.4	Obligations to Processors
B-2.5	NMFS Role
<b>B-3</b>	<b><i>Whiting Shoreside Sector Co-op Program</i></b>
	Not included in recommendation. <i>(This section header is being maintained as a place holder).</i>
<b>B-4</b>	<b><i>Catcher-Processors Co-op Program</i></b>
B-4.1	Participation in the Catcher-Processor Sector and Endorsement Qualification
B-4.2	Co-op Formation and Operation Rules
B-4.3	NMFS Role

## **B-1 Whiting Sector Management Under Co-ops**

### **B-1.1 Whiting Management**

Under the co-op program, catcher vessel permits for the mothership sector will be endorsed for deliveries to motherships and amounts of history assigned to each catcher vessel permit based on past harvest in the fishery. Catcher-processor permits will be endorsed for participation in the catcher-processor sector.

The whiting catch history calculation for each mothership-endorsed catcher vessel permit [CV(MS)] will be assigned to a pool for the co-op in which the permit will participate or a pool for the mothership nonco-op fishery. NMFS will make an allocation assignment to the catcher-processor sector co-op based on the allocation to the CP sector. Co-ops are responsible for monitoring and enforcing the catch limits of co-op members.

NMFS will monitor the catch in the mothership nonco-op fishery, the mothership co-op fishery, the CP fishery, and the overall whiting catch of all at-sea sectors. NMFS will close each segment of the fishery based on projected attainment of whiting catch. Additionally, all at-sea sectors will be subject to closure based on attainment of the overall trawl whiting allocation.

### **B-1.2 Annual Whiting Rollovers**

There will not be a rollover of unused whiting from one sector to another.

### **B-1.3 Bycatch Species Management**

For the foreseeable future, the whiting fishery will be managed under bycatch limits (hard caps) for widow, canary, darkblotched rockfish, and Pacific Ocean perch. The catch of all groundfish will be accounted for and tracked against the OY.

The ESA-listed salmon bycatch management measures—that is, the 11,000 Chinook threshold, 0.05 rate threshold, and triggered 100 fathom closure—will also continue to be in place.

The goal of bycatch management is to control the rate and amounts of rockfish and salmon bycatch to ensure each sector is provided an opportunity to harvest its whiting allocation.

There will be a set aside of Pacific halibut for the at-sea whiting fishery, as specified in the intersector allocation process (Amendment 21).

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### **B-1.3.1 Bycatch Allocation Subdivision**

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Subdivide bycatch species managed with hard caps (widow, canary, darkblotched rockfish, and Pacific Ocean perch ) among each of the whiting sectors; within the sectors subdivide between the co-op fishery and nonco-op fishery (subdivision for the nonco-op fishery does not apply to the catcher-processor co-op program); and subdivide among co-ops.

Only those species with hard caps will be subdivided for bycatch management and bycatch will be allocated to each permit and co-op pro rata in proportion to its whiting allocation. The mothership sector's bycatch allocation will be divided between its co-op and nonco-op fishery, based on the allocations made to the permits participating in each portion of the fishery.

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### **B-1.3.2 Bycatch Management**

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All sectors and co-ops will close based on projected attainment of the at-sea whiting fishery bycatch cap for any one species. The mothership co-op fishery, nonco-op fishery, and catcher-processor fishery will each be closed based on projected attainment of their individual allocation. Additionally, each co-op will cease fishing when its bycatch allocation is reached.

The Council may also use area closures (seasonal or year-round) to manage overfished stocks in the co-op and nonco-op fisheries. The area closures may be the same or different for different species. Area closures may be year-round, seasonal, or triggered automatically by the attainment of certain levels of catch.

Unused bycatch may be rolled over from one sector to another if the sector's full allocation of whiting has been harvested or participants in the sector do not intend to harvest the remaining sector allocation.

### **B-1.4 At-sea Observers/ Monitoring**

**At-sea Whiting Fishery:** 100 percent observer coverage aboard mothership and catcher-processors will continue. Observers would be required in addition to or as a replacement for video monitoring.<sup>12</sup>

For some coverage, cameras may be used in place of observers (feasibility to be determined). It is the Council intent to provide NMFS flexibility sufficient to design and implementation a tracking and monitoring program that will achieve the goals and objectives of the trawl rationalization program.

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<sup>12</sup> February 2010: The second sentence of this paragraph was adopted as part of the Council's November 2008 motion but it was located under the section on the IFQ program rather than the section on the mothership co-op program.

### **B-1.5 Mandatory Data Collection**

The following are the central elements of the data collection program that will be implemented as part of the co-op program.

- Mandatory submission of economic data for LE trawl industry (harvesters and processors).
- Voluntary submission of economic data for other sectors of the fishing industry.
- Include transaction value information in a centralized registry of ownership.
- Formal monitoring of government costs.

**Mandatory Provisions.** The Council and NMFS shall have the authority to implement a data collection program for cost, revenue, ownership, and employment data, compliance with which will be mandatory for members of the west coast groundfish industry harvesting or processing fish under the Council's authority. Data collected under this authority will be treated as confidential in accordance with Section 402 of the MSA.

A mandatory data collection program shall be developed and implemented as part of the groundfish trawl rationalization program and continued through the life of the program. Cost, revenue, ownership, employment and other information will be collected on a periodic basis (based on scientific requirements) to provide the information necessary to study the impacts of the program, including achievement of goals and objectives associated with the rationalization program. These data may also be used to analyze the economic and social impacts of future FMP amendments on industry, regions, and localities. The program will include targeted and random audits as necessary to verify and validate data submissions. *Data collected under this authority will be treated as confidential in accordance with Section 402 of the MSA.* Additional funding (as compared to status quo) will be needed to support the collection of these data. The data collected would include data needed to meet MSA requirements (including antitrust).

The development of the program shall include a comprehensive discussion of the enforcement of such a program, including discussion of the type of enforcement actions that will be taken if inaccuracies are found in mandatory data submissions. The intent of this action will be to ensure that accurate data are collected without being overly burdensome to industry in the event of unintended errors. Annual reports will be provided to the Council.

**Voluntary Provisions:** A voluntary data collection program will be used to collect information needed to assess spillover impacts on nontrawl fisheries.

**Central Registry:** Information on transaction prices will be included in a central registry of whiting endorsed permit and mothership permit owners. Such information will also be included for sales and lessees.

**Government Costs:** Data will be collected and maintained on the monitoring, administration, and enforcement costs related to governance of the rationalization program.

### **B-1.6 Adaptive Management**

There will not be an adaptive management set aside for the at-sea whiting fisheries. *(This section is being maintained as a place holder so that numbering will correspond to that in the alternatives and analysis of the EIS.)*

### **B-1.7 Length Endorsement**

Length endorsement restrictions on LE permits endorsed for groundfish gear will be retained, however, the provision that requires that the size endorsements on trawl permits transferred to smaller vessels be reduced to the size of that smaller vessel will be eliminated (i.e. length endorsements will not change when a trawl endorsed permit is transferred to a smaller vessel).

## **B-2 Whiting Mothership Sector Co-Op Program**

**Overview.** Qualified permits will be endorsed for mothership (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 nonco-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 determined based on preseason declarations. LE permits will be issued for motherships and required for a mothership to receive whiting from catcher vessels.

### **B-2.1 Participation in the Mothership Sector**

#### **a. Catcher Vessels**

Vessels with CV(MS)-endorsed permits may participate in either the co-op or nonco-op portion of the mothership fishery. They will choose annually which fishery they will participate in for the coming year. Additionally, any groundfish LE 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>13</sup> No other catcher vessels may participate in the mothership fishery.

A vessel may not engage in the processing of whiting during any year in which a catcher vessel (mothership) (CV[MS]) endorsed permit is registered for use with the vessel.

#### **b. Processors**

Only motherships with a mothership LE permit may receive deliveries from catcher vessels participating in the co-op or nonco-op portions of the mothership sector whiting fishery. (Note: motherships may acquire such permits by transfer; see Section B-2.2.2.)

#### **c. Vessels Excluded<sup>14</sup>**

Motherships also operating as a catcher-processor may not operate as a mothership: during a year in which it also participates as a catcher-processor.

<sup>13</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>14</sup> 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, as per the AFA's modification of Section 12102(c)(6) of the USC. Section 12102(c)(6) of the USC has since been renumbered.

## B-2.2 Permits/Endorsement Qualification and Characteristics

### B-2.2.1 Catcher Vessel Mothership (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 LE 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 LE 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 1994 through 2003.

**Catch History Assignment (Identification of Endorsement Related Catch History).** The initial catch history calculation for CV(MS) whiting endorsements will be based on whiting history of the permit for 1994 through 2003, dropping two<sup>45</sup> years. A permit's history for each year will be measured as a share of the fleet history for that year (i.e. "relative pounds" will be used). This catch history will be used by NMFS to assign both whiting and bycatch species allocations to the co-ops and nonco-op fishery pools, as per section B.1.3.2.

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 Permit and Endorsement Transferability and Endorsement Severability

The CV(MS) whiting endorsement (together with the associated catch history) *may not be* severed from the groundfish LE trawl permit. Catch history associated with the whiting endorsement may not be subdivided. CV(MS) permits may be transferred two times during the fishing year, provided that the second transfer is back to the original catcher vessel (i.e. only one transfer per year to a different catcher vessel).

#### c. Accumulation Limit

**CV(MS) Permit Ownership:** No individual or entity may own CV(MS) permits for which the allocation total is greater than 20 percent.

**Catcher Vessel Usage Limit:** No vessel may catch more than 30 percent of the mothership sector's whiting allocation.

<sup>45</sup> February 2010: The word "worst" was removed in line with the Council's April 2009 action specifying that the permit owner would be allowed to select the years dropped from the calculation.

#### d. Combination

**CV(MS) Permit Combination to Achieve a Larger Size Endorsement.** When a CV(MS)-endorsed permit is combined with another permit (including unendorsed permits), the resulting permit will be CV(MS) endorsed.<sup>16</sup>

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### **B-2.2.2      *Mothership Processor Permit***

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#### a. Qualifying Entities

The 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 1997 through 2003.

#### c. Transferability

1. MS permits will be transferable
2. MS permits may be transferred to a vessel of any size (there will be no size endorsements associated with the permit). MS permits **may not** be transferred to a vessel engaged in the *harvest* of whiting in the year of the transfer.
3. Limit on the Frequency of Transfers: MS permits may be transferred two times during the fishing year provided that the second transfer is back to the original mothership (i.e. only one transfer per year to a different mothership).

#### d. Usage Limit

No individual or entity owning a MS permit(s) may process more than 45 percent of the total MS sector whiting allocation.

<b>B-2.3 Co-op Formation and Operation Rules.</b>
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### **B-2.3.1      *Who and Number of Co-ops***

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Co-ops are not required but may be voluntarily formed among CV(MS) permit owners. The number of co-ops will be indirectly limited by the limit on the minimum number of vessels able to form a co-op (see Section 2.3.3-b).

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<sup>16</sup> Specifically, a CV(MS)-endorsed permit that is combined with a LE 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.



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**B-2.3.2      When**


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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 nonco-op fishery.

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**B-2.3.3      Co-op Agreement Standards**


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**a. Submissions to NMFS and the Council**

**Co-op permit and agreement.** Federal co-op permits will be issued for co-op agreements approved by NMFS. Signed copies of the cooperative contracts must be filed with ~~the Council and NMFS and available for public review~~ before the co-op is authorized to engage in fishing activities.<sup>17</sup> Any material changes or amendments to the contract must be filed annually with the Council and NMFS by a date certain.

~~Letter to Department of Justice. Co-ops must also file with the Council and NMFS a copy of a letter from the co-op requesting a business review letter on the fishery cooperative from the Department of Justice and any response to such request.~~

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

CV permits may join together in separate harvester co-ops. A minimum of 20 percent of the CV(MS) permit holders are required to form a co-op.<sup>18</sup> Co-ops may form co-ops with other co-ops. Within one of the whiting sectors, these co-ops may be formed to manage directed catch and/or bycatch. Whiting and bycatch allocations may be transferred among co-ops through inter-co-op agreements.

**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 by NMFS used for distribution to the co-op.

**d. Participation by NonCV (MS) Endorsed Permits**

Through temporary arrangements a co-op allocation may be harvested by any catcher vessel holding a valid LE trawl permit which has joined the co-op (including one that does not have a CV(MS) endorsement).<sup>19</sup>

**e. Other Required Co-op Agreement Provisions**


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<sup>17</sup> ~~During council discussion this was flagged by NOAA GC as a potential legal problem.~~

<sup>18</sup> The minimum threshold number of participants required to form a co-op balances the potential advantages for multiple co-ops while limiting implementation and management costs and administrative requirements for managing this sector.

<sup>19</sup> As a member of the co-op, such a vessel would be subject to Section B-2.4 and the indicated processor obligations.

The Council's intent is to have mothership sector participants work with NMFS to develop and describe a process and co-op agreement requirements to include in implementing regulations for this action.

A co-op agreement must include:

1. A list of all vessels and permit holders participating in the co-op and their share of allocated catch, which must match the amount distributed to individual permit holders by NMFS.
2. Signature of all permit holders participating in the co-op.
3. A plan to adequately monitor catch and bycatch.
4. Adequate enforcement and penalty provisions to ensure that catch and bycatch overages do not occur.
5. Measures designed to reduce bycatch of overfished species.
6. An obligation to manage inseason transfers of catch history.
- ~~7. A requirement that agreement by at least a majority of the members is required to dissolve a co-op (During council discussion this was flagged by NOAA GC as a potential legal problem).~~
- ~~8.7.~~ An obligation to produce an annual report to the Council and NMFS by a date certain documenting the co-op's catch and bycatch data and inseason transfers (the report is to be available for review by the public).
- ~~9.8.~~ Identification of a co-op manager who will:
  - a. serve as the contact person with NMFS, the Council and other co-ops,
  - b. be responsible for the annual distribution of catch and bycatch,
  - c. oversee transfers,
  - d. prepare annual reports, and
  - e. be authorized to receive or respond to any legal process against the co-op.
- ~~10.9.~~ Provisions that prohibit co-op membership by permit holders that have incurred legal sanctions that prevent them from fishing groundfish in the Council region.
- ~~11.10.~~ A provision that requires new owners to comply with membership restrictions in the co-op agreements.

#### **f. Additional Provisions for Inter-co-op Agreements**

1. In the case of two or more cooperatives entering into an inter-cooperative agreement, the inter-co-op agreement must incorporate and honor the provisions of the individual co-op agreements unless all such agreements (or modifications thereof) are resubmitted for approval.
2. The requirements of Sections 2.3.3.a-2.3.3.e apply to the inter-co-op agreement, except that for the purpose of Section 2.3.3.e., subparagraph 7, the members of the interco-ops are the co-ops and not the participants in each co-op.

#### **B-2.3.4 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-2.4). 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-2.4 Obligations to Processors (Processor Ties)**

Each year, a permit will obligate to a processor all of its catch for a coming year.

### **B-2.4.1 Formation and Modification of Processor Tie Obligations**

There will not be processor tie that carries from one year to the next. CV(MS) permits will be obligated to a single MS permit for an entire year but may change to a different MS permit through a preseason declaration of intent.

Between September 1 and December 31 of the year prior to implementation and every year thereafter, each CV(MS) permit is required to contact NMFS and indicate whether CV(MS) permit will be participating in the co-op or nonco-op fishery in the following year. If participating in the co-op fishery, then CV(MS) permit must also provide the name of the MS permit that CV(MS) permit will be linked to in the following year (i.e., annual catcher vessel, mothership linkage that may be changed each year without requirement to go into the "nonco-op" fishery). Once established, the catcher vessel, mothership linkage shall remain in place until changed by CV(MS) permit. By September 1 of the year prior to implementation and every year thereafter, if CV permit would be participating in the co-op fishery in the following year, then CV permit must notify the MS permit that the CV permit QP will be linked to in the following year.<sup>20</sup>

**Mothership Permit Transfer.** If a mothership transfers its MS permit to a different mothership or different owner, the CV(MS) permit obligation for that year remains in place and transfers with the MS permit to the replacement mothership unless the obligation is changed by mutual agreement. The obligation does not extend beyond the fishing year.

### **B-2.4.2 Flexibility in Meeting Obligations to Processors**

#### **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 allocations must be delivered to the mothership to which the allocation is obligated through the preseason declaration, 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, a permit may deliver to a licensed mothership other than that to which it is obligated.

### **B-2.4.3 Mothership Processor Withdrawal**

If a mothership withdraws subsequent to quota assignment, then the CV(MS) permit that it is obligated to it is free to participate in the co-op or nonco-op fishery. The MS permit shall notify

<sup>20</sup> February 2010: The last sentence of this paragraph was part of the November 2008 Council motion and was inadvertently omitted from previous drafts of the Council's final preferred alternative.

NMFS and linked CV(MS) permits of its withdrawal, and CV(MS) permits shall notify NMFS of their intent to participate in the co-op or nonco-op fishery thereafter. If continuing in co-op fishery, then CV(MS) permit shall provide NMFS with the name of the new MS permit to which it will be obligated for that season.

## **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***

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 that it deems necessary to achieve the policy intent of the Council's actions.

### ***B-2.5.3 Annual Allocation to Co-ops and the Nonco-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, NMFS 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. Nonco-op Allocation**

Each year NMFS will determine the distribution to be given to the nonco-op fishery based on the catch history calculation of permit holders registered to participate in that fishery.

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

1. NMFS will track all permit transfers and the invocation of mutual agreement exceptions. Permit transfers will not be valid until registered and acknowledged by NMFS.
2. NMFS will monitor catch and close segments of the fishery as necessary to ensure catch limits are not exceeded for:
  - a. the whiting mothership co-op fishery
  - b. the whiting mothership nonco-op fishery
  - c. the mothership whiting sector as a whole
3. NMFS will not necessarily monitor, but will investigate and enforce as it deems necessary, the permit and co-op obligations to motherships.

4. NMFS will not necessarily monitor or enforce (except as it deems necessary):
  - a. 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)
  - b. a co-op's progress toward its catch allocation<sup>21</sup>
  - c. actual performance of the co-op agreement (the parties to the contract will resolve through private contract and remedies any deviation from provisions such as that requiring that a vessel have the opportunity to harvest the catch allocated to the co-op based on that vessel's permit, Section B-2.3.3.c)
5. NMFS will monitor other program provisions as needed. In some situations, there may need to be a declaration procedure to determine where a permit is delivering its obligated catch, for example, if a mothership withdraws without transferring its permit or reaching a mutual agreement for the transfer of obligated deliveries to a different mothership.

<b>B-3</b>	<b>Whiting Shoreside Sector Co-Op Program (placeholder, not recommended)</b>
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**The shoreside whiting sector will be managed with an IFQ program. This section header is being maintained so that section numbering here will correspond to section numbering in the alternatives and analysis in the EIS.**

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<sup>21</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).

## **B-4      Catcher-Processors Co-op Program**

Catch by the catcher-processor sector will be controlled primarily by closing the fishery when a constraining allocation is reached.<sup>22</sup> As under status quo, vessels may form co-ops to achieve benefits that result from a slower-paced, more controlled harvest. The main recommendations are the creation of a limited number of catcher-processor endorsements, the requirement that a catcher-processor co-op qualify for a Federal co-op permit, and the specification in regulation of the amounts that will be available for harvest by the voluntary co-op. A new entrant will have to acquire a permit with a catcher-processor endorsement in order to enter the fishery. If the co-op system fails it will be replaced by an IFQ program and the initial issuance of IFQ will be allocated equally among the permits (equally divided among all CP endorsed permits).

### **B-4.1 Participation in the Catcher-Processor Sector , Endorsement Qualification and Permit Transferability.**

**Catcher-processor (CP) Endorsement.** The class of CP endorsed permits (CP permits) will be limited by an endorsement placed on a LE permit. LE permits registered to qualified catcher-processor vessels will be 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. Only vessels catcher-processor vessels with a CP endorsed LE permit will be allowed to process whiting at-sea as part of the CP sector. LE permits with CP endorsements will continue to be transferable.

**Participation as Mothership.** A catcher-processor cannot operate as a mothership during the same year it participates in the CP fishery.

**CP Permit Combination to Achieve a Larger Size Endorsement.** A CP permit that is combined with a LE trawl permit that is not CP endorsed will result in a single CP permit with a larger size endorsement. (A CV(MS) endorsement on one of the permits being combined will not be reissued on the resulting permit.) The resulting size endorsement will be determined based on the existing permit combination formula.

**CP Permit Transfers to Smaller Vessels.** Length endorsement restrictions on LE permits endorsed for groundfish gear will be retained, however, the provision that requires that the size endorsements on trawl permits transferred to smaller vessels be reduced to the size of that smaller vessel will be eliminated (i.e. length endorsements will not change when a trawl endorsed permit is transferred to a smaller vessel).

**Number of Transfers Per Year.** CP permits may be transferred two times during the fishing year, provided that the second transfer was back to the original CP (I.e., only one transfer per year to a different CP).

<sup>22</sup> All references to catcher-processors in this section references to vessels operating in the catcher-processor sector. Vessels under 75' which catch and process at-sea as part of the shoreside sector are not covered here.

## **B-4.2 Co-op Formation and Operation Rules**

**Annual registration.** As under status quo, co-op(s) will be formed among holders of permits for catcher-processors. Participation in the co-op will be at the discretion of those permit holders. If eligible participants choose to form a co-op, the catcher-processor sector will be managed as a private voluntary cooperative and governed by a private contract that specifies, among other things, allocation of whiting among CP permits, catch/bycatch management, and enforcement and compliance provisions. The co-op will submit an application to NMFS for a Federal co-op permit. NMFS will not establish an allocation of catch or catch history among permits unless the sector fails to organize itself under a single co-op agreement that qualifies for a Federal co-op permit. If the co-op system fails it will be replaced by an IFQ program and the initial issuance of IFQ will be divided equally among all CP endorsed permits.

**Annual Reporting Requirements.** The CP cooperative will submit an annual report to the Council at their November meeting. The report will contain information about the current year's CP fishery, including the CP sector's annual allocation of Pacific whiting; the CP cooperative's actual retained and discarded catch of Pacific whiting, salmon, rockfish, groundfish, and other species on a vessel-by-vessel basis; a description of the method used by the CP cooperative to monitor performance of cooperative vessels that participated in the CP sector of the fishery; and a description of any actions taken by the CP cooperative in response to any vessels that exceed their allowed catch and bycatch. The report will also identify plans for the next year's CP fishery, including the companies participating in the cooperative, the harvest agreement, and catch monitoring and reporting requirements.

## **B-4.3 NMFS Role**

### ***B-4.3.1 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-4.3.2 Annual Allocation***

Harvest amounts for the co-op will be specified in regulation. If the co-op breaks up, IFQ will issue and divided equally among the 10 permits.

The catcher-processor sector allocation may be divided among eligible catcher-processor vessels (i.e., those catcher-processor vessels for which a CP permit is held) according to an agreed catcher-processor cooperative harvest schedule as specified by private contract.

### ***B-4.3.3 Fishery and Co-op Monitoring***

1. NMFS will track all permit transfers. Permit transfers will not be valid until registered and acknowledged by NMFS.
2. NMFS will monitor catch and close the catcher-processor sector fishery as necessary to ensure catch limits are not exceeded.





**PROPOSED  
GROUNDFISH FISHERY MANAGEMENT PLAN  
AMENDMENT 21  
(INTERSECTOR ALLOCATION)**

***(PORTIONS DISAPPROVED BY NMFS AND  
TECHNICAL EDITS HIGHLIGHTED WITH SHADED  
STRIKEOUT)***

**PREPARED BY  
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SEATTLE, WA 98115-0070  
206-526-6150**

**APRIL 2010**

## Summary of Changes to the Content of the Groundfish FMP

As part of implementing the long term intersector allocations adopted by the Council, the Groundfish FMP was amended (Amendment 21 to the FMP). Parts of Chapters 1, 6, and 11 of the FMP were modified by Amendment 21 as specified in the following sections (insertions underlined, deletions struck through). The portions of Amendment 21 which were recommended by the Council but disapproved by NMFS are both struck through and shaded.

### 1.0 INTRODUCTION

...

Amendment 21 was approved in [2010] and establishes long-term allocations between the trawl and nontrawl sectors of the groundfish fishery; establishes a short term allocational split between the shoreside whiting and nonwhiting fishery, necessary for implementation of the individual fishing quoa (IFQ) program (established through Amendment 20); establishes darkblotched rockfish, Pacific Ocean perch and widow rockfish allocations among the trawl at-sea and trawl shoreside sectors; identifies the need for and initial set asides for the at-sea trawl sectors; and establishes a Pacific halibut bycatch allowance to be provided to the trawl fishery in the form of individual bycatch quota (established through Amendment 20).

### 6.0 MANAGEMENT MEASURES

#### 6.1 Introduction

##### 6.1.1 Overview of Management Measures for West Coast Groundfish Fisheries

In the early stages of fishery development, there is generally little concern with management strategies. As fishing effort increases, management measures become necessary to prevent overfishing and the resulting adverse biological, social and economic impacts. Although recruitment, growth, natural mortality, and fishing mortality affect the size of fish populations, fishery managers only have control over one of these factors—fishing mortality. The principal measures available to the Council to control fishing mortality of the groundfish fisheries in the Washington, Oregon, and California region are:

- Measures to reduce bycatch and bycatch mortality – described in 6.5.
- Defining authorized fishing gear and regulating the configuration and deployment of fishing gear, including mesh size in nets and escape panels or ports in traps—described in Section 6.6.
- Restricting catches by defining prohibited species and establishing landing, trip frequency, bag, and size limits—described in Section 6.7.
- Establishing fishing seasons and closed areas—described in Section 6.8
- Limiting fishing capacity or effort through permits, licenses and endorsements, and quotas, or by means of input controls on fishing gear, such as restrictions on trawl size/shape or longline length or number of hooks or pots—described in Section 6.9. Fishing capacity may be further limited through programs that reduce participation in the fishery by retiring permits and/or vessels.

Although this chapter only discusses in detail the types of management measures outlined above, the

Council may recommend and NMFS may implement other useful management measures through the appropriate rulemaking process, as long as they are consistent with the criteria and general procedures contained in this FMP.

## 6.2 General Procedures for Establishing and Adjusting Management Measures

\* \* \* \*

## 6.3 Allocation

### 6.3.1 Allocation Framework

Allocation is the apportionment of an item for a specific purpose or to a particular person or group of persons. Allocation of fishery resources may result from any type of management measure, but is most commonly a numerical quota or HG for a specific gear or fishery sector. Most fishery management measures allocate fishery resources to some degree, because they invariably affect access to the resource by different fishery sectors by different amounts. These allocative impacts, if not the intentional purpose of the management measure, are considered to be indirect or unintentional allocations. Direct allocation occurs when numerical quotas, HGs, or other management measures are established with the specific intent of affecting a particular group's access to the fishery resource.

Fishery resources may be allocated to accomplish a single biological, social or economic objective, or a combination of such objectives. The entire resource, or a portion, may be allocated to a particular group, although the Magnuson-Stevens Act requires that allocation among user groups be fair and equitable, reasonably calculated to promote conservation, and determined in such a way that no group, person, or entity receives an undue excessive share of the resource. The socioeconomic framework described in Section 6.2.3 provides criteria for direct allocation. Allocative impacts of all proposed management measures should be analyzed and discussed in the Council's decision-making process.

In addition to the requirements described in Section 6.2.3, the Council will consider the following factors when intending to recommend direct allocation of the resource.

1. Present participation in and dependence on the fishery, including alternative fisheries.
2. Historical fishing practices in and historical dependence on the fishery.
3. The economics of the fishery.
4. Any consensus harvest sharing agreement or negotiated settlement between the affected participants in the fishery.
5. Potential biological yield of any species or species complex affected by the allocation.
6. Consistency with the Magnuson-Stevens Act national standards.
7. Consistency with the goals and objectives of the FMP.

The modification of a direct allocation cannot be designated as routine unless the specific criteria for the modification have been established in the regulations.

### 6.3.2 Formal Allocations

#### 6.3.2.1 Sector Allocations of Sablefish North of 36° N Latitude

Fixed allocations of sablefish are based on the OY specified for the area north of 36° N latitude (to the U.S.-Canada border). Sablefish allocations north of 36° N latitude are determined by first deducting the tribal share from the OY specified for north of 36° N latitude, then deducting the estimated total mortality of sablefish in research and non-groundfish fisheries (these deductions are decided in the biennial process for specifying harvest specifications and management measures based on the best available information at the time of the decision), then dividing the remaining yield (non-tribal share) between open access and limited entry fisheries, with the limited entry share divided between the trawl and fixed gear (longline and fishpot) sectors. The proportions of each of these divisions are indicated in Figure 6- 1. The limited entry fixed gear share is then generally divided 85% to the primary fishery for limited entry fixed gear vessels with sablefish endorsements and 15% for the daily-trip-limit fishery, for such vessels with and without sablefish endorsements.

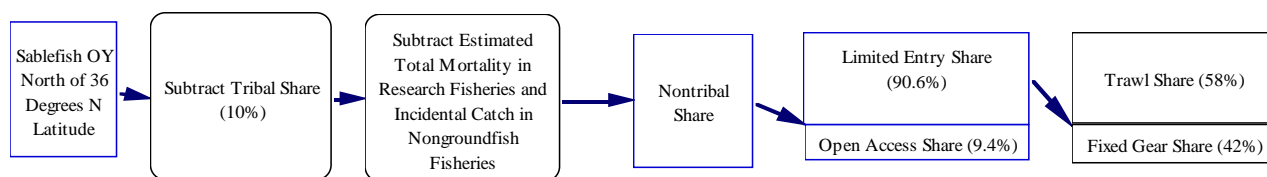


Figure 6- 1. Fixed intersector allocations of sablefish north of 36° N latitude.

### 6.3.2.2 Sector allocations of Pacific Whiting

Projected total mortalities of Pacific whiting in recreational, research, and non-whiting fisheries are first set aside (these deductions are decided in the annual process for specifying Pacific whiting harvest specifications and management measures based on the best available information at the time of the decision), then a yield amount is set-aside to accommodate tribal whiting fisheries. In some years the whiting set-aside may be increased to accommodate other programs, such as EFPs. The nontribal commercial share of whiting is allocated to LE whiting trawl sectors as follows: 42% for the shoreside whiting sector, 24% for the at-sea mothership whiting sector, and 34% for the at-sea catcher-processor whiting sector. No more than five percent of the shoreside whiting sector's allocation may be taken and retained south of 42° N latitude prior to the start of the shore-based whiting season north of 42° N latitude (in waters off Oregon and Washington).

### 6.3.2.3 Limited Entry Trawl Allocations for Amendment 21 Species

Formal allocations of species covered under Amendment 21 support Amendment 20 trawl rationalization measures. Annual OYs/ACLs are established for these species the same as for other groundfish species. The OYs/ACLs are then reduced by deducting the estimated total mortality of these species in research, tribal, and non-groundfish fisheries, and the bycatch limits specified in adopted exempted fishing permits. The remainder of the OYs/ACLs are then allocated according to the percentages in Table 6- 1. The trawl percentage is for the non-treaty trawl fishery managed under Amendment 21. The non-treaty, non-trawl percentage is for the limited entry fixed gear fishery, the open access fishery, and the recreational fishery. Amendment 6 limited entry and open access allocations are superseded by these allocation percentages. Allocations to the directed non-trawl sectors (i.e., limited entry fixed gear, directed open access, and recreational) for the species allocated in Table 6- 1 are decided, if needed, in the biennial harvest specifications and management measures process.

#### Trawl/Nontrawl Allocations

Table 6- 1. Allocation percentages for limited entry trawl and non-trawl sectors specified for FMP groundfish stocks and stock complexes under Amendment 21 (most percentages based on 2003-2005).

<u>Stock or Complex</u>	<u>All Non-Treaty LE Trawl Sectors</u>	<u>All Non-Treaty Non-Trawl Sectors</u>
<u>Lingcod</u>	<u>45.0%</u>	<u>55.0%</u>
<u>Pacific Cod</u>	<u>95.0%</u>	<u>5.0%</u>
<u>Sablefish S. of 36° N latitude</u>	<u>42.0%</u>	<u>58.0%</u>
<b><u>PACIFIC OCEAN PERCH</u></b>	<b><u>95.0%</u></b>	<b><u>5.0%</u></b>
<b><u>WIDOW</u></b>	<b><u>91.0%</u></b>	<b><u>9.0%</u></b>
<u>Chilipepper S. of 40°10' N latitude</u>	<u>75.0%</u>	<u>25.0%</u>
<u>Splitnose S. of 40°10' N latitude</u>	<u>95.0%</u>	<u>5.0%</u>
<u>Yellowtail N. of 40°10' N latitude</u>	<u>88.0%</u>	<u>12.0%</u>
<u>Shortspine N. of 34°27' N latitude</u>	<u>95.0%</u>	<u>5.0%</u>
<u>Shortspine S. of 34°27' N latitude</u>	<u>50 mt</u>	<u>Remaining Yield</u>
<u>Longspine N. of 34°27' N latitude</u>	<u>95.0%</u>	<u>5.0%</u>
<b><u>DARKBLOTCHED</u></b>	<b><u>95.0%</u></b>	<b><u>5.0%</u></b>
<u>Minor Slope RF North of 40°10' N latitude</u>	<u>81.0%</u>	<u>19.0%</u>
<u>Minor Slope RF South of 40°10' N latitude</u>	<u>63.0%</u>	<u>37.0%</u>
<u>Dover Sole</u>	<u>95.0%</u>	<u>5.0%</u>
<u>English Sole</u>	<u>95.0%</u>	<u>5.0%</u>
<u>Petrale Sole</u>	<u>95.0%</u>	<u>5.0%</u>
<u>Arrowtooth Flounder</u>	<u>95.0%</u>	<u>5.0%</u>
<u>Starry Flounder</u>	<u>50.0%</u>	<u>50.0%</u>
<u>Other Flatfish</u>	<u>90.0%</u>	<u>10.0%</u>

#### Shoreside Trawl Allocations for Initial Issuance

Under Amendment 20 trawl rationalization, the two existing LE trawl sectors delivering groundfish to shoreside processing plants (i.e., shoreside whiting and shoreside non-whiting) are managed as one sector under a system of individual fishing quotas (IFQs). However, before quota shares can be allocated to eligible LE trawl permit holders, an initial one-time allocation was made to the two shoreside sectors. All species subject to formal allocation, including sablefish north of 36° N latitude and excluding the three trawl-dominant overfished species (i.e., darkblotched rockfish, Pacific ocean perch, and widow rockfish) and yellowtail rockfish are allocated to the shoreside whiting and shoreside non-whiting sectors based on 1995-2005 sector catch percentages (Table 6- 2). An initial allocation of 300 mt of yellowtail rockfish was made to the shoreside whiting sector prior to allocation of Amendment 20 quota shares. The estimated fishing mortality of Amendment 21 species in the at-sea whiting fishery (i.e., total catch by catcher-processors and vessels delivering whiting to motherships) other than the three trawl-dominant overfished species is set-aside from the LE trawl allocations specified in Table 6- 1 prior to making the initial shoreside trawl sector allocations. While set-aside amounts for the at-sea whiting fishery (Mothership and Catcher/Processor sectors) were preliminarily decided under Amendment 21, the actual set-aside amounts will be based on the best available information on bycatch by these sectors in the biennial harvest specifications and management measures decision process.

Table 6- 2. Shoreside trawl sector catch percentages during 1995-2005 used to apportion the initial

allocation of Amendment 21 species to LE trawl sectors delivering groundfish to shoreside processing plants (i.e., shoreside whiting and shoreside non-whiting).

<u>Stock or Complex</u>	<u>1995-2005 Sector Catch Percentage</u>	
	<u>Non-whiting</u>	<u>Whiting</u>
<u>Lingcod</u>	<u>99.70%</u>	<u>0.30%</u>
<u>Pacific Cod</u>	<u>99.90%</u>	<u>0.10%</u>
<u>Pacific Whiting</u>	<u>0.10%</u>	<u>99.90%</u>
<u>Sablefish N. of 36° N latitude</u>	<u>98.20%</u>	<u>1.80%</u>
<u>Sablefish S. of 36° N latitude</u>	<u>100.00%</u>	<u>0.00%</u>
<u>Chilipepper S. of 40°10' N latitude</u>	<u>100.00%</u>	<u>0.00%</u>
<u>Splitnose S. of 40°10' N latitude</u>	<u>100.00%</u>	<u>0.00%</u>
<u>Shortspine N. of 34°27' N latitude</u>	<u>99.90%</u>	<u>0.10%</u>
<u>Shortspine S. of 34°27' N latitude</u>	<u>100.00%</u>	<u>0.00%</u>
<u>Longspine N. of 34°27' N latitude</u>	<u>100.00%</u>	<u>0.00%</u>
<u>Minor Slope RF North of 40°10' N latitude</u>	<u>98.60%</u>	<u>1.40%</u>
<u>Dover Sole</u>	<u>100.00%</u>	<u>0.00%</u>
<u>English Sole</u>	<u>99.90%</u>	<u>0.10%</u>
<u>Petrable Sole</u>	<u>100.00%</u>	<u>0.00%</u>
<u>Arrowtooth Flounder</u>	<u>100.00%</u>	<u>0.00%</u>
<u>Starry Flounder</u>	<u>100.00%</u>	<u>0.00%</u>
<u>Other Flatfish</u>	<u>99.90%</u>	<u>0.10%</u>

#### Allocation of Trawl Dominant Overfished Species

Under Amendment 20, the at-sea whiting sectors (i.e., catcher-processors and motherships) are managed in a system of sector-specific harvest cooperatives. Each at-sea whiting sector will manage their bycatch of canary rockfish, darkblotched rockfish, Pacific ocean perch, and widow rockfish using sector-specific total catch limits. An initial allocation of these four species needs to be made to the four existing LE trawl sectors before initial allocation of quota shares under Amendment 20. Initial sector allocation of canary rockfish would be decided in the biennial harvest specification and management measures process immediately preceding implementation of Amendments 20 and 21. The initial sector allocation of the trawl-dominant overfished species under Amendment 21 is as follows:

##### Darkblotched Rockfish

Allocate 9% or 25 mt, whichever is greater, of the total LE trawl allocation of darkblotched rockfish to the whiting fisheries (at-sea and shoreside combined). The distribution of the whiting trawl allocation of darkblotched to individual whiting sectors will be done pro rata relative to the sectors' whiting allocation.

##### Pacific Ocean Perch

Allocate 17% or 30 mt, whichever is greater, of the total LE trawl allocation of Pacific ocean perch to the whiting fisheries (at-sea and shoreside combined). The distribution of the whiting trawl allocation of POP to individual whiting sectors will be done pro rata relative to the sectors' whiting allocation.

#### Widow Rockfish

Initially allocate 52% of the total LE trawl allocation of widow rockfish to the whiting sectors if the stock is under rebuilding or 10% of the total LE trawl allocation or 500 mt of the trawl allocation to the whiting sectors, whichever is greater, if the stock is rebuilt. If the stock is overfished when the initial allocation is implemented, the latter allocation scheme automatically kicks in when it is declared rebuilt. The distribution of the whiting trawl allocation of widow to individual whiting sectors will be done pro rata relative to the sectors' whiting allocation.

#### Allocation of Pacific Halibut

Pacific halibut is a prohibited species in the west coast LE trawl fishery. Under Amendment 20, Pacific halibut bycatch in the shoreside trawl fishery north of 40°10' N latitude is managed using a system of individual bycatch quotas (IBQs). Under Amendment 21, an allocation of Pacific halibut was decided as follows:

The trawl mortality limit for legal and sublegal Pacific halibut be set at 15% of the Area 2A (i.e., waters off California, Oregon, and Washington) constant exploitation yield for legal size halibut, not to exceed 130,000 pounds for the first four years of trawl rationalization and not to exceed 100,000 pounds starting in the fifth year. This total bycatch limit may be adjusted downward or upward through the biennial specifications and management measures process. Part of the overall total catch limit is a set-aside of 10 mt of Pacific halibut to accommodate bycatch in the at-sea whiting fishery and bottom trawl bycatch south of 40°10' N latitude. The set-aside amount of Pacific halibut to accommodate the incidental catch in the trawl fishery south of 40°10' N latitude and in the at-sea whiting fishery may be adjusted in the biennial specifications and management measures process in future years as better information becomes available.

Under Amendment 21, it was decided that any formal allocations be specified in the FMP. Future consideration for a re-allocation of FMP species subject to a formal allocation will require an FMP amendment. The provision to temporarily suspend the limited entry, open access allocation if a species is declared overfished (see section 4.6.1(5) of the FMP) is maintained under Amendment 21.

All intersector allocations will be formally reviewed along with the formal review of the trawl rationalization program five years after implementation of Amendments 20 and 21.

[Amendment 21]

### 6.4 Standardized Total Catch Reporting and Compliance Monitoring Program

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### 6.5 Bycatch Mitigation Program

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### 6.6 Gear Definitions and Restrictions

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## 6.7 Catch Restrictions

\* \* \* \*

## 6.8 Time/Area Closures

\* \* \* \*

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

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## 6.10 Fishery Enforcement and Vessel Safety

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## 11.0 GROUNDFISH LIMITED ENTRY

All references to fishing activities in these proposals are references to catching activities occurring off the Washington, Oregon, and California coasts unless otherwise noted.

### 11.1 Introduction

#### *11.1.1 Problem to be Addressed by this Groundfish Limited Entry System*

\* \* \* \*

#### *11.1.2 Goals and Objectives for Groundfish Limited Entry*

\* \* \* \*

#### *11.1.3 Achievement of Goal and Objectives and Need for Additional Measures to Reduce Capacity*

\* \* \* \*

#### *11.1.4 Nature of the Interest Created*

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#### *11.1.5 Fisheries Within the Scope of the Limited Entry Program*

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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

#### *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 [fishery regulations](#)<sup>2/</sup> quota.
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

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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

groundfish under an open access system. (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*

1. The division of the fleet into limited and open access participants will require that separate allocations be established for each group where management measures are required to prevent harvest in excess of annual catch limits. For those species, species groups and areas covered by the trawl/non trawl allocations provided in Table 6-1 and for which the Council determines an allocation is necessary, open access allocations will be established as needed through the biennial specifications process.

[Amendment 21]

2. For those species for which trawl/non trawl allocations are not established in Table 6-1,  
AaA allocations for the open access fishery will be based on historical catch levels for the period July 11, 1984 to August 1, 1988 by exempted, longline and fishpot gears used by vessels which did not receive an endorsement for the gear.
  - a. On the basis of landings over this period, a percentage of catch<sup>4</sup> for these gears will be determined and applied to harvest guidelines and quotas in order to establish the allocation for the open access portion of the fishery. The open access portion of harvest guideline or quota will be set aside before other allocations are made.
  - b. Limited/open access allocation percentages for specific species and species groups will be determined after this limited entry program is implemented and permitted and non-permitted vessels are identified.
  - c. An open access allocation based on catch history will be determined for each separate species, species group and area for which the Council determines an allocation is necessary.
  - d. Initial determination and any subsequent revision of the species or species groups and areas for which an open access allocation will be made will occur through a rule making under the appropriate framework in Chapter 6 of this plan.
  - e. Open access allocations for species, species groups and areas identified for such allocation by the Council will be specified during the biennial process for setting specifications described in Section 5.7 of this plan.
  - f. A change in the catch history allocation method for determining the allocation for the open access fishery will require a plan amendment.

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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.

<sup>4</sup> Percentage of catch as determined through the Pacific Coast Fisheries Information Network database or some comparable database.

- g. If a group of vessels that initially is to participate in the open access fishery later receives permits in the limited access fishery, the historical catch levels of those vessels shall be deducted from the historical catch levels used to calculate the open access allocation, and the percentages used in setting the open access allocation recalculated. For example, if a vessel whose gear is prohibited by a state or the Secretary of Commerce qualifies for a LE permit under Section 11.3.2.3(9), or if a small limited entry fleet is incorporated under Section 11.3.1.3(9) and its vessels are issued LE permits, their catch history with the banned gear or the limited entry gear for which they are now going to receive permits, shall be deducted from the open access fishery's historical catch levels and open access percentages will be recalculated.
  - h. Prior to expiration of "B" endorsements, vessels' catch history using gears for which they receive "B" endorsements is not included in the catch history used to calculate the percentage of catch for open access vessels. When "B" endorsements expire, the historic catch levels of vessels which received "B" endorsements for longline or fishpot gear when using that gear will then count toward determining the proportion allocated to the open access quota. The historic catch levels of vessels which received "B" endorsements for trawl gear will continue to count toward determining the limited access quota and will not be transferred to the catch history used to determine the open access quota, even after trawl "B" endorsements expire.
- 3. For International North Pacific Fisheries Commission areas where quotas or harvest guidelines for a stock are not fully utilized, no limited/open access allocation will be established until it is anticipated the allowable catch for a species or group of species will be reached.
- 4. ~~Any g~~Groundfish catch will be counted against the allocation to the fishery or sector into which the vessel has declared or is otherwise participating. by vessels with an LE permit will be counted against the quota for the limited entry gears while the fishery for the limited entry gear for which its permit is endorsed is open. A vessel may not carry or deploy limited entry gear for which its permit is endorsed when the limited entry fishery for that gear is closed. Once the limited entry fishery for the gear for which the permit is endorsed has closed, any landings by the vessel with exempted gear, or limited entry gears for which no endorsement is held, will count toward the open access quota. The catch of vessels fishing without LE permits will count toward the open access quota regardless of what open access gear is used.
- 5. Allocations among gear types for species other than sablefish north of 36° N latitude may be established in the future. If this occurs, portions of the new allocations may, in turn, be allocated to the open access fishery under the principles set forth in this section.
- 6. Management of the open access fishery.
  - a. The open access portion of the fishery will be managed to provide year-round fishing opportunity.
  - b. The purpose of providing an open access alternative for vessels using longline or fishpot gear is to allow a group of vessels which has historically fished at low levels, with minimal impacts on the resource (fewer than 5 or 6 landings greater than 500 pounds per vessel during the qualifying window period, July 1, 1984 through August 1, 1988), to remain in the fishery without creating permits which may be used at higher effort levels.

[Amendment 21]

- c. The open access fishery will be managed with the intent of maintaining the historic fishing opportunities for the participant groups and to keep the overall catch in line with historic harvests. For example, trip limits for non-permitted longline and fishpot gears operating in the open access fishery will likely be fairly low because the historic fishing levels of this group are low. Trip limits, when necessary, for some exempted gears will probably be higher because their historic fishing levels are higher.

#### *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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#### *11.2.5 Gear Endorsements*

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#### *11.2.6 Sector Endorsements*

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

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

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#### *11.2.12 Permit Renewal*

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11.2.13      *Owner on Board Requirement*

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11.3      *Multilevel Gear Endorsements*

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11.4      *LE Permit Issuance Review Board*

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11.5      *Implementation, Application and Appeals Process*

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11.6      *Council Review and Monitoring*

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# Federal Register

**Tuesday,  
August 31, 2010**

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## **Part II**

## **Department of Commerce**

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**National Oceanic and Atmospheric  
Administration**

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**50 CFR Part 660**

**Fisheries Off West Coast States; Pacific  
Coast Groundfish Fishery Management  
Plan; Amendments 20 and 21; Trawl  
Rationalization Program; Proposed Rule**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 660****[Docket No. 100212086–0307–03]****RIN 0648–AY68****Fisheries off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Amendments 20 and 21; Trawl Rationalization Program**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes specific measures for the implementation of Amendments 20 and 21 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 20 would establish a trawl rationalization program for the Pacific Coast groundfish fishery, which would consist of: An individual fishing quota (IFQ) program for the shorebased trawl fleet (including whiting and non-whiting); and cooperative (coop) programs for the at-sea (whiting only) mothership (MS) and catcher/processor (C/P) trawl fleets. The trawl rationalization program is intended to increase net economic benefits, create individual economic stability, provide full utilization of the trawl sector allocation, consider environmental impacts, and achieve individual accountability of catch and bycatch. Amendment 21 would establish fixed allocations for limited entry (LE) trawl participants. These allocations are intended to improve management under the rationalization program by streamlining its administration, providing stability to the fishery, and addressing halibut bycatch.

On August 9, 2010, NMFS made its decision to partially approve Amendments 20 and 21. Accordingly, this rule proposes the key components that would be necessary to implement the trawl rationalization program at the start of the 2011 fishery. NMFS previously published a proposed rule on June 10, 2010 that would restructure and clarify the Pacific Coast groundfish regulations to more closely track the organization of the proposed measures (the initial issuance proposed rule). The proposed rule and references to the groundfish regulations in the preamble for this proposed rule cite to the applicable sections of in the initial

issuance proposed rule. The initial issuance proposed rule would also establish the allocations set forth under Amendment 21 and procedures for initial issuance of permits, endorsements, quota shares (QS), and catch history assignments under the IFQ and coop programs. This rule supplements the prior initial issuance proposed rule, and provides additional details, including: Program components applicable to IFQ gear switching, observer programs, retention requirements, equipment requirements, catch monitors, catch weighing requirements, coop permits, coop agreement requirements, first receiver site licenses, quota share accounts, vessel quota pound accounts, further tracking and monitoring components, and economic data collection requirements. NMFS is also planning a future “cost recovery” rule based on a recommended methodology yet to be developed by the Pacific Fishery Management Council (the Council).

**DATES:** Comments on this proposed rule must be received no later than 5 p.m., local time on September 30, 2010.

**ADDRESSES:** You may submit comments, identified by 0648–AY68, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal, at <http://www.regulations.gov>.
- *Fax:* 206–526–6736; *Attn:* Jamie Goen.
- *Mail:* William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE., Seattle, WA 98115–0070; *Attn:* Jamie Goen.

*Instructions:* All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (if submitting comments via the Federal e-Rulemaking portal, enter “N/A” in the relevant required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS, Northwest Region, e-mailed to

[David.Rostker@omb.eop.gov](mailto:David.Rostker@omb.eop.gov); or faxed to 202–395–7285.

**FOR FURTHER INFORMATION CONTACT:**

Jamie Goen, 206–526–4656; (fax) 206–526–6736; [Jamie.Goen@noaa.gov](mailto:Jamie.Goen@noaa.gov).

**SUPPLEMENTARY INFORMATION:****Electronic Access**

This proposed rule is accessible via the Internet at the Office of the Federal Register’s Web site at <http://www.gpoaccess.gov/fr/index.html>. Background information and documents, including the Final Environmental Impacts Statements for Amendment 20 and Amendment 21, are available at the Pacific Fishery Management Council’s Web site at <http://www.pcouncil.org/>.

**Background**

On August 9, 2010, NMFS made its decision to partially approve Amendments 20 and 21 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 20 would establish a trawl rationalization program for the Pacific Coast groundfish fishery, which would consist of: An individual fishing quota (IFQ) program for the shorebased trawl fleet (including whiting and non-whiting sectors); and cooperative (coop) programs for the at-sea (whiting only) mothership (MS) and catcher/processor (C/P) trawl fleets. Amendment 21 would establish fixed allocations for limited entry (LE) trawl participants. On May 12, 2010 (75 FR 26702), NMFS published a notice of availability of Amendments 20 and 21, and—consistent with requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA)—made its decision to partially approve the amendments on August 9, 2010.

Because of the complexity of these amendments, NMFS determined that implementation would take place through multiple rulemakings. The first rule developed by NMFS would: Restructure and clarify the Pacific Coast groundfish regulations to more closely track the organization of the proposed management measures, establish the allocations set forth under Amendment 21, and establish procedures for the initial issuance of permits, endorsements, QS, and catch history assignments under the IFQ and coop programs. Council staff and NMFS coordinated to develop this initial issuance rule in early 2010, and the Council deemed a version of the initial issuance rule necessary or appropriate for the implementation of Amendments 20 and 21 at its April 2010 meeting in Portland, Oregon. At the April meeting,

the Council directed Council staff to make specific revisions to the regulations and additional edits as appropriate, convened a Regulatory Deeming Workgroup (RDW) to review the continuing regulatory development, and delegated authority to the Executive Director of the Council to further deem the rule as necessary or appropriate prior to their transmittal to NMFS for publication. On May 7, 2010, the Executive Director transmitted Amendments 20 & 21 to NMFS for review by the Secretary of Commerce. In that same letter, the Executive Director deemed that the revised rule continued to be necessary or appropriate for the purpose of implementing the plan amendments consistent with the Council's intent, and after review by NMFS headquarters, the initial issuance proposed rule was published in the **Federal Register** on June 10, 2010 (75 FR 32994). The preamble to the June 10, 2010, proposed rule provided the detailed background for the proposed management measures and is not repeated here.

After the April 2010 Council meeting, Council staff and NMFS coordinated to develop the second set of draft regulations, which would establish several of the program components required for implementation of the rationalized trawl fishery in 2011, including IFQ gear switching provisions, details of observer requirements and first receiver catch monitor programs, first receiver site licenses, equipment requirements, catch weighing requirements, retention requirements in the shorebased IFQ program, QS accounts, vessel accounts for use of quota pounds (QP), requirements for coop permits and coop agreements, further tracking and monitoring components, and economic data collection requirements. A version of the program components proposed rule was provided to the RDW for its June 10–11, 2010 meeting to review and comment to the Council. NMFS provided this version for the Council's consideration at its June 2010 meeting. At the June 2010 meeting, the Council directed NMFS to continue drafting the proposed rule consistent with the Council's direction on remaining issues to be addressed, and to provide a revised version for the RDW to review at its June 30, 2010 meeting. The Council delegated authority to its Executive Director to deem the final version of the program components proposed rule as necessary or appropriate after consideration of any further comments by the RDW. The RDW reviewed additional revisions to

the program components proposed rule on June 30, 2010, and provided its comments to the Council. NMFS completed drafting the regulations in close coordination with Council staff, and on July 12, 2010, provided its final version of the program components proposed rule to the Council. Council staff made additional revisions, and on July 20, 2010, the Executive Director deemed the regulations to be necessary or appropriate to implement Amendments 20 and 21 consistent with the Council's action.

The program components proposed rule provides details necessary for implementation of trawl rationalization by January 2011. Some of the provisions apply to several or all of the programs (*i.e.*, Shorebased IFQ Program, MS Coop Program, C/P Coop Program), while other details only affect one program, as discussed below.

As mentioned in the preamble to the initial issuance proposed rule (75 FR 32994, June 10, 2010) on page 32997, the management approaches set forth in the trawl rationalization program consist of different types of limited-access approaches. These limited-access approaches grant permission to the holder of the privilege or permit to participate in the program. Such permission may be revoked, limited, or modified at any time. In other words, it is a conditional privilege. Amendment 20 includes features such as annual renewal requirements and regular program reviews that would ensure program goals are being met, provide NMFS the ability to review, track, and monitor program implementation and needs, and prevent the perception that the program confers "rights" as opposed to privileges.

Amendment 20 establishes programs that are "limited-access privilege programs," which are consistent with the MSA provisions at section 303A. Limited-access privileges, including the QS, QP, and catch history assignments, may be revoked, limited or modified at any time in accordance with the MSA, and do not create any right of compensation to the holder of the limited-access privilege, QS, QP, or catch history assignment if revoked, limited or modified. The limited-access privilege program does not create any right, title, or interest in or to any fish before the fish is harvested by the holder and shall be considered a grant of permission to the holder of the limited-access privilege to engage in activities permitted by the limited-access privilege program. For further statutory provisions related to limited-access privileges, *see* section 303A of the MSA.

Section 303A contains an "antitrust savings clause" that provides that "nothing in this Act shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of the preceding sentence, the term 'antitrust laws' has the meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition." NOAA advises that any fishery participants who are uncertain about the legality of their activities under the antitrust laws of the United States should consult legal counsel prior to commencing those activities.

#### *Changes Applicable to All Programs*

##### *Recordkeeping and Reporting*

The program components proposed rule includes several new recordkeeping and reporting requirements, including provisions for new declarations, electronic fish tickets, a mandatory economic data collection program (described further under "Economic Data Collection (EDC) Program" later in this preamble), scale reports, annual coop reports, and cease fishing reports.

The proposed rule would expand the use of declarations for the management of the groundfish fisheries. Current regulations require groundfish vessels to submit declarations in order to facilitate tracking of compliance with area management measures when a vessel is required to carry a vessel monitoring system (VMS). The proposed rule would use declarations not only to complement VMS requirements, but also to establish what fishery a vessel would be participating in for the purpose of catch accounting and identifying what other requirements would be applicable to that vessel. The proposed rule would also add a declaration for vessels participating in the Shorebased IFQ Program under gear switching, as described below. Motherships would be exempted from the requirement to submit declarations, because motherships do not operate as a catcher vessel, are not subject to any groundfish conservation areas (GCAs), are not required to carry a VMS, and do not switch between various gear types such that a declaration would be of any use.

Landings in the Shorebased IFQ Program would be reported through a Federal electronic fish ticket system. Shorebased IFQ first receivers, which would be issued a first receiver site license from NMFS, would complete the



landings information for each fishing trip by a vessel offloading at their site.

Scale reports would be required for scales used at shorebased IFQ first receivers and for scales used on mothership and catcher/processor vessels. Scales used to weigh catch on vessels would be required to be inspected annually and tested daily. Records of the scale tests and records of the scale printouts (catch weight and cumulative weight) would be required to be maintained onboard the vessel until the end of the year during which the reports were made, and be made available to NMFS upon request. In addition, the vessel owner would be required to retain printed reports for 3 years after the end of the year during which the printouts were made. IFQ first receivers would be required to allow for in-season scale testing. IFQ first receivers would also be required to ensure that printouts of the scale weight of each delivery or offload are made available to NMFS staff or to authorized officers at the time printouts are generated. An IFQ first receiver would be required to maintain printouts on site until the end of the fishing year during which the printouts were made and make them available upon request by NMFS staff or authorized officers for 3 years after the end of the fishing year during which the printout was made.

Additional new recordkeeping and reporting requirements for the coop fisheries would include a requirement for an annual coop report describing the coop allocation, the total catch (retained and discards) of the coop, monitoring, and other coop activities. Cease fishing reports would be required in the coop fisheries to report to NMFS when a coop has completed fishing for the year.

#### *Permits*

Under the proposed initial issuance rule, several new permits that could be registered to a vessel would be issued. The program components proposed rule sets forth the rules for registration and transfer of registration that would apply to these permits. Consistent with current regulations, when the owner of a limited entry trawl permit registered to a vessel operating in the Shorebased IFQ Program transfers the registration to another vessel, the registration would be effective at the start of the next cumulative trip limit period. This provision would remain in place because trip limits would remain in place in the Shorebased IFQ Program (for non-IFQ species and for Pacific whiting outside the primary whiting season). A transfer of registration for MS/CV-endorsed limited entry trawl permits would also be effective at the

start of the next cumulative limit period because vessels registered to MS/CV-endorsed permits would be eligible to participate in both the Shorebased IFQ Program and the MS Coop Program. Transfers of MS permits and C/P-endorsed limited entry trawl permits would be effective immediately upon reissuance to the new vessel, because neither of these permits would be affected by trip limits.

With respect to transfer of MS/CV-endorsed permits, the Council motion included a provision (Appendix D, Page D-34) that would allow an MS/CV-endorsed permit to have two changes in vessel registration in the same calendar year, provided that the second change in vessel registration would return the registration to the original vessel assigned to the permit in that year. Transfer rules for limited entry trawl permits without an MS/CV endorsement, however, limit the permit owner to only one transfer in a given year. During its March 2010 meeting, the Council considered that because vessels registered to an MS/CV-endorsed permit would be able to deliver whiting to the MS sector and would also potentially be able to deliver IFQ groundfish to shorebased first receivers, it may be possible for owners of an MS/CV-endorsed permit to circumvent the restrictions on transfers of limited entry permits in the Shorebased IFQ Program for owners of permits that lack an MS/CV endorsement. Consequently, the Council decided that if the owner of an MS/CV-endorsed permit were to transfer registration of the permit a second time, the vessel to which the permit is transferred to would not be eligible to fish in the Shorebased IFQ Program under that permit during the remainder of the year. The Council's motion on this issue did not address the timing of when the second transfer would be effective. Under the regulations being proposed, the second transfer would be effective at the start of the next cumulative limit period (*i.e.*, 2-month period). If there are no trip limits for the mothership fishery, then this restriction on the effective date of transfers may not be necessary. NMFS solicits public comment on the effective date for a second transfer within the same year of an MS/CV-endorsed limited entry permit.

Pacific whiting vessel licenses, currently used in the at-sea whiting fishery, would be removed under this proposed rule. Consequently, section 660.26 of the initial issuance proposed rule would be removed from the regulations. These licenses, which were first issued in 2009 as an interim step

in implementing Amendment 10, would no longer be necessary under the trawl rationalization program. Under trawl rationalization, participation in the mothership and catcher/processor sectors would be limited by vessel permits that would replace the Pacific whiting vessel licenses: MS permits and MS/CV-endorsed limited entry trawl permits for the mothership sector and C/P-endorsed limited entry trawl permits for the catcher/processor sector. Initial eligibility and application processes for these permits and endorsements were proposed in the initial issuance proposed rule (75 FR 32994, June 10, 2010). Vessels fishing for whiting in the Shorebased IFQ Program would be limited through the existing limited entry trawl permit system, and thus, Pacific whiting vessel licenses would no longer be needed.

The at-sea whiting sectors (both mothership and catcher/processor) would require a coop permit for any coops. Coop permits are discussed further in the "at-sea sector" discussion below.

#### *Economic Data Collection (EDC) Program*

Trawl rationalization is expected to change both the size and distribution of economic benefits generated by the West Coast groundfish trawl fishery. Recognizing these likely changes in the economic performance of the fishery, and the limitations inherent in voluntary economic data collection programs, the Council voted to implement a mandatory EDC program.

#### *Authority To Implement the EDC Program*

Economic data collection from harvesters and processors participating in the West Coast groundfish trawl fishery is required not only to determine if the trawl rationalization goals identified by the Council are being met, but also to meet the heightened requirements for economic analysis contained in the MSA. The MSA (Sec. 303A.(c)(1)(C)(iii)) requires that any limited access privilege program (LAPP) shall promote social and economic benefits. In addition, Sec. 303A(c)(1)(G) of the MSA contains a monitoring requirement to determine whether a LAPP is meeting its goals. The Council's stated goals include several economic performance measures such as: a profitable and efficient fleet, operational flexibility, minimize adverse impact on fishing communities, promotion of economic and employment benefits, and to provide quality product to consumers. The monitoring of economic performance can also provide needed

information to fishery managers about how to best use quota that has been reserved for adaptive management. Without the collection of economic data it would be difficult, if not impossible, to measure the economic benefits and consequences of the proposed groundfish trawl rationalization program. The EDC program seeks to provide the economic data needed not only to meet legislative mandates, but also to provide the Council with valuable information for future fisheries management decisions. At the same time, the design of this program is mindful of confidentiality concerns and the compliance burden created for harvesters and processors.

#### *Type of Information To Be Submitted*

In order for economists to provide decision makers with information on the magnitude and distribution of economic benefits of the trawl rationalization program, available data collection must provide reliable information on (1) the relevant parties whose economic welfare is affected by trawl rationalization, and (2) the elements (such as earnings, expenditures and employment) that comprise each party's economic welfare derived from the groundfish trawl fishery. To meet these needs, NMFS has designed mandatory survey questionnaires for catcher vessels (both delivering shoreside and to motherships), catcher-processors, motherships, shoreside processors, and first receivers. These mandatory surveys would replace the existing voluntary survey program undertaken with the shoreside limited entry groundfish trawl fleet. This data collection would provide, for the first time, a comprehensive source of economic information that can be used to quantify the economic benefits and consequences accruing to shoreside processors, catcher-processors, motherships, harvesters, individuals employed in the fishery, and regional economic impacts.

#### *Information Confidentiality*

Under Federal law, EDC information would be considered confidential and, as such, would not be disclosed to the public. In particular, under the MSA, information that is submitted to NMFS pursuant to the MSA is considered confidential and cannot be disclosed. The information submitted through the questionnaires would be a required submission under the MSA. If a Freedom of Information Act (FOIA) request for EDC were received by NMFS, EDC information would only be released in aggregated form, that is, without identifiers and other

information components that, if released, would allow someone to identify the submitter and result in competitive or other harm to the submitter. Further information about NMFS' confidentiality and aggregation guidance can be found on its Web sites. NMFS' reports or other publications on trawl rationalization would discuss EDC information, but only in aggregated form.

#### *Purposes for the EDC Information*

Topics that would be addressed by economic analysis of the trawl rationalization program include the magnitude and distribution of economic benefits generated by the groundfish trawl fishery, regional economic impacts, employment, the efficiency of harvesting and processing operations within the fishery, capacity utilization, the functioning of the quota market, spillover effects into other fisheries, product quality, and incentives to reduce bycatch. Addressing these topics would require collecting data at the level of the individual harvesting vessel, processing vessel, first receiver and processing plant. The data collection would be done on an annual basis, with specific questionnaires designed for catcher vessels, catcher-processors, motherships, and first receivers and shoreside processing plants. Due to the relatively small number of vessels or processing plants in each of these populations, a census of all members of the survey population would be conducted each year. In addition to the mandatory surveys of harvesters and processors, NMFS is conducting voluntary social surveys of a wide range of participants in the fishery.

#### *Deadlines for EDC Form Submission*

The questionnaires would be mailed to permitted and licensed fishery participants (both active and inactive), as well as others who according to available databases are required to complete a questionnaire. Baseline information is necessary for NMFS and the Council to understand program effects. To achieve a complete and useful baseline database, NMFS would require 2009 and 2010 trawl fisheries participants to provide baseline economic information. Although it is possible that certain participants may not possess baseline information, or may have dropped out of the fishery, NMFS believes it must attempt to acquire the information. Requiring submission of 2009 and 2010 baseline information and not older information reduces the submission burden.

To facilitate program administration, NMFS would attempt to mail

questionnaires to all relevant fishery participants on or around May 1 of every year. However, it is possible that NMFS would not identify all participants who would be obligated to submit a questionnaire, thus it would ultimately be the relevant participant's responsibility to obtain a questionnaire and complete it. NMFS would conduct outreach to facilitate identification of those who must provide both baseline and annual questionnaires.

NMFS believes that persons required to submit EDC questionnaires must have sufficient time to retrieve necessary information and complete the questionnaire. Information submitted in annual questionnaires is typically similar to information used to complete tax returns. Given these considerations, NMFS proposes that EDC questionnaires would be due no later than September 1 for both baseline and annual EDC questionnaires. Thus, baseline questionnaires would be submitted before September 1, 2011. Annual questionnaires would be submitted before September 1 of each corresponding year, that is, September 1 of the year following the year for which the information must be provided.

#### *Compliance With the EDC Form Submission Requirement*

Because questionnaire submission would be mandatory, NMFS must ensure there are compliance incentives. In addition to incentives to avoid enforcement actions for failure to submit the questionnaire, another incentive would be to withhold permit issuance or other applications authorizing participation in the trawl program. For example, if a prior year's annual questionnaire is not submitted by a permit applicant or a vessel owner who maintains a vessel account, the application or renewal process would be considered incomplete by NMFS. The permit or renewal application would be denied and an Initial Administrative Determination (IAD) issued setting forth the underlying facts, a discussion and determination. Upon issuance of the IAD, NMFS may withhold issuance of any new annual QS, not reauthorize a vessel account, not register a permit to a vessel, not renew a permit, not issue a license, or other related authorization to a participant. An aggrieved permit or other participation applicant could appeal an IAD through the Office of Administrative Appeals (OAA) in NMFS. An IAD that is not appealed to the OAA within 30 days of the issuance would become final agency action. Thus, if a questionnaire had not been submitted prior to its receipt of an application or renewal request, NMFS

would suspend permit application or renewal processing. Upon receipt of the questionnaire, NMFS would then finish application or renewal processing, assuming the applicant or requestor had met all other requirements.

#### *Who Would Be Required To Submit the EDC Form*

The EDC program would require all trawl program participants to submit the questionnaires. These participants include owners, lessees and charterers of, catcher vessels, catcher processor vessels, and mothership vessels; and, first receivers and shorebased processors. For purposes of identifying shorebased processors from whom NMFS would receive questionnaires and relevant economic information, NMFS—in consultation with the RDW—crafted a specific, EDC program only, definition for “shorebased processor.” Identifying the “who” among shorebased processors that would be required to submit the questionnaire raised a practical issue. There are a variety of seafood processing operations, including first receivers and primary fish processing operations that subject round or headed-and-gutted fish to the first strokes of a knife. However, a certain amount of “shorebased” fish processing occurs long past the point of the initial processors. For example, commercial processing can occur in major food manufacturing facilities and supermarkets. While NMFS may have authority to collect economic information from certain processing operations, the EDC program was not designed to require information from these operations.

In its consultations with the RDW, NMFS initially proposed that the limited entry permit owner would bear the burden of submitting the questionnaire and all information for vessels, including all vessel economic information. This meant that the permit owner would be required to submit data from “third parties,” that is, a person who leases a permit to operate a vessel. In that instance, if the permit owner were unable to obtain the lessee or charter’s economic information, it was possible that the permit owner would be unable to submit a completed EDC questionnaire to NMFS. The RDW responded to NMFS’ proposal and asked that NMFS not require the permit owner to be responsible for the submission of third-party lessee information.

The problem, according to the RDW, would be that in some circumstances it would be impossible to obtain third-party information. Thus, it would be unfair to impose this burden on the permit owner. In view of the RDW’s

response, NMFS has changed the requirements it initially proposed before the RDW. Thus, in this proposed rule, NMFS would require that the permit owner submit only the permit owner’s information, if required, and not a third-party’s information. Further, the permit lessees would be required to submit questionnaires. This eliminates the RDW’s concerns and reduces the reporting burden for permit owners and certain other program participants. However, in order to facilitate its ability to identify who must submit a questionnaire, NMFS proposes that permit owners and vessel owners be required to disclose identifying information about lessees and charters.

The RDW also registered concerns about NMFS’ use of the administrative permit process to gain compliance with the EDC requirements. In other EDC programs, NMFS has found that holding-up a permit or renewal process for failure to submit a questionnaire resulted in high compliance. NMFS believes that this administrative-based compliance incentive is preferred to enforcement-based incentives. An enforcement-based violation requires a lengthy and administratively-complex adjudication process, while the administrative-based, “complete permit application” process is more efficient and requires fewer resources.

#### *EDC Audit Process*

In other EDC programs, NMFS has installed an economic information verification process to ensure that submitted information is accurate and to ascertain sources or causes for anomalous or outlier information. Because an audit process enhances the reliability and accuracy of the information database, NMFS proposes an audit process for the trawl program. The audit program would consist of a process to request submission of supporting documentation, either to NMFS itself, or to a third-party such as a contractor or auditor. Further, NMFS or the third-party could require the submitter to respond to any questions within 20 days, unless an extension is granted by NMFS. A NMFS or third-party auditor would review requested information for verification purposes. Requested information would include financial statements, worksheets, and tax returns. Information submitted in this audit process would be a required submission to either NMFS or the third-party auditor, thus the information would be considered confidential.

#### *Transaction Prices*

Separate from the EDC Program, NMFS would collect transaction prices

as recommended in the Council motion (Appendix D, A–2.3.2, p.D–14). For collecting transaction values on permits, QS, and QP transactions, the data collection system would have two components: (a) A request for monetary estimates; and (b) key questions that characterize the nature of the transaction. Responses may require a few sentences to describe the nature of transactions. The permits office would use this data to provide the public, via the NMFS IFQ Web site, with simple averages so that the estimates may not reflect the total values of the transactions. Detailed data on the nature of the transactions would be provided to the NWFSC for use in developing more precise estimates using econometric techniques. Because all reporting would be electronic, NMFS would not be requesting copies of supporting documentations, such as sales or lease agreements. Instructions would be provided to encourage retention of supporting documents in order to be responsive to audits that may be conducted by OLE as part of an enforcement action or by NWFSC as part of their economic audit function. Only relevant questions would be asked, with the intent being to keep the list of questions to a minimum.

#### *Observer Program*

The initial issuance proposed rule created a separate section (at § 660.116) for regulatory requirements regarding mandatory observer coverage as an interim step until discrete observer regulations were proposed under this program components rule for each trawl program (IFQ, MS, and C/P). Observers have been deployed in the Pacific coast groundfish fisheries since 2001 in the West Coast Groundfish Observer Program (WCGOP). In order to incorporate changes expected under trawl rationalization, NMFS has been adapting the regulations implementing the WCGOP. During this regulatory development, NMFS recognized that each observer’s roles and responsibilities would differ between each fishery and may change in the future based upon a specific fishery’s requirements or needs. Accordingly, the program components proposed rule removes § 660.116 and reorganizes the observer regulations to follow the overall structure of the regulations, providing detailed requirements by fishery: Shorebased IFQ Program (§ 660.140(h)), MS Coop Program (§ 660.150(j)), and C/P Coop Program (§ 660.160(g)). While a general description of the observer program applicable to all is provided here, sections within each program outline

changes in the proposed regulations specific to each.

Vessels would be required to procure observer services from any one of a number of observer providers that are currently permitted to deploy observers in the North Pacific fisheries. This presents a distinct change for catcher vessels which have previously had no observer coverage or which have had government-funded observers selected and deployed by NMFS. The catcher vessels' cost of procuring observer services may be partially defrayed by the government via a subsidy for at least the first year of the Shorebased IFQ Program, subject to appropriations.

Companies providing observer services (aka observer providers) would be required to comply with all observer support, deployment limitations and logistics and communication in this rule. The requirements are similar to those found in other areas of the country and focused on those considered necessary to receiving quality data without impacting the efficiency of the provider companies operating in the West Coast rationalized groundfish fleet.

Observers would be required to meet the minimum qualification standards currently in use and successfully complete all training. Observers would also be required to collect and submit data as per the protocols of the program. If an observer's performance does not meet the observer program minimum standards outlined in the observer program manuals and other materials, the observer may be decertified and would not be eligible to observe in any West Coast groundfish fishery. If an observer fails to meet performance standards while conducting their responsibilities, NMFS would initiate a proceeding to propose their decertification. As with any proceeding to revoke a certification, NMFS would provide the observer notice and an opportunity to challenge the proposed decertification. NMFS would issue a preliminary decision and, if it is unfavorable to the observer, an appeal process for further review would be provided.

In addition to continuing to deploy observers in the non-rationalized fleet, the WCGOP is reorganizing to meet the new demands of trawl rationalization including training and briefings. To maintain observer deployment flexibility and efficiency, observer training will capitalize on the existing program structure to train and certify qualified observers in the least number of trainings and briefings as possible. Currently, observers are qualified, trained and certified separately for the shorebased fleet and at-sea whiting

processing fleet. NMFS envisions continuing to design observer training around similar observer duties and deployment logistics. Thus, in the future coop whiting fleet, observers deployed aboard the motherships and catcher processors would still be required to be certified and in good standing with the North Pacific Groundfish Observer Program (NPGOP) (as data collection, recording and transmission methods are similar) and successfully complete a whiting observer briefing. These existing briefings are expected to incorporate any additional duties aboard motherships and catcher processors due to trawl rationalization. As for observers deploying aboard catcher vessels delivering shoreside or to motherships, a broader training incorporating updated duties or a stand-alone IFQ training or briefing, is being investigated. The current shorebased observer training is 13 days and instruction includes data sampling methodology, data recording, species identification, at-sea safety, *etc.* The Pacific whiting IFQ fishery and mothership catcher vessel coverage that would be required under this proposed rule creates the need to develop and train observers in new methodology not previously included in WCGOP training. Given the number of vessels anticipated to be in the Shorebased IFQ Program, the given staffing and class size restrictions, NMFS is planning on two to three trainings to ensure enough qualified observers are available for the fleet by year end.

#### *Conflict of Interest Regulations in the Observer or Catch Monitor Programs*

The proposed regulations, as deemed by the Council, contain language on conflict of interest provisions for observers (§§ 660.140(h)(6)(vii), 660.150(j)(6)(vii), and 660.160(g)(6)(i)(G)) and catch monitors (§ 660.18(c)). However, NMFS has concerns with the language and believes it has the potential to undermine the integrity of the shorebased and at-sea monitoring programs.

The data coming from observers aboard fishing vessels and catch monitors at shorebased first receivers is crucial to NMFS's ability to sustainably manage groundfish in general, and would be particularly important during management of the pending groundfish trawl rationalization program. A crucial component of NMFS's tracking and monitoring system for the trawl rationalization program is the collection of timely and accurate landings and discard data to allow managers to ensure that landings stay within

prescribed limits in order to prevent overfishing and promote rebuilding. Such landings and discard data would also provide fishermen with an accurate accounting of their harvesting activities so that they can efficiently plan their fishing operations. Maintaining strict conflict of interest standards for monitors and observers would give managers and fishermen a high level of assurance that they are basing their decisions on accurate data. NMFS believes that the changes proposed by the Council would unacceptably reduce the assurance that NMFS is receiving the best available information from its monitoring programs.

In addition, if the language deemed by the Council were to be implemented, there would be inconsistent conflict of interest requirements within NMFS regulations, both between the regions, and on the West Coast. The conflict of interest requirements that were presented to the Council at its June 2010 meeting (*see [http://www.pcouncil.org/wp-content/uploads/B6a\\_ATT2\\_DRAFT\\_PRGRM\\_COMPONENTS\\_JUNE2010BB.pdf](http://www.pcouncil.org/wp-content/uploads/B6a_ATT2_DRAFT_PRGRM_COMPONENTS_JUNE2010BB.pdf)*; requirements for catch monitors starting on page 9, and for observers on page 41) are consistent with conflict of interest standards set forth in the NMFS policy statement 04-109-01, National Minimum Eligibility Standards for Marine Fisheries Observers, implemented on August 6, 2007. In addition, the provisions proposed by NMFS are consistent with existing requirements in the WCGOP, which will remain in place for the fixed gear and open access fleets. NMFS believes that the changes proposed by the Council would create discrepancies both within the region and nationally, and would place undue administrative burdens on NMFS.

Because of these reasons, NMFS intends to use its authority under section 305(d) of the MSA to publish language in the final rule that differs from what was deemed by the Council. This proposed rule includes both the Council-deemed regulatory language and the language proposed by NMFS. The regulatory language labeled Alternative 1 in the conflict of interest provisions for observers (§§ 660.140(h)(6)(vii), 660.150(j)(6)(vii), and 660.160(g)(6)(i)(G)) and for catch monitors (§ 660.18(c)) is the Council-deemed language, and Alternative 2 is the language NMFS proposes to publish in the final rule.

NMFS specifically requests comment on these conflict of interest provisions for observers and catch monitors, and on NMFS's intent to publish Alternative 2 to make these requirements consistent

within the region and with other NMFS programs.

#### *Ownership Information*

Previously, NMFS promulgated rules to determine ownership interests of limited entry trawl permits under the data collection rule (75 FR 4684, January 29, 2010). Information regarding ownership is necessary for NMFS to determine compliance with control limits and accumulation limits in the trawl rationalization program. Based on NMFS's review of the ownership information that it has received, NMFS realizes that additional information may be necessary to make this determination. For instance, while in many cases the owner of the trawl limited entry permit is the same person as the owner of the vessel to which the permit is registered, this does not always appear to be the case. Because control of QS is determined on a case by case basis and extensive control of QP may indicate control of the underlying QS, NMFS needs ownership information related to vessel accounts as well as for the permit owner. The proposed rule would require vessel account owners to submit an ownership identification form in order to collect this information. In the event that the permit owner and vessel owner are the same, there may be some duplication in the requested information, and NMFS is exploring methods to coordinate processes in order to minimize the burden of multiple ownership identification forms.

In some cases, the structure of the ownership interests may raise questions as to how NMFS interprets the ownership interest in order to make its determination. NMFS has identified two such instances: (1) Joint ownership, and (2) ownership by a trust. Each of these situations is addressed in the proposed rule, and NMFS specifically requests comments on the implications of its interpretations of these ownership structures, or of any other ownership structure not previously identified that may raise questions.

A joint ownership situation exists where more than one person claims an interest indivisible from that of another person, such that the total ownership interest is greater than 100 percent. An example of this would be a joint tenancy, a form of property ownership where two parties (often a husband and wife) each own 100 percent, and in the event of death of one of them, the survivor would retain the indivisible 100 percent already owned. In these situations, NMFS would credit each owner with the full percent claimed (e.g., in this example, 100 percent each),

even though the sum of all ownership interests would exceed 100 percent. NMFS believes that for some owners, the benefits of joint tenancy may be greater than the parties' concern for accumulation limits, particularly if they are more interested in estate planning than accumulation of privileges, and that if the parties to a joint tenancy don't want to avoid individual accountability for the entire ownership interest, they would have the option of restructuring.

Ownership by a trust creates another area where questions arise regarding compliance with accumulation limits. In any consideration of trusts, there are three parties that need to be considered: the trustee, the beneficiaries, and the trustor. Generally speaking, the trustee manages the property held in the trust according to the terms of the trust document for the benefit of the beneficiaries of the trust. The beneficiaries are equitable owners of the property, but generally, since they are not the legal owners do not exercise control over the property. The trustor is the party that sets up and grants property to the trust. Because a trust vests the legal title to the property in the trustee, under the proposed rule NMFS would credit ownership to the trustee. If there is more than one trustee (i.e., "co-trustees"), NMFS would consider each trustee to have 100 percent ownership of the trust property. NMFS recognizes that whether other parties besides the trustee would be impacted by ownership and control rules depends upon the nature of the trust and how it is set up. For instance, a trustor might retain authority to take the property back from the trust (i.e., a revocable trust), or, in some circumstances, beneficiaries could assert control over the trust property, modify the trust document, and/or wrest the legal ownership away from the trustee. For both of these cases, ownership would not appear to be an issue unless the trustor or beneficiaries gain actual legal ownership of the trust property, however, whether control rules would be implicated is harder to say and would depend upon the trust document. Thus, the program components rule includes provisions that NMFS may ask for additional information it believes to be necessary for its determination.

#### *Monitoring and Enforcement Measures*

As is the case for any quota-based program, NMFS would need to be able to accurately monitor the use of QS and accumulation limits. The Council voted to institute a variety of monitoring and enforcement measures. The shorebased monitoring and catch accounting system

would be an expansion of the program that has been conducted under exempted fisheries permits for the Pacific whiting shoreside fishery since 1992. The primary tools for monitoring would include: (1) Requiring the use of observers aboard catcher, catcher-processor, and mothership vessels; (2) requiring the use of catch monitors at all first receivers and related processing facilities; (3) requiring the weighing of all catch on NMFS approved scales; (4) requiring that catcher-processors follow specified procedures when handling catch prior to processing; (5) requiring that first receivers participating in the program use electronic fish tickets and related computer software, and adopt and comply with catch monitoring plans for each site. These measures are discussed in more detail below.

#### *Cost Recovery*

The agency may collect fees to cover the administrative costs of issuing any permits (one-time fee for initial issuance and annual renewal), QS accounts and vessel accounts (annual), and first receiver site licenses (annual). Amendment 20 provides for the assessment of cost recovery fees up to 3 percent of ex-vessel value, consistent with section 303A(e) of the MSA. Under the MSA (Section 303A(e)(1)(2)) and Public Law 109-479, the Secretary is authorized and shall collect a fee to recover the agency's costs of management, data collection, analysis, and enforcement activities. Cost recovery is not included in this proposed rule, but will be addressed through a future Council action and trailing regulatory amendment.

#### *Status Quo Management of the Trawl Fishery*

Under the trawl rationalization program, some status quo management measures would remain in place for the trawl fishery, including the use of trip limits and closed areas. One example of a status quo management measures that would remain in place is the provision at § 660.55 in the initial issuance proposed rule that "no more than 5 percent of the Shorebased IFQ Program allocation may be taken and retained south of 42° N. lat. before the start of the primary Pacific whiting season north of 42° N. lat." This issue was specifically addressed by the Council at its April 2010 meeting as a management measure that should remain because of implications for Chinook salmon bycatch.

Many groundfish species would continue to be subject to trip limits under the Shorebased IFQ Program; any IFQ species caught (retained or

discarded) under these trip limits would still be required to be covered by QP. Trip limits would also remain in place for Pacific whiting prior to the primary whiting season (*see* Appendix D, A–1.5, p. D–6), in order to maintain protections for incidentally-caught Chinook salmon. The proposed rule would eliminate trip limits at the close of the primary season, because under an IFQ program, the effective date of the close of the primary whiting season would be the end of the calendar year, and any catch of Pacific whiting would be subject to available whiting QP. Closed areas, including the GCAs and Ocean Salmon Conservation Zone, would also remain in place as a management tool for all trawl programs. One potential concern may be that whiting fishermen could increase targeting of non-whiting stocks, such as yellowtail, that could be caught with midwater trawl gear used in the GCAs as allowed for vessels targeting whiting. The proposed rule would not prohibit this. NMFS believes that it can monitor the fishery, and that the Council can take action if it determines that this possibility presents a concern.

#### *Shorebased IFQ Program*

##### *Observers and Catch Monitors*

Under the Shorebased IFQ Program, in order to assure that all catch, including discards, would be matched against QP, the Council voted to implement 100 percent at-sea observer coverage for all vessels and 100 percent monitoring of catch by all IFQ first receivers. The proposed rule would require all vessels in the Shorebased IFQ Program to carry observers, and defines prohibited actions and responsibilities of vessels, the responsibilities of companies providing observer services, and observer qualifications and responsibilities. The proposed rule would also require all IFQ first receivers to employ catch monitors, and would establish similar definitions of responsibilities for first receivers, catch monitor providers, and catch monitors.

The qualifications, roles, and responsibilities would differ between observers and catch monitors, therefore, each are addressed in separate areas in the rule. Observers in the WCGOP are highly-trained biologists that work independently aboard vessels in difficult at-sea environments to quantify discards and mortality estimates of certain bycatch species, collect biological samples and monitor for any fishery interactions with marine mammals, sea turtles and seabirds. The WCGOP was developed consistent with guidelines for fishery observer programs

developed under the MSA (*see* MSA sec. 403, 16 U.S.C. 1881b; 50 CFR 600.746), and as such, the program components proposed rule would retain the WCGOP's existing general framework and add new components specific to the Shorebased IFQ Program. New provisions would include the collection of accurate estimates of discards of IFQ species that would be used to estimate individual vessels' overall use of QP and the requirement for observer coverage until all IFQ species from the trip are offloaded.

In contrast to observers, catch monitors would be land-based—principally at first receiver facilities—and would confirm that total landings are accurately recorded on fish tickets (landing receipts). A catch monitors' focus would be more akin to an enforcement role than that of a biologist. The shorebased monitoring and catch accounting system in the proposed rule would expand the current program that has been conducted under exempted fisheries permits (EFPs) for the Pacific whiting shoreside fishery since 1992. The new collection of data would cover not only the Pacific whiting shoreside fishery but all groundfish delivered shoreside by vessels participating in the Shorebased IFQ Program.

The proposed rule would adopt similar regulations for catch monitors as for observers, including definitions of prohibited actions that undermine catch monitors, such as harassment, and responsibilities of IFQ first receivers, responsibilities of companies providing catch monitor services, and catch monitor qualifications and responsibilities. The key differences between the observer and the catch monitor programs include physical location, tracking of discards versus landings, and educational requirements. The program components proposed rule would require catch monitors and catch monitor providers to meet the standards outlined in the rule, but for the first year of the trawl rationalization program, to ease the implementation of the catch monitor program and assure that there are enough catch monitors available for the fishery to proceed, NMFS would “grandfather” existing catch monitors and catch monitor providers that have provided services in the EFP fishery.

There are some additions to the catch monitor regulations in this proposed rule that were deemed through the Council deeming process after the June 2010 Council meeting. A summary of these additions to § 660.17 follows: (1) That a qualified catch monitor would be required to have computer skills; (2) that a catch monitor would be required to be certified by NMFS, not have

ailments that would prevent them from performing their duties, and to have completed training; (3) that catch monitor providers would be required to provide catch monitors to first receivers pursuant to the terms of their contract; (4) that the catch monitor providers would be required to ensure that catch monitors complete their duties in a timely manner; (5) that the catch monitor providers would be required to provide catch monitors' salaries, benefits, and logistical support; (6) that catch monitor providers would be required to assign catch monitors within specified assignment limitations and workload; (7) that catch monitor providers would be required to maintain communications with catch monitors and the catch monitor program office; (8) details of training, briefing, and debriefing requirements for catch monitors; (9) details on requirements of the catch monitor provider contracts; (10) that catch monitor providers would be required to provide NMFS status reports on catch monitors; (11) that catch monitor providers would be required to replace lost or stolen gear; and (12) that catch monitor providers would be required to ensure that records on individual catch monitor performance remain confidential. These provisions would delineate the respective responsibilities between catch monitors, catch monitor providers, and first receivers and are included to assure the effectiveness of the catch monitor program.

In order to improve efficiency in some ports, the proposed rule anticipates that some observers would also take the role as a catch monitor, provided the qualifications for both would have been met. However, an individual who functions as both would not work more than a maximum number of hours that would negatively affect their safety, health, or job performance. NMFS continues to discuss possible coordination between observer training and catch monitor training programs to gain further efficiencies. In addition, NMFS is examining the Council's request to explore the possibility that State employees may be used as observers or catch monitors, but discussions have not progressed sufficiently to include in this proposed rule.

#### *First Receiver Site License, Catch Monitoring Plan, Electronic Fish Tickets, and Scales*

The Shorebased IFQ Program requires that fish harvested in the program be delivered to an IFQ first receiver holding a first receiver site license. Under the program components

proposed rule, for an applicant to obtain a first receiver site license, the applicant would be required to have a NMFS-approved catch monitoring plan that complies with regulatory requirements, have been subject to a site inspection conducted by NMFS staff, be in compliance with equipment requirements (e.g., scales), and report landings through an electronic fish ticket system. Because the rule is not projected to be effective until the end of December 2010, NMFS anticipates that there would not be sufficient time to review all catch monitor plans submitted with first receiver site license applications, nor would there be sufficient time to physically inspect each site prior to the start of the groundfish season on January 1, 2011. Thus, the program components proposed rule includes a provision for an interim first receiver site license that would provide a temporary authorization for first receivers to buy IFQ groundfish while NMFS processes the applications for the first receiver site licenses.

To obtain an interim site license, a first receiver would need to submit an application with a catch monitor plan, and NMFS would issue the interim license. Subsequently, NMFS would review the plan and inspect the site, and if the plan and inspection meets the listed criteria, NMFS would issue a (non-interim) first receiver site license which would supersede the interim license. If the catch monitor plan or inspection does not meet the required standards, the first receiver may attempt to fix the deficiencies and have its application reconsidered by NMFS. The interim license would be effective for a period of up to six months, or until NMFS issues a (non-interim) first receiver site license, whichever comes first. NMFS anticipates that this six month period would be sufficient to process initial applications for first receiver site licenses, and any subsequent applications would be processed as applications are received.

An IFQ first receiver would be required to meet equipment requirements and electronic landing reporting requirements while operating under an interim first receiver license. A first receiver site license applicant would be required to prepare a catch monitoring plan and be subject to on-site verification for compliance. These plans would be subject to approval by NMFS to ensure the plan conforms with program monitoring criteria. The plans would include descriptions of catch-sorting spaces, how first receiver staff would sort catch and prevent unsorted catch from entering areas beyond the

sorting space, scales used for weighing and their location, ensure accurate catch weighing, delivery points where catch is removed from vessels, and the catch monitor's observing area sufficient to allow monitoring of the flow of fish. Likewise, a first receiver site license holder would be required to ensure that all catch is landed, sorted, and weighed in accordance with the plan. Should conditions change and the plan require modification, a first receiver would be able to amend the plan.

First receivers would be required to provide complete facility access to NMFS staff, catch monitors, and other authorized persons. Such access is necessary for monitoring and program enforcement. Further, scales to weigh catch would be periodically checked for accuracy and written printouts verifying their accuracy would be required to be provided on a periodic basis.

After catch is weighed by the first receiver, the landing information would be reported on the electronic fish ticket system. The electronic fish ticket system would require a first receiver to have a computer installed with NMFS-specified hardware and software. To facilitate and ensure accurate scales and a reliable electronic fish ticket system, NMFS proposes a number of standards by which the scales and computer and software systems would be operated.

#### *QS Permits, QS Accounts, Vessel Accounts*

The initial issuance proposed rule established a QS permit that would be issued to eligible applicants for QS. Under the initial issuance proposed rule, a QS permit would be required for the establishment of a QS account, which would be used for tracking the QS owner's amounts of QS or IBQ for each IFQ species. Also under the proposed initial issuance rule, such QS permits would be required to be renewed annually in order to track ownership of QS and IBQ for compliance with control limits. The program components proposed rule further develops how NMFS would manage QS accounts and QS permit renewals.

The proposed rule would allow QS owners to access their QS accounts electronically, through the use of a unique ID and personal identification number (PIN). Previously, NMFS had drafted language that QS account and vessel account owners would be required to make a request to NMFS in writing in order to designate other people with access to the account. NMFS has decided, however, that in order to reduce the paperwork burden on NMFS and the public, NMFS would

issue an ID and PIN to account owners to access their individual QS account or vessel account. If an account owner wants to grant access to their account, the account owner may authorize any individual to access their QS account by providing their unique ID and PIN. NMFS would not manage access to the accounts, and the burden of ensuring the integrity of the account would fall to the account owner. While not in the proposed regulation, if preferable, NMFS could issue access level PINs as well, allowing account owners to grant different levels of account access to other individuals as needed. That is, an account owner could have a PIN that would allow him/her to make a transfer, but another individual may have a different PIN that only allows for read-only access to the account, which may be desirable for a vessel captain to verify QP balances in the vessel account before making a trip, for example.

For the first two years of the program, QS and IBQ would not be transferable, but QS and IBQ pounds would be able to be transferred to vessel accounts. Each year, QS account holders must transfer their associated QP and IBQ pounds to a vessel account by September 1. QP and IBQ pounds, once transferred to a vessel account, would not be able to be transferred back to a QS account, but could be transferred to other vessel accounts.

Annually, NMFS would make allocations of QP and IBQ pounds to QS accounts based on available OYs, the amount of QS or IBQ in the QS account, and the results of any initial issuance appeals processes and/or non-renewed QS permits.

A vessel account would be created by NMFS upon request by the owner of a vessel registered to a valid trawl limited entry permit (other than a C/P-endorsed permit). A vessel account registration would be specific to the vessel and its unique vessel owners. The vessel may be registered with different trawl permits in a given year (one at a time), and the vessel account would cover landings of IFQ species only when the vessel is registered to a trawl limited entry permit. Subject to accumulation limits, vessel accounts would be able to receive QP via transfers from QS accounts or from other vessel accounts. After an IFQ landing by a vessel, the amount of the landing would be initially debited from the vessel account, based on electronic fish ticket submissions by first receivers. However, if the catch monitor estimates were to be higher than that reported by the first receiver, the account would be adjusted to reflect the higher estimate, and both the first receiver and the vessel account holder



would be notified of the discrepancy. When a discrepancy occurs, NMFS would review available information against its quality control procedures. If differences cannot be resolved, the final correction would be based on the final fish ticket estimates developed under the State fish ticket system. The accounts would also be debited by the discard estimates submitted by the observer program. Should the vessel owner dispute the observer estimates, the owner would be able to request the WCGOP to review its processes and make appropriate corrections.

QS permit owners and owners of vessels that land IFQ species would be required to use an online IFQ system to account for and to transfer QS and IBQ, or QP and IBQ pounds. The online IFQ system would grant access to both QS accounts and vessel accounts.

For transfers, each transaction would be subject to accumulation limits. Because of this, both the transferee and the transferor would be required to agree to the transaction online. NMFS would review the proposed transaction, and accept the transaction if accumulation limits would not be exceeded as a result of the transfer, thus allowing the transaction to proceed. NMFS acceptance of the transaction would only relate to compliance with accumulation limits and not control limits, as a determination on compliance with control limits would require more information than that which would be provided in the online IFQ system. Upon acceptance, the online system would send both the transferee and transferor confirmation notices for the transaction. Account holders would be able to use these confirmation notices for purposes of providing documentation to banks or other third parties associated with the transaction. NMFS would also provide a process by which account holders could request a correction of transaction data that were incorrectly recorded by the online IFQ system.

The November 2008 Council motion states that transfers of "QS will be highly divisible and the QP will be transferred in whole pound units (*i.e.*, fractions of a pound may not be transferred)." Appendix D, A-2.2.3(d), p. D-12. While the motion clearly identified the lowest unit for the transfer of QP, the motion did not state what the lowest unit of "highly divisible" QS would be once QS becomes transferable in the third year of the program. NMFS presented this issue to the Council at its June 2010 meeting, and the Council determined that the smallest unit for QS transfers would be one one-thousandth of a percent. Thus,

the proposed rule establishes the minimum unit for QS transfer at 0.001 percent.

Under the proposed initial issuance rule, QS permits would be required to be renewed annually. The program components proposed rule adds a renewal requirement for vessel accounts as well. Upon review of ownership information for limited entry permits collected from the data collection rule (75 FR 4684, January 29, 2010), NMFS realized that ownership of limited entry trawl permits alone would be insufficient to administer the Shorebased IFQ Program and that additional information would be needed. In particular, NMFS would need to collect information for the economic data collection program, ownership information to assure compliance with control limits, and general administrative information to keep NMFS' database current. Requiring an annual renewal of vessel accounts would provide NMFS the ability to collect such information at the vessel level, in particular where the permit owner and vessel owner are not the same. In the event that the permit owner and vessel owner are the same, there may be some duplication in the requested information, and NMFS is exploring methods to coordinate processes in order to minimize the burden of multiple renewals. If NMFS does not renew a QS permit or a vessel account after the owner submits the renewal application (*e.g.*, because the renewal is incomplete), this action would be subject to NMFS' permit appeals process.

While the initial issuance proposed rule would establish a QS permit renewal requirement, it did not specify what would happen to the QP that would be derived from the QS associated with the QS permit in the event that the permit owner failed to renew the permit. Allowing a QS permit owner to renew at a later time and delaying the issuance of QP until that time would provide greater flexibility for an individual QS permit owner, but would provide less overall flexibility for the fleet as the QP would not be available for transfer to vessels that seek additional QP. At its June 2010 meeting, the Council determined that for any QS permit that is not timely renewed, the QP that would be derived from the QS associated with the QS permit would be redistributed among all of the QS permit owners that timely renew their permits, in proportion to the amount of QS they each own for each IFQ species. The redistribution of QP would not affect the ownership of QS; the owner of the QS permit that did not timely renew in one

year would be able to renew the QS permit in a subsequent year to bring the QS permit current.

#### *Accumulation Limits and "Other Fish"*

The accumulation limits on used and unused QP in vessel accounts in the Council motion (Appendix D, Table D-2, p. D-20) erroneously included limits on "other fish," which is not an IFQ species subject to these limits. The initial issuance proposed rule likewise included "other fish" erroneously in the accumulation limits table at § 660.140(e)(4). In this proposed rule, NMFS has removed "other fish" from the accumulation limits table, and intends to make the same change in the final initial issuance rule.

#### *Maximized Retention in the Pacific Whiting IFQ Fishery*

Under current practices in the maximized retention Pacific whiting fisheries, some minor amounts of operational discard are allowed. Under trawl rationalization, any minor operational amounts of discard would be estimated by the observer and deducted from allocations. NMFS raised this issue at the Council's March 2010 meeting for the maximized retention fishery in the mothership sector (Agenda Item E.6.b, NMFS Report 1, March 2010, #25). For the Shorebased IFQ Program, however, the Council motion at Appendix D, A-2.3.1, p. D-13 states: "Whiting: Maximized retention vessels: Discarding of fish covered by IFQ or IBQ, and nongroundfish species prohibited." The proposed rule adopts this language at § 660.140(g)(2), which states: "Maximized retention vessels participating in the Pacific whiting IFQ fishery are prohibited from discarding any IFQ species/species group and nongroundfish species[;]" however, this language is potentially ambiguous in that it refers to maximized retention vessels, but prohibits discarding. NMFS specifically requests public comment on any implications that the prohibition on discarding may have on the prosecution of a maximized retention fishery, and further requests comment on what should constitute discarding under this provision of the Shorebased IFQ Program.

#### *IFQ Program Management Measures*

##### *Prohibition on Processing Groundfish in Shorebased IFQ Program*

Under the trawl rationalization program, vessels participating in the Shorebased IFQ Program may have more flexibility in when and how they harvest their quota, including fishing



with any legal groundfish gear under the gear switching provisions. Therefore, there may be increased opportunity for processing of groundfish at sea. Under current regulations at § 660.302 (which would remain under the proposed rule at § 660.11), “processing” is defined as “the preparation or packaging of groundfish to render it suitable for human consumption, retail sale, industrial uses or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil, but does not mean heading and gutting unless additional preparation is done.” Current groundfish regulations prohibit the following: (1) Processing sablefish taken at-sea in the limited entry fixed gear primary sablefish fishery from a vessel that does not have a sablefish at-sea processing exemption (§ 660.334(e)); or (2) processing of Pacific whiting except by Pacific whiting shoreside vessels 75 feet in length or less that are allowed to head and gut, remove tails, and freeze whiting (§ 660.373(a)(3)). The current regulations do not include a general prohibition on processing all groundfish at-sea for vessels landing groundfish at shorebased processors. In other words, under current regulations, the non-whiting trawl catcher vessels are not prohibited from processing non-whiting catch.

NMFS brought the prohibitions on processing for limited entry fixed gear sablefish and Pacific whiting shoreside vessels to the Council’s attention at its March and April 2010 meetings in regards to implications for the Shorebased IFQ Program. At the Council’s April meeting, NMFS provided a document that stated “Because at-sea processing is prohibited for participants of the limited entry primary sablefish fishery and in order to maintain fairness between this fishery and the shorebased IFQ fishery, sablefish processing at-sea will also be prohibited for participants in the shorebased IFQ fishery.” (Agenda Item I.1.b, Supplemental NMFS Report 3, April 2010, #5). Extending from that interpretation, and as brought forward in the version of the regulations deemed by the Council at its June 2010 Council meeting, the prohibition was broadened to include processing of all groundfish at sea by vessels in the Shorebased IFQ Program, regardless of the type of gear used, with the following exceptions: (A) A vessel that is 75-ft (23-m) or less LOA that harvests whiting and, in addition to heading and gutting, cuts the tail off and freezes the whiting, and (B) a vessel that has a sablefish at-sea processing

exemption may process sablefish at-sea. The proposed rule would adopt this prohibition at § 660.112(b)(1)(xii).

#### *Weight Limits and Conversions*

Groundfish allocations, harvest guidelines, and quotas are expressed in round weight. In cases where fish are landed dressed (headed and gutted, or in the case of Pacific whiting, headed and gutted with tails removed (neither activity is considered processing under the groundfish regulations which prohibit processing at-sea for the shorebased fishery), catch weight conversions are used to determine actual round weight of the harvested fish. To derive the weight of round fish harvested by a vessel that delivers dressed fish, a weight conversion factor is multiplied by the dressed weight.

Due to the increased individual accountability of catch (landings and discards) and the individual allocations of harvest opportunity under the Shorebased IFQ Program, NMFS proposes to revise regulations at § 660.60(h)(5)(ii) to create more consistent use of weight conversion factors coastwide. Currently, some discrepancies exist between the weight conversions used by the States of Washington, Oregon, and California. The use of State weight conversions would remain in place for the limited entry fixed gear and open access fisheries because they would continue to be managed under sector allocations (rather than individual quotas) and would continue to be tracked under the State paper fish ticket system. However, under trawl rationalization, landings of groundfish in the Shorebased IFQ Program would be reported through a Federal electronic fish ticket system in addition to the State paper fish ticket system. A consistent, accurate round weight must be reported on the electronic fish ticket submitted to NMFS, and would be used to determine total catch in the Shorebased IFQ Program.

The use of different weight conversions in the different States for catch estimates under the Shorebased IFQ Program may influence vessels to make deliveries based on conversion factors perceived to be more favorable for a particular species, especially if landing near a State border. Another concern from using different State weight conversions would be discrepancies in reported landings values. NMFS believes that the use of consistent coastwide conversion factors in the Shoreside IFQ Program would provide consistency in catch estimates between States, prevent artificial influences on individual landings

choices, and benefit NMFS’s ability to track landings values. Thus, NMFS proposes Federal conversion factors for species within the scope of the IFQ program at § 660.60(h)(5)(ii) based on published values.

The new catch weight conversion values for dressed IFQ species proposed by this action were derived from an Alaska Sea Grant College Program publication titled, “Recoveries and Yields from Pacific Fish and Shellfish” (Marine Advisory Bulletin number 37, 2004). For Pacific whiting that has been dressed (headed and gutted) with tails removed, the weight conversion was derived from the value for pollock as published at § 679 for the Alaska groundfish fishery. NMFS informed the Council at its March 2010 meeting of its intent to use published values for these weight conversions, however, NMFS specifically requests public comment on the actual values and implications of the proposed conversion factors.

#### *Area Management*

Under the Shorebased IFQ Program, IFQ species would be managed in four distinct geographic areas: U.S./Canada border to  $\geq 40^{\circ}10'$ ;  $40^{\circ}10'$  to  $\geq 36^{\circ}$ ;  $36^{\circ}$  to  $\geq 34^{\circ}27'$ ;  $34^{\circ}27'$  to the U.S./Mexico border. These management areas would have different management measures for different species. Many groundfish species would be tracked as either a single species with different QS by area; or as a single species in one area and as a component of a species group in another area (e.g., minor shelf or slope group north or south of  $40^{\circ}10'$  N. lat.). For example, yellowtail rockfish is an individual species management unit north of  $40^{\circ}10'$ , but a member of the minor shelf rockfish species complex south of  $40^{\circ}10'$ . As another example, QS for sablefish would be issued with area distinctions either north or south of  $36^{\circ}$  N. lat. As still another example, QS for shortspine thornyhead would be issued with area distinctions either north or south of  $34^{\circ}27'$  N. lat.

To address the different management measures in the different areas, the proposed rule would prohibit a vessel from fishing in different areas during the same trip. Because landings in the Shorebased IFQ Program would be a mix of all hauls taken during a single trip, a vessel would be required to fish entirely in one management area during any trip to simplify sorting requirements, at-sea observation, and enforcement of IFQ limits. While this provision would reduce flexibility for a vessel that wishes to fish in more than one area during a trip, this provision would address the catch accounting and enforcement concerns without

increasing costs of the program by overburdening the observer and enforcement programs, and thus would provide the most straightforward and efficient method to track and verify total catch of a vessel's IFQ limits for individual species and rockfish complexes.

#### *Gear Switching Provisions*

The proposed initial issuance rule laid out the provisions of the Council motion that would allow IFQ species to be harvested with gear other than trawl gear, also known as "gear switching." The program components proposed rule would set forth details of how such gear switching would be managed by NMFS. Many existing management measures depend upon the gear employed by the vessel, and not by the sector endorsement on the vessel's limited entry permit. For instance, GCAs are specific to whether the vessel employs trawl gear or fixed gear, regardless of whether the permit the vessel is registered to is endorsed for trawl or for fixed gear. In order to account for when a vessel participating in the Shorebased IFQ Program elects to use gear other than trawl gear, the proposed rule would incorporate a new designation in the vessel declaration process that would identify the vessel as "Limited entry groundfish non-trawl, shorebased IFQ."

Under the proposed rule, a vessel would be required to elect gear switching in the declaration before the trip begins, and would not be able to use trawl gear on that trip. Current regulations prohibit a vessel from carrying both trawl gear and non-trawl gear onboard the vessel at the same time. This restriction would continue under the proposed rule, because of the gear-specific management measures in place. If vessels were to be allowed to fish more than one gear on the same trip, it would present significant management difficulties. While vessels fishing in the Shorebased IFQ Program under gear switching would be required to have observer coverage onboard at all times, the observer program is designed to identify species composition in the catch, account for discards and, for some species, mortality estimates; to have the observer account for changes in gear use during the trip would detract from the purposes of the observer program and thus would be impracticable. Alternatively, if a vessel wanted to fish with more than one gear during the same trip, the vessel would need to be accountable to management measures for both gear types, as for instance, being restricted from both fixed gear GCAs and trawl GCAs, a

management outcome that would likewise be impracticable. Instead, to reduce the complexity of managing gear switching under the Shorebased IFQ Program, the proposed rule would require that a vessel only fish with trawl gear or non-trawl gear on the same trip.

One issue under consideration with regards to gear switching is how often a fisherman would be able to declare and switch gears. Although the declaration system managed by the NMFS Office of Law Enforcement can manage frequent changes in vessel declarations as would be the case for frequent gear switching, NMFS believes the process must be managed in an orderly fashion so as to not compromise the efficient management of the observer program by the Northwest Fisheries Science Center. NMFS specifically requests comment regarding the impact of any restrictions on changes in declarations on gear switching in the Shorebased IFQ Program.

The proposed rule would establish the new declaration for gear switching as "Limited entry groundfish non-trawl, shorebased IFQ." During the June 2010 Council meeting and at the RDW meetings, some members of the public expressed that the declaration process should be more specific, with separate declarations for pot gear or longline gear as opposed to the more general non-trawl declaration. NMFS has not included more specific declarations for vessels electing to fish in the Shorebased IFQ Program under the gear switching provisions because the management measures for non-trawl gears do not differ such that separate declarations would be of any use. For instance, whether a vessel fishes with pot gear or longline gear, the vessel would be subject to the same GCAs. Furthermore, if the management of the nontrawl gears were to change in the future such that a separate declaration would make sense (*e.g.*, separate GCAs for pot and longline gears), such change would require a change to the regulations and a new declaration category could be added at that time. Because of this, NMFS declines to adopt unnecessary additional declaration categories at this time.

#### *Reallocation*

The November 2008 Council motion provided directions for reallocation of QS in response to future management changes or for future allocations of groundfish currently outside the scope of the IFQ program (Appendix D, A-2.1.6, p. D-9). Specific potential changes addressed in the Council motion include changes in overfished status, changes in area management,

subdivision of an IFQ species group, or subdivision of an IFQ species group. Changes in area management could entail geographic subdivision of an area for management of an IFQ species, recombination of two or more subdivided areas, or movement of a management boundary line.

The proposed rule sets forth what action NMFS would take in the event of a change in area management or subdivision of a species group. For area subdivision, NMFS would issue QS for each newly created area that is equivalent to the amount that was owned for the area before it was subdivided. When two areas are combined, NMFS would adjust the QS for each area so that the total sums to 100 percent and the QS owner would receive the same amount of QP as if the areas had not been combined. If a management boundary line is moved, NMFS would adjust the QS proportionally so that the QS owner would maintain the same share of the trawl allocation for that species on a coastwise basis. If a species group becomes subdivided, NMFS would issue an amount of QS for the newly created IFQ management unit equal to the amount of QS owned of the species group before subdivision.

With regards to changes in overfished status, the November 2008 Council motion states that "When an overfished species is rebuilt or a species becomes overfished there may be a change in the QS allocation within a sector. When a stock becomes rebuilt, the reallocation will be to facilitate the reestablishment of historic target fishing opportunities. When a stock becomes overfished, QS may be reallocated to maintain target fisheries to the degree possible. That change may be based on a person's holding of QS for target species associated with the rebuilt species or other approaches deemed appropriate by the Council." Appendix D, A-2.1.6, p. D-9. Because any reallocation based on a change in overfished status anticipates future Council action, NMFS does not include this language in this proposed rule, but highlights it as a statement of Council intent.

With regards to future allocations of groundfish outside the scope of the IFQ program, the November 2008 Council motion states "For the 'Other Fish,' category of groundfish, if at some time in the future the Council adds it to the IFQ system, the initial allocation would be determined using the same history criteria as was used for other IFQ species (*i.e.*, 1994-2003 history), unless otherwise specified by a future Council action." *Id.* This, too, anticipates future action by the Council and is thus not

included in this proposed rule, but is highlighted here in the preamble.

#### *IFQ Carryover Provision*

The proposed carryover provisions at § 660.140(d)(5) would allow a limited amount of surplus QP and IBQ pounds in a vessel account to be carried over from one year to the next or would allow a deficit in a vessel account in one year to be covered with QP or IBQ pounds from a subsequent year, up to a carryover limit. The carryover limit would be calculated by multiplying the percent allowed for a carryover by the total cumulative amount of QP or IBQ pounds transferred into the vessel account for the year (used and unused), less any transfers of QP or IBQ pounds out of the vessel account and less any prior carryover amounts. The reason that QP or IBQ pounds transferred out of the account would not be included in the calculation is to prevent a carryover from being calculated from the same QP or IBQ pounds in more than one account, which would effectively circumvent the percent determined by the Council for the carryover limit. The reason prior carryover amounts would be excluded from the calculation of the carryover limit is to prevent carryovers from being carried forward more than one year, consistent with the Council motion. The Council determined that the percentage to be used for calculating the carryover limit would be 10 percent, but that if there was any reduction in the OY for an IFQ species, the carryover limit would be reduced proportionately. The Council could revise the percentage used for this calculation in future action.

Under the proposed rule, a surplus up to the carryover limit could be carried over if a vessel account has remaining unused QP for an IFQ species at the end of the year. In the case of a surplus, the carryover limit would be based on the cumulative total QP or IBQ pounds in the account (used and unused, less any transfers out of the account and any prior carryover amounts) for the entire year. Alternatively, a vessel account that incurs a deficit (a negative balance for any IFQ species) that is lower than the carryover limit where the vessel account owner is unable to transfer QP or IBQ pounds into the vessel account to cure the deficit within 30 days, the vessel account owner could cure the deficit by declaring the vessel out of the fishery for the remainder of the year and transferring sufficient QP or IBQ pounds into the vessel account within 30 days of NMFS's issuance of QP and IBQ pounds in the following year. In the case of a deficit, the carryover limit would be based on the cumulative total

QP or IBQ pounds in the account (used and unused, less any transfers out of the account and any prior carryover amounts) at the date upon which the deficit was documented. If a vessel declares out of the fishery for the remainder of the year, remaining QP or IBQ pounds in the vessel account (species for which there is no deficit) would still be transferable.

During discussions at the RDW, some commenters expressed concern that the requirement to declare out of the fishery for the remainder of the year in order to invoke the carryover provision for a deficit would be overly restrictive and that, in their view, a vessel that declares out of the IFQ fishery under the carryover provision should be able to declare back into the fishery if able to obtain sufficient QP or IBQ pounds later in the year. Under the proposed rule, a vessel would be able to declare back into the Shorebased IFQ Program if it cures the deficit in the same year in which the deficit occurs, however, if a vessel opts to do so, it would no longer meet the requirements for the carryover provision. Instead, the vessel would be subject to enforcement for a violation of the requirement to cure a deficit within 30 days of the date the deficit is documented. The Council was emphatic on the importance of curing deficits within 30 days, and that the carryover provision was a narrow exception to this requirement. If a vessel were allowed to declare out of the fishery under the carryover provision, and subsequently declare back into the fishery before the end of the year, a vessel could effectively circumvent the requirement to cure a deficit within 30 days. The RDW did not achieve consensus regarding this issue, and it was suggested that if any approach different from that in this proposed rule were considered preferable, the Council could address it in the trailing amendments for the rationalization program. Thus, NMFS specifically highlights this issue to solicit public comment.

#### *At-Sea Sectors*

##### *Changes Applicable to All At-Sea Sectors*

##### *Coop Permits & Coop Agreements*

The proposed rule would require that any coop participating in the MS Coop Program or C/P Coop Program would need to obtain a NMFS-approved coop permit in order to address management at the coop level. A coop permit would formally register the coop and its associated members to harvest and process in the sector. Under the proposed rule, in order to obtain a coop

permit, the coop would need to specify a coop manager and submit a coop agreement that would establish the terms and conditions for the coop. These provisions would provide NMFS with a mechanism to track and communicate with the coop. In addition, the coop permit would provide a means to assure accountability at the coop level instead of at the individual level, and would provide NMFS with an avenue to take enforcement or administrative action at the coop level if any of the conditions of the coop permit and its associated coop agreement are not met. Under the proposed rule, the coop permit may be revised by NMFS to reflect changes in the membership or participating vessels and other material changes to the coop.

A coop agreement must be submitted with any application for an MS or C/P coop permit. The coop agreement would establish the terms and conditions for the coop. The MS coop agreement language from the Council motion at Appendix D, B-2.3.3 (e), p. D-31, stated that a coop agreement must include "A list of all vessels, and which must match the amount distributed to individual permit holders by NMFS." Some text was inadvertently removed from an earlier version of this Council motion language. Council staff clarified after the June 30th RDW meeting that the text should read, "A list of all vessels *and permit holders participating in the coop and their share of the allocated catch*, which must match the amount distributed to individual permit owners by NMFS." NMFS requires this missing language because of its need to track vessels participating in the coop for enforcement reasons. Accordingly, this corrected language has been inserted in this proposed rule. The C/P coop agreement language also requires a list of vessels for NMFS' enforcement reasons, but does not specify associated catch allocations because the C/P Coop Program is one voluntary coop that receives the entire C/P sector allocation.

MS coop agreements would also be required to include, "Provisions that prohibit co-op membership by permit holders that have incurred legal sanctions that prevent them from fishing groundfish in the Council region" (Appendix D, B-2.3.3(e)(10), p. D-31). Because MS coops would also be required to represent at least 20 percent of the catch history assignment associated with MS/CV-endorsed limited entry trawl permits, as stated, such provisions could result in a coop failure if a coop member permit incurs a legal sanction, is prohibited membership in the coop, and the coop membership falls below the 20 percent

threshold as a result. Such an outcome could potentially penalize all members of a coop for actions of a single member unrelated to the coop's activity. In this proposed rule, NMFS revised this clause to require of MS coop agreements "Provisions that prohibit member permit owners that have incurred legal sanctions that prevent them from fishing groundfish in the Council region *from fishing in the coop*." This way, such members would remain coop members, avoiding the risk of triggering a coop failure, but could not fish for the coop. The proposed rule does not include a parallel clause for C/P coop agreements referring to legal sanctions.

The Council motion did not include a C/P coop agreement provision. However, NMFS determined the need for the coop agreement provisions for the same reasons such provisions are required for the MS Coop Program. C/P coop agreement contents would not be directly parallel to the MS coop agreement language because these fisheries are structured differently.

#### *At-Sea Sector Observers*

Under the MS Coop Program and the C/P Coop Program, the Council voted to implement 100 percent at-sea observer coverage for all vessels, including processing vessels, in order to assure that all catch, including discards, would be matched against allocations. The proposed rule would require all vessels in the MS Coop or C/P Coop Programs to carry observers, and defines prohibited actions and responsibilities of vessels, the responsibilities of companies providing observer services, and observer qualifications and responsibilities.

As previously described, the WCGOP was developed consistent with guidelines for fishery observer programs developed under the MSA (see MSA sec. 403, 16 U.S.C. 1881b; 50 CFR 600.746), and as such, the program components proposed rule would retain the WCGOP's existing general framework and add new components specific to the MS or C/P Coop Programs. New provisions would include mandatory observer coverage, the placement of observers on catcher vessels, and collection of estimates of any operational or other discards.

Observers certified for catcher vessels in the mothership fishery would be trained in the same manner as those trained for the Shorebased IFQ Program because of the similarity of their roles (refer back to Shorebased IFQ Program observer discussion for details applicable to catcher vessel observers). Observers certified for mothership processors or catcher/processors would

be trained in the same manner as under the current at-sea observer program.

#### *At-Sea Sector Donation Program*

A management measure that may no longer be necessary or may need further revision is the optional "bycatch reduction and full utilization program for at-sea processors" (called bycatch reduction and donation program). The bycatch reduction and donation program was established to allow vessels harvesting unsorted catch to retain and donate amounts of groundfish that were in excess of trip limits. Under trawl rationalization, the at-sea sector regulations may not require vessels to be subject to trip limits for groundfish species other than Pacific whiting outside of the primary whiting season. Therefore, the donation program may no longer be necessary or may require minor adjustments. In this proposed rule, the bycatch reductions and donation program remains as stated in existing regulations. NMFS specifically requests comment on the implications of removing or retaining this program and suggested language revisions.

#### *Other At-Sea Management Measures*

Many of the existing Pacific whiting management measures and provisions for bycatch management remain in place under the implementation of the rationalization program. With regards to bycatch, the Council motion states that "[t]he goal of bycatch management is to control the rate and amounts of rockfish and salmon bycatch to ensure that each sector is provided an opportunity to harvest its whiting allocation" (Appendix D, B-1.3, p. D-24). For rockfish, hard caps for widow, canary, darkblotched, and Pacific ocean perch would be subdivided between sectors, and in the MS Coop Program, would be further subdivided between the coop fishery and non-coop fishery, and between the coops in the coop fishery. The motion further states that "[t]he ESA listed salmon bycatch management measures—that is, the 11,000 Chinook threshold, 0.05 rate threshold, and triggered 100 fathom closure—will also continue to be in place." *Id.* The program components proposed rule specifies that these measures would continue to be applicable to the at-sea sector under rationalization.

Existing regulations at § 660.306(f)(8) prohibit sorting or discarding of any portion of the catch taken by a catcher vessel in the mothership sector prior to the catch being received on a mothership, and prior to the observer being provided access to the unsorted catch, with the exception of minor

amounts of catch that are lost when the codend is separated from the net and prepared for transfer. Moreover, § 660.306(i)(2) prohibits all vessels with an observer onboard from interfering with or biasing the observer's sampling procedure, including either mechanically or physically sorting or discarding catch before sampling. These prohibitions were retained in the proposed initial issuance rule, at § 660.112(c)(5) and § 660.112(e)(2), respectively. These existing prohibitions address retention requirements sufficiently in the catcher/processor sector. However, because of the allocations to coops and increased observer coverage, additional provisions have been proposed in the MS Coop Program. In the draft program components rule provided by NMFS to the Council for its review at the June 2010 meeting, NMFS had included language in § 660.150 regarding retention requirements in the MS Coop Program with the understanding that catcher vessels would be able to continue to operate as a maximized retention fishery where vessels transfer all of their catch to the mothership prior to sorting the catch. In this program components proposed rule, NMFS has clarified the retention requirements in the MS Coop Program consistent with Council guidance that a maximized retention fishery would still be allowed to continue, but that discards would need to be accounted for and applied against allocations.

#### *MS Coop Program*

The proposed rule provides details of the requirements of the MS Coop Program. Each year, a vessel registered to an MS/CV-endorsed permit would be allowed to fish in the coop or non-coop portion of the MS Coop Program, but not both. As discussed above, the MS Coop Program is a maximized retention fishery. While some minor amounts of operational discards may occur, the intent is that all such discards would be accounted for (estimated by the observer) and deducted from allocations.

#### *Motherships*

The proposed rule specifies the participation responsibilities for mothership processors in the MS Coop Program. A mothership would be allowed to receive and process fish provided that it was registered to an MS permit and that it neither fished in the MS sector as a catcher vessel nor fished in the C/P sector as a catcher processor during the same calendar year. An MS permit is a new kind of limited entry permit; however, unlike vessels

registered to other limited entry permits, a mothership would not be required to have a vessel monitoring system (VMS) onboard. VMS provides location data to assure fishing vessel with groundfish conservation areas, and is inapplicable to motherships. As described above, the mothership would need to maintain observer coverage, provide NMFS-approved catch weighing equipment, and ensure that all catch which it receives is accurately weighed in its round form. The mothership would also be required to maintain and submit required records and reports, including: Economic data collection forms, scale test records, and cease fishing reports. A vessel registered to an MS permit would also be required to declare its intent to operate as a mothership in the MS permit renewal process. MS permits would be subject to a usage limit in that no person who owns an MS permit(s) may register the MS permit(s) to vessels that cumulatively process more than 45 percent of the annual mothership sector Pacific whiting allocation. Ownership of an MS permit would be calculated using the individual and collective rule, which means the person would be credited with 100 percent of the processing associated with each permit wholly owned by that person and with an amount of processing equivalent to that person's ownership interest in the permit for each permit partially owned by that person.

#### *Catcher Vessels*

A catcher vessel would be eligible to participate in the MS Coop Program provided it is registered to a trawl-endorsed limited entry permit; however, it may only elect to participate in the non-coop fishery in the MS Coop Program if the permit has an MS/CV endorsement. The vessel would not be eligible to participate as a catcher vessel in the MS Coop Program if it operated as a mothership in the MS Coop Program or as a catcher-processor in the C/P Coop Program during the same year. A vessel would also not be allowed to catch more than 30 percent of the Pacific whiting allocation for the mothership sector. As with motherships, catcher vessels would be required to procure observers, and maintain and submit required records and reports such as economic data collection forms and scale test records (if scales are employed). MS/CV-endorsed permits could be combined with another limited entry trawl permit in order to increase the size endorsement, but if combined with another MS/CV-endorsed permit would be subject to accumulation limits restricting ownership of catch history

assignment to no more than 20 percent of the MS Coop Program allocation. MS/CV-endorsed permits would be subject to limited entry permit regulations regarding change in ownership, change in vessel registration, and annual renewal.

If the owner of an MS/CV-endorsed permit fails to renew the permit, the catch history assignment for that permit would be assigned to the non-coop fishery in the first year in which this occurs; if not renewed in a second year, the catch history assignment would be redistributed proportionally to all valid MS/CV-endorsed permits. The reason the catch history assignment would be assigned to the non-coop fishery in the first year is to provide sufficient time for the permit owner to appeal the extinguishment of the permit as a result of the permit owner's failure to renew the permit. If the permit owner's appeal were to be successful, the permit owner would be eligible to fish in the non-coop fishery. If the permit owner's appeal does not succeed, the catch history assignment would be redistributed among all other MS/CV-endorsed permits in the following year; NMFS would not redistribute the catch history assignment in the first year because of the timing involved.

#### *Coops*

Owners of MS/CV-endorsed limited entry trawl permits would be allowed to form coops, provided the coop meets its own participation requirements and responsibilities. A coop would be required to be a voluntarily formed, legally recognized entity that is owned and operated by and representative of its members, who would need to be the owners of at least 20 percent of all MS/CV-endorsed permits, and would be required to designate a coop manager and obtain an MS coop permit from NMFS. The coop would be responsible for applying for and being registered to an MS coop permit, managing and monitoring transfers of catch allocations between members and with other coops, managing and monitoring harvest activities and enforcing catch limits of the coop members, submitting an annual report and identifying a designated coop manager. The designated coop manager would serve as the contact person for the coop, and would be responsible for the annual distribution of catch and bycatch, oversee transfers, prepare annual reports, and be authorized to receive and respond to any legal process against the coop. The designated coop manager would also be required to notify NMFS if the coop dissolves.

Each year, a coop entity that wishes to participate in the MS Coop Program as a permitted coop would be required to submit a complete application for an MS coop permit, including a coop agreement and any administrative fees and annual reports that may be due. The coop entity would also be required to provide copies of any inter-coop agreement(s) into which the coop has entered at the time of annual application, which must incorporate and honor the provisions of each permitted MS coop. For a coop agreement to be complete, it must be signed by all members of the coop and include all of the information outlined in the regulation. If NMFS does not accept the coop agreement, the application would be returned with a letter explaining why not, the coop entity could resubmit the application after addressing any deficiencies. If NMFS accepts the coop agreement and issues an MS coop permit, the coop agreement would remain in place through the end of the calendar year. If any material changes to the coop agreement were to occur during the year, the designated coop manager would be required to notify NMFS within 7 calendar days and would be required to submit a revised coop agreement within 30 calendar days (a material change would be any change in the required components of the coop agreement). The MS coop permit itself would remain in effect until the coop has reached its Pacific whiting allocation or notifies NMFS that it has ceased fishing for the calendar year, a material change to the coop agreement has occurred and the designated coop manager failed to provide a revised coop agreement to NMFS within 7 calendar days of the material change, or NMFS has determined that a coop failure occurred.

#### *MS Coop Program Allocations*

The proposed rule sets forth how sub-allocations in the MS Coop Program would be determined and managed. Catch history assignment associated with each MS/CV-endorsed limited entry trawl permit would be annually allocated to a single permitted MS coop or to the non-coop fishery, and would remain with that coop or non-coop fishery for that year. Each permitted MS coop would be authorized to harvest a quantity of Pacific whiting that is based on the sum of the catch history assignments for each MS/CV-endorsed permit identified in the accepted coop agreement for a given calendar year. Designated coop managers may redistribute Pacific whiting sub-allocations between permitted MS coops

through an inter-coop agreement, but Pacific whiting would not be allowed to be redistributed from a permitted MS coop to the non-coop fishery, nor from the MS Coop Program to either the Shorebased IFQ Program or the C/P Coop Program.

Annual mothership sector allocations of non-whiting groundfish species would be divided between MS coops and the non-coop fishery annually; NMFS would inform each MS coop with the amount of its allocation for such species at the time NMFS issues the MS coop permit. Sub-allocations of non-whiting groundfish species with allocations to permitted MS coops would be in proportion to the Pacific whiting catch history assignments assigned to each permitted MS coop. The annual amount of both whiting and allocated non-whiting groundfish species to the non-coop fishery would likewise be calculated from the sum of the catch history assignments for each MS/CV-endorsed permit in the non-coop fishery plus any permits that did not identify a coop, did not renew or were revoked in the previous year. [Note: After any permits that did not renew or were revoked have been through due process, the catch history assignments from those permits would be redistributed pro-rata to all remaining MS/CV-endorsed permits in the second year after revocation or non-renewal. Permits that did not declare into a coop and that do not have an obligation to an MS permit would default to the non-coop fishery due to failure to meet the processor obligation and coop agreement requirements.] Pacific halibut and groundfish species that are not allocated (e.g., those with at-sea sector set-asides and those with no set-asides) would not be divided between MS coops and the non-coop fishery, but would be managed annually.

Under the proposed rule, when a mothership sector allocation is reached or is projected to be reached, fishing would be required to cease and a mothership would be prohibited from receiving further deliveries. Likewise, if a sub-allocation to the non-coop fishery is reached or is projected to be reached, all fishing would be required to cease in the non-coop fishery. In a permitted MS coop, fishing would be required to cease once the annual sub-allocation is reached, unless the coop is operating under an inter-coop agreement. Unused non-whiting allocations that remain after a MS coop ceases fishing could be reapportioned among permitted MS coops and the non-coop fishery in proportion to their sub-allocations, or could be reallocated to the C/P sector if

the mothership sector's Pacific whiting allocation is reached or participants in the sector do not intend to harvest the remaining allocation.

#### *Processor Obligations*

The proposed rule outlines requirements for owners of MS/CV-endorsed permits to make a preliminary declaration in the annual permit renewal process whether they intend to participate in an MS coop or in the non-coop fishery in the following year. If declaring to fish in an MS coop, the owner of the permit would also be required to designate to which mothership the owner intends to obligate its permit for that year. An MS/CV-endorsed permit owner would be required to indicate its intended processor obligation through the renewal process for that permit, and the actual processor obligation would be required to be disclosed on the MS coop permit application in the following year. A permitted MS coop would be required to honor the processor obligation of each permit with respect to any distribution of Pacific whiting sub-allocation within the coop or between permitted coops through an inter-coop agreement, unless it obtains a mutual agreement with the processor to release the MS/CV-endorsed permit owner's processor obligation and the MS/CV-endorsed permit owner identifies a processor obligation to another MS permit. A vessel registered to an MS/CV-endorsed permit may fish for more than one coop in a year, but can only transfer the catch history assignment associated with its MS/CV-endorsed permit through an inter-coop agreement and deliveries of fish caught under that catch history assignment may only be delivered to another MS permit through a mutual agreement exception.

In developing the regulations for the processor obligation provision, NMFS discovered that there may be some confusion over the extent of the annual obligation of an MS/CV-endorsed permit to a specific processor. The Council motion states that "Each year, a permit will obligate to a processor all of its catch for a coming year[.]" and that "CV(MS) permits will be obligated to a single MS permit for an entire year[.]" (Appendix D, B-2.4, p. D-31). As the motion further describes this obligation, it refers to the obligation as a "linkage" between the MS/CV-endorsed permit and the MS permit, and states that the "CV permit must notify the MS permit that the CV permit QP will be linked to." *Id.* at p. D-32 (emphasis added). Because of this language in the Council motion, NMFS believes the nature and extent of the processor obligation is the

commitment of the annual catch history assignment associated with the MS/CV-endorsed permit, analogous to QP in the Shorebased IFQ Program. Draft regulations provided to the Council for review as part of the deeming process referred only to the obligation of the MS/CV-endorsed permit to the MS permit, and did not specify the nature or extent of that obligation. Members of the Council's RDW expressed concern that such language could be interpreted to require all deliveries of a vessel registered to the MS/CV-endorsed permit to be delivered to the mothership registered to the MS permit, not just deliveries of the fish associated with the MS/CV-endorsed permit's catch history assignment, and that under such an interpretation, for a vessel to deliver to a processor other than that to which its permit is obligated would require registration of the vessel to another permit or release of the permit through mutual agreement with the processor to which the permit is obligated. For the reasons described above, NMFS does not believe that such an interpretation comports with the intent of the Council motion. Accordingly, NMFS has clarified the regulation to specify that the processor obligation refers only to the commitment of the permit's catch history assignment to a given MS permit, and specifically requests comment on the implications that this interpretation may have on anticipated operations within the MS Coop Program.

There is no processor obligation provision for participants in the non-coop fishery. The version of the regulations provided to the Council at its June 2010 meeting erroneously included a processor obligation for participants in the non-coop fishery. This has been removed from these proposed regulations to conform to the Council motion on the trawl rationalization program.

The Council motion included a clause where a mothership processor may withdraw from the mothership fishery and its obligation to any MS/CV endorsed permits. This provision requires a mothership to notify NMFS and all MS/CV-endorsed permit owners that have declared their obligation to the MS permit registered to that mothership if the mothership is withdrawing from their processor obligation before NMFS assignment of catch history assignments to an individual mothership coop. The Council motion states that this withdrawal could happen "subsequent to quota assignments[.]" (Appendix D, B-2.4.3, p. D-32.) NMFS interprets this to mean subsequent to the declaration of MS/CV-endorsed permit owners' intent

to obligate to particular MS permits during the limited entry permit renewal process up to NMFS's issuance of coop permits in the following year. After NMFS assigns catch history assignments to individual MS coops, MS/CV-endorsed permits would not be able to move between the coop and non-coop fishery within the calendar year, and the Council provided for transfers of allocations in such circumstances through the mutual agreement process described above. Under the MS permit withdrawal provision, if an MS permit were to withdraw from the mothership fishery before the allocations to individual MS coops have been announced by NMFS, any MS/CV endorsed permit obligated to the MS permit may elect to participate in the coop or non-coop fishery. In such an event, the owner of each MS/CV-endorsed permit obligated to the MS permit must provide written notification to NMFS of their intent to either participate in the non-coop fishery or the coop fishery, and if participating in the coop fishery must identify a processor obligation for another MS permit.

#### *MS Coop Failure*

In the event of a coop failure during the Pacific whiting primary season for the mothership sector, unused allocation associated with the catch history would not be available for harvest by the coop that failed, by any former members of the coop that failed, any other MS coop, or the non-coop fishery for the remainder of that calendar year. The regulations at § 660.150(k) do not reference the non-coop fishery because regulations at § 660.150(c)(2), annual mothership sector sub-allocations, already establishes that allocations could not be redistributed between the coop and non-coop fishery within the calendar year. If allocations were permitted to move to the non-coop fishery within year, it may create incentives for coop failure.

#### *Items Disapproved by NMFS*

On August 9, 2010, NMFS made its decision to partially approve Amendments 20 and 21 to the FMP. The proposed rule, which was developed by NMFS and deemed by the Council prior to this partial approval, and contains several provisions in the MS Coop Program that NMFS has subsequently disapproved. NMFS intends to remove these provisions in the final rule. One such provision states: "Signed copies of the coop agreement must be submitted to NMFS and the Council and available for public review before the coop is authorized to engage in fishing

activities." NMFS disapproved of the requirement to submit agreements to the Council and for public review because not only would it be impracticable given the timing for public review, but also could violate restrictions on the disclosure of confidential information under the MSA. Accordingly, NMFS intends to revise this provision in the final rule to state: "Signed copies of the coop agreement must be submitted to NMFS before the coop is authorized to engage in fishing activities." Another provision would require coops to submit a letter to the Department of Justice requesting a business review letter on the fishery coop, and to submit copies of all such correspondence with an MS coop permit application. NMFS disapproved this provision because compliance with antitrust laws is a separate and distinct obligation of each and every participant and does not need to be a requirement specified in the FMP. Accordingly, NMFS intends to remove this provision entirely in the final rule. Another provision would require coop agreements to include "A requirement that agreement by at least a majority of the members is required to dissolve the coop." NMFS disapproved this provision because it would interfere with private parties' ability to contract and agree to the terms of dissolution that are appropriate for their coop. Accordingly, NMFS intends to remove this provision entirely in the final rule as well.

#### *C/P Coop Program*

Under Amendment 20, the C/P Coop Program would formalize in the FMP provisions that support the formation of a single, voluntary coop consisting of all owners of C/P-endorsed permits. Because there could be only one coop, the allocation of Pacific whiting to the C/P Coop Program in a given year would be equal to the entire catcher/processor sector allocation. The annual amount of non-whiting groundfish species with allocations (canary rockfish, darkblotched rockfish, POP, and widow rockfish) would be allocated to the C/P Coop Program in proportion to its allocation of Pacific whiting (*i.e.*, the same percent as the catcher/processor sector whiting allocation). Pacific halibut and groundfish species that are not allocated (*e.g.*, those with at-sea sector set-asides and those with no set-asides) would not be so divided, but would be managed annually.

When the catcher-processor sector whiting allocation is reached or is projected to be reached, fishing within the sector would be required to cease. If the catcher-processor sector's whiting allocation is reached, or if participants

in the sector do not intend to harvest the remaining whiting allocation, unused non-whiting allocations that remain after the C/P coop ceases fishing could be reapportioned to the mothership sector.

Because the catcher-processor sector already operates as a voluntary coop under existing regulations, NMFS does not anticipate significant change to its operations. One change that the proposed rule would adopt is the provision that if the voluntary coop were to fail, it would be replaced with an IFQ program, and NMFS would issue IFQ equally to each owner of a C/P-endorsed permit, as specified in the Council motion. Appendix D, B-4, p. D-34. Other changes to the C/P Coop Program are described in sections of this preamble applicable to all fisheries or to at-sea sectors (*e.g.*, EDC program, observer program, coop permits and coop agreements, *etc.*).

#### *Classification*

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Pacific Coast Groundfish FMP, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

The Council prepared a final environmental impact statement (EIS) for Amendment 20 and Amendment 21 to the Pacific Coast Groundfish FMP; a notice of availability for each of these final EISs was published on June 25, 2010 (75 FR 36386).

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the IRFA is available from NMFS (*see ADDRESSES*) and a summary of the IRFA, per the requirements of 5 U.S.C. 604(a) follows:

The Council has prepared two EIS documents: Amendment 20—Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery, which would create the structure and management details of the trawl fishery rationalization program; and Amendment 21—Allocation of Harvest Opportunity Between Sectors of



the Pacific Coast Groundfish Fishery, which would allocate the groundfish stocks between trawl and non-trawl fisheries. The two draft EIS's prepared by the Council provide economic analyses of the Council's preferred alternatives and draft RIR and IRFAs. The draft RIR and IRFAs were updated and combined into a single RIR/IRFA for use with the "initial issuance" proposed rule that was published on June 10, 2010 (75 FR 32994). This single RIR/IRFA reviewed and summarized the benefits and costs, and the economic effects of the Council's recommendations as presented in the two EIS's. In addition, the RIR/IRFA contains additional information on characterizing the participants in the fishery and on the tracking and monitoring costs associated with this program.

The RIR/IRFA analyzed the overall program as recommended by the Pacific Fishery Management Council. The analysis encompassed aspects of the initial issuance rule which establishes the allocations set forth under Amendment 21 and procedures for initial issuance of permits, endorsements, quota shares, and catch history assignments under the IFQ and coop programs. It also encompassed this rule—the "program components" rule which provides additional details, including: program components applicable to IFQ gear switching, observer programs, retention requirements, equipment requirements, catch monitors, catch weighing requirements, coop permits/agreements, first receiver site licenses, quota share accounts, vessel quota pound accounts, further tracking and monitoring components, and economic data collection requirements. Revenue and landings data in the RIR/IRFA have been updated based on recent analysis by the Council (Appendix F: Historical Landings and Revenue in Groundfish Fisheries; Agenda Item B.3.a, Attachment 3, June 2010). The Council analysis provides revenue trends based on inflation adjusted dollars where estimates are adjusted to current (2009) dollars. The RIR/IRFA was also revised based on comments received on the initial issuance rule and includes a discussion of the other alternatives considered by the Council. This revised RIR/IRFA will also be revised again to address the future "cost-recovery" rule, based on a recommended methodology yet to be developed by the Council. A summary of the revised RIR/IRFA follows.

Although other alternatives were examined, the RIR/IRFA focuses on the two key alternatives—the No-Action

Alternative and the Preferred Alternative. The EISs include an economic analysis of the impacts of all the alternatives and the RIR/IRFA incorporates this analysis. For the Amendment 20 EIS, the alternatives ranged from status quo (no action), to IFQ for all trawl sectors, IFQ for the non-whiting sector and coops for all whiting sectors, and IFQ for the shorebased sector and coops for the at-sea sectors (preferred). Various elements were part of each of these alternatives and varied among them, including initial qualifications and allocations, accumulation limits, grandfathering, processor shares, species covered, number of sectors, adaptive management, area management, and carryover provisions. The preferred alternative is a blending of components from the other alternatives analyzed in the EIS. For the Amendment 21 EIS, alternatives were provided for 6 decision points: (1) Limited entry trawl allocations for Amendment 21 species, (2) shoreside trawl sector allocations, (3) trawl sector allocations of trawl-dominant overfished species, (4) at-sea whiting trawl sector set-asides, (5) Pacific halibut total bycatch limits, and (6) formal allocations in the FMP. For most of these decision points, the alternatives within them were crafted around approximately maintaining historical catch levels by the sectors or, in some cases, increasing opportunity for the non-trawl sector.

By focusing on the two key alternatives in the RIR/IRFA (no action and preferred), it encompasses parts of the other alternatives and informs the reader of these proposed regulations. The analysis of the no action alternative describes what is likely to occur in the absence of the proposed action. It provides a benchmark against which the incremental effects of the proposed action can be compared. Under the no action alternative, the current, primary management tool used to control the Pacific coast groundfish trawl catch includes a system of two month cumulative landing limits for most species and season closures for Pacific whiting. This management program would continue under the no action alternative. Only long-term, fixed allocations for Pacific whiting and sablefish north of 36° N. lat. would exist. All other groundfish species would not be formally allocated between the trawl and non-trawl sectors. Allocating the available harvest of groundfish species and species complexes would occur in the Council process of deciding biennial harvest specifications and management

measures and, as such, would be considered short term allocations.

The analysis of the preferred alternative describes what is likely to occur as a result of the proposed action. Under the preferred alternative, the existing shore-based whiting and shore-based non-whiting sectors of the Pacific Coast groundfish limited entry trawl fishery would be managed as one sector under a system of IFQs, and the at-sea whiting sectors of the fishery (*i.e.*, catcher-processor sector and mothership sector, which includes motherships and catcher vessels) would be managed under a system of sector-specific harvesting cooperatives (co-ops). The catcher-processor sector would continue to operate under the existing, self-developed co-op program entered into voluntarily by that sector. A distinct set of groundfish species and Pacific halibut would be covered by the rationalization program. Amendment 20 would include a tracking and monitoring program to assure that all catch (including discards) would be documented and matched against QP. The Council specified that observers would be required on all vessels and shore-based monitoring (catch monitors) would be required during all off-loading (100 percent coverage). Compared to status quo monitoring, this would be a monitoring and observer coverage level increase for a large portion of the trawl fleet, particularly for non-whiting shorebased vessels.

The limited entry trawl fishery is divided into two broad sectors: a multi-species trawl fishery, which most often uses bottom trawl gear (hereafter called the non-whiting fishery), and the Pacific whiting fishery, which uses midwater trawl gear. Over the 2005–2009 period, these fisheries when combined have average annual inflation adjusted revenues of about \$57 million and total landings of about 215,000 tons. The non-whiting fishery is principally managed through 2-month cumulative landing limits along with closed areas to limit overfished species bycatch. Fishery participants target the range of species described above with the exception of Pacific whiting. By weight, the vast majority of trawl vessel groundfish is caught in the Pacific whiting fishery. In contrast, the non-whiting fishery accounts for the majority of limited entry trawl fishery ex-vessel revenues. On average, for the period 2005–2009, Pacific whiting accounted for about 90 percent of the quantity of groundfish landed in the limited entry trawl fishery, but only 44 percent of the value due to their relatively low ex-vessel price.



Non-whiting trawl vessels deliver their catch to shoreside processors and buyers located along the coasts of Washington, Oregon, and California, and tend to have their homeports located in towns within the same general area where they make deliveries, though there are several cases of vessels delivering to multiple ports during a year. Some Pacific whiting trawl vessels are catcher-processors, which, as their name implies, process their catch on-board, while other vessels in this sector deliver their catch to shoreside processors or motherships that receive Pacific whiting for processing but do not directly harvest the fish.

Over time, landings in the limited entry trawl fishery have fluctuated, especially on a species-specific basis. Pacific whiting has grown in importance, especially in recent years. Through the 1990s, the volume of Pacific whiting landed in the fishery increased. In 2002 and 2003, landings of Pacific whiting declined due to information showing the stock was depleted and the subsequent regulations that restricted harvest in order to rebuild the species. Over the years 2005–2009, estimated Pacific whiting ex-vessel revenues averaged about \$25 million (figures have been adjusted to 2009 dollars to account for inflation). In 2008, these participants harvested about 216,000 tons of whiting worth about \$51 million in ex-vessel revenues, based on shore-based ex-vessel prices of \$235 per ton, the highest ex-vessel revenues and prices on record. In comparison, the 2007 fishery harvested about 214,000 tons worth \$29 million at an average ex-vessel price of about \$137 per ton while the 2009 non-Tribal fishery harvested about 99,000 tons worth about \$12 million at a price of \$120 per ton.

While the Pacific whiting fishery has grown in importance in recent years, harvests in the non-whiting component of the limited entry trawl fishery have declined steadily since the 1980s. Non-whiting trawl ex-vessel revenues (adjusted for inflation) in the fishery peaked in the mid 1990s of about \$40 million. Following the passage of the Sustainable Fisheries Act (1996) and the listing of several species as overfished, harvests became increasingly restricted and landings and revenues declined steadily until 2002. Over the period 2005 to 2009, inflation adjusted ex-vessel revenues from groundfish in the non-whiting trawl sector have averaged \$27 million annually; ranging from \$24 million (2005) to \$32 million (2008). The 2009 fishery earned \$30 million in ex-vessel revenues. Under the trawl rationalization program, shorebased whiting sector will be joined with the

shorebased non-whiting sector. For perspective, when these fisheries are combined, their total ex-vessel revenues have averaged about \$36 million annually over the last five years.

#### **Expected Effects of Amendment 21—Intersector Allocation**

The allocation of harvest opportunity between sectors under the proposed regulation does not differ significantly from the allocation made biennially under the no action alternative. The primary economic effect of the long-term allocation under the proposed regulations is to provide more certainty in future trawl harvest opportunities, which would enable better business planning for participants in the rationalized fishery. As described elsewhere, the trawl rationalization program could create an incentive structure and facilitate more comprehensive monitoring to allow bycatch reduction and effective management of the groundfish fisheries. In support of the trawl rationalization program, the main socioeconomic impact of Amendment 21 allocations is longer term stability for the trawl industry. While the preferred Amendment 21 allocations do not differ significantly from status quo ad hoc allocations made biennially, there is more certainty in future trawl harvest opportunities, which enables better business planning for participants in the rationalized fishery. This is the main purpose for the Amendment 21 actions. The economic effects of Amendment 21 arise from the impacts on current and future harvests. The need to constrain groundfish harvests to address overfishing has had substantial socioeconomic impacts. The groundfish limited entry trawl sector has experienced a large contraction, spurred in part by a partially Federally-subsidized vessel and permit buyback program implemented in 2005. This \$46 million buyback program was financed by a Congressional appropriation of \$10 million and an industry loan of \$36 million. Approximately 240 groundfish, crab, and shrimp permits were retired from State and Federal fisheries, and there was a 35 percent reduction in the groundfish trawl permits. To repay the loan, groundfish, shrimp and crab fisheries are subject to landings fees. Follow-on effects of the buyback have been felt in coastal communities where groundfish trawlers comprise a large portion of the local fleet. As the fleet size shrinks and ex-vessel revenues decline, income and employment in these communities is affected. Fishery-related businesses in the community may cease operations because of lost

business. This can affect non-groundfish fishery sectors that also depend on the services provided by these businesses, such as providing ice and buying fish. An objective to the trawl rationalization program is to mitigate some of these effects by increasing revenues and profits within the trawl sector. However, because further fleet consolidation is expected, the resulting benefits are likely to be unevenly distributed among coastal communities. Some communities may see their groundfish trawl fleet shrink further as the remaining vessels concentrate in a few major ports. Species subject to Amendment 21 allocations would be: Lingcod, Pacific cod, sablefish south of 36° N. lat., Pacific ocean perch, widow rockfish, chilipepper rockfish, splitnose rockfish, yellowtail rockfish north of 40°10' N. lat., shortspine thornyhead (north and south of 34°27' N. lat.), longspine thornyhead north of 34°27' N. lat., darkblotched rockfish, minor slope rockfish (north and south of 40°10' N. lat.), Dover sole, English sole, petrale sole, arrowtooth flounder, starry flounder, and Other Flatfish. While the preferred Amendment 21 allocations of these species do not differ significantly from status quo ad hoc allocations made biennially, there is more certainty in future trawl harvest opportunities, which enables better business planning for participants in the rationalized fishery. This is the main purpose for the Amendment 21 actions.

Based on ex-vessel revenue projections, Table 4–18 (ISA DEIS) shows the potential 2010 yield to trawl and non-trawl (including recreational) sectors under the Amendment 21 alternatives and the potential 2010 value of alternative trawl allocations. Under the status quo option Alternative 1, the projected ex-vessel value of the trawl allocation is \$56 million while the projected ex-vessel value of the Council's preferred alternative is \$54 million, indicating a potential increase to the non-trawl sectors and a potential decrease to the trawl sector.

In addition to the species above, halibut would also be specifically allocated to the trawl fishery. The proposed regulations include a halibut trawl bycatch reduction program in phases to provide sufficient time to establish a baseline of trawl halibut bycatch and for harvesters to explore methods (e.g., adjustments to time and/or area fished, gear modifications) to reduce halibut bycatch and bycatch mortality. Pacific halibut are currently not allowed to be retained in any U.S. or Canadian trawl fisheries per the policy of the IPhC. The Council's intent on setting a total catch limit of Pacific

halibut in Area 2A trawl fisheries is to limit the bycatch and progressively reduce the bycatch to provide more benefits to directed halibut fisheries. The program establishes a limit for total Pacific halibut bycatch mortality (legal-sized and sublegal fish) through the use of an individual bycatch quota in the trawl fishery. The initial amount for the first two years of the trawl rationalization program would be calculated by taking 15% of the Area 2A Total Constant Exploitation Yield (CEY) as set by the International Pacific Halibut Commission (IPHC) for the previous year, not to exceed 130,000 lbs per year for total mortality. For example, if the trawl rationalization program went into effect in 2013, the trawl halibut IBQ would be set at 15% of the Area 2A CEY adopted for 2012 or 130,000 lbs per year, whichever is less, for 2013 and 2014 (years 1 and 2 of the program). Beginning with the third year of implementation, the maximum amount set aside for the trawl rationalization program would be reduced to 100,000 lbs per year for total mortality. This amount may be adjusted downward through the biennial specifications process for future years.

Currently there are no total catch limits of Pacific halibut specified for the west coast trawl fishery. Trawl bycatch of Pacific halibut, therefore, does not limit the trawl fishery. A phased in, halibut bycatch reduction program, would provide sufficient time to establish a baseline of trawl halibut bycatch under the new rationalization program and for harvesters to explore methods (*e.g.*, adjustments to time and/or area fished, gear modifications) to reduce both halibut bycatch and bycatch mortality. By limiting the bycatch of Pacific halibut in the LE trawl fisheries, Amendment 21 would control bycatch and could provide increased benefits to Washington, Oregon, and California fishermen targeting Pacific halibut. Reducing the trawl limit would also provide more halibut to those who participate in the directed Tribal, commercial and recreational halibut fisheries.

#### **Effects of Amendment 20—Trawl Rationalization**

An overall comprehensive model that simultaneously captures changes in fishermen's behavior, changes in the markets, and changes in communities was not feasible because of lack of data and empirical analyses that show needed relationships. Instead, a set of models designed to focus on specific issues was developed. For example, models were used to: Analyze the effects of the initial allocation of QS in

the trawl IFQ program; project geographic shifts in fishery patterns; and illustrate the potential for reducing bycatch, increasing target catch, and increasing revenues. To illustrate the benefits of the IFQ program, a model projecting the expected amount of fleet consolidation in the shore-based non-whiting fishery was developed. This model illustrates the potential for the fleet to reduce bycatch and potentially increase the amount of target species harvested. This model is primarily based on bycatch reduction experiences in the Pacific whiting fishery and under an Exempted Fishing Permit carried out in the arrowtooth flounder fishery. The model accounts for the fact that trawlers harvest many species (multiple outputs). The model also uses fish ticket data and the data from the recently completed West Coast Limited Entry Cost Earnings Survey sponsored by the NMFS Northwest Fisheries Science Center. (For the other sectors, similar models could not be developed because the appropriate cost data was unavailable.)

Estimates of potential economic benefits are generated based on the predicted harvesting practices from the first step analysis. Because the west coast nonwhiting groundfish fishery is not a derby fishery, it is expected that economic benefits will come through cost reductions and increased access to target species that arise from modifications in fishing behavior (overfished species avoidance). The key output of this analysis is an estimate of post-rationalization equilibrium harvesting cost.

Changes in harvesting costs can arise from three sources. First, the total fixed costs incurred by the groundfish trawl fleet change as the size of the fleet changes. Since many limited entry trawlers incur annual fixed costs of at least \$100,000, reductions in fleet size can result in substantial cost savings. In other words, a fewer number of vessels in the fishery will lead to decreased costs through a decrease in annual fixed costs. Second, costs may change as fishery participation changes and no longer incur diseconomies of scope (such as the costs of frequently switching gear for participating in multiple fisheries). Third, costs may change as vessels are able to buy and sell quota to take advantage of economies of scale and operate at the minimum point on their long-run average cost curve (*i.e.* the strategy that minimizes the cost of harvesting).

The major conclusions of this model suggest that (with landings held at 2004 levels), the current groundfish fleet (non-whiting component) which

consisted of 117 vessels in 2004, will be reduced by roughly 50% to 66%, or 40–60 vessels under an IFQ program. The reduction in fleet size implies cost savings of \$18–\$22 million for the year 2004 (most recent year of the data). Vessels that remain active will, on average, be more cost efficient and will benefit from economies of scale that are currently unexploited under controlled access regulations in the fishery. The cost savings estimates are significant, amounting to approximately half of the costs incurred currently, suggesting that IFQ management may be an attractive option for the Pacific Coast Groundfish Fishery. Assuming a 10% annual return to the vessel capital investment, estimates indicate that the 2004 groundfish fleet incurred a total cost of \$39 million. The PacFIN data indicate fleetwide revenue (this includes groundfish, crab, and other species) at roughly \$36 million in 2004, and, therefore, fleetwide losses of about \$3 million occurred in 2004. Based on a lower 5% return to vessel capital, the results suggest that the groundfish fleet merely broke even in 2004; *i.e.*, dockside revenues were offset by the fleetwide harvesting costs. The results also suggest a switch from the current controlled access management program to IFQs could yield a significant increase in resource rents in the Pacific Coast Groundfish fishery. For instance, the analysis finds that the 2004 groundfish catch generated zero resource rent. Instead, it could have yielded a substantial positive rent at about \$14 million.

As the model was based on the 2004 fishery, it may be useful to show current trends in the fishery. In 2004, the shorebased non-whiting trawl fishery generated about \$21 million in groundfish ex-vessel revenues (inflation adjusted). But according to cost estimates discussed above, this fishery was at best breaking even or perhaps suffering a loss of up to \$2 million. Since 2004, shorebased non-whiting trawl fisheries have increased their revenues to about \$30 million. The increase in shorebased revenues have come from increased landings of flatfish and sablefish and significant increase in sablefish ex-vessel prices. Sablefish now accounts for almost 40 percent of the trawl fleet's revenues. While revenues were increasing, so were fuel prices. Fuel costs now account for approximately 30 to 40 percent of the vessels' revenues. The average 2005–2009 revenues were about \$27 million, or 29 percent greater than 2004. The average 2005–2009 fuel price was about \$2.81 per gallon, 70% greater than that

of 2004. Therefore, it appears that the profitability of the 2009 fishery may not be that much improved over that of 2004.

Ex-vessel revenues for the non-whiting sector of the limited entry trawl fishery are projected to be approximately \$30–40 million per year under the preferred alternative, compared to \$22–25 million under the no action alternative. These projections yield a potential range in increased revenues of 20 to 80 percent. This revenue increase is expected to occur in a rationalized fishery, because target species quotas can be more fully utilized. Currently, in the non-whiting sector, cumulative landing limits for target species have to be set lower because the bycatch of overfished species cannot be directly controlled. Introducing accountability at the individual vessel level by means of IFQs provides a strong incentive for bycatch avoidance (because of the actual or implicit cost of quota needed to cover bycatch species) and prevents the bycatch of any one vessel from affecting the harvest opportunities of others. In addition, under the preferred alternative, the non-whiting sector would have control over harvest timing over the whole calendar year. Nonwhiting harvesters currently operate under 2-month cumulative landing limits, which allow greater flexibility in terms of harvest timing between 2-month periods but less flexibility within periods (because any difference between actual limits and the period limit cannot be carried over to the next period). In contrast, under the IFQ program harvesters will have control over harvest timing over the whole calendar year. However, in terms of any influence on price, this increased flexibility is unlikely to have a noticeable effect. Finally, the ability for vessels managed under IFQs to use other types of legal groundfish gear could allow some increases in revenue by targeting higher-value line or pot gear caught fish. This opportunity would mainly relate to sablefish, which are caught in deeper water, rather than nearshore species where State level regulatory constraints apply.

Costs for the non-whiting sector of the limited entry trawl fishery are expected to decrease under the preferred alternative because of productivity gains related to fleet consolidation. Productivity gains would be achieved through lower capital requirements and a move to more efficient vessels. Operating costs for the non-whiting sector are predicted to decrease by as much as 60 percent annually. Based on estimates of current costs, this

percentage decrease represents a \$13.8 million cost reduction relative to the no action alternative.

The accumulation limits considered under the preferred alternative are not expected to introduce cost inefficiencies in the non-whiting sector, provided that current prices and harvest volumes do not decrease. However, the preferred alternative would impose new costs on the non-whiting sector that would not be incurred under the no action alternative. First, a landings fee of up to 3 percent of the ex-vessel value of fish harvested would be assessed under the preferred alternative to recover management costs, such as maintenance of the system of QS accounts. Second, new at-sea observer requirements would be introduced, and vessels would have to pay the costs of complying with these requirements, estimated at \$500 a day if independent contractors are hired. The daily observer cost could place a disproportionate adverse economic burden on small businesses because such costs would comprise a larger portion of small vessels costs than that of larger vessels.

The increase in profits that commercial harvesters are expected to experience under the preferred alternative may render them better able to sustain the costs of complying with the new reporting and monitoring requirements. The improved harvesting cost efficiency under the preferred alternative may allow the non-whiting sector to realize profits of \$14–23 million compared to \$0 or less under the no action alternative. In addition, a provision that allows vessels managed under the IFQ program to use other legal gear (gear switching) would allow sablefish allocated to the trawl sector to be sold at a higher price per pound, possibly contributing to increased profits. The imposition of accumulation limits could reduce the expected increase in the profitability of the non-whiting sector by restricting the amount of expected cost savings, and the costs of at-sea observers may reduce profits by about \$2.2 million, depending on the fee structure. However, the profits earned by the non-whiting sector would still be substantially higher under the preferred alternative than under the no action alternative.

New entrants are likely to face a barrier to entry in the Pacific Coast groundfish limited entry trawl fishery in the form of the cost of acquiring QS (or a co-op share in the case of the at-sea whiting sector). This disadvantages them in comparison to those entities that receive an initial allocation of harvest privileges. Small entities may be particularly disadvantaged to the degree

that they may find it more difficult to finance such quota purchases. Among the goals the Council identified for the adaptive management program was to use the reserved non-whiting QS to facilitate new entry into the fishery. In addition, the Council identified, as a trailing action, a framework to allow the establishment and implementation of Community Fishing Associations as part of the adaptive management program. These entities could facilitate entry into the fishery by leasing QS at below market rates, thereby leveling the playing field in terms of costs between initial recipients of QS and new entrants.

The incremental effects of the preferred alternative on buyers and processors of trawl caught groundfish are detailed Sections 4.9–4.10 of the Rationalization of the Amendment 20 Pacific Coast Groundfish Limited Entry Trawl Fishery DEIS. Even though processors may have to pay fishermen higher ex-vessel prices, processors may see cost savings under the preferred alternative to the degree that rationalization allows greater processors and fishermen greater ability to plan the timing, location, and species mix of landings. Processors could use current plant capacity more efficiently, because available information suggests that processing facilities are currently underutilized. Fleet consolidation in the non-whiting sector could also provide cost savings for processors if landings occur in fewer locations, thereby reducing the need for facilities and/or transport. The preferred alternative would also impose new costs on processors that would not be incurred under the no action alternative. Processors would be required to pay some or all of the costs of plant monitors, who would verify landings. Similar to at-sea observers, these monitors would be independent contractors rather than direct employees of the processing firm.

In the non-whiting processing industry, harvest volumes may increase because of a decrease in constraining species bycatch and a subsequent increase in under-utilized target species catch. This boost in target species catch may increase utilization of processing capital and processing activity. (It should be noted that if under the current system bycatch has been underreported, with 100 percent observer coverage under the new system, the gains in increased target catches may be less than expected.) Consequently, the possibility of capital consolidation in the non-whiting shorebased sector may be less than in the shore-based whiting sector.

However, shifts in the distribution of landings across ports as a result of fleet consolidation, industry agglomeration, and the comparative advantage of ports (a function of bycatch rates in the waters constituting the operational area for the port, differences in infrastructure, and other factors) could lead to consolidation in processing activity at a localized or regional scale and an expansion in processing activity elsewhere. To mitigate harm to adversely impacted non-whiting shoreside processors, the adaptive management program provides a mechanism to distribute non-whiting QS to processors, thereby ensuring that some processors receive greater landings of groundfish than would otherwise be the case.

As noted above, the preferred alternative may reduce the power of non-whiting shoreside processors to negotiate ex-vessel prices with harvesters. The larger harvest volume due to bycatch avoidance may lower processor average costs, which could offset the negative effects on non-whiting shoreside processors of a shift in bargaining power. In addition, QS could be purchased by processors over the long term, thereby increasing processors' negotiation power. However, the accumulation limits included in the preferred alternative would limit the ability of processors to purchase substantial quantities of QS. Alternatively, the adaptive management provision could be used to allocate QS to non-whiting shoreside processors, thereby providing them additional leverage when negotiating terms with harvesters.

The allocation of 20 percent of the initial shore-based whiting QS to the shoreside processor portion of the groundfish fishery would give these processors more influence in negotiations over ex-vessel prices and would tend to offset the gains in bargaining power for harvesters. For example, a processor could use QS to induce a harvester that is short of quota pounds for a Pacific whiting trip to make deliveries under specified conditions and prices. However, because of a reduction in peak harvest volume, fewer processing companies and/or facilities may be necessary to handle harvest volumes of Pacific whiting, meaning some companies may find themselves without enough product to continue justifying processing operations of Pacific whiting. Revenues from harvesting and processing trawl-caught groundfish are expected to increase. Revenues in the non-whiting trawl sector are projected to increase by 20 to 80 percent in a

rationalized fishery, depending on bycatch rate reductions and stock status. Revenue increases are mainly expected because under rationalized fisheries, target species quotas can be more fully utilized. Currently, in the nonwhiting sector, cumulative landing limits for target species have to be set lower because the bycatch of overfished species cannot be directly controlled. Introducing accountability at the individual vessel level provides a strong incentive for bycatch avoidance (because of the actual or implicit cost of quota needed to cover bycatch species) and prevents the bycatch of any one vessel from affecting the harvest opportunity of others. Whiting fisheries are more directly managed through quotas, and in recent years, by limits on bycatch. Beginning in 2009, bycatch limits have been established for each of the three whiting sectors. For the shore-based and mothership whiting sectors, the fishery can potentially close before the whiting allocation is fully harvested because a bycatch cap is reached. (The catcher-processor sector currently operates as a voluntary co-op and is therefore better able to coordinate harvest strategy to avoid reaching bycatch limits.) However, in general, the whiting sectors have been able to harvest their sector allocations. Whiting vessels could increase revenues due to improved product recovery as a result of the ability to better control harvest timing. As mentioned above, the ability for vessels managed under IFQs to use other types of legal groundfish gear could allow some increases in revenue by targeting higher-value line or pot gear caught fish.

Harvester and possibly processor costs are expected to decrease because of productivity gains related to fleet consolidation. Cost savings would be due to lower capital requirements and a move to more efficient vessels in the nonwhiting sector. Costs are predicted to decrease by as much as 60 percent annually, which based on estimates of current operating costs would represent a \$13.8 million decrease. Similar levels of consolidation are expected for shorebased and mothership catcher vessels. Proposed mitigation measures could reduce these costs savings. For example, a 1 percent quota share accumulation limit could reduce cost savings by as much as 20 percent. But the accumulation limits considered in the alternatives are not expected to introduce higher costs at current prices and harvest volume. The proposed action would introduce some new costs. First, up to 3 percent of the value of landings may be assessed to cover

administrative and management costs. Second, new at-sea observer requirements would be introduced and vessels would have to pay the cost, estimated at \$350–\$500 a day.

Processors may see cost-savings to the degree that rationalization allows greater control over the timing and location of landings. Processors could use current plant capacity more efficiently, because available information suggests that processing facilities are currently underutilized. Fleet consolidation could also drive some cost savings on the part of processors if landings occur in fewer locations. This would reduce the need for facilities and/or transport. Under the proposed action, processors would be required to pay the costs of plant monitors, who would verify landings. These monitors would not be directly employed by the processing firm but, similar to at-sea observers, be independent contractors.

Rationalization of the groundfish trawl sector is expected to free up capital and labor because of increases in productivity. (Since the basic input, trawl-caught fish, is subject to an underlying constraint due to biological productivity, increases in labor and capital productivity are expected to reduce the amount of those inputs needed.) However, from a national net benefit perspective these effects are neutral since capital and labor can be put to some productive use elsewhere in the broader economy. Also, current groundfish fishery participants that receive QS (trawl limited entry trawl permit holders and eligible shoreside processors) are compensated to the degree that the asset value of the QS covers capital losses.

It was noted in the RIR/IRFA associated with the initial issuance rule that tracking and monitoring costs of this program will be provided in more detail with this rule. The program details associated with this rule do not change; however, the RIR/IRFA now presents an explicit range of costs based on different daily observer cost rates. What follows is a summary of those estimates—these estimates are focused on the shorebased non-whiting fishery so that it is compared to the results of the NWFSC economic model of this fishery. After a transition period, for the shore-based fishery, the initial estimates of the annual Federal and State agency costs to run this program are about \$5 million; and after the transition period, these costs could fall to \$4.0 million. Based on the observer cost of \$500 per day, the annual costs to the vessel of observer monitoring is about \$4 million. Based on \$350 per day, the annual costs

of compliance monitors is just over \$1 million. These figures add up to about \$10 million. From a cost-benefit viewpoint, if consolidation leads to \$14 million savings from reduced harvesting costs and the new program increases the tracking and monitoring costs of \$10 million, there is a projected net gain of about \$4 million. These estimates do not take into account expectations that agency, observer and compliance costs are likely to be reduced due to consolidation or the expected increases in revenues discussed above. Better planning by the industry and companies that provide the observers and compliance monitors should further reduce costs. Recent analyses developed for the North Pacific Council and for the New England Council were reviewed. The New England analysis includes observer cost estimates associated with the Canadian Pacific Groundfish fishery. Based on a review of these analyses, a daily observer rate of \$350 a day is feasible. If so, the annual shoreside non-whiting costs of observers and catch monitors will add up to about \$3.5 million.

In contrast to the shoreside non-whiting fishery, the effect of the preferred alternative on revenues and costs in the whiting sector of the limited entry trawl fishery can only be discussed qualitatively, as there is no economic model because of lack of cost data. The lower motivation to "race for fish" due to coop harvest privileges is expected to result in improved product quality, slower-paced harvest activity, increased yield (which should increase exvessel prices), and enhanced flexibility and ability for business planning. The overall effect of these changes would be higher revenues and profits for harvesters in the shoreside and mothership portions of the whiting fishery in comparison to the no action alternative. Under the preferred alternative, some consolidation may occur in the shoreside and mothership sectors of the Pacific whiting fishery, though the magnitude of consolidation is expected to be less than in the non-whiting sector. The existing catcher-processor coop would continue under the preferred alternative, with effects on the catcher-processor sector that look similar, or identical, to those of the no action alternative. However, the change from a vessel-based limit under Amendment 15 to the permit-based limit of Amendment 21 will provide additional flexibility that currently does not exist in the catcher-processor fishery. Using estimates of \$350 per day for observers and compliance monitors, the total annual costs of observers and

catch monitors for the whiting sector (shoreside harvesters, processors, mothership processors, mothership catcher vessels, and catcher-processors) is about \$1.5 million. Additional agency costs associated with managing these whiting fisheries are included in the estimates provided in the above discussion on shore-based non-whiting costs.

This proposed rule would regulate businesses that harvest groundfish and processors that wish to process limited entry trawl groundfish. Under the RFA, the term "small entities" includes small businesses, small organizations, and small governmental jurisdictions. For small businesses, the SBA has established size criteria for all major industry sectors in the U.S., including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of \$4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the \$4.0 million criterion for fish harvesting operations. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide. For marinas and charter/party boats, a small business is one with annual receipts not in excess of \$7.0 million. The RFA defines a small organization as any nonprofit enterprise that is independently owned and operated and is not dominant in its field. The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

NMFS makes the following conclusions based primarily on analyses associated with fish ticket data and limited entry permit data, available employment data provided by processors, information on the charterboat and Tribal fleets, and available industry responses industry to on-going survey on ownership. Entities were analyzed as to whether they were only affected by the Amendment 21 allocation processes (non-trawl), or if

they were affected by both Amendment 20 and 21 (trawl).

The non-trawl businesses are associated with the following fleets: limited entry fixed gear (approximately 150 companies), open access groundfish (1,100), charterboats (465), and the Tribal fleet (four Tribes with 66 vessels). Available information on average revenue per vessel suggests that all the entities in this group can be considered small.

For the trawl sector, there are 177 permit holders. Nine limited entry trawl permits are associated with the catcher-processing vessels which are considered "large" companies. Of the remaining 168 limited entry permits, 25 limited entry trawl permits are either owned or closely associated with a "large" shore-based processing company or with a non-profit organization who considers itself a "large" organization. Nine other permit owners indicated that they were large "companies." Almost all of these companies are associated with the shorebased and mothership whiting fisheries. The remaining 134 limited entry trawl permits are projected to be held by "small" companies. Three of the six mothership processors are "large" companies. Within the 14 shorebased whiting first receivers/processors, there are four "large" companies. Including the shorebased whiting first receivers, in 2008, there were 75 first receivers that purchased limited entry trawl groundfish. There were 36 small purchasers (less than \$150,000); 26 medium purchasers (purchases greater than \$150,000 but less than \$1,000,000); and 13 large purchasers (purchases greater than \$1.0 million). Because of the costs of obtaining a "processor site license", procuring and scheduling a catch monitor, and installing and using the electronic fish ticket software, these "small" purchasers will likely opt out of buying groundfish, or make arrangements to purchase fish from another company that has obtained a processing site license.

The major impacts of this rule appear to be on three groups: Shoreside processors which are a mix of large and small processors; and shore-based trawlers which are also a mix of large and small companies. The non-whiting shore-based trawlers are currently operating at a loss or at best are "breaking even." The new rationalization program would lead to profitability, but only with a reduction of about 60 percent of the fleet. This program would lead to major changes in the fishery. To help mitigate against these changes, as discussed above, the agency has announced its intent, subject to available Federal funding, that

participants would initially be responsible for 10 percent of the cost of hiring observers and catch monitors. The industry proportion of the costs of hiring observers and catch monitors would be increased every year so that by 2014, once the fishery has transitioned to the rationalization program, the industry would be responsible for 100 percent of the cost of hiring the observers and catch monitors. NMFS believes that an incrementally reduced subsidy to industry funding would enhance the observer and catch monitor program's stability, ensure 100 percent observer and catch monitor coverage, and facilitate the industries' successful transition to the new quota system. In addition, to help mitigate against the negative impacts of this program, the Council has adopted an Adaptive Management Program where starting in year 3 of the program, 10 percent of non-whiting QS would be set aside every year to address community impacts and industry transition needs. After reviewing the initial effects of ITQ programs in other parts of the world, the council had placed a short term QS trading prohibition so that fishermen can learn from their experiences and not make premature sales of their QS. The Council is also envisioning future regulatory processes that would allow community fisheries associations to be established to help aid communities and fishermen.

A summary of the proposed action is as follows. The proposed action is to replace the current, primary management tool used to control the West Coast groundfish trawl catch—a system of 2-month cumulative landing limits for most species and season closures for whiting—with a system requiring more individual accountability by the assignment of limited access privileges (LAPs). LAPs are a form of output control whereby an individual fisherman, community, or other entity is granted the privilege to catch a specified portion of the total allowable catch (TAC). The alternatives include (1) a catch-based IFQ system where all groundfish catch (landings plus bycatch) by LE trawl vessels would count against a vessel's IFQ holdings, which could be applied to the whole groundfish trawl fishery or selected trawl sectors; and (2) a system of coops that would be applied to one or more of the fishery sectors that target Pacific whiting. The status quo alternative (no action) could also be considered for application to one or more trawl fishery sectors even if one or both action alternatives (IFQs or coops) are chosen for the other trawl sectors.

The description of purpose and need in section 1.2 of the Amendment 20 DEIS also outlines the objectives of the proposed action. The introductory paragraph in Chapter 1 and section 1.3 of the DEIS, background to the purpose and need, provide information on the legal basis for the proposed action (proposed rule). The Council articulated the following goal for the trawl rationalization program: "Create and implement a capacity rationalization plan that increases net economic benefits, creates individual economic stability, provides for full utilization of the trawl sector allocation, considers environmental impacts, and achieves individual accountability of catch and bycatch." The objectives supporting this goal are: Provide a mechanism for total catch accounting; provide for a viable, profitable, and efficient groundfish fishery; promote practices that reduce bycatch and discard mortality, and minimize ecological impacts; increase operational flexibility; minimize adverse effects from an IFQ program on fishing communities and other fisheries to the extent practical; promote measurable economic and employment benefits through the seafood catching, processing, distribution elements, and support sectors of the industry; provide quality product for the consumer; and increase safety in the fishery.

As part of the proposed action, NMFS would place observers and/or cameras on board all catcher vessels in the shore-based sector (which combines the current shore-based whiting and non-whiting trawl sectors). Existing requirements for motherships, catcher vessels in the MS sector, and C/Ps would continue. Independently contracted processing plant monitors would track landings. Also, there would be new reporting requirements related to the tracking of QS and QP in the shore-based fishery.

No Federal rules have been identified that duplicate, overlap, or conflict with the alternatives. Public comment is hereby solicited, identifying such rules. A copy of this analysis is available from NMFS (*see ADDRESSES*).

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for the Economic Data Collection survey is estimated to average 8 hours per response (268 responses). Public reporting burden for QS Permit Renewal Application is estimated to average 0.33 hour per response (120 responses), First Receiver Site License Initial Issuance/Renewal

Application is estimated to average 0.5 hour per response (80 responses), MS Renewal Application is estimated to average 0.33 hour per response (6 responses), MS Transfer Application is estimated to average 0.5 hour per response (3 responses) C/P Coop Permit Transfer Application is estimated to average 3 hours per response (1 response), MS Coop Permit Application is estimated to average 3 hours per response (1 response), Change in vessel fishing for coop form is estimated to average 0.33 hours per response (3 responses), Material Change form is estimated to average 2 hours per response (3 responses), MS Withdrawal/Mutual Exception form is estimated to average 2 hours per response (2 responses), Ownership Interest Form Renewal is estimated to average 0.5 hour per response (156 responses), Ownership Interest Form Transfer, is estimated to average 0.5 hour per response (20 responses), Vessel Account Registration (Initial) is estimated to average 0.5 hour per response (120 responses), Vessel Account Registration (ongoing) is estimated to average 0.5 hour per response (10 responses), Vessel Account Renewal (annual), is estimated to average 0.33 hour per response (30 responses), QS Account Registration is estimated to average 1 hour per response (1 response), QS/QP transfer from QS account to vessel account is estimated to average 0.25 hour per response (180 responses), QP Transfer from vessel account to vessel account is estimated to average 0.25 hour per response (600 responses), Transaction Dispute Request is estimated to average 1 hour per response (10 responses). Public reporting burden for the catch monitor providers, Application preparation & submission is estimated to average 10 hours per response (3 responses), Training registration is estimated to average 1 hour per response (3 responses), Exit Interview registration is estimated to average 10 minutes per response (3 responses), Appeals—written response & submission is estimated to average 4 hours per response (1 response). Public reporting burden for the catch monitors application appeals—written response & submission is estimated to average 4 hours per response (5 responses). Public reporting burden for the catch monitoring plans, Preparation & submission is estimated to average 4 hours per response (80 responses), Inspection, is estimated to average 2 hours per response (80 responses), inseason scale testing is estimated to average 1 hour per response (80 responses), reports are estimated to

average 10 minutes per response (2400 responses). Public reporting burden for electronic fish tickets are estimated to average 10 minutes per response (400 responses). Public reporting burden for the changes to the declaration reporting system and the changes to the observer program are not expected to change the public reporting burden. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS, Northwest Region, at the **ADDRESSES** section above; e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov); or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the Pacific Coast groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the FMP for the Pacific Coast groundfish

fishery was not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS reinitiated a formal section 7 consultation under the ESA in 2005 for both the Pacific whiting midwater trawl fishery and the groundfish bottom trawl fishery. The December 19, 1999, Biological Opinion had defined an 11,000 Chinook incidental take threshold for the Pacific whiting fishery. During the 2005 Pacific whiting season, the 11,000 fish Chinook incidental take threshold was exceeded, triggering reinitiation. Also in 2005, new data from the West Coast Groundfish Observer Program became available, allowing NMFS to complete an analysis of salmon take in the bottom trawl fishery.

NMFS prepared a Supplemental Biological Opinion dated March 11, 2006, which addressed salmon take in both the Pacific whiting midwater trawl and groundfish bottom trawl fisheries. In its 2006 Supplemental Biological Opinion, NMFS concluded that catch rates of salmon in the 2005 whiting fishery were consistent with expectations considered during prior consultations. Chinook bycatch has averaged about 7,300 fish over the last 15 years and has only occasionally exceeded the reinitiation trigger of 11,000 fish.

Since 1999, annual Chinook bycatch has averaged about 8,450 fish. The Chinook ESUs most likely affected by the whiting fishery has generally improved in status since the 1999 section 7 consultation. Although these species remain at risk, as indicated by their ESA listing, NMFS concluded that the higher observed bycatch in 2005 does not require a reconsideration of its prior "no jeopardy" conclusion with respect to the fishery. For the groundfish bottom trawl fishery, NMFS concluded that incidental take in the groundfish fisheries is within the overall limits articulated in the Incidental Take Statement of the 1999 Biological Opinion. The groundfish bottom trawl limit from that opinion was 9,000 fish annually. NMFS will continue to monitor and collect data to analyze take levels. NMFS also reaffirmed its prior determination that implementation of the Groundfish FMP is not likely to jeopardize the continued existence of any of the affected ESUs.

Lower Columbia River coho (70 FR 37160, June 28, 2005) were recently listed and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA.

The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead. The Southern Distinct Population Segment (DPS) of green sturgeon (71 FR 17757, April 7, 2006) and the southern DPS of Pacific eulachon (75 FR 13012, March 18, 2010) were also recently listed as threatened under the ESA. As a consequence, NMFS has reinitiated its Section 7 consultation on the PFMC's Groundfish FMP.

After reviewing the available information, NMFS concluded that, in keeping with Sections 7(a)(2) and 7(d) of the ESA, the proposed action would not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

This proposed rule was developed after meaningful consultation and collaboration with the Tribal representative on the Council who has agreed with the provisions that apply to Tribal vessels.

#### List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: August 20, 2010.

**Samuel D. Rauch III,**  
Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.

For the reasons stated in the preamble, 50 CFR Chapter VI, as proposed to be amended at 75 FR 32994, June 10, 2010, is further proposed to be amended as follows:

#### 50 CFR Chapter VI

#### PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 773 *et seq.*

2. In § 660.11, the definitions for "processing or to process" and "processor" are revised to read as follows:

#### § 660.11 General definitions.

\* \* \* \* \*

*Processing or to process* means the preparation or packaging of groundfish to render it suitable for human consumption, retail sale, industrial uses or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or



rendering into meal or oil, but does not mean heading and gutting unless additional preparation is done. (*Also see* an exception to certain requirements at § 660.131(a), subpart D pertaining to Pacific whiting shoreside vessels 75-ft (23-m) or less LOA that, in addition to heading and gutting, remove the tails and freeze catch at sea.)

(1) At-sea processing means processing that takes place on a vessel or other platform that floats and is capable of being moved from one location to another, whether shore-based or on the water.

(2) Shorebased processing or processing means processing that takes place at a facility that is permanently fixed to land. (*Also see* the definition for shoreside processing at § 660.140, subpart D which defines shoreside processing for the purposes of qualifying for a Shorebased IFQ Program QS permit.) For the purposes of economic data collection in the Shorebased IFQ Program, shorebased processing means either of the following:

(i) Any activity that takes place shoreside; and that involves: Cutting groundfish into smaller portions; or freezing, cooking, smoking, drying groundfish; or packaging that groundfish for resale into 100 pound units or smaller; for sale or distribution into a wholesale or retail market.

(ii) The purchase and redistribution in to a wholesale or retail market of live groundfish from a harvesting vessel.

*Processor* means a person, vessel, or facility that engages in commercial processing; or receives live groundfish directly from a fishing vessel for retail sale without further processing. (*Also see* the definition for processors at § 660.140, subpart D which defines processor for the purposes of qualifying for initial issuance of QS in the Shorebased IFQ Program.)

(1) For the purposes of economic data collection in the Shorebased IFQ Program, shorebased processor means a person that engages in commercial processing, that is an operation working on U.S. soil or permanently fixed to land, that takes delivery of fish that has not been subject to at-sea processing or shorebased processing; and that thereafter engages that particular fish in shorebased processing; and excludes retailers, such as grocery stores and markets, which receive whole or headed and gutted fish that are then filleted and packaged for retail sale. At § 660.114(b), trawl fishery—economic data collection program, the definition of processor is further refined to describe which shorebased processors are required to

submit their economic data collection forms.

(2) [Reserved]

\* \* \* \* \*

3. In § 660.12, paragraph (e)(7) and (e)(8) are revised, paragraph (f) is redesignated as paragraph (g), and a new paragraph (f) is added to read as follows:

#### § 660.12 General groundfish prohibitions.

\* \* \* \* \*

(e) \* \* \*

(7) Fail to provide departure or cease fishing reports specified at §§ 660.140, 660.150, 660.160, subpart D; § 660.216, subpart E; or § 660.316, subpart F.

(8) Fail to meet the vessel responsibilities specified at §§ 660.140, 660.150, 660.160, subpart D; § 660.216, subpart E; or § 660.316, subpart F.

(f) *Groundfish catch monitor program.*

(1) Forcibly assault, resist, oppose, impede, intimidate, harass, sexually harass, bribe, or interfere with a catch monitor.

(2) Interfere with or bias the monitoring procedure employed by a catch monitor, including either mechanically or manually sorting or discarding catch before its monitored.

(3) Tamper with, destroy, or discard a catch monitor's collected samples, equipment, records, photographic film, papers, or personal effects.

(4) Harass a catch monitor by conduct that:

(i) Has sexual connotations,  
(ii) Has the purpose or effect of interfering with the catch monitor's work performance, and/or  
(iii) Otherwise creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

(5) Receive, purchase, or take custody, control, or possession of a delivery without catch monitor coverage when such coverage is required under § 660.140, subpart D.

(6) Fail to allow the catch monitor unobstructed access to catch sorting, processing, catch counting, catch weighing, or electronic or paper fish tickets.

(7) Fail to provide reasonable assistance to the catch monitor.

(8) Require, pressure, coerce, or threaten a catch monitor to perform duties normally performed by employees of the first receiver, including, but not limited to duties associated with the receiving of landing,

processing of fish, sorting of catch, or the storage of the finished product.

\* \* \* \* \*

4. In § 660.13, paragraph (d)(5)(iv) introductory text, paragraph (d)(5)(iv)(A) introductory text, and paragraphs (d)(5)(iv)(A)(1) through (4), and (6) through (8) are revised to read as follows:

#### § 660.13 Recordkeeping and reporting.

\* \* \* \* \*

(d) \* \* \*

(5) \* \* \*

(iv) Declaration reports will include: the vessel name and/or identification number, and gear type (as defined in paragraph (d)(5)(iv)(A) of this section). Upon receipt of a declaration report, NMFS will provide a confirmation code or receipt to confirm that a valid declaration report was received for the vessel. Retention of the confirmation code or receipt to verify that a valid declaration report was filed and the declaration requirement was met is the responsibility of the vessel owner or operator. Vessels using nontrawl gear may declare more than one gear type with the exception of vessels participating in the Shorebased IFQ Program (*i.e.* gear switching), however, vessels using trawl gear may only declare one of the trawl gear types listed in paragraph (d)(5)(iv)(A) of this section on any trip and may not declare nontrawl gear on the same trip in which trawl gear is declared.

(A) One of the following gear types or sectors must be declared:

(1) Limited entry fixed gear, not including shorebased IFQ fishery,

(2) Limited entry groundfish non-trawl, shorebased IFQ,

(3) Limited entry midwater trawl, non-whiting shorebased IFQ,

(4) Limited entry midwater trawl, Pacific whiting shorebased IFQ,

\* \* \* \* \*

(6) Limited entry midwater trawl, Pacific whiting mothership sector (catcher vessel or mothership),

(7) Limited entry bottom trawl, shorebased IFQ, not including demersal trawl,

(8) Limited entry demersal trawl, shorebased IFQ,

\* \* \* \* \*

5. In § 660.14, paragraph (b)(1) is revised to read as follows:

#### § 660.14 Vessel Monitoring System (VMS) requirements.

\* \* \* \* \*

(b) \* \* \*

(1) Any vessel registered for use with a limited entry "A" endorsed permit (*i.e.*, not a MS permit) that fishes in State or Federal waters seaward of the



baseline from which the territorial sea is measured off the States of Washington, Oregon or California (0–200 nm offshore).

\* \* \* \* \*

6. Section 660.15 is revised to read as follows:

**§ 660.15 Equipment requirements.**

(a) *Applicability.* This section contains the equipment and operational requirements for scales used to weigh catch at sea, scales used to weigh catch at IFQ first receivers, computer hardware for electronic fish ticket software, and computer hardware for electronic logbook software. Unless otherwise specified by regulation, the operator or manager must retain, for 3 years, a copy of all records described in this section and make available the records upon request of NMFS staff or authorized officer.

(b) *Scales used to weigh catch at sea—performance and technical requirements.* (1) *Scales approved by NMFS for MS and C/P Coop Programs.* A scale used to weigh catch in the MS and C/P Coop Programs must meet the type evaluation and initial inspection requirements set forth in 50 CFR 679.28(b)(1) and (2), and must be approved by NMFS.

(2) *Annual inspection.* Once a scale is installed on a vessel and approved by NMFS for use, it must be inspected annually as described in 50 CFR 679.28(b).

(3) *Daily testing.* Each scale must be tested daily and meet the maximum permissible error (MPE) requirements described at paragraph (b)(4) of this section.

(4) *At-sea scale tests.* To verify that the scale meets the maximum permissible errors (MPEs) specified in this paragraph, the vessel operator must ensure that vessel crew test each scale used to weigh catch at least one time during each 24-hour period when use of the scale is required. The vessel owner must ensure that these tests are performed in an accurate and timely manner.

(i) *Belt scales.* The MPE for the daily at-sea scale test is plus or minus 3 percent of the known weight of the test material. The scale must be tested by weighing at least 400 kg (882 lb) of fish or an alternative material supplied by the scale manufacturer on the scale under test. The known weight of the fish or test material must be determined by weighing it on a platform scale approved for use under 50 CFR 679.28(b)(7).

(ii) *Platform scales used for observer sampling on MSs and C/Ps.* A platform scale used for observer sampling must

be tested at 10, 25, and 50 kg (or 20, 50, and 100 lb if the scale is denominated in pounds) using approved test weights. The MPE for the daily at-sea scale test is plus or minus 0.5 percent.

(iii) *Approved test weights.* Each test weight must have its weight stamped on or otherwise permanently affixed to it. The weight of each test weight must be annually certified by a National Institute of Standards and Technology approved metrology laboratory or approved for continued use by the NMFS authorized inspector at the time of the annual scale inspection.

(iv) *Requirements for all at-sea scale tests.* The vessel operator must ensure that vessel crew:

(A) Notify the observer at least 15 minutes before the time that the test will be conducted, and conduct the test while the observer is present.

(B) Conduct the scale test and record the following information on the at-sea scale test report form:

(1) Vessel name;

(2) Month, day, and year of test;

(3) Time test started to the nearest minute;

(4) Known weight of test weights;

(5) Weight of test weights recorded by scale;

(6) Percent error as determined by subtracting the known weight of the test weights from the weight recorded on the scale, dividing that amount by the known weight of the test weights, and multiplying by 100; and

(7) Sea conditions at the time of the scale test.

(C) Maintain the test report form on board the vessel until the end of the fishing year during which the tests were conducted, and make the report forms available to observers, NMFS staff, or authorized officers. In addition, the vessel owner must retain the scale test report forms for 3 years after the end of the fishing year during which the tests were performed. Each scale test report form must be signed by the vessel operator immediately following completion of each scale test.

(5) *Scale maintenance.* The vessel owner must ensure that the vessel operator maintains the scale in proper operating condition throughout its use, that adjustments made to the scale are made so as to bring the performance errors as close as practicable to a zero value, and that no adjustment is made that will cause the scale to weigh inaccurately.

(6) *Printed reports from the scale.* The vessel owner must ensure that the printed reports are provided to NMFS as required by this paragraph. Printed reports from the scale must be maintained on board the vessel until the

end of the year during which the reports were made, and be made available to NMFS staff or authorized officers. In addition, the vessel owner must retain printed reports for 3 years after the end of the year during which the printouts were made.

(i) *Reports of catch weight and cumulative weight.* Reports must be printed at least once every 24 hours. Reports must also be printed before any information stored in the scale computer memory is replaced. Scale weights must not be adjusted by the scale operator to account for the perceived weight of water, slime, mud, debris, or other materials. Scale printouts must show:

(A) The vessel name and Federal vessel permit number;

(B) The date and time the information was printed;

(C) The haul number;

(D) The total weight of the haul; and

(E) The total cumulative weight of all fish and other material weighed on the scale since the last annual inspection.

(ii) *Printed report from the audit trail.* The printed report must include the information specified in sections 2.3.1.8, 3.3.1.7, and 4.3.1.8 of appendix A to 50 CFR part 679. The printed report must be provided to the authorized scale inspector at each scale inspection and must also be printed at any time upon request of NMFS staff or other authorized officer.

(iii) *Platform scales used for observer sampling.* A platform scale used for observer sampling is not required to produce a printed record.

(c) *Scales used to weigh catch at IFQ first receivers—performance and technical requirements.* Scale requirements in this paragraph are in addition to those requirements set forth by the State in which the scale is located, and nothing in this paragraph may be construed to reduce or supersede the authority of the State to regulate, test, or approve scales within the State. Scales used to weigh catch that are also required to be approved by the State must meet the following requirements:

(1) *Verification of approval.* The scale must display a valid sticker indicating that the scale is currently approved in accordance with the laws of the State where the scale is located.

(2) *Visibility.* NMFS staff, NMFS-authorized personnel, or authorized officers must be allowed to observe the weighing of catch on the scale and be allowed to read the scale display at all times.

(3) *Printed scale weights.* (i) An IFQ first receiver must ensure that printouts of the scale weight of each delivery or

offload are made available to NMFS staff, to NMFS-authorized personnel, or to authorized officers at the time printouts are generated. An IFQ first receiver must maintain printouts on site until the end of the fishing year during which the printouts were made and make them available upon request by NMFS staff, NMFS-authorized personnel, or authorized officers for 3 years after the end of the fishing year during which the printout was made.

(ii) All scales identified in a catch monitoring plan (*see* § 660.140(f)(3), subpart D) must produce a printed record for each delivery, or portion of a delivery, weighed on that scale, unless specifically exempted by NMFS. NMFS may exempt, as part of the NMFS-accepted catch monitoring plan, scales not designed for automatic bulk weighing from part or all of the printed record requirements. For scales that must produce a printed record, the printed record must include:

(A) The IFQ first receiver's name;

(B) The weight of each load in the weighing cycle;

(C) The total weight of fish in each landing, or portion of the landing that was weighed on that scale;

(D) The date the information is printed; and

(E) The name and vessel registration or documentation number of the vessel making the delivery. The scale operator may write this information on the scale printout in ink at the time of printing.

(4) *Inseason scale testing.* IFQ first receivers must allow, and provide reasonable assistance to NMFS staff, NMFS-authorized personnel, and authorized officers to test scales used to weigh IFQ catch. A scale that does not pass an inseason test may not be used to weigh IFQ catch until the scale passes an inseason test or is approved for continued use by the weights and measures authorities of the State in which the scale is located.

(i) *Inseason testing criteria.* To pass an inseason test, NMFS staff or authorized officers must be able to verify that:

(A) The scale display and printed information are clear and easily read under all conditions of normal operation;

(B) Weight values are visible on the display until the value is printed;

(C) The scale does not exceed the maximum permissible errors specified in the following table:

Test load in scale divisions	Maximum error in scale divisions
(1) 0–500 .....	1
(2) 501–2,000 .....	2
(3) 2,001–4,000 .....	3
(4) >4,000 .....	4

(D) *Automatic weighing systems.* An automatic weighing system must be provided and operational that will prevent fish from passing over the scale or entering any weighing hopper unless the following criteria are met:

(1) No catch may enter or leave a weighing hopper until the weighing cycle is complete;

(2) No product may be cycled and weighed if the weight recording element is not operational; and

(3) No product may enter a weighing hopper until the prior weighing cycle has been completed and the scale indicator has returned to a zero.

(ii) [Reserved]

(d) *Electronic fish tickets.* IFQ first receivers using the electronic fish ticket software provided by Pacific States Marine Fisheries Commission are required to meet the hardware and software requirements below. Those IFQ first receivers who have NMFS-approved software compatible with the standards specified by Pacific States Marine Fisheries Commission for electronic fish tickets are not subject to any specific hardware or software requirements.

(1) *Hardware and software requirements.* (i) A personal computer with Pentium 75-MHz or higher. Random Access Memory (RAM) must have sufficient megabyte (MB) space to run the operating system, plus an additional 8 MB for the software application and available hard disk space of 217 MB or greater. A CD-ROM drive with a Video Graphics Adapter (VGA) or higher resolution monitor (super VGA is recommended).

(ii) Microsoft Windows 2000 (64 MB or greater RAM required), Windows XP (128 MB or greater RAM required), or later operating system.

(iii) Microsoft Access 2003 or newer.

(2) *NMFS approved software standards and Internet access.* The IFQ first receiver is responsible for obtaining, installing, and updating electronic fish tickets software either provided by Pacific States Marine Fisheries Commission, or compatible with the data export specifications specified by Pacific States Marine

Fisheries Commission and for maintaining Internet access sufficient to transmit data files via e-mail. Requests for data export specifications can be submitted to: Attn: Electronic Fish Ticket Monitoring, National Marine Fisheries Service, Northwest Region, Sustainable Fisheries Division, 7600 Sand Point Way NE., Seattle, WA 98115.

(3) *Maintenance.* The IFQ first receiver is responsible for ensuring that all hardware and software required under this subsection are fully operational and functional whenever they receive, purchase, or take custody, control, or possession of an IFQ landing.

(4) *Improving data quality.* Vessel owners and operators, IFQ first receivers, or shoreside processor owners, or managers may contact NMFS in writing to request assistance in improving data quality and resolving issues. Requests may be submitted to: Attn: Electronic Fish Ticket Monitoring, National Marine Fisheries Service, Northwest Region, Sustainable Fisheries Division, 7600 Sand Point Way NE., Seattle, WA 98115.

7. Section 660.16 is revised to read as follows:

**§ 660.16 Groundfish observer program.**

(a) *General.* Vessel owners, operators, and managers are jointly and severally responsible for their vessel's compliance with observer requirements specified in this section and within §§ 660.140, 660.150, 660.160, subpart D; § 660.216, subpart E; § 660.316, subpart F; or subpart G.

(b) *Purpose.* The purpose of the Groundfish Observer Program is to collect fisheries data necessary and appropriate for, among other relevant purposes, management, compliance monitoring, and research in the groundfish fisheries and for the conservation of living marine resources.

(c) *Observer coverage requirements.* The following table provides references to the paragraphs in the Pacific coast groundfish subparts that contain fishery specific requirements. Observer coverage required for the Shorebased IFQ Program, MS Coop Program, or C/P Coop Program shall not be used to comply with observer coverage requirements for any other Pacific coast groundfish fishery in which that vessel may also participate.

West coast groundfish fishery	Regulation section
(1) Shorebased IFQ Program—Trawl Fishery .....	§ 660.140, subpart D.
(2) MS Coop Program—Whiting At-sea Trawl Fishery .....	§ 660.150, subpart D.

<i>West coast groundfish fishery</i>	<i>Regulation section</i>
(3) C/P Coop Program—Whiting At-sea Trawl Fishery .....	§ 660.160, subpart D.
(4) Fixed Gear Fisheries .....	§ 660.216, subpart E.
(5) Open Access Fisheries .....	§ 660.316, subpart F.

8. Section 660.17 is added to read as follows:

**§ 660.17 Catch monitors and catch monitor providers.**

(a) *Catch monitor certification.* Catch monitor certification authorizes an individual to fulfill duties as specified by NMFS while under the employ of a certified catch monitor provider.

(b) *Catch monitor certification requirements.* NMFS may certify individuals who:

(1) Are employed by a certified catch monitor provider at the time of the issuance of the certification and qualified, as described at paragraph (e)(1)(i) through (viii) of this section and have provided proof of qualifications to NMFS, through the certified catch monitor provider.

(2) Have successfully completed NMFS-approved training.

(i) Successful completion of training by an applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by NMFS.

(ii) If a candidate fails training, he or she will be notified in writing on or before the last day of training. The notification will indicate: The reasons the candidate failed the training; whether the candidate can retake the training, and under what conditions.

(3) Have not been decertified as an observer or catch monitor under provisions in §§ 660.18, 660.140(h)(6), 660.150(g)(6), and 660.160(g)(6).

(4) *Existing catch monitors as of 2010.* A catch monitor who has completed sampling or monitoring activities in 2010 in NMFS-managed West Coast groundfish fisheries, and has not had his or her certification revoked during or after that time, will be considered to have met his or her certification requirements under this section. These catch monitors will be issued a new catch monitor certification prior to their first deployment to a first receiver after December 31, 2010, unless NMFS determines that he or she has not completed any additional training required for this program.

(c) *Catch monitor standards of behavior.* Catch monitors must do the following:

(1) Perform authorized duties as described in training and instructional manuals or other written and oral instructions provided by NMFS.

(2) Accurately record and submit the required data, which includes fish species composition, identification, sorting, and weighing information.

(3) Write complete reports, and report accurately any observations of suspected violations of regulations.

(4) Keep confidential and not disclose data and observations collected at the processing facility to any person except, NMFS staff or authorized officers or others as specifically authorized by NMFS.

(d) *Catch monitor provider certification.* Persons seeking to provide catch monitor services under this section must obtain a catch monitor provider certification from NMFS.

(1) *Applications.* Persons seeking to provide catch monitor services must submit a completed application by mail to the NMFS Northwest Region, Permits Office, *Attn:* Catch Monitor Coordinator, 7600 Sand Point Way NE., Seattle, WA 98115. An application for a catch monitor provider permit shall consist of a narrative that contains the following:

(i) Identification of the management, organizational structure, and ownership structure of the applicant's business, including identification by name and general function of all controlling management interests in the company, including but not limited to owners, board members, officers, authorized agents, and staff. If the applicant is a corporation, the articles of incorporation must be provided. If the applicant is a partnership, the partnership agreement must be provided.

(ii) *Contact information.* (A) The owner's permanent mailing address, telephone, and fax numbers.

(B) The business mailing address, including the physical location, e-mail address, telephone and fax numbers.

(C) Any authorized agent's mailing address, physical location, e-mail address, telephone and fax numbers. An authorized agent means a person appointed and maintained within the United States who is authorized to receive and respond to any legal process issued in the United States to an owner

or employee of a catch monitor provider.

(iii) *Prior experience.* A statement identifying prior relevant experience in recruiting, hiring, deploying, and providing support for individuals in marine work environments in the groundfish fishery or other fisheries of similar scale.

(iv) *Ability to perform or carry out responsibilities of a catch monitor provider.* A description of the applicant's ability to carry out the responsibilities of a catch monitor provider is set out under paragraph (e) of this section.

(v) A statement describing any criminal convictions of each owner and board member, officer, authorized agent, and staff; a list of Federal contracts held and related performance ratings; and, a description of any previous decertification actions that may have been taken while working as an observer or observer provider.

(vi) A statement describing each owner and board member, officer, authorized agent, and staff indicating that they are free from conflict of interest as described under § 660.18(d).

(2) *Application review.* (i) The certification official, described in § 660.18(a), may issue catch monitor provider certifications upon determination that the application submitted by the candidate meets all requirements specified in paragraph (d)(2)(ii) of this section.

(ii) Issuance of the certification will, at a minimum, be based on the completeness of the application, as well as the following criteria:

(A) The applicant's ability to carry out the responsibilities and relevant experience;

(B) Satisfactory performance ratings on any Federal contracts held by the applicant.

(C) Absence of a conflict of interest.

(D) Absence of relevant criminal convictions.

(3) *Agency determination.* The certification official will make a determination to approve or deny the application and notify the applicant by letter via certified return receipt mail, within 60 days of receipt of the application. Additional certification procedures are specified in § 660.18, subpart C.

(4) *Existing catch monitor providers as of 2010.* NMFS-certified providers

who deployed catch monitors in a NMFS-managed West Coast groundfish fishery or observers under the North Pacific Groundfish Program in 2010, are exempt from the requirement to apply for a permit for 2011 and will be issued a catch monitor provider permit effective through December 31, 2011, except that a change in ownership of an existing catch monitor provider or observer provider after January 1, 2011, requires a new permit application under this section. To receive catch monitor certification for 2012 and beyond, these exempted catch monitor providers must follow application procedures otherwise set forth in this section.

(e) *Catch monitor provider responsibilities.* (1) *Provide qualified candidates to serve as catch monitors.* To be qualified a candidate must:

- (i) Be a U.S. citizen or have authorization to work in the United States;
- (ii) Be at least 18 years of age;
- (iii) Have a high school diploma and;
- (A) At least two years of study from an accredited college with a major study in natural resource management, natural sciences, earth sciences, natural resource anthropology, law enforcement/police science, criminal justice, public administration, behavioral sciences, environmental sociology, or other closely related subjects pertinent to the management and protection of natural resources, or;
- (B) One year of specialized experience performing duties which involved communicating effectively and obtaining cooperation, identifying and reporting problems or apparent violations of regulations concerning the use of protected or public land areas, and carrying out policies and procedures within a recreational area or natural resource site.

(iv) Computer skills that enable the candidate to work competently with standard database software and computer hardware.

(v) Have a current and valid driver's license.

(vi) Have had a background investigation and been found to have had no criminal or civil convictions that would affect their performance or credibility as a catch monitor.

(vii) Have had health and physical fitness exams and been found to be fit for the job duties and work conditions;

(A) Physical fitness exams shall be conducted by a medical doctor who has been provided with a description of the job duties and work conditions and who provides a written conclusion regarding the candidate's fitness relative to the required duties and work conditions; and

(B) Physical exams may include testing for illegal drugs;

(viii) Have signed a statement indicating that they are free from conflict of interest as described under § 660.18(c); and

(ix) Priority shall be given to qualified candidates who have and show proof of their knowledge of West Coast marine fish species, ability to effectively communicate in writing and orally, and have technical expertise in weights and measures.

(2) *Standards.* Provide to the candidate a copy of the standards of conduct, responsibilities, conflict of interest standards and drug and alcohol policy.

(3) *Contract.* Provide to the candidate a copy of a written contract signed by the catch monitor and catch monitor provider that shows among other factors the following provisions for employment:

(i) Compliance with the standards of conduct, responsibilities, conflict of interest standards and drug and alcohol policy;

(ii) Willingness to complete all responsibilities of current deployment prior to performing jobs or duties which are not part of the catch monitor responsibilities.

(iii) Commitment to return all sampling or safety equipment issued for the deployment.

(4) *Catch monitors provided to a first receiver.*

(i) Must have a valid catch monitor certification;

(ii) Must not have informed the provider prior to the time of assignment that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement, as required in paragraph (e)(1)(vii)(A) of this section that would prevent him or her from performing his or her assigned duties; and

(iii) Must have successfully completed all NMFS required training and briefing before assignment.

(5) *Respond to industry requests for catch monitors.* A catch monitor provider must provide a catch monitor for assignment pursuant to the terms of the contractual relationship with the first receiver to fulfill first receiver requirements for catch monitor coverage under paragraph (e)(10)(i)(C)(1)(ii) of this section. An alternate catch monitor must be supplied in each case where injury or illness prevents the catch monitor from performing his or her duties or where the catch monitor resigns prior to completion of his or her duties. If the catch monitor provider is unable to respond to an industry request

for catch monitor coverage from a first receiver for whom the provider is in a contractual relationship due to the lack of available catch monitors, the provider must report it to NMFS at least 4 hours prior to the expected assignment time.

(6) *Ensure that catch monitors complete duties in a timely manner.* Catch monitor providers must ensure that catch monitors employed by that provider do the following in a complete and timely manner:

(i) Submit to NMFS all data, logbooks and reports as required under the catch monitor program deadlines.

(ii) Report for his or her scheduled debriefing and complete all debriefing responsibilities.

(7) *Provide catch monitor salaries and benefits.* A catch monitor provider must provide to its catch monitor employees salaries and any other benefits and personnel services in accordance with the terms of each catch monitor's contract.

(8) *Provide catch monitor assignment logistics.*

(i) A catch monitor provider must ensure each of its catch monitors under contract:

(A) Has an individually assigned mobile or cell phones, in working order, for all necessary communication. A catch monitor provider may alternatively compensate catch monitors for the use of the catch monitor's personal cell phone or pager for communications made in support of, or necessary for, the catch monitor's duties.

(B) Has Internet access for catch monitor program communications and data submission.

(C) Remains available to NOAA Office for Law Enforcement and the catch monitor program until the completion of the catch monitors' debriefing.

(D) Receives all necessary transportation, including arrangements and logistics, of catch monitors to the location of assignment, to all subsequent assignments during that assignment, and to the debriefing location when an assignment ends for any reason; and

(E) Receives lodging, per diem, and any other services necessary to catch monitors assigned to first receivers, as specified in the contract between the catch monitor and catch monitor provider.

(F) While under contract with a permitted catch monitor provider, catch monitor shall be provided with accommodations in accordance with the contract between the catch monitor and the catch monitor provider. If the catch monitor provider is responsible for providing accommodations under the contract with the catch monitor, the

accommodations must be at a licensed hotel, motel, bed and breakfast, or other accommodations that has an assigned bed for each catch monitor that no other person may be assigned to for the duration of that catch monitor's stay.

(ii) [Reserved]

(9) *Catch monitor assignment limitations and workload.*

(i) Not assign a catch monitor to the same first receiver for more than 90 calendar days in a 12-month period, unless otherwise authorized by NMFS.

(ii) Not exceed catch monitor assignment limitations and workload as outlined in § 660.140(i)(3)(ii), subpart D.

(10) *Maintain communications with catch monitors.* A catch monitor provider must have an employee responsible for catch monitor activities on call 24 hours a day to handle emergencies involving catch monitors or problems concerning catch monitor logistics, whenever catch monitors are assigned, or in transit, or awaiting first receiver reassignment.

(11) *Maintain communications with the catch monitor program office.* A catch monitor provider must provide all of the following information by electronic transmission (e-mail), fax, or other method specified by NMFS.

(i) *Catch monitor training, briefing, and debriefing registration materials.* This information must be submitted to the catch monitor program at least 7 business days prior to the beginning of a scheduled catch monitor certification training or briefing session.

(A) Training registration materials consist of the following:

(1) Date of requested training;

(2) A list of catch monitor candidates that includes each candidate's full name (i.e., first, middle and last names), date of birth, and gender;

(3) A copy of each candidate's academic transcripts and resume;

(4) A statement signed by the candidate under penalty of perjury which discloses the candidate's criminal convictions;

(5) Projected candidate assignments. Prior to the completion of the training session, the catch monitor provider must submit to the catch monitor program a statement of projected catch monitor assignments that includes each catch monitor's name and length of catch monitor's contract.

(B) Briefing registration materials consist of the following:

(1) Date and type of requested briefing session;

(2) List of catch monitors to attend the briefing session, that includes each catch monitor's full name (first, middle, and last names);

(3) Projected catch monitor assignments. Prior to the catch

monitor's completion of the briefing session, the catch monitor provider must submit to the catch monitor program a statement of projected catch monitor assignments that includes each catch monitor's name and length of observer contract.

(C) *Debriefing.* The catch monitor program will notify the catch monitor provider which catch monitors require debriefing and the specific time period the provider has to schedule a date, time, and location for debriefing. The catch monitor provider must contact the catch monitor program within 5 business days by telephone to schedule debriefings.

(1) Catch monitor providers must immediately notify the catch monitor program when catch monitors end their contract earlier than anticipated.

(2) [Reserved]

(ii) *Catch monitor provider contracts.*

If requested, catch monitor providers must submit to the catch monitor program a completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the catch monitor provider and those entities requiring catch monitor services under § 660.140(i)(1), subpart D. Catch monitor providers must also submit to the catch monitor program upon request, a completed and unaltered copy of the current or most recent signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract and any agreements or policies with regard to catch monitor compensation or salary levels) between the catch monitor provider and the particular entity identified by the catch monitor program or with specific catch monitors. The copies must be submitted to the catch monitor program via e-mail, fax, or mail within 5 business days of the request. Signed and valid contracts include the contracts a catch monitor provider has with:

(A) First receivers required to have catch monitor coverage as specified at paragraph § 660.140(i)(1), subpart D; and

(B) Catch monitors.

(iii) *Change in catch monitor provider management and contact information.* A catch monitor provider must submit to the catch monitor program any change of management or contact information submitted on the provider's permit application under paragraph (d)(1) of this section within 30 days of the effective date of such change.

(iv) *Catch monitor status report.* Each Tuesday, catch monitor providers must provide NMFS with an updated list of

contact information for all catch monitors that includes the catch monitor's name, mailing address, e-mail address, phone numbers, first receiver assignment for the previous week and whether or not the catch monitor is "in service", indicating when the catch monitor has requested leave and/or is not currently working for the provider.

(v) *Informational materials.* Providers must submit to NMFS, if requested, copies of any information developed and used by the catch monitor providers and distributed to first receivers, including, but not limited to, informational pamphlets, payment notification, and description of catch monitor duties.

(vi) *Other reports.* Reports of the following must be submitted in writing to the catch monitor program by the catch monitor provider via fax or e-mail address designated by the catch monitor program within 24 hours after the catch monitor provider becomes aware of the information:

(A) Any information regarding possible catch monitor harassment;

(B) Any information regarding any action prohibited under § 660.12(f);

(C) Any catch monitor illness or injury that prevents the catch monitor from completing any of his or her duties described in the catch monitor manual; and

(D) Any information, allegations or reports regarding catch monitor conflict of interest or breach of the standards of behavior described in catch monitor provider policy.

(12) *Replace lost or damaged gear.* A catch monitor provider must replace all lost or damaged gear and equipment issued by NMFS to a catch monitor under contract to that provider.

(13) *Confidentiality of information.* A catch monitor provider must ensure that all records on individual catch monitor performance received from NMFS under the routine use provision of the Privacy Act or as otherwise required by law remain confidential and are not further released to anyone outside the employ of the catch monitor provider company to whom the catch monitor was contracted except with written permission of the catch monitor.

9. Section 660.18 is revised to read as follows:

**§ 660.18 Certification and decertification procedures for catch monitors and catch monitor providers.**

(a) *Certification official.* The Regional Administrator (or a designee) will designate a NMFS catch monitor certification official who will make decisions on whether to issue or deny catch monitor or catch monitor provider

certification pursuant to the regulations at §§ 660.17 and 660.18, subpart C.

(b) *Agency determinations on certifications*. (1) *Issuance of certifications*—Certification may be issued upon determination by the certification official that the candidate has successfully met all requirements for certification as specified in:

(i) § 660.17(b) for catch monitors; and  
(ii) § 660.17(d) for catch monitor providers.

(2) *Denial of a certification*. The NMFS certification official will issue a written determination identifying the reasons for denial of a certification.

[Alternative 1 for paragraph (c)  
(Council-deemed)]

(c) *Limitations on conflict of interest for catch monitors*. (1) Catch monitors must not have a direct financial interest in the first receivers at which they serve as catch monitors or vessels that deliver to those first receivers, other than the provision of observer or catch monitor services.

(2) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS or has interests that may be substantially affected by the performance or nonperformance of the catch monitor's official duties.

(3) May not serve as a catch monitor at any shoreside or floating stationary processing facility owned or operated where a person was previously employed in the last two years.

(4) May not solicit or accept employment as a crew member or an employee of a vessel, or shoreside processor while employed by a catch monitor provider.

(5) Provisions for remuneration of catch monitors under this section do not constitute a conflict of interest.

[Alternative 2 for paragraph (c) (NMFS-proposed)]

(c) *Limitations on conflict of interest for catch monitors*. (1) Catch monitors must not have a direct financial interest, other than the provision of observer or catch monitor services, in a North Pacific fishery managed pursuant to an FMP for the waters off the coast of Alaska, Alaska State waters, or in a Pacific Coast fishery managed by either the State or Federal governments in waters off Washington, Oregon, or California, including but not limited to:

(i) Any ownership, mortgage holder, or other secured interest in a vessel, shore-based or floating stationary processor facility involved in the

catching, taking, harvesting or processing of fish,

(ii) Any business involved with selling supplies or services to any vessel, shore-based or floating stationary processing facility; or

(iii) Any business involved with purchasing raw or processed products from any vessel, shore-based or floating stationary processing facilities.

(2) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS or has interests that may be substantially affected by the performance or nonperformance of the catch monitor's official duties.

(3) May not serve as a catch monitor at any shoreside or floating stationary processing facility owned or operated where a person was previously employed in the last two years.

(4) May not solicit or accept employment as a crew member or an employee of a vessel, or shoreside processor while employed by a catch monitor provider.

(5) Provisions for remuneration of catch monitors under this section do not constitute a conflict of interest.

(d) *Limitations on conflict of interest for catch monitor providers*. Catch monitor providers must not have a direct financial interest, other than the provision of observer or catch monitor services, in a North Pacific fishery managed pursuant to an FMP for the waters off the coast of Alaska, Alaska State waters, or in a Pacific Coast fishery managed by either the State or Federal governments in waters off Washington, Oregon, or California, including but not limited to:

(1) Any ownership, mortgage holder, or other secured interest in a vessel, shore-based or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish,

(2) Any business involved with selling supplies or services to any vessel, shore-based or floating stationary processing facility; or

(3) Any business involved with purchasing raw or processed products from any vessel, shore-based or floating stationary processing facilities.

(e) *Decertification*. (1) *Decertification review official*—The Regional Administrator (or a designee) will designate a decertification review official(s), who will have the authority to review certifications and issue IADs of decertification.

(2) *Causes for decertification*. The decertification official may initiate decertification proceedings when it is

alleged that any of the following acts or omissions have been committed:

(i) Failed to satisfactorily perform the specified duties and responsibilities;

(ii) Failed to abide by the specified standards of conduct;

(iii) Upon conviction of a crime or upon entry of a civil judgment for:

(A) Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties and responsibilities specified in this section;

(B) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(C) Commission of any other offense indicating a lack of integrity or honesty that seriously and directly affects the fitness of catch monitors.

(3) *Issuance of IAD*. Upon determination that decertification is warranted under § 660.17(c) or (e), the decertification official will issue a written IAD. The IAD will identify the specific reasons for the action taken. Decertification is effective 30 days after the date of issuance, unless there is an appeal.

(4) *Appeals*. Pursuant to § 679.43, a catch monitor who receives an IAD that revokes certification may appeal within 30 days of the determination revoking the certification.

10. In § 660.25, paragraphs (b)(1)(i)(A) and (B) are removed; paragraph (b)(4)(i)(F) is added; paragraphs (b)(4)(iv)(A), (b)(4)(v)(A), (b)(4)(v)(C), (b)(4)(vi)(C), and (e) are revised to read as follows:

#### § 660.25 Permits.

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(i) \* \* \*

(F) A limited entry permit will not be renewed until a complete economic data collection form is submitted as required under § 660.113(b), (c) and (d), subpart D. The permit renewal will be marked incomplete until the required information is submitted.

\* \* \* \* \*

(iv) *Changes in permit ownership and permit holder*—(A) *General*. The permit owner may convey the limited entry permit to a different person. The new permit owner will not be authorized to use the permit until the change in permit ownership has been registered with and approved by the SFD. The SFD will not approve a change in permit ownership for a limited entry permit with a sablefish endorsement that does not meet the ownership requirements for such permit described at paragraph (b)(3)(iv)(C) of this section. The SFD

will not approve a change in permit ownership for a limited entry permit with a MS/CV endorsement or an MS permit that does not meet the ownership requirements for such permit described at § 660.150(g)(3), subpart D, and § 660.150(f)(3), subpart D, respectively. Change in permit owner and/or permit holder applications must be submitted to SFD with the appropriate documentation described at paragraph (b)(4)(vii) of this section. During the initial issuance application period for the trawl rationalization program, NMFS will not review or approve any request for a change in limited entry trawl permit owner at any time during the application period as specified at § 660.140(d)(8)(viii) for QS applicants, at § 660.150(g)(6)(vii) for MS/CV endorsement applicants, and at § 660.160(d)(7)(vii) for C/P endorsement applicants.

(v) *Changes in vessel registration-transfer of limited entry permits and gear endorsements*—(A) *General*. A permit may not be used with any vessel other than the vessel registered to that permit. For purposes of this section, a permit transfer occurs when, through SFD, a permit owner registers a limited entry permit for use with a new vessel. Permit transfer applications must be submitted to SFD with the appropriate documentation described at paragraph (b)(4)(vii) of this section. Upon receipt of a complete application, and following review and approval of the application, the SFD will reissue the permit registered to the new vessel. Applications to transfer limited entry permits with sablefish endorsements will not be approved until SFD has received complete documentation of permit ownership as described at paragraph (b)(3)(iv)(C)(4) and as required under paragraph (b)(4)(vii) of this section. Applications to transfer limited entry permits with trawl endorsements or MS permits will not be approved until SFD has received complete EDC forms as required under § 660.114, subpart D.

(C) *Effective date*. Changes in vessel registration on permits will take effect no sooner than the first day of the next major limited entry cumulative limit period following the date that SFD receives the signed permit transfer form and the original limited entry permit, except for MS permits and C/P endorsement permits will take effect immediately upon reissuance to the new vessel. No transfer is effective until the limited

entry permit has been reissued as registered with the new vessel.

(vi) \* \* \*

(C) *Limited entry MS permits and limited entry permits with a MS/CV or C/P endorsement*. Limited entry MS permits and limited entry permits with a MS/CV or C/P endorsement may be registered to another vessel up to two times during the fishing season as long as the second transfer is back to the original vessel. The original vessel is either the vessel registered to the permit as of January 1, or if no vessel is registered to the permit as of January 1, the original vessel is the first vessel to which the permit is registered after January 1. After the original vessel has been established, the first transfer would be to another vessel, but any second transfer must be back to the original vessel. For a MS/CV endorsed permit on the second transfer back to the original vessel, that vessel must be used to fish exclusively in the MS Coop Program described § 660.150, and declare in to the limited entry midwater trawl, Pacific whiting mothership sector as specified at § 660.13(d)(5)(iv).

(e) *Coop permit*—(1) *MS coop permit*. A MS coop permit conveys a conditional privilege to an eligible coop entity to receive and manage a coop's allocation of designated species and species groups. A MS coop permit is not a limited entry permit. The provisions for the MS coop permit, including eligibility, renewal, change of permit ownership, fees, and appeals are described in the MS Coop Program at § 660.150, subpart D.

(2) *C/P coop permit*. A C/P coop permit conveys a conditional privilege to an eligible coop entity to receive and manage a coop's allocation of designated species and species groups. A C/P coop permit is not a limited entry permit. The provisions for the C/P coop permit, including eligibility, renewal, change of permit ownership, fees, and appeals are described in the C/P Coop Program at § 660.160, subpart D.

#### § 660.26 [Removed]

11. Section 660.26 is removed.  
12. In § 660.55, paragraph (i)(2) is revised to read as follows:

#### § 660.55 Allocations.

(i) \* \* \*

(2) The commercial harvest guideline for Pacific whiting is allocated among three sectors, as follows: 34 percent for the C/P Coop Program; 24 percent for

the MS Coop Program; and 42 percent for the Shorebased IFQ Program. No more than 5 percent of the Shorebased IFQ Program allocation may be taken and retained south of 42° N. lat. before the start of the primary Pacific whiting season north of 42° N. lat. Specific sector allocations for a given calendar year are found in Tables 1a and 2a of this subpart. Set asides for other species for the at-sea whiting fishery for a given calendar year are found in Tables 1d and 2d of this subpart.

13. In § 660.60, paragraph (d)(1), paragraph (h)(2), and paragraph (h)(5)(ii), (h)(5)(iii), and (h)(5)(iv) are revised; and paragraphs (h)(5)(v) through (xii) are added to read as follows:

#### § 660.60 Specifications and management measures.

(d) \* \* \*

(1) Automatic actions are used in the Pacific whiting fishery to:

(i) Close an at-sea sector of the fishery when that sector's Pacific whiting allocation is reached, or is projected to be reached;

(ii) Close all at-sea sectors or a single sector of the fishery when a non-whiting groundfish species with allocations is reached or projected to be reached;

(iii) Reapportion unused allocations of non-whiting groundfish species from one at-sea sector of the Pacific whiting fishery to another.

(iv) Implement the Ocean Salmon Conservation Zone, described at § 660.131(c)(3), subpart D, when NMFS projects the Pacific whiting fishery may take in excess of 11,000 Chinook within a calendar year.

(v) Implement Pacific Whiting Bycatch Reduction Areas, described at § 660.131(c)(4) Subpart D, when NMFS projects a sector-specific bycatch limit will be reached before the sector's whiting allocation.

(h) \* \* \*

(2) *Landing*. As stated at § 660.11, subpart C (in the definition of "Landing"), once the offloading of any species begins, all fish aboard the vessel are counted as part of the landing and must be reported as such. Transfer of fish at sea is prohibited under § 660.12, subpart C, unless a vessel is participating in the primary whiting fishery as part of the mothership or catcher/processor sectors, as described at § 660.131(a), subpart D. Catcher vessels in the mothership sector must transfer all catch from a haul to the same vessel registered to a MS permit prior to the gear being set for a



subsequent haul. Catch may not be transferred to a tender vessel.

\* \* \* \* \*

(5) \* \* \*

(ii) *Weight limits and conversions.* To determine the round weight, multiply the processed weight times the conversion factor. For participants in the Shorebased IFQ Program landing sorted catch, the weight conversions are provided below for purposes of applying QP. For participants in the limited entry fixed gear or open access fisheries, the weight limit conversion factor established by the State where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit or other allocation. Weight conversions provided herein are those conversions currently in use by the States of Washington, Oregon, and California and may be subject to change by those States. Fishery participants should contact fishery enforcement officials in the State where the fish will be landed to determine that State's official conversion factor.

(iii) *Sablefish.* The following conversions apply:

(A) The following conversion applies to both the limited entry fixed gear and open access fisheries: For headed and gutted (eviscerated) sablefish the weight conversion factor is 1.6.

(B) The following conversion applies to vessels landing sorted catch in the Shorebased IFQ Program: For headed and gutted (eviscerated) sablefish the weight conversion factor is 1.47.

(iv) *Lingcod.* The following conversions apply:

(A) North of 42° N. lat., for lingcod with the head removed, the minimum size limit is 18 inches (46 cm), which corresponds to 22 inches (56 cm) total length for whole fish.

(B) South of 42° N. lat., for lingcod with the head removed, the minimum size limit is 19.5 inches (49.5 cm), which corresponds to 24 inches (61 cm) total length for whole fish.

(C) The following conversions apply in both limited entry fixed gear and open access fisheries: For headed and gutted (eviscerated) lingcod, the weight conversion factor is 1.5; for lingcod that has only been gutted with the head on, the weight conversion factor is 1.1.

(D) The following conversions apply to vessels landing sorted catch in the Shorebased IFQ Program: For headed and gutted (eviscerated), the weight conversion factor is 1.43; for lingcod that has only been gutted with the head on, the weight conversion factor is 1.1.

(v) *Pacific whiting.* The following conversion applies to vessels landing

sorted catch in the Shorebased IFQ Program: For headed and gutted Pacific whiting (head removed just in front of the collar bone and viscera removed), the weight conversion factor is 1.67; for headed and gutted Pacific whiting with the tail removed the weight conversion factor is 2.0.

(vi) *Rockfish (including thornyheads), except POP.* The following conversions apply to vessels landing sorted catch in the Shorebased IFQ Program: For headed and gutted (eviscerated), the weight conversion factor is 1.75; for headed and gutted, western cut (head removed just in front of the collar bone and viscera removed), the weight conversion factor is 1.66; for headed and gutted, eastern cut (head removed just in behind the collar bone and viscera removed,) the weight conversion factor is 2.0.

(vii) *Pacific ocean perch (POP).* The following conversion applies to vessels landing sorted catch in the Shorebased IFQ Program: For headed and gutted (eviscerated), the weight conversion factor is 1.6.

(viii) *Pacific cod.* The following conversion applies to vessels landing sorted catch in the Shorebased IFQ Program: For headed and gutted (eviscerated), the weight conversion factor is 1.58.

(ix) *Dover sole, English sole, and "other flatfish."* The following conversion applies to vessels landing sorted catch in the Shorebased IFQ Program: For headed and gutted (eviscerated), the weight conversion factor is 1.53.

(x) *Petrale sole.* The following conversion applies to vessels landing sorted catch in the Shorebased IFQ Program: For headed and gutted (eviscerated), the weight conversion factor is 1.51.

(xi) *Arrowtooth flounder.* The following conversion applies to vessels landing sorted catch in the Shorebased IFQ Program: For headed and gutted (eviscerated), the weight conversion factor is 1.35.

(xii) *Starry flounder.* The following conversion applies to vessels landing sorted catch in the Shorebased IFQ Program: For headed and gutted (eviscerated), the weight conversion factor is 1.49.

\* \* \* \* \*

14. Section 660.100 is revised to read as follows:

#### **§ 660.100 Purpose and scope.**

This subpart covers the Pacific coast groundfish limited entry trawl fishery. Under the trawl rationalization program, the limited entry trawl fishery consists of the Shorebased IFQ Program, the MS

Coop Program, and the C/P Coop Program. Nothing in these regulations shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. The trawl rationalization program creates limited access privileges. These limited access privileges, including the QS or IBQ, QP or IBQ pounds, and catch history assignments, may be revoked, limited or modified at any time in accordance with the MSA—and do not create any right of compensation to the holder of the limited access privilege if it is revoked, limited, or modified. The trawl rationalization program does not create any right, title, or interest in or to any fish before the fish is harvested by the holder and shall be considered a grant of permission to the holder of the limited access privilege to engage in activities permitted by the trawl rationalization program.

15. In § 660.111, the following definitions are removed: "Pacific whiting shoreside first receivers", "Pacific whiting shoreside or shore-based fishery", "Pacific whiting shoreside vessel," and "Vessel limits"; "Pacific whiting IFQ fishery" is revised; and new definitions are added in alphabetical order for: "accumulation limits," "charterer," "complete economic data collection (EDC) form," "IFQ trip", "lessee," and "Pacific whiting IFQ trip".

#### **§ 660.111 Trawl fishery—definitions.**

\* \* \* \* \*

*Accumulation limits* mean the maximum extent of permissible ownership, control or use of a privilege within the trawl rationalization program, and include the following:

(1) *Shorebased IFQ Program.* (i) *Control limits* means the maximum amount of QS that a person may own or control, as described at § 660.140(d)(4).

(ii) *Vessel limits* means the maximum amount of QP a vessel can hold, acquire, and/or use during a calendar year, and specify the maximum amount of QP that may be registered to a single vessel during the year (QP Vessel Limit) and, for some species, the maximum amount of unused QP registered to a vessel account at any one time (Unused QP Vessel Limit), as described at § 660.140(e)(4).

(2) *MS Coop Program.* (i) MS permit usage limit means the maximum amount of the annual mothership sector Pacific whiting allocation that a person may cumulatively process, no more than 45 percent, as described at § 660.150(f)(3)(i).

(ii) MS/CV permit ownership limit means the maximum amount of catch history assignment that a person may own, no more than 20 percent of the MS



sector's allocation of Pacific whiting, as described at § 660.150(g)(3)(i).

(iii) Catcher vessel usage limit means the maximum amount of the annual mothership sector Pacific whiting allocation that a vessel may catch, no more than 30 percent, as described at § 660.150(g)(3)(ii).

\* \* \* \* \*

*Charterer* means, for the purpose of economic data collection program, a person, other than the owner of the vessel, who: Entered in to any agreement or commitment by which the possession or services of the vessel are secured for a period of time for the purposes of commercially harvesting or processing fish. A long-term or exclusive contract for the sale of all or a portion of the vessel's catch or processed products is not considered a charter.

\* \* \* \* \*

*Complete economic data collection (EDC) form* means that a response is supplied for each question, sub-question, and answer-table cell. If particular question or sub-question is not applicable, "NA", must be entered in the appropriate space on the form. The form must also be signed and dated to certify that the information is true and complete to the best of the signatory's knowledge.

\* \* \* \* \*

*IFQ trip* means a trip in which the vessel has a valid fishing declaration for any of the following: Limited entry midwater trawl, non-whiting shorebased IFQ; Limited entry midwater trawl, Pacific whiting shorebased IFQ; Limited entry bottom trawl, shorebased IFQ, not including demersal trawl; Limited entry demersal trawl, shorebased IFQ; or Limited entry groundfish non-trawl, shorebased IFQ.

\* \* \* \* \*

*Lessee* means, for the purpose of economic data collection program, a person, other than the owner of the vessel or facility, who: Was identified as the leaseholder, in a written lease, of the vessel or facility, or paid expenses of the vessel or facility, or claimed expenses for the vessel or facility as a business expense on a Federal income tax return, or on a State income tax return.

\* \* \* \* \*

*Pacific whiting IFQ fishery* means the Shorebased IFQ Program fishery composed of vessels making Pacific whiting IFQ trips pursuant to the requirements at § 660.131 during the primary whiting season fishery dates for the Shorebased IFQ Program.

*Pacific whiting IFQ trip* means a trip in which a vessel registered to a limited entry permit uses legal midwater

groundfish trawl gear with a valid declaration for limited entry midwater trawl, Pacific whiting shorebased IFQ, as specified at § 660.13(d)(5)(iv)(A) during the dates that the Pacific whiting IFQ fishery primary season.

\* \* \* \* \*

16. In § 660.112:

- a. Paragraph (f) is removed;
- b. Paragraph (a)(2) is added;
- c. Paragraph (a)(3)(iii) is added;
- d. Paragraph (a)(4) is redesignated as paragraph (a)(5), and a new paragraph (a)(4) is added; and
- e. Paragraphs (b) through (e) are added to read as follows:

**§ 660.112 Trawl fishery—prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(2) *Sorting*. Fail to sort catch consistent with the requirements specified at § 660.130(d).

\* \* \* \* \*

(3) \* \* \*

(iii) Failure to submit a complete EDC form to NMFS as required by § 660.113.

\* \* \* \* \*

(4) *Observers*. (i) Fish (including processing, as defined at § 600.10 of this chapter) in the Shorebased IFQ Program, the MS Coop Program, or the C/P Coop Program if NMFS determines the vessel is unsafe for an observer.

(ii) Fish in the Shorebased IFQ Program, the MS Coop Program, or the C/P Coop Program without observer coverage.

\* \* \* \* \*

(b) *Shorebased IFQ program*—(1) *General*. (i) Own or control by any means whatsoever an amount of QS that exceeds the Shorebased IFQ Program accumulation limits.

(ii) Fish in the Shorebased IFQ Program with a vessel that does not have a valid vessel account or that has a vessel account with a deficit (negative balance) for any species/species group.

(iii) Have any IFQ species/species group catch (landings and discards) from an IFQ trip not covered by QP for greater than 30 days from the date the deficit (negative balance) from that trip is documented, unless the deficit is within the limits of the carryover provision specified at § 660.140(e)(5), subpart D, in which case the vessel has 30 days after the QP for the following year are issued to eliminate the deficit.

(iv) Transfer the limited entry trawl endorsed permit to another vessel or sell the limited entry trawl endorsed permit to another owner if the vessel registered to the permit has an overage (catch not covered by QP), until the overage is covered, regardless of the amount of the overage.

(v) Use QP by vessels not registered to a limited entry trawl permit with a valid vessel account.

(vi) Use QP in an area or for species/species groups other than that for which it is designated.

(vii) Fish in more than one IFQ management area, specified at § 660.140(c)(2), on the same trip.

(viii) Fish on a Pacific whiting IFQ trip with a gear other than legal midwater groundfish trawl gear.

(ix) Fish on a Pacific whiting IFQ trip without a valid declaration for limited entry midwater trawl, Pacific whiting shorebased IFQ, as specified at § 660.13(d)(5)(iv)(A), subpart C.

(x) Use midwater trawl gear to fish for Pacific whiting within an RCA outside the Pacific whiting IFQ fishery primary season as specified at § 660.131(b)(2)(iii).

(xi) Bring a haul on board before all catch from the previous haul has been stowed.

(xii) Process groundfish at-sea ("at-sea processing") by vessels in the Shorebased IFQ Program regardless of the type of gear used, with the following exceptions:

(A) A vessel that is 75-ft (23-m) 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, and

(B) A vessel that has a sablefish at-sea processing exemption, defined at § 660.25(b)(3)(iv)(D), subpart C may process sablefish at-sea.

(xiii) Retain any IFQ species/species group onboard a vessel unless the vessel has observer coverage. A vessel may deliver IFQ species/species groups to more than one IFQ first receiver, but must maintain observer coverage until all IFQ species from the trip are offloaded. Once transfer of fish begins, all fish aboard the vessel are counted as part of the same landing as defined at § 660.11.

(xiv) Discard IFQ species/species group onboard a vessel unless observer has documented the amount and species of the discards.

(2) *IFQ first receivers*. (i) Accept an IFQ landing without a valid first receiver site license.

(ii) Fail to sort fish received from a IFQ landing prior to first weighing after offloading as specified at § 660.130(d)(2) for the Shorebased IFQ Program, except the vessels declared in to the limited entry midwater trawl, Pacific whiting shorebased IFQ at § 660.13(d)(5)(iv)(A), subpart C may weigh catch on a bulk scale before sorting as described at § 660.140(j)(2).

(iii) Process, sell, or discard any groundfish received from an IFQ landing that has not been weighed on a scale that is in compliance with requirements at § 660.15, subpart C.

(iv) Transport catch away from the point of landing before that catch has been sorted and weighed by Federal groundfish species or species group, and recorded for submission on an electronic fish ticket. (If fish will be transported to a different location for processing, all sorting and weighing to Federal groundfish species groups must occur before transporting the catch away from the point of landing).

(v) Receive an IFQ landing without coverage by a catch monitor when one is required by regulations, unless NMFS has granted a written waiver exempting the IFQ first receiver from the catch monitor coverage requirements. On a case-by-case basis, a temporary written waiver may be granted by the Assistant Regional Administrator or designee if he/she determines that the failure to obtain coverage of a catch monitor was due to circumstances beyond the control of the first receiver. The duration of the waiver will be determined on a case-by-case basis.

(vi) Receive an IFQ landing without a NMFS-accepted catch monitoring plan or not in accordance with their NMFS-accepted catch monitoring plan.

(vii) Mix catch from more than one IFQ landing prior to the catch being sorted and weighed.

(viii) Fail to comply with the IFQ first receiver responsibilities specified at § 660.140(b)(2).

(ix) Process, sell, or discard any groundfish received from an IFQ landing that has not been accounted for on an electronic fish ticket with the identification number for the vessel that delivered the fish.

(x) Fail to submit, or submit incomplete or inaccurate information on any report, application, or statement required under this part.

(c) *MS and C/P Coop Programs.* (1) Process Pacific whiting in the fishery management area during times or in areas where at-sea processing is prohibited for the sector in which the vessel fishes, unless:

(i) The fish are received from a member of a Pacific Coast treaty Indian Tribe fishing under § 660.50, subpart C;

(ii) The fish are processed by a waste-processing vessel according to § 660.131(h), subpart D; or

(iii) The vessel is completing processing of Pacific whiting taken on board prior to the close of that vessel's primary season.

(2) During times or in areas where at-sea processing is prohibited, take and

retain or receive Pacific whiting, except as cargo or fish waste, on a vessel in the fishery management area that already has processed Pacific whiting on board. An exception to this prohibition is provided if the fish are received within the Tribal U&A from a member of a Pacific Coast treaty Indian Tribe fishing under § 660.50, subpart C.

(3) Operate as a waste-processing vessel within 48 hours of a primary season for Pacific whiting in which that vessel operates as a catcher/processor or mothership, according to § 660.131(h), subpart D.

(4) On a vessel used to fish for Pacific whiting, fail to keep the trawl doors on board the vessel, when taking and retention is prohibited under § 660.131(b), subpart D.

(5) Sort or discard any portion of the catch taken by a catcher vessel in the mothership sector before the catcher vessel observer completes sampling of the catch, with the exception of minor amounts of catch that are lost when the codend is separated from the net and prepared for transfer.

(d) *MS Coop Program (coop and non-coop fisheries).* (1) Catch, take, or harvest fish in the mothership non-coop fishery with a vessel that is not registered to a current MS/CV-endorsed limited entry trawl permit.

(2) Receive catch, process catch, or otherwise fish as a mothership vessel if it is not registered to a current MS permit.

(3) Fish with a vessel in the mothership sector, if that vessel was used to fish in the C/P fishery in the same calendar year.

(4) Catch, take, or harvest fish in the MS Coop Program with a vessel that does not have a valid VMS declaration for limited entry midwater trawl, Pacific whiting mothership sector, as specified at § 660.13(d)(5)(iv)(A), subpart C.

(5) Transfer catch to a vessel that is not registered to a MS permit. (*i.e.* a tender vessel).

(6) Use a vessel registered to a limited entry permit with a trawl endorsement (with or without a MS/CV endorsement) to catch more than 30 percent of the Pacific whiting allocation for the mothership sector.

(7) Process more than 45 percent of the annual mothership sector's Pacific whiting allocation.

(8) Catch, take, or harvest fish before all catch from any previous haul has been transferred to a single vessel registered to a MS permit.

(9) Transfer catch from a single haul to more than one permitted MS vessel.

(10) Catch, take, or harvest fish for a MS coop with a vessel that has not been identified by the coop as a vessel

authorized to harvest that coop's allocation.

(11) Catch, take, or harvest fish in the non-coop fishery with a vessel registered to a MS/CV endorsed permit in the same year the MS/CV endorsed permit was registered to a vessel that fished as a member of a coop in the MS Coop Program.

(12) Sort or discard any portion of the catch taken by a catcher vessel in the mothership sector before the catcher vessel observer completes sampling of the catch, except for minor operational amounts of catch lost by a catcher vessel provided the observer has accounted for the discard (*i.e.*, a maximized retention fishery).

(13) Mix catch from more than one haul before the observer completes their collection of catch for sampling.

(14) Take deliveries without a valid scale inspection report signed by an authorized scale inspector on board the vessel.

(15) Sort, process, or discard catch delivered to a mothership before the catch is weighed on a scale that meets the requirements of § 660.15(b), including the daily test requirements.

(e) *C/P Coop Program.* (1) Fish with a vessel in the catcher/processor sector that is not registered to a current C/P endorsed limited entry trawl permit.

(2) Fish as a catcher/processor vessel in the same year that the vessel fishes as a catcher vessel in the mothership fishery.

(3) Fish as a catcher/processor vessel in the same year that the vessel operates as a mothership in the mothership fishery.

(4) Fish in the C/P Coop Program with a vessel that does not have a valid VMS declaration for limited entry midwater trawl, Pacific whiting catcher/processor sector, as specified at § 660.13(d)(5)(iv)(A).

(5) Fish in the C/P Coop Program with a vessel that is not identified in the C/P coop agreement.

(6) Fish in the C/P Coop Program without a valid scale inspection report signed by an authorized scale inspector on board the vessel.

(7) Sort, process, or discard catch before the catch is weighed on a scale that meets the requirements of § 660.15(b), including the daily test requirements.

(8) Discard any catch from the codend or net (*i.e.* bleeding) before the observer has completed their data collection.

(9) Mix catch from more than one haul before the observer completes their collection of catch for sampling.

17. In § 660.113, paragraphs (a) through (c) are added, and paragraph (d) is revised, to read as follows:

**§ 660.113 Trawl fishery—recordkeeping and reporting.**

\* \* \* \*

(a) *General requirements.* (1) All records or reports required by this paragraph must: Be maintained in English, be accurate, be legible, be based on local time, and be submitted in a timely manner.

(2) *Retention of Records.* All records used in the preparation of records or reports specified in this section or corrections to these reports must be maintained for a period of not less than three years after the date of landing and must be immediately available upon request for inspection by NMFS or authorized officers or others as specifically authorized by NMFS. Records used in the preparation of required reports specified in this section or corrections to these reports that are required to be kept include, but are not limited to, any written, recorded, graphic, electronic, or digital materials as well as other information stored in or accessible through a computer or other information retrieval system; worksheets; weight slips; preliminary, interim, and final tally sheets; receipts; checks; ledgers; notebooks; diaries; spreadsheets; diagrams; graphs; charts; tapes; disks; or computer printouts. All relevant records used in the preparation of electronic fish ticket reports or corrections to these reports must be maintained for a period of not less than three years after the date and must be immediately available upon request for inspection by NMFS or authorized officers or others as specifically authorized by NMFS.

(b) *Shorebased IFQ Program.* (1) *Economic data collection (EDC) program.* The following persons are required to submit an EDC form as specified at § 660.114:

(i) All owners, lessees, and charterers of a catcher vessel registered to a limited entry trawl endorsed permit.

(ii) All owners of a first receiver site license.

(iii) All owners and lessees of a shorebased processor.

(2) *Electronic vessel logbook.*

[Reserved]

(3) *Gear switching declaration.* Any person with a limited entry trawl permit participating in the Shorebased IFQ Program using groundfish non-trawl gear (*i.e.*, gear switching) must submit a valid gear declaration reporting such participation as specified in § 660.13(d)(5)(iv)(A).

(4) *Electronic fish ticket.* The IFQ first receiver is responsible for compliance with all reporting requirements described in this paragraph.

(i) *Required information.* All IFQ first receivers must provide the following types of information: Date of landing, vessel that made the delivery, gear type used, catch area, first receiver, round weights of species landed listed by species or species group including species with no value, number of salmon by species, number of Pacific halibut, and any other information deemed necessary by the Regional Administrator as specified on the appropriate electronic fish ticket form.

(ii) *Submissions.* The IFQ first receiver must:

(A) Include as part of each electronic fish ticket submission, the actual scale weight for each groundfish species as specified by requirements at § 660.15(c) and the vessel identification number.

(B) Use for the purpose of submitting electronic fish tickets, and maintain in good working order, computer equipment as specified at § 660.15(d)(1);

(C) Install, use, and update as necessary, any NMFS-approved software described at § 660.15(d)(3);

(D) Submit a completed electronic fish ticket for every IFQ landing no later than 24 hours after the date the fish are received, unless a waiver of this requirement has been granted under provisions specified at paragraph (b)(4)(iv) of this section.

(iii) *Revising a submission.* In the event that a data error is found, electronic fish ticket submissions may be revised by resubmitting the revised form. Electronic fish tickets are to be used for the submission of final data. Preliminary data, including estimates of fish weights or species composition, shall not be submitted on electronic fish tickets.

(iv) *Waivers for submission.* On a case-by-case basis, a temporary written waiver of the requirement to submit electronic fish tickets may be granted by the Assistant Regional Administrator or designee if he/she determines that circumstances beyond the control of a first receiver would result in inadequate data submissions using the electronic fish ticket system. The duration of the waiver will be determined on a case-by-case basis.

(v) *Reporting requirements when a temporary waiver has been granted.* IFQ first receivers that have been granted a temporary waiver from the requirement to submit electronic fish tickets must submit on paper the same data as is required on electronic fish tickets within 24 hours of the date received during the period that the waiver is in effect. Paper fish tickets must be sent by facsimile to NMFS, Northwest Region, Sustainable Fisheries Division, 206–526–6736 or by delivering it in person

to 7600 Sand Point Way NE, Seattle, WA 98115. The requirements for submissions of paper tickets in this paragraph are separate from, and in addition to existing State requirements for landing receipts or fish receiving tickets.

(c) *MS Coop Program (coop and non-coop fisheries)*—(1) *Economic data collection (EDC) program.* The following persons are required to submit a complete economic data collection form as specified at § 660.114.

(i) All owners, lessees, and charterers of a catcher vessel registered to a limited entry trawl MS/CV endorsed permit.

(ii) All owners, lessees, and charterers of a vessel registered to a MS permit.

(2) *NMFS-approved scales*—(i) *Scale test report form.* Mothership vessel operators are responsible for conducting scale tests and for recording the scale test information on the at-sea scale test report form as specified at § 660.15(b), subpart C, for mothership vessels.

(ii) *Printed scale reports.* Specific requirements pertaining to printed scale reports and scale weight printouts are specified at § 660.15(b), subpart C, for mothership vessels.

(iii) *Retention of scale records and reports.* The vessel must maintain the test report form on board until the end of the fishing year during which the tests were conducted, and make the report forms available to observers, NMPS staff, or authorized officers. In addition, the vessel owner must retain the scale test report forms for 3 years after the end of the fishing year during which the tests were performed. All scale test report forms must be signed by the vessel operator.

(3) *Annual coop report*—(i) The designed coop manager for the mothership coop must submit an annual report to the Pacific Fishery Management Council for their November meeting each year. The annual coop report will contain information about the current year's fishery, including:

(A) The mothership sector's annual allocation of Pacific whiting and the permitted mothership coop allocation;

(B) The mothership coop's actual retained and discarded catch of Pacific whiting, salmon, Pacific halibut, rockfish, groundfish, and other species on a vessel-by-vessel basis;

(C) A description of the method used by the mothership coop to monitor performance of coop vessels that participated in the fishery;

(D) A description of any actions taken by the mothership coop in response to any vessels that exceed their allowed catch and bycatch; and

(E) Plans for the next year's mothership coop fishery, including the companies participating in the cooperative, the harvest agreement, and catch monitoring and reporting requirements.

(ii) The annual coop report submitted to the Pacific Fishery Management Council must be finalized to capture any additional fishing activity that year and submitted to NMFS by March 31 of the following year before a coop permit is issued for the following year.

(4) *Cease fishing report.* As specified at § 660.150(c)(4)(ii), the designated coop manager, or in the case of an inter-coop agreement, all of the designated coop managers must submit a cease fishing report to NMFS indicating that harvesting has concluded for the year.

(d) *C/P Coop Program*—(1) *Economic data collection (EDC) program.* All owners, lessees, and charterers of a vessel registered to a C/P endorsed limited entry trawl permit are required to submit a complete economic data collection form as specified at § 660.114.

(2) *NMFS-approved scales*—(i) *Scale test report form.* Catcher/processor vessel operators are responsible for conducting scale tests and for recording the scale test information on the at-sea scale test report form as specified at § 660.15(b), subpart C, for C/P vessels.

(ii) *Printed scale reports.* Specific requirements pertaining to printed scale reports and scale weight print outs are

specified at § 660.15(b), subpart C, for C/P vessels.

(iii) *Retention of scale records and reports.* The vessel must maintain the test report form on board until the end of the fishing year during which the tests were conducted, and make the report forms available to observers, NMFS staff, or authorized officers. In addition, the vessel owner must retain the scale test report forms for 3 years after the end of the fishing year during which the tests were performed. All scale test report forms must be signed by the vessel operator.

(3) *Annual coop report*—(i) The designated coop manager for the C/P coop must submit an annual report to the Pacific Fishery Management Council for their November meeting each year. The annual coop report will contain information about the current year's fishery, including:

(A) The C/P sector's annual allocation of Pacific whiting;

(B) The C/P coop's actual retained and discarded catch of Pacific whiting, salmon, Pacific halibut, rockfish, groundfish, and other species on a vessel-by-vessel basis;

(C) A description of the method used by the C/P coop to monitor performance of cooperative vessels that participated in the fishery;

(D) A description of any actions taken by the C/P coop in response to any vessels that exceed their allowed catch and bycatch; and

(E) Plans for the next year's C/P coop fishery, including the companies participating in the cooperative, the harvest agreement, and catch monitoring and reporting requirements.

(ii) The annual coop report submitted to the Pacific Fishery Management Council must be finalized to capture any additional fishing activity that year and submitted to NMFS by March 31 of the following year before a coop permit is issued for the following year.

(4) *Cease fishing report.* As specified at § 660.160(c)(5), the designated coop manager must submit a cease fishing report to NMFS indicating that harvesting has concluded for the year.

18. Section 660.114 is added to read as follows:

**§ 660.114 Trawl fishery—economic data collection program.**

(a) *General.* The economic data collection (EDC) program collects mandatory economic data from participants in the trawl rationalization program. NMFS requires submission of an EDC form to gather ongoing, annual data for 2011 and beyond, as well as a onetime collection in 2011 of baseline economic data from 2009 through 2010.

(b) *Economic data collection program requirements.* The following fishery participants in the limited entry groundfish trawl fisheries are required to comply with the following EDC program requirements:

Fishery participant	Economic data collection	Who is required to submit an EDC?	Consequence for failure to submit (In addition to consequences listed below, failure to submit an EDC may be a violation of the MSA)
(1) Limited entry trawl catcher vessels.	(i) Baseline (2009 and 2010) economic data.	All owners, lessees, and charterers of a catcher vessel registered to a limited entry trawl endorsed permit at any time in 2009 or 2010.	(A) For permit owner, a limited entry trawl permit application (including MS/CV endorsed limited entry trawl permit) will not be considered complete until the required EDC for that permit owner associated with that permit is submitted, as specified at § 660.25(b)(4)(i), subpart C. (B) For a vessel owner, participation in the groundfish fishery (including, but not limited to, changes in vessel registration, vessel account actions, or if own QS permit, issuance of annual QP) will not be authorized until the required EDC for that owner for that vessel is submitted, as specified, in part, at § 660.25(b)(4)(v), subpart C and § 660.140(e), subpart D. (C) For a vessel lessee or charterer, participation in the groundfish fishery (including, but not limited to, issuance of annual QP if own QS) will not be authorized, until the required EDC for their operation of that vessel is submitted.

Fishery participant	Economic data collection	Who is required to submit an EDC?	Consequence for failure to submit (In addition to consequences listed below, failure to submit an EDC may be a violation of the MSA)
	(ii) Annual/ongoing (2011 and beyond) economic data.	All owners, lessees, and charterers of a catcher vessel registered to a limited entry trawl endorsed permit at any time in 2011 and beyond.	(A) For permit owner, a limited entry trawl permit application (including MS/CV endorsed limited entry trawl permit) will not be considered complete until the required EDC for that permit owner associated with that permit is submitted, as specified at § 660.25(b)(4)(i), subpart C. (B) For a vessel owner, participation in the groundfish fishery (including, but not limited to, changes in vessel registration, vessel account actions, or if own QS permit, issuance of annual QP) will not be authorized until the required EDC for that owner for that vessel is submitted, as specified, in part, at § 660.25(b)(4)(v), subpart C and § 660.140(e), subpart D. (C) For a vessel lessee or charterer, participation in the groundfish fishery (including, but not limited to, issuance of annual QP if own QS) will not be authorized, until the required EDC for their operation of that vessel is submitted.
(2) Motherships .....	(i) Baseline (2009 and 2010) economic data.	All owners, lessees, and charterers of a mothership vessel that received whiting in 2009 or 2010 as recorded in NMFS' NORPAC database.	(A) For permit owner, a MS permit application will not be considered complete until the required EDC for that permit owner associated with that permit is submitted, as specified at § 660.25(b)(4)(i), subpart C. (B) For a vessel owner, participation in the groundfish fishery (including, but not limited to, changes in vessel registration) will not be authorized until the required EDC for that owner for that vessel is submitted, as specified, in part, at § 660.25(b)(4)(v), subpart C. (C) For a vessel lessee or charterer, participation in the groundfish fishery will not be authorized, until the required EDC for their operation of that vessel is submitted.
	(ii) Annual/ongoing (2011 and beyond) economic data.	All owners, lessees, and charterers of a mothership vessel registered to a MS permit at any time in 2011 and beyond.	(A) For permit owner, a MS permit application will not be considered complete until the required EDC for that permit owner associated with that permit is submitted, as specified at § 660.25(b)(4)(i), subpart C. (B) For a vessel owner, participation in the groundfish fishery (including, but not limited to, changes in vessel registration) will not be authorized until the required EDC for that owner for that vessel is submitted, as specified, in part, at § 660.25(b)(4)(v), subpart C. (C) For a vessel lessee or charterer, participation in the groundfish fishery will not be authorized, until the required EDC for their operation of that vessel is submitted.
(3) Catcher processors	(i) Baseline (2009 and 2010) economic data.	All owners, lessees, and charterers of a catcher processor vessel that harvested whiting in 2009 or 2010 as recorded in NMFS' NORPAC database.	(A) For permit owner, a C/P endorsed limited entry trawl permit application will not be considered complete until the required EDC for that permit owner associated with that permit is submitted, as specified at § 660.25(b)(4)(i), subpart C. (B) For a vessel owner, participation in the groundfish fishery (including, but not limited to, changes in vessel registration) will not be authorized until the required EDC for that owner for that vessel is submitted, as specified, in part, at § 660.25(b)(4)(v), subpart C. (C) For a vessel lessee or charterer, participation in the groundfish fishery will not be authorized, until the required EDC for their operation of that vessel is submitted.

Fishery participant	Economic data collection	Who is required to submit an EDC?	Consequence for failure to submit (In addition to consequences listed below, failure to submit an EDC may be a violation of the MSA)
	(ii) Annual/ongoing (2011 and beyond) economic data.	All owners, lessees, and charterers of a catcher processor vessel registered to a catcher processor permit at any time in 2011 and beyond.	(A) For permit owner, a C/P endorsed limited entry trawl permit application will not be considered complete until the required EDC for that permit owner associated with that permit is submitted, as specified at § 660.25(b)(4)(i), subpart C. (B) For a vessel owner, participation in the groundfish fishery (including, but not limited to, changes in vessel registration) will not be authorized until the required EDC for that owner for that vessel is submitted, as specified, in part, at § 660.25(b)(4)(v), subpart C. (C) For a vessel lessee or charterer, participation in the groundfish fishery will not be authorized, until the required EDC for their operation of that vessel is submitted.
(4) First receivers/ shorebased processors.	(i) Baseline (2009 and 2010) economic data.  (ii) Annual/ongoing (2011 and beyond) economic data.	All owners and lessees of a shorebased processor and all buyers that received groundfish or whiting harvested with a limited entry trawl permit as listed in the PacFIN database in 2009 or 2010.  (A) All owners of a first receiver site license in 2011 and beyond. (B) All owners and lessees of a shore-based processor (as defined under “processor” at § 660.11, subpart C, for purposes of EDC) that received round or headed-and-gutted IFQ species groundfish or whiting from a first receiver in 2011 and beyond.	A first receiver site license application for a particular physical location for processing and buying will not be considered complete until the required EDC for the applying processor or buyer is submitted, as specified at § 660.140(f)(3), subpart D.  A first receiver site license application will not be considered complete until the required EDC for that license owner associated with that license is submitted, as specified at § 660.140(f)(3), subpart D.

(c) *Submission of the EDC form and deadline*—(1) *Submission of the EDC form*. The complete, certified EDC form must be submitted to *Attn: Economic Data Collection Program (FRAM Division)*, NMFS, Northwest Fisheries Science Center, 2725 Montlake Boulevard East, Seattle, WA 98112. A complete EDC form contains responses for all data fields, which include but are not limited to costs, labor, earnings, activity in a fishery, vessel or plant characteristics, value, quota, operational information, location of expenditures and earnings, ownership information and leasing information.

(2) *Deadline*. Complete, certified EDC forms must be mailed and postmarked by or hand-delivered to NMFS NWFSC no later than September 1, 2011, for baseline data, and, for the annual/ongoing data collection beginning September 1, 2012, September 1 each year for the prior year's data.

(d) *Confidentiality of information*. Information received on an EDC form will be considered confidential under applicable law and guidance.

(e) *EDC audit procedures*—(1) NMFS reserves the right to conduct verification of economic data with the submitter of the form. NMFS may employ a third party agent to conduct the audits.

(2) The submitter of the EDC form must respond to any inquiry by NMFS or a NMFS agent within 20 days of the date of issuance of the inquiry, unless an extension is granted by NMFS.

(3) The submitter of the form must provide copies of additional data to facilitate verification by NMFS or NMFS' agent upon request. The NMFS auditor may review and request copies of additional data provided by the submitter, including but not limited to, previously audited or reviewed financial statements, worksheets, tax returns, invoices, receipts, and other original documents substantiating the economic data submitted.

#### § 660.116 [Removed]

19. Section 660.116 is removed.

20. In § 660.130, paragraphs (a) and (d) are revised to read as follows:

#### § 660.130 Trawl fishery—management measures.

(a) *General*. Limited entry trawl vessels are those vessels registered to a limited entry permit with a trawl endorsement and those vessels registered to a MS permit. Most species taken in limited entry trawl fisheries will be managed with quotas (*see* § 660.140), allocations or set-asides (*see* § 660.150 or § 660.160), or cumulative

trip limits (*see* trip limits in Tables 1 (North) and 1 (South) of this subpart), size limits (*see* § 660.60 (h)(5), subpart C), seasons (*see* Pacific whiting at § 660.131(b), subpart D), gear restrictions (*see* paragraph (b) of this section) and closed areas (*see* paragraph (e) of this section and §§ 660.70 through 660.79, subpart C). The trawl fishery has gear requirements and harvest limits that differ by the type of trawl gear on board and the area fished. Groundfish vessels operating south of Point Conception must adhere to CCA restrictions (*see* paragraph (e)(1) of this section and § 660.70, subpart C). The trip limits in Tables 1 (North) and 1 (South) of this subpart apply to vessels participating in the limited entry groundfish trawl fishery and may not be exceeded. Federal commercial groundfish regulations are not intended to supersede any more restrictive State commercial groundfish regulations relating to Federally-managed groundfish.

\* \* \* \* \*

(d) *Sorting*. Under § 660.12(a)(8), subpart C, it is unlawful for any person to “fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, scientific

sorting designation, quota, harvest guideline, or OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, scientific sorting designation, quota, harvest guideline, or OY applied." The States of Washington, Oregon, and California may also require that vessels record their landings as sorted on their State landing receipt.

(1) *Species and areas*—(i) *Coastwide*. Widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, shortbelly rockfish, black rockfish, blue rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, shortspine and longspine thornyhead, Dover sole, arrowtooth flounder, petrale sole, starry flounder, English sole, other flatfish, lingcod, sablefish, Pacific cod, spiny dogfish, other fish, longnose skate, and Pacific whiting;

(ii) *North of 40°10' N. lat.* POP, yellowtail rockfish;

(iii) *South of 40°10' N. lat.* Minor shallow nearshore rockfish, minor deeper nearshore rockfish, California scorpionfish, chilipepper rockfish, bocaccio rockfish, splitnose rockfish, Pacific sanddabs, cowcod, bronzespotted rockfish and cabezon.

(2) *Sorting requirements for the Shorebased IFQ Program*—(i) *First receivers*. Fish landed at IFQ first receivers (including shoreside processing facilities and buying stations that intend to transport catch for processing elsewhere) must be sorted, prior to first weighing after offloading from the vessel and prior to transport away from the point of landing, except the vessels declared in to the limited entry midwater trawl, Pacific whiting shorebased IFQ at § 660.13(d)(5)(iv)(A), subpart C, may weigh catch on a bulk scale before sorting as described at § 660.140(j)(2).

(ii) *Catcher vessels*. All catch must be sorted to the species groups specified in paragraph (d)(1) of this section for vessels with limited entry permits, except those retaining all catch during a Pacific whiting IFQ trip. The catch must not be discarded from the vessel and the vessel must not mix catch from hauls until the observer has sampled the catch. Prohibited species must be sorted according to the following species groups: Dungeness crab, Pacific halibut, Chinook salmon, other salmon. Non-groundfish species must be sorted as required by the State of landing.

(3) *Sorting requirements for the at-sea sectors of the Pacific whiting fishery*.

(i) Pacific whiting at-sea processing vessels may use an accurate in-line conveyor or hopper type scale to derive an accurate total catch weight prior to

sorting. Immediately following weighing of the total catch, the catch must be sorted to the species groups specified in paragraph (d)(1) of this section and all incidental catch (groundfish and non-groundfish species) must be accurately accounted for and the weight of incidental catch deducted from the total catch weight to derive the weight of target species.

(ii) *Catcher vessels in the MS sector*. If sorting occurs on the catcher vessel, the catch must not be discarded from the vessel and the vessel must not mix catch from hauls until the observer has sampled the catch.

\* \* \* \* \*

#### 21. In § 660.131:

a. Paragraphs (a) and (b), the introductory text of paragraph (c), and paragraphs (e) and (f) are revised;

b. Paragraphs (g), (h), and (k) are removed;

c. Paragraphs (i) and (j) are redesignated as paragraphs (g) and (h); and

d. The newly redesignated paragraph (g) is revised to read as follows:

#### **§ 660.131 Pacific whiting fishery management measures.**

\* \* \* \* \*

(a) *Sectors*—(1) The catcher/processor sector, or C/P Coop Program, is composed of catcher/processors registered to a limited entry permit with a C/P endorsement.

(2) The mothership sector, or MS Coop Program, is composed of motherships and catcher vessels that harvest Pacific whiting for delivery to motherships. Motherships are vessels registered to a MS permit, and catcher vessels are vessels registered to a limited entry permit with a MS/CV endorsement or vessels registered to a limited entry permit without a MS/CV endorsement if the vessel is authorized to harvest the coop's allocation.

(3) The Pacific whiting IFQ fishery is composed of vessels that harvest Pacific whiting for delivery shoreside to IFQ first receivers during the primary season.

(b) *Pacific whiting seasons*—(1) *Primary seasons*. The primary seasons for the Pacific whiting fishery are:

(i) For the Shorebased IFQ Program, Pacific whiting IFQ fishery, the period(s) of the large-scale target fishery is conducted after the season start date;

(ii) For catcher/processors, the period(s) when catching and at-sea processing is allowed for the catcher/processor sector (after the season closes at-sea processing of any fish already on board the processing vessel is allowed to continue); and

(iii) For vessels delivering to motherships, the period(s) when catching and at-sea processing is allowed for the mothership sector (after the season closes, at-sea processing of any fish already on board the processing vessel is allowed to continue).

(2) *Different primary season start dates*. North of 40°30' N. lat., different starting dates may be established for the catcher/processor sector, the mothership sector, and in the Pacific whiting IFQ fishery for vessels delivering to IFQ first receivers north of 42° N. lat. and vessels delivering to IFQ first receivers between 42° and 40°30' N. lat.

(i) *Procedures*. The primary seasons for the whiting fishery north of 40°30' N. lat. generally will be established according to the procedures of the PCGFMP for developing and implementing harvest specifications and apportionments. The season opening dates remain in effect unless changed, generally with the harvest specifications and management measures.

(ii) *Criteria*. The start of a primary season may be changed based on a recommendation from the Council and consideration of the following factors, if applicable: Size of the harvest guidelines for whiting and bycatch species; age/size structure of the whiting population; expected harvest of bycatch and prohibited species; availability and stock status of prohibited species; expected participation by catchers and processors; the period between when catcher vessels make annual processor obligations and the start of the fishery; environmental conditions; timing of alternate or competing fisheries; industry agreement; fishing or processing rates; and other relevant information.

(iii) *Primary whiting season start dates and duration*. After the start of a primary season for a sector of the whiting fishery, the season remains open for that sector until the sector allocation of whiting or non-whiting groundfish (with allocations) is reached or projected to be reached and the fishery season for that sector is closed by NMFS. The starting dates for the primary seasons for the whiting fishery are as follows:

(A) Catcher/processor sector—May 15.

(B) Mothership sector—May 15.

(C) Shorebased IFQ program, Pacific whiting IFQ fishery.

(1) North of 42° N. lat.—June 15;

(2) Between 42° and 40°30' N. lat.—April 1; and

(3) South of 40°30' N. lat.—April 15.

(3) *Trip limits in the whiting fishery*.

The "per trip" limit for whiting before the regular (primary) season for the shorebased sector is announced in Table

1 of this subpart, and is a routine management measure under § 660.60(c). This trip limit includes any whiting caught shoreward of 100-fm (183-m) in the Eureka, CA area. The “per trip” limit for other groundfish species are announced in Table 1 (North) and Table 1 (South) of this subpart and apply as follows:

(i) During the groundfish cumulative limit periods both before and after the primary whiting season, vessels may use either small and/or large footrope gear, but are subject to the more restrictive trip limits for those entire cumulative periods.

(ii) If, during a primary whiting season, a whiting vessel harvests a groundfish species other than whiting for which there is a midwater trip limit, then that vessel may also harvest up to another footrope-specific limit for that species during any cumulative limit period that overlaps the start or end of the primary whiting season.

(c) *Closed areas.* Vessels fishing in the Pacific whiting primary seasons for the Shorebased IFQ Program, MS Coop Program, or C/P Coop Program shall not target Pacific whiting with midwater trawl gear in the following portions of the fishery management area:

\* \* \* \* \*

(e) *At-sea processing.* Whiting may not be processed at sea south of 42°00' N. lat. (Oregon-California border), unless by a waste-processing vessel as authorized under paragraph (g) of this section.

(f) *Time of day.* Vessels fishing in the Pacific whiting primary seasons for the Shorebased IFQ Program, MS Coop Program or C/P Coop Program shall not target Pacific whiting with midwater trawl gear in the fishery management area south of 42°00' N. lat. between 0001 hours to one-half hour after official sunrise (local time). During this time south of 42°00' N. lat., trawl doors must be on board any vessel used to fish for whiting and the trawl must be attached to the trawl doors. Official sunrise is determined, to the nearest 5° lat., in The Nautical Almanac issued annually by the Nautical Almanac Office, U.S. Naval Observatory, and available from the U.S. Government Printing Office.

(g) *Bycatch reduction and full utilization program for at-sea processors (optional).* If a catcher/processor or mothership in the whiting fishery carries more than one NMFS-approved observer for at least 90 percent of the fishing days during a cumulative trip limit period, then groundfish trip limits may be exceeded without penalty for that cumulative trip limit period, if the conditions in paragraph (g)(1) of this

section are met. For purposes of this program, “fishing day” means a 24-hour period, from 0001 hours through 2400 hours, local time, in which fishing gear is retrieved or catch is received by the vessel, and will be determined from the vessel’s observer data, if available. Changes to the number of observers required for a vessel to fish under in the bycatch reduction program will be announced prior to the start of the fishery, generally concurrent with the harvest specifications and management measures. Groundfish consumed on board the vessel must be within any applicable trip limit and recorded as retained catch in any applicable logbook or report. [Note: For a mothership, non-whiting groundfish landings are limited by the cumulative landings limits of the catcher vessels delivering to that mothership.]

(1) *Conditions.* Conditions for participating in the voluntary full utilization program are as follows:

(i) All catch must be made available to the observers for sampling before it is sorted by the crew.

(ii) Any retained catch in excess of cumulative trip limits must either be: Converted to meal, mince, or oil products, which may then be sold; or donated to a bona fide tax-exempt hunger relief organization (including food banks, food bank networks or food bank distributors), and the vessel operator must be able to provide a receipt for the donation of groundfish landed under this program from a tax-exempt hunger relief organization immediately upon the request of an authorized officer.

(iii) No processor or catcher vessel may receive compensation or otherwise benefit from any amount in excess of a cumulative trip limit unless the overage is converted to meal, mince, or oil products. Amounts of fish in excess of cumulative trip limits may only be sold as meal, mince, or oil products.

(iv) The vessel operator must contact the NMFS enforcement office nearest to the place of landing at least 24 hours before landing groundfish in excess of cumulative trip limits for distribution to a hunger relief agency. Cumulative trip limits and a list of NMFS enforcement offices are found on the NMFS, Northwest Region homepage at <http://www.nwr.noaa.gov>.

(v) If the meal plant on board the whiting processing vessel breaks down, then no further overages may be retained for the rest of the cumulative trip limit period unless the overage is donated to a hunger relief organization.

(vi) Prohibited species may not be retained.

(vii) Donation of fish to a hunger relief organization must be noted in the transfer log (Product Transfer/Offloading Log (PTOL)), in the column for total value, by entering a value of “0” or “donation,” followed by the name of the hunger relief organization receiving the fish. Any fish or fish product that is retained in excess of trip limits under this rule, whether donated to a hunger relief organization or converted to meal, must be entered separately on the PTOL so that it is distinguishable from fish or fish products that are retained under trip limits. The information on the Mate’s Receipt for any fish or fish product in excess of trip limits must be consistent with the information on the PTOL. The Mate’s Receipt is an official document that states who takes possession of offloaded fish, and may be a Bill of Lading, Warehouse Receipt, or other official document that tracks the transfer of offloaded fish or fish product. The Mate’s Receipt and PTOL must be made available for inspection upon request of an authorized officer throughout the cumulative limit period during which such landings occurred and for 15 days thereafter.

\* \* \* \* \*

22. In § 660.140:  
a. Paragraphs (a), (d)(1), (d)(4)(iv), and (d)(5) are revised;

b. Paragraph (i) is removed and paragraphs (j) through (m) are redesignated as paragraphs (i) through (l), and text is added to the newly redesignated paragraphs (i) through (l);

c. Paragraph (c) heading is revised, paragraph (c)(2) is redesignated as paragraph (c)(3) and a new paragraph (c)(2) is added, and the newly redesignated paragraph (c)(3)(vi) is revised; and

d. Paragraphs (b), (c)(3)(vii), (d)(2), (d)(3), and (e) through (h) are added, and paragraph (d)(7) is added and reserved, to read as follows:

**§ 660.140 Shorebased IFQ Program.**

\* \* \* \* \*

(a) *General.* The Shorebased IFQ Program requirements in this section will be effective beginning January 1, 2011, except for paragraphs (d)(4), (d)(6), and (d)(8) of this section, which are effective immediately. The Shorebased IFQ Program applies to qualified participants in the Pacific Coast Groundfish fishery and includes a system of transferable QS for most groundfish species or species groups (and transferable IBQ for Pacific halibut) and trip limits or set-asides for the remaining groundfish species or species groups. NMFS will issue a QS permit to eligible participants and will establish a QS account for each QS permit owner



to track the amount of QS or IBQ and QP or IBQ pounds owned by that owner. QS permit owners may own QS or IBQ for IFQ species, expressed as a percent of the allocation to the Shorebased IFQ Program for that species. NMFS will issue QP or IBQ pounds to QS permit owners, expressed in pounds, on an annual basis, to be deposited in the corresponding QS account. NMFS will establish a vessel account for each eligible vessel owner participating in the Shorebased IFQ Program, which is independent of the QS permit and QS account. In order to use QP or IBQ pounds, a QS permit owner must transfer the QP or IBQ pounds from the QS account in to the vessel account for the vessel to which the QP or IBQ pounds is to be assigned. Harvests of IFQ species may only be delivered to an IFQ first receiver with a first receiver site license. In addition to the requirements of this section, the Shorebased IFQ Program is subject to the following groundfish regulations of subparts C and D:

(1) Regulations set out in the following sections of subpart C: § 660.11 Definitions, § 660.12 Prohibitions, § 660.13 Recordkeeping and reporting, § 660.14 VMS requirements, § 660.15 Equipment requirements, § 660.16 Groundfish observer program, § 660.20 Vessel and gear identification, § 660.25 Permits, § 660.55 Allocations, § 660.60 Specifications and management measures, § 660.65 Groundfish harvest specifications, and §§ 660.70 through 660.79 Closed areas.

(2) Regulations set out in the following sections of subpart D: § 660.111 Trawl fishery definitions, § 660.112 Trawl fishery prohibitions, § 660.113 Trawl fishery recordkeeping and reporting, § 660.120 Trawl fishery crossover provisions, § 660.130 Trawl fishery management measures, and § 660.131 Pacific whiting fishery management measures.

(3) The shorebased IFQ fishery may be restricted or closed as a result of projected overages within the Shorebased IFQ Program, the MS Coop Program, or the C/P Coop Program. As determined necessary by the Regional Administrator, area restrictions, season closures, or other measures will be used to prevent the trawl sector in aggregate or the individual trawl sectors (Shorebased IFQ, MS Coop, or C/P Coop) from exceeding an OY, or formal allocation specified in the PCGFMP or regulation at § 660.55, subpart C, or §§ 660.140, 660.150, or 660.160, subpart D.

(b) *Participation requirements and responsibilities*—(1) *IFQ vessels*. (i) Vessels must be registered to a

groundfish limited entry permit, endorsed for trawl gear with no C/P endorsement.

(ii) To start a trip in the Shorebased IFQ Program, a vessel and its owner(s) (as described on the USCG documentation) must be registered to the same vessel account established by NMFS with no deficit (negative balance) for any species/species group.

(iii) All IFQ species/species group catch (landings and discards) must be covered by QP or IBQ pounds. Any deficit (negative balance in a vessel account) must be cured within 30 days from the date the deficit from that trip is documented in the vessel account, unless the deficit is within the limits of the carryover provision at paragraph (e)(5) of this section, in which case the vessel may declare out of the IFQ fishery for the year in which the deficit occurred and must cure the deficit within 30 days after the issuance of QP or IBQ pounds for the following year.

(iv) Any vessel with a deficit (negative balance) in its vessel account is prohibited from fishing that is within the scope of the Shorebased IFQ Program until sufficient QP or IBQ pounds are transferred in to the vessel account to remove any deficit, regardless of the amount of the deficit.

(v) A vessel account may not have QP or IBQ pounds (used and unused combined) in excess of the QP Vessel Limit in any year, and for species covered by Unused QP Vessel Limit, may not have QP or IBQ pounds in excess of the Unused QP Vessel Limit at any time. These amounts are specified at paragraph (e)(4) of this section.

(vi) Vessels must use either trawl gear as specified at § 660.130(b), or a legal non-trawl groundfish gear under the gear switching provisions as specified at § 660.140(k).

(vii) Vessels that are registered to MS/CV endorsed permits may be used to fish in the Shorebased IFQ Program provided that the vessel is registered to a valid Shorebased IFQ Program vessel account.

(viii) In the same calendar year, a vessel registered to a trawl endorsed limited entry permit with no MS/CV or C/P endorsements may be used to fish in the Shorebased IFQ Program if the vessel has a valid vessel account, and to fish in the mothership sector for a permitted MS coop as authorized by the MS coop.

(ix) Vessels that are registered to C/P endorsed permits may not be used to fish in the Shorebased IFQ Program.

(2) *IFQ first receivers*. The IFQ first receiver must:

(i) Ensure that all catch removed from a vessel making an IFQ delivery is

weighed on a scale or scales meeting the requirements described in § 660.15(c), subpart C;

(ii) Ensure that all catch is landed, sorted, and weighed in accordance with a valid catch monitoring plan as described in § 660.140(f)(3)(iii), subpart D.

(iii) Ensure that all catch is sorted, prior to first weighing, by species or species groups as specified at § 660.130(d), except the vessels declared in to the limited entry midwater trawl, Pacific whiting shorebased IFQ at § 660.13(d)(5)(iv)(A), subpart C may weigh catch on a before sorting as described at § 660.140(j)(2).

(iv) Provide uninhibited access to all areas where fish are or may be sorted or weighed to NMFS staff, NMFS-authorized personnel, or authorized officer at any time when a delivery of IFQ species, or the processing of those species, is taking place.

(v) Ensure that each scale produces a complete and accurate printed record of the weight of all catch in a delivery, unless exempted in the NMFS-accepted catch monitoring plan.

(vi) Retain and make available to NMFS staff, NMFS-authorized personnel, or an authorized officer, all printed output from any scale used to weigh catch, and any hand tally sheets, worksheets, or notes used to determine the total weight of any species.

(vii) Ensure that each delivery of IFQ catch is monitored by a catch monitor and that the catch monitor is on site the entire time the delivery is being weighed or sorted.

(viii) Ensure that sorting and weighing is completed prior to catch leaving the area that can be monitored from the observation area.

\* \* \* \* \*

(c) *IFQ species, management areas, and allocations*. \* \* \*

(2) *IFQ management areas*. A vessel participating in the Shorebased IFQ Program may not fish in more than one IFQ management area during a trip. IFQ management areas are as follows:

(i) Between the U.S./Canada border and 40°10' N. lat.,

(ii) Between 40°10' N. lat. and 36° N. lat.,

(iii) Between 36° N. lat. and 34°27' N. lat., and

(iv) Between 34°27' N. lat. and the U.S./Mexico border.

\* \* \* \* \*

(3) \* \* \*

(vi) For each IFQ species, NMFS will determine annual sub-allocations to individual QS accounts by multiplying the percent of QS or IBQ registered to the account by the amount of each

respective IFQ species allocated to the Shorebased IFQ Program for that year. For each IFQ species, NMFS will issue QP or IBQ pounds to the respective QS account in the amount of each sub-allocation determined.

(vii) *Reallocations*—(A) *Reallocation with changes in management areas*.

(1) *Area subdivision*. If at any time after the initial allocation, an IFQ species/species group is geographically subdivided, those holding QS for the species/species group being subdivided will receive an amount of QS for each newly created area that is equivalent to the amount they held for the area before it was subdivided.

(2) *Area recombination*. When two areas are combined, the QS held by individuals in each area will be adjusted proportionally such that:

(i) The total QS for the area sums to 100 percent, and

(ii) A person holding QS in the newly created area will receive the same amount of total QP as they would if the areas had not been combined.

(3) *Area line movement*. When a management area boundary line is moved, the QS held by individuals in each area will be adjusted proportionally such that they each maintain their same share of the trawl allocation on a coastwide basis (a fishing area may expand or decrease, but the individual's QP for both areas combined wouldn't change because of the change in areas). In order to achieve this end, the holders of QS in the area being reduced will receive QS for the area being expanded, such that the total QP they would be issued will not be reduced as a result of the area reduction. Those holding QS in the area being expanded will have their QS reduced such that the total QP they receive in the year of the line movement will not increase as a result of the expansion (nor will it be reduced).

(B) *Reallocation with subdivision of a species group*. If at any time after the initial allocation an IFQ species group is subdivided, those holding QS for the species group being subdivided will receive an amount of QS for each newly created IFQ species/species group that is equivalent to the amount they held for the species group before it was subdivided. For example, if a person holds one percent of a species group before the subdivision, that person will hold one percent of the QS for each species or species group resulting from the subdivision.

\* \* \* \* \*

(d) *QS permits and QS accounts*—(1) *General*. In order to obtain QS, a person must apply for a QS permit. NMFS will

determine if the applicant is eligible to acquire QS in compliance with the accumulation limits found at paragraph (d)(4) of this section. For those persons that are found to be eligible for a QS permit, NMFS will issue QS and establish a QS account. On or about January 1 each year, QS permit owners will be notified, via the IFQ Web site and their QS account of their QP or IBQ pound allocations, for each of the IFQ species/species groups, for the upcoming fishing year. These updated QS/QP values will reflect the results of: changed OYs, carryover adjustments, and any redistribution of QS (resulting from nonrenewal or permanent revocation of applicable permits, subject to accumulation limits). QS permit owners can monitor the status of their QS and QP allocations throughout the year via the IFQ Web site. QP will be issued to the nearest whole pound using standard rounding rules (*i.e.* decimal amounts from zero up to 0.5 round down and 0.5 up to 1.0 round up), except that initial allocations of QP for overfished species greater than zero but less than one pound will be rounded up to one pound in the first year of the trawl rationalization program. QS owners must transfer their QP from their QS account to a vessel account in order for those QP to be fished. QP must be transferred in whole pounds (*i.e.* no fraction of a QP can be transferred). All QP in a QS account must be transferred to a vessel account by September 1 of each year.

(2) *Eligibility and registration*—(i) *Eligibility*. Only the following persons are eligible to own QS permits:

(A) A United States citizen, that is eligible to own and control a U.S. fishing vessel with a fishery endorsement pursuant to 46 USC 12113 (general fishery endorsement requirements and 75 percent citizenship requirement for entities);

(B) A permanent resident alien, that is eligible to own and control a U.S. fishing vessel with a fishery endorsement pursuant to 46 USC 12113 (general fishery endorsement requirements and 75 percent citizenship requirement for entities); or

(C) A corporation, partnership, or other entity established under the laws of the United States or any State, that is eligible to own and control a U.S. fishing vessel with a fishery endorsement pursuant to 46 USC 12113 (general fishery endorsement requirements and 75 percent citizenship requirement for entities). However,

there is an exception for any entity that owns a mothership that participated in the west coast groundfish fishery during the allocation period and is eligible to

own or control that U.S. fishing vessel with a fishery endorsement pursuant to sections 203(g) and 213(g) of the AFA.

(ii) *Registration*. A QS account will be established by NMFS with the issuance of a QS permit. The administrative functions associated with the Shorebased IFQ Program (*e.g.*, account registration, landing transactions, and transfers) are designed to be accomplished online; therefore, a participant must have access to a computer with Internet access and must set up an appropriate QS account to participate. The computer must have Internet browser software installed (*e.g.* Internet Explorer, Netscape, Mozilla Firefox); as well as the Adobe Flash Player software version 9.0 or greater. NMFS will mail initial QS permit owners instructions pertinent to setting up an online QS account. Each IFQ participant must monitor his/her online QS account and all associated messages and comply with all online reporting requirements.

(3) *Renewal, change of permit ownership, and transfer*—(i) *Renewal*. (A) QS permits expire at the end of each calendar year, and must be renewed between October 1 and November 30 of each year in order to remain in force the following year. A complete QS permit renewal package must be received by SFD no later than November 30 to be accepted by NMFS.

(B) Notification to renew QS permits will be issued by SFD prior to September 1 each year to the QS permit owner's most recent address in the SFD record. The permit owner shall provide SFD with notice of any address change within 15 days of the change.

(C) Any QS permit for which SFD does not receive a QS permit renewal request by November 30 will have its QS account inactivated by NMFS at the end of the calendar year and the QS permit will not be renewed by NMFS for the following year. NMFS will not issue QP or IBQ pounds to the inactivated QS account associated with the non-renewed QS permit. Any QP or IBQ pounds derived from the QS in the inactivated QS account will be redistributed among all other QS permit owners that renewed their permit by the deadline. Redistribution to QS permit owners will be proportional to the QS or IBQ for each IFQ species. A non-renewed QS permit may be renewed in a subsequent year by submission of a complete QS permit renewal package during the permit renewal period for that year.

(D) QS permits will not be renewed until SFD has received a complete application for a QS permit renewal, which includes payment of required

fees, complete documentation of QS permit ownership on the Trawl Identification of Ownership Interest Form as required under (d)(4)(iv) of this section, and a complete economic data collection form if required under § 660.114, subpart D. The QS permit renewal will be marked incomplete until the required information is submitted.

(E) *Effective Date.* A QS permit is effective on the date given on the permit and remains in effective until the end of the calendar year.

(F) *IAD and appeals.* QS permit renewals are subject to the permit appeals process specified at § 660.25(g), subpart C.

(ii) *Change of permit ownership and transfer restrictions—(A) Restriction on the transfer of ownership for QS permits.* A QS permit cannot be transferred to another individual or entity. The QS permit owner cannot change or add additional individuals or entities as owners of the permit (*i.e.*, cannot change the registered permit owners as given on the permit). Any change to the owner of the QS permit requires the new owner(s) to apply for a QS permit, and is subject to accumulation limits and approval by NMFS.

(B) *Transfer of QS or IBQ.* Transfers of QS or IBQ must be accomplished online via the IFQ Web site. To make a transfer, a QS permit owner must initiate a transfer request by logging onto the IFQ Web site. Following the instructions provided on the Web site, the QS permit owner must enter pertinent information regarding the transfer request including, but not limited to: amount of QS, IBQ, QP or IBQ pounds to be transferred; name and any other identifier of the eligible transferee (*e.g.*, account number); and the value of the transferred QS, IBQ, QP, or IBQ pounds. If the information is not accepted, the online system will send the QS permit owner an electronic message explaining the reason(s). During the year there may be situations where NMFS deems it necessary to prohibit transfers (*i.e.*, account reconciliation, system maintenance, or for emergency fishery management reasons). If the information is accepted, the online system will send the transferee an electronic message regarding the pending transfer. The transferee must approve the transfer by electronic signature. If the transferee approves the transfer, the online system will send a transfer transaction confirmation notice to both the QS permit owner and the vessel account owner confirming the transaction. If the transaction itself is incorrectly recorded,

either party can contact the NMFS NWR for instructions on how to request a correction. NMFS will review and make a determination on whether to make a correction based on the request and available information.

(1) *Transfer of QS or IBQ between QS accounts.* After the second year of the trawl rationalization program, QS permit owners may transfer QS or IBQ to another QS permit owner, subject to accumulation limits and approval by NMFS. QS or IBQ is transferred as a percent, divisible to one-thousandth of a percent (*i.e.*, greater than or equal to 0.001%). QP or IBQ pounds may not be transferred with the QS or IBQ. During the first 2 years after implementation of the program, QS or IBQ cannot be transferred to another QS permit owner, except under U.S. court order and as approved by NMFS. QS or IBQ may not be transferred between December 1 through December 31.

(2) *Transfer of QP or IBQ pounds from a QS account to a vessel account.* QP or IBQ pounds must be transferred in whole pounds (*i.e.* no fraction of a QP can be transferred). QP or IBQ pounds must be transferred to a vessel account in order to be used. Transfers of QP or IBQ pounds from a QS account are subject to vessel accumulation limits and NMFS' approval. All QP or IBQ pounds from a QS account must be transferred to one or more vessel accounts by September 1 each year. Once QP or IBQ pounds are transferred from a QS account to a vessel account, they cannot be transferred back to a QS account and may only be transferred to another vessel account. QP or IBQ pounds may not be transferred from one QS account to another QS account.

(C) *Effective date—(1) Transfer of QS or IBQ between QS accounts is effective on the date approved by NMFS.*

(2) *Transfer of QP or IBQ pounds from a QS account to a vessel account is effective on the date approved by NMFS.*

(E) *IAD and appeals.* Transfers are subject to the permit appeals process specified at § 660.25 (g), subpart C.

\* \* \*

(4) \* \* \*

(iv) *Trawl identification of ownership interest form.* Any person that owns a limited entry trawl permit and that is applying for or renewing a QS permit shall document those persons that have an ownership interest in the limited entry trawl or QS permit greater than or equal to 2 percent. This ownership interest must be documented with the SFD via the Trawl Identification of Ownership Interest Form. For renewal, if the limited entry trawl permit and QS

permit have identical ownership interest, only one form need be submitted attesting to such ownership. SFD will not issue a QS Permit unless the Trawl Identification of Ownership Interest Form has been completed. Further, if SFD discovers through review of the Trawl Identification of Ownership Interest Form that a person owns or controls more than the accumulation limits and is not authorized to do so under paragraph (d)(4)(v) of this section, the person will be notified and the QS permit will be issued up to the accumulation limit specified in the QS Control Limit table from paragraph (d)(4)(i) of this section. NMFS may request additional information of the applicant as necessary to verify compliance with accumulation limits.

\* \* \*

(5) *Appeals.* An appeal to a QS permit or QS account action follows the same process as the general permit appeals process is defined at § 660.25(g), subpart C.

\* \* \*

(7) *Cost recovery.* [Reserved]

\* \* \*

(e) *Vessel account—(1) General.* QP or IBQ pounds will have the same species/species groups and area designations as the QS or IBQ from which it was issued. Annually, QS or IBQ (expressed as a percent) are converted to QP or IBQ pounds (expressed as a weight) in a QS account. QP or IBQ pounds may only be transferred from a QS account to a vessel account. QP or IBQ pounds are required to cover catch (landings and discards) by limited entry trawl vessels of all IFQ species/species groups, except for:

(i) *Gear exception.* Vessels with a limited entry trawl permit using the following gears would not be required to cover groundfish catch with QP or Pacific halibut catch with IBQ pounds: non-groundfish trawl, gear types defined in the coastal pelagic species FMP, gear types defined in the highly migratory species FMP, salmon troll, crab pot, and limited entry fixed gear when the vessel also has a limited entry permit endorsed for fixed gear and has declared that they are fishing in the limited entry fixed gear fishery.

(ii) *Species exception.* QP are not required for the following species, longspine thornyheads south of 34°27 N. lat., minor nearshore rockfish (north and south), black rockfish (coastwide), California scorpionfish, cabezon, kelp greenling, shortbelly rockfish, and "other fish" (as defined at § 660.11, subpart C, under the definition of "groundfish"). For these species, trip

limits remain in place as specified in the trip limit tables at Table 1 (North) and Table 1 (South) of this subpart.

(2) *Eligibility and registration*—(i) *Eligibility*. To have a registered vessel account, a person must own a vessel and that vessel must be registered to a groundfish limited entry permit endorsed for trawl gear.

(ii) *Registration*. A vessel account must be registered with the NMFS SFD Permits Office. A vessel account may be established at any time during the year. An eligible vessel owner must request in writing that NMFS establish a vessel account. The request must include the vessel name; USCG vessel registration number (as given on USCG Form 1270); all vessel owner names (as given on USCG Form 1270); if the vessel owner is a business entity, then include the name of the authorized vessel account manager that may act on behalf of the entity; business contact information, including: address, phone number, fax number, and e-mail. Applications for a vessel account must also include the following information: a complete economic data collection form as required under § 660.113(b), (c) and (d), subpart D, and a complete Trawl Identification of Ownership Interest Form as required under paragraph (e)(4)(ii) of this section. The application for a vessel account will be marked incomplete until the required information is submitted. Any change in the legal name of the vessel owner(s) will require the new owner to register with NMFS for a vessel account.

(3) *Renewal, change of account ownership, and transfer of QP or IBQ pounds*—(i) *Renewal*. (A) Vessel accounts expire at the end of each calendar year, and must be renewed between October 1 and November 30 of each year in order to remain in force the following year. A complete vessel account renewal package must be received by SFD no later than November 30 to be accepted by NMFS.

(B) Notification to renew vessel accounts will be issued by SFD prior to September 1 each year to the vessel account owner's most recent address in the SFD record. The vessel account owner shall provide SFD with notice of any address change within 15 days of the change.

(C) Any vessel account for which SFD does not receive a vessel account renewal request by November 30 will have its vessel account inactivated by NMFS at the end of the calendar year. NMFS will not issue QP or IBQ pounds to the inactivated vessel account. Any QP or IBQ pounds in the vessel account will expire and surplus QP or IBQ pounds will not be available for carryover. A non-renewed vessel account may be renewed in a subsequent year by submission of a complete vessel account renewal package.

(D) Vessel accounts will not be renewed until SFD has received a complete application for a vessel account renewal, which includes payment of required fees, a complete documentation of permit ownership on the Trawl Identification of Ownership Interest Form as required under (e)(4)(ii) of this section, and a complete economic data collection form as required under § 660.114, subpart D. The vessel account renewal will be marked incomplete until the required information is submitted.

(E) *Effective Date*. A vessel account is effective on the date issued by NMFS and remains effective until the end of the calendar year.

(F) *IAD and appeals*. Vessel account renewals are subject to the appeals process specified at § 660.25 (g), subpart C.

(ii) *Change in vessel account ownership*. Vessel accounts are non-transferable and ownership of a vessel account cannot change. If the owner of a vessel changes, then a new vessel account must be opened.

(iii) *Transfer of QP or IBQ pounds*—(A) *General*. QP or IBQ pounds may only be transferred from a QS account to a vessel account or between vessel accounts. QP or IBQ pounds cannot be transferred from a vessel account to a QS account. QP or IBQ pounds transfers are subject to accumulation limits. QP or IBQ pounds in a vessel account may only be transferred to another vessel account. QP or IBQ pounds must be transferred in whole pounds (*i.e.* no fraction of a QP can be transferred).

(B) *Transfer procedures*. QP or IBQ pound transfers from one vessel account to another vessel account must be

accomplished online via the IFQ Web site. A vessel account owner must initiate a transfer request by logging onto the IFQ Web site. Following the instructions provided on the Web site, the vessel account owner must enter pertinent information regarding the transfer request including, but not limited to: Amount of QP or IBQ pounds to be transferred (in whole pound increments); name and any other identifier (*e.g.*, vessel account number) of the eligible vessel account receiving the transfer; and value of the transferred QPs or IBQ pounds. The online system will verify the information entered. If the information is not accepted, the online system will send the both parties an electronic message explaining the reason(s). If the information is accepted, the online system will send the transferee receiving the QP or IBQ pounds an electronic message of the pending transfer. The transferee must approve the transfer by electronic signature. If the transferee approves the QP or IBQ pound transfer, the online system will send a transfer transaction confirmation notice to both the vessel account owner that made the transfer and transferee receiving the QP or IBQ pounds. Once this confirmation is received, this transaction is final. If the transaction itself is incorrectly recorded, either party can contact the NMFS NWR for instructions on how to request a correction. NMFS will review and make a determination on whether to make a correction based on the request and available information. QP or IBQ pounds may be transferred to vessel accounts at any time during the year unless otherwise notified by NMFS. During the year there may be situations where NMFS deems it necessary to prohibit transfers because of account reconciliation purposes, system maintenance, or for emergency fishery management reasons.

(4) *Accumulation limits*—(i) *Vessel limits*. Vessel accounts may not have QP or IBQ pounds in excess of the QP Vessel Limit in any year, and for species covered by Unused QP Vessel Limits, may not have QP or IBQ pounds in excess of the Unused QP Vessel Limit at any time. These amounts are as follows:

Species category	QP Vessel limit (annual limit) %	Unused QP Vessel limit (daily limit) %
Nonwhiting Groundfish Species .....	3.2	.....
Lingcod—coastwide .....	3.8	.....
Pacific Cod .....	20.0	.....
Pacific whiting (shoreside) .....	15.0	.....
Sablefish:		

Species category	QP Vessel limit (annual limit) %	Unused QP Vessel limit (daily limit) %
N. of 36° (Monterey north) .....	4.5	.....
S. of 36° (Conception area) .....	15.0	.....
PACIFIC OCEAN PERCH .....	6.0	4.0
WIDOW ROCKFISH <sup>1</sup> .....	8.5	5.1
CANARY ROCKFISH .....	10.0	4.4
Chilipepper Rockfish .....	15.0	.....
BOCACCIO .....	15.4	13.2
Splitnose Rockfish .....	15.0	.....
Yellowtail Rockfish .....	7.5	.....
Shortspine Thornyhead:		
N. of 34°27' .....	9.0	.....
S. of 34°27' .....	9.0	.....
Longspine Thornyhead:		
N. of 34°27' .....	9.0	.....
COWCOD .....	17.7	17.7
DARKBLOTCHED .....	6.8	4.5
YELLOWEYE .....	11.4	5.7
Minor Rockfish North:		
Shelf Species .....	7.5	.....
Slope Species .....	7.5	.....
Minor Rockfish South:		
Shelf Species .....	13.5	.....
Slope Species .....	9.0	.....
Dover sole .....	3.9	.....
English Sole .....	7.5	.....
Petrale Sole .....	4.5	.....
Arrowtooth Flounder .....	20.0	.....
Starry Flounder .....	20.0	.....
Other Flatfish .....	15.0	.....
Pacific Halibut .....	14.4	5.4

<sup>1</sup> If widow rockfish is rebuilt before initial allocation of QS, the vessel limit will be set at 1.5 times the control limit.

(ii) *Trawl identification of ownership interest form.* Any person that owns a vessel registered to a limited entry trawl permit and that is applying for or renewing a vessel account shall document those persons that have an ownership interest in the vessel greater than or equal to 2 percent. This ownership interest must be documented with the SFD via the Trawl Identification of Ownership Interest Form. SFD will not issue a vessel account unless the Trawl Identification of Ownership Interest Form has been completed. NMFS may request additional information of the applicant as necessary to verify compliance with accumulation limits.

(5) *Carryover.* The carryover provision allows a limited amount of surplus QP or IBQ pounds in a vessel account to be carried over from one year to the next or allows a deficit in a vessel account in one year to be covered with QP or IBQ pounds from a subsequent year, up to a carryover limit. The carryover limit is calculated by multiplying the carryover percentage by the cumulative total of QP or IBQ pounds (used and unused) in a vessel account for the base year, less any transfers out of the vessel account or any previous carryover amounts. The percentage used for the carryover

provision may be changed during the biennial specifications and management measures process.

(i) *Surplus QP or IBQ pounds.* A vessel account with a surplus of QP or IBQ pounds (unused QP or IBQ pounds) for any IFQ species at the end of the fishing year may carryover for use in the immediately following year an amount of unused QP or IBQ pounds up to its carryover limit. The carryover limit for the surplus is calculated as 10 percent of the cumulative total QP or IBQ pounds (used and unused, less any transfers or any previous carryover amounts) in the vessel account at the end of the year. NMFS will credit the carryover amount to the vessel account in the immediately following year. If there is a decline in the OY between the base year and the following year in which the QP or IBQ pounds would be carried over, the carryover amount will be reduced in proportion to the reduction in the OY. Surplus QP or IBQ pounds may not be carried over for more than one year. Any amount of QP or IBQ pounds in a vessel account and in excess of the carryover amount will expire on December 31 each year and will not be available for any future use.

(ii) *Deficit QP or IBQ pounds.* A vessel account with a deficit (negative balance) of QP or IBQ pounds for any IFQ species

in the current year may cover that deficit with QP or IBQ pounds from the following year without incurring a violation if the following conditions are met:

(A) The vessel declares out of the shorebased IFQ fishery for the year in which the deficit occurred (If the deficit occurs less than 30 days before the end of the calendar year, then declaring out for the year is not required.);

(B) The amount of QP or IBQ pounds required to cover the deficit from the current fishing year is less than or equal to the vessel's carryover limit for a deficit. The carryover limit for a deficit is calculated as 10 percent of the total cumulative QP or IBQ pounds (used and unused, less any transfers or any previous carryover amounts) in the vessel account 30 days after the date the deficit is documented; and

(C) Sufficient QP or IBQ pounds are transferred in to the vessel account to cure the deficit within 30 days of NMFS' issuance of QP or IBQ pounds to QS accounts in the following year.

(6) *Appeals.* An appeal to a vessel account action follows the appeals process defined at § 660.25(g), subpart C.

(7) *Fees.* The Regional Administrator is authorized to charge fees for administrative costs associated with the

vessel accounts consistent with the provisions given at § 660.25(f), subpart C.

(8) *Cost recovery.* [Reserved]

(f) *First receiver site license*—(1)

*General.* Any IFQ first receiver that receives IFQ landings must hold a valid first receiver site license. The first receiver site license authorizes the holder to receive, purchase, or take custody, control, or possession of an IFQ landing at a specific physical site onshore directly from a vessel. Once the trawl rationalization program is implemented, a temporary, interim first receiver site license will be available by application to NMFS and will be valid until June 30, 2011, or until an application for a first receiver site license as specified in paragraph (f)(3) of this section is approved by NMFS, whichever comes first. An application for an interim first receiver site license is subject to all of the requirements in this paragraph (f) including the submission of a catch monitoring plan, except that the catch monitoring plan in paragraph (f)(3)(iii) does not have to have been previously accepted by NMFS and the site does not have to have been previously inspected.

(2) *Issuance.* (i) First receiver site licenses will only be issued to a person registered to a valid license issued by the State of Washington, Oregon, or California, and that authorizes the person to receive fish from a catcher vessel.

(ii) A first receiver may apply for a first receiver site license at any time during the calendar year.

(iii) A first receiver site license is valid for one year from the date it was issued by NMFS, or until the State license required by paragraph (f)(2)(i) of this section is no longer effective, whichever occurs first. IFQ first receivers must reapply for a first receiver site license each year and whenever a change in the ownership occurs.

(3) *Application process.* Persons interested in being licensed as an IFQ first receiver must submit a complete application for a first receiver site license. NMFS will only consider complete applications for approval. A complete application includes:

(i) *State license.* A copy of a valid license issued by the State in which they operate which allows the person to receive fish from a catcher vessel.

(ii) *Contact information.* (A) The name of the first receiver,

(B) The physical location of the first receiver, including the street address where the IFQ landings will be received and/or processed.

(C) The name and phone number of the plant manager and any other authorized representative who will serve as a point of contact with NMFS.

(iii) *A NMFS-accepted catch monitoring plan.* All IFQ first receivers must prepare and operate under a NMFS-accepted catch monitoring plan. NMFS will not issue a first receiver site license to a processor that does not have a current, NMFS-accepted catch monitoring plan.

(A) *Catch monitoring plan review process.* NMFS will accept a catch monitoring plan if it meets all the requirements specified in paragraph (f)(3)(iii)(C) of this section. The site must be inspected by NMFS staff or a NMFS designated inspector prior to acceptance to ensure that the first receiver conforms to the elements addressed in the catch monitoring plan. NMFS will complete its review of the catch monitoring plan within 14 working days of receiving a complete catch monitoring plan and conducting a monitoring plan inspection. If NMFS does not accept a catch monitoring plan for any reason, a new or revised catch monitoring plan may be submitted.

(B) *Arranging an inspection.* The time and place of a monitoring plan inspection must be arranged by submitting a written request for an inspection to NMFS at NMFS, Northwest Region, Permits Office, *Attn:* Catch Monitor Coordinator, Bldg. 1, 7600 Sand Point Way NE., Seattle, WA 98115. NMFS will schedule an inspection within ten working days after receiving a complete application for an inspection. The inspection request must include:

(1) Name and signature of the person submitting the application and the date of the application;

(2) Address, telephone number, fax number, and e-mail address (if available) of the person submitting the application;

(3) A proposed catch monitoring plan detailing how the IFQ first receiver will meet each of the performance standards in paragraph (f)(3)(iii)(C) of this section.

(C) *Contents of a catch monitoring plan.* The catch monitoring plan must:

(1) *Catch sorting.* Describe the amount and location of all space used for sorting catch, the number of staff assigned to catch sorting, and the maximum rate that catch will flow through the sorting area.

(2) *Monitoring for complete sorting.* Detail how IFQ first receiver staff will ensure that sorting is complete; what steps will be taken to prevent unsorted catch from entering the factory or other areas beyond the location where catch sorting and weighing can be monitored

from the observation area; and what steps will be taken if unsorted catch enters the factory or other areas beyond the location where catch sorting and weighing can be monitored from the observation area.

(3) *Scales used for weighing IFQ landings.* Identify each scale that will be used to weigh IFQ landings by the type and capacity and describe where it is located and what it will be used for. Each scale must be appropriate for its intended use.

(4) *Printed record.* Identify all scales that will be used to weigh IFQ landings that cannot produce a complete printed record as specified at § 660.15(c), subpart C. State how the scale will be used, and how the plant intends to produce a complete and accurate record of the total weight of each delivery.

(5) *Weight monitoring.* Detail how the IFQ first receiver will ensure that all catch is weighed and the process used to meet the catch weighing requirements specified at paragraph (j) of this section. If a catch monitoring plan proposes the use of totes in which IFQ species will be weighed, or a deduction for the weight of ice, the catch monitoring plan must detail how the process will accurately account for the weight of ice and/or totes.

(6) *Delivery points.* Identify specific delivery points where catch is removed from an IFQ vessel. The delivery point is the first location where fish removed from a delivering catcher vessel can be sorted or diverted to more than one location. If the catch is pumped from the hold of a catcher vessel or a codend, the delivery point will be the location where the pump first discharges the catch. If catch is removed from a vessel by brailing, the delivery point normally will be the bin or belt where the brailer discharges the catch.

(7) *Observation area.* Designate and describe the observation area. The observation area is a location where a catch monitor may monitor the flow of fish during a delivery, including: access to the observation area, the flow of fish, and lighting used during periods of limited visibility. Standards for the observation area are specified at paragraph (i)(4)(ii) of this section.

(8) *Lockable cabinet.* Identify the location of a secure, dry, and lockable cabinet or locker with the minimum interior dimensions of two feet wide by two feet tall by two feet deep for the exclusive use of the catch monitor, NMFS staff, or authorized officers.

(9) *Plant liaison.* Identify the designated plant liaison. The plant liaison responsibilities are specified at paragraph (i)(6) of this section.

(10) *First receiver diagram.* The catch monitoring plan must be accompanied by a diagram of the plant showing:

- (i) The delivery point(s);
- (ii) The observation area;
- (iii) The lockable cabinet;
- (iv) The location of each scale used to weigh catch; and
- (v) Each location where catch is sorted.

(D) *Catch monitoring plan acceptance period and changes.* NMFS will accept a catch monitoring plan if it meets the performance standards specified in paragraph (f)(3)(iii)(C) of this section. For the first receiver site license to remain in effect through the calendar year, an owner or manager must notify NMFS in writing of any and all changes made in IFQ first receiver operations or layout that do not conform to the catch monitoring plan.

(E) *Changing a NMFS-accepted catch monitoring plan.* An owner and manager may change an accepted catch monitoring plan by submitting a plan addendum to NMFS. NMFS will accept the modified catch monitoring plan if it continues to meet the performance standards specified in paragraph (f)(3)(iii)(C) of this section. Depending on the nature and magnitude of the change requested, NMFS may require an additional catch monitoring plan inspections. A catch monitoring plan addendum must contain:

- (1) Name and signature of the person submitting the addendum;
- (2) Address, telephone number, fax number and e-mail address (if available) of the person submitting the addendum;
- (3) A complete description of the proposed catch monitoring plan change.

(iv) *Completed EDC form.* A first receiver site license application must include a complete economic data collection form as required under § 660.113(b), subpart D. The application for a first receiver site license will be marked incomplete until the required information is submitted.

(4) *Initial administrative determination.* For all complete applications, NMFS will issue an IAD that either approves or disapproves the application. If approved, the IAD will include a first receiver site license. If disapproved, the IAD will provide the reasons for this determination.

(5) *Effective date.* The first receiver site license is effective upon approval and issuance by NMFS and will be effective for one year from the date of NMFS issuance.

(6) *Reissuance in subsequent years.* Existing license holders must reapply annually. If the existing license holder fails to reapply, the first receiver's site license will expire one year from the

date of NMFS issuance of the license. The first receiver will not be authorized to receive or process groundfish IFQ species if their first receiver site license has expired.

(7) *Change in ownership of an IFQ first receiver.* If there are any changes to the owner of a first receiver registered to a first receiver site license during a calendar year, the first receiver site license is void. The new owner of the first receiver must apply to NMFS for a first receiver site license. A first receiver site license is not transferrable by the license holder to any other person.

(8) *Fees.* The Regional Administrator is authorized to charge fees for administrative costs associated with processing the application consistent with the provisions given at § 660.25(f), subpart C.

(9) *Appeals.* If NMFS does not accept the first receiver site license application through an IAD, the applicant may appeal the IAD consistent with the general permit appeals process defined at § 660.25(g), subpart C.

(g) *Retention requirements (whiting and non-whiting vessels)*—(1) *Non-whiting vessels.* Vessels participating in the Shoreside IFQ Program other than vessels participating in the Pacific whiting IFQ fishery (non-whiting vessels) may discard IFQ species/species groups, provided such discards are accounted for and deducted from QP in the vessel account. Non-whiting vessels must discard Pacific halibut and the discard mortality must be accounted for and deducted from IBQ pounds in the vessel account. Non-whiting vessels may discard non-IFQ species and non-groundfish species. The sorting of catch, the weighing and discarding of any IBQ and IFQ species, and the retention of IFQ species must be monitored by the observer.

(2) *Whiting maximized retention vessels.* Maximized retention vessels participating in the Pacific whiting IFQ fishery are prohibited from discarding any IFQ species/species group and nongroundfish species.

(3) *Whiting vessels sorting at-sea.* Vessels participating in the Pacific whiting IFQ fishery that sort their catch at sea (whiting vessels sorting at-sea) may discard IFQ species/species groups, provided such discards are accounted for and deducted from QP in the vessel account. Whiting vessels sorting at sea must discard Pacific halibut and such discard mortality must be accounted for and deducted from IBQ pounds in the vessel account. Whiting vessels sorting at-sea may discard non-IFQ species and non-groundfish species. The sorting of catch, weighing and discarding of any

IFQ or IBQ species must be monitored by the observer.

(h) *Observer requirements*—(1) *Coverage requirements.* (i) Any vessel participating in the Shorebased IFQ Program must carry a NMFS-certified observer during any trip until all fish from that trip have been offloaded. If a vessel delivers fish from an IFQ trip to more than one IFQ first receiver, the observer must remain onboard the vessel during any transit between delivery points.

(ii) *The observer deployment limitations and workload.* Observer must not be deployed for more than 22 calendar days in a calendar month. The observer program may issue waivers to allow observers to work more than 22 calendar days per month when it's anticipated one trip will last over 20 days or for issues with observer availability due to illness or injury of other observers.

(A) If an observer is unable to perform their duties for any reason, the vessel is required to be in port within 36 hours of the last haul sampled by the observer.

(B) [Reserved]

(iii) Any boarding refusal on the part of the observer or vessel is immediately reported to the observer program and NOAA OLE by the observer provider. The observer must be available for an interview with the observer program or NOAA OLE if necessary.

(2) *Vessel responsibilities*—(i) *Accommodations and food.* (A) Accommodations and food for trips less than 24 hours must be equivalent to those provided for the crew.

(B) Accommodations and food for trips of 24 hours or more must be equivalent to those provided for the crew and must include berthing space, a space that is intended to be used for sleeping and is provided with installed bunks and mattresses. A mattress or futon on the floor or a cot is not acceptable if a regular bunk is provided to any crew member, unless other arrangements are approved in advance by the Regional Administrator or their designee.

(ii) *Safe conditions.* (A) Maintain safe conditions on the vessel for the protection of observers including adherence to all U.S. Coast Guard and other applicable rules, regulations, statutes, and guidelines pertaining to safe operation of the vessel, including, but not limited to rules of the road, vessel stability, emergency drills, emergency equipment, vessel maintenance, vessel general condition and port bar crossings. An observer may refuse boarding or reboarding a vessel and may request a vessel to return to



port if operated in an unsafe manner or if unsafe conditions are identified.

(B) Have on board: A valid Commercial Fishing Vessel Safety Decal that certifies compliance with regulations found in 33 CFR Chapter I and 46 CFR Chapter I, a certificate of compliance issued pursuant to 46 CFR 28.710 or a valid certificate of inspection pursuant to 46 U.S.C. 3311.

(iii) *Computer hardware and software.* [Reserved]

(iv) *Vessel position.* Allow observer(s) access to the vessel's navigation equipment and personnel, on request, to determine the vessel's position.

(v) *Access.* Allow observer(s) free and unobstructed access to the vessel's bridge, trawl or working deck, holding bins, sorting areas, cargo hold, and any other space that may be used to hold, process, weigh, or store fish at any time.

(vi) *Prior notification.* Notify observer(s) at least 15 minutes before fish are brought on board to allow sampling the catch.

(vii) *Records.* Allow observer(s) to inspect and copy any state or Federal logbook maintained voluntarily or as required by regulation.

(viii) *Assistance.* Provide all other reasonable assistance to enable observer(s) to carry out their duties, including, but not limited to:

(A) Measuring decks, codends, and holding bins.

(B) Providing a designated working area on deck for the observer(s) to collect, sort and store catch samples.

(C) Collecting samples of catch.

(D) Collecting and carrying baskets of fish.

(E) Allowing the observer(s) to collect biological data and samples.

(F) Providing adequate space for storage of biological samples.

(G) Providing time between hauls to sample and record all catch.

(H) Sorting retained and discarded catch into quota pound groupings.

(I) Stowing all catch from a haul before the next haul is brought aboard.

(ix) *Sampling station.* To allow the observer to carry out the required duties, the vessel owner must provide an observer sampling station that is:

(A) *Accessible.* The observer sampling station must be available to the observer at all times.

(B) *Limits hazards.* To the extent possible, the area should be free and clear of hazards including, but not limited to, moving fishing gear, stored fishing gear, inclement weather conditions, and open hatches.

(x) *Transfers at sea.* Transfers at-sea are prohibited.

(3) *Procurement of observer services—*  
(i) Owners of vessels required to carry

observers under paragraph (a)(1) of this section must arrange for observer services from a permitted observer provider, except that:

(A) Vessels are required to procure observer services directly from NMFS when NMFS has determined and given notification that the vessel must carry NMFS staff or an individual authorized by NMFS in lieu of an observer provided by a permitted observer provider.

(B) Vessels are required to procure observer services directly from NMFS and a permitted observer provider when NMFS has determined and given notification that the vessel must carry NMFS staff and/or individuals authorized by NMFS, in addition to an observer provided by a permitted observer provider.

(ii) [Reserved]

(4) *Application to become an observer provider.* Any observer provider holding a valid permit issued by the North Pacific observer program in 2010 can supply observer services to the west coast trawl fishery and will be issued a West Coast Groundfish Observer Program permit.

(5) *Observer provider responsibilities.* Observer providers must:

(i) *Provide qualified candidates to serve as observers.*

(A) To be qualified, a candidate must have:

(1) A Bachelor's degree or higher from an accredited college or university with a major in one of the natural sciences;

(2) Successfully completed a minimum of 30 semester hours or equivalent in applicable biological sciences with extensive use of dichotomous keys in at least one course;

(3) Successfully completed at least one undergraduate course each in math and statistics with a minimum of 5 semester hours total for both; and

(4) Computer skills that enable the candidate to work competently with standard database software and computer hardware.

(ii) *Prior to hiring an observer candidate,* the observer provider must:

(A) Provide the candidate a copy of NMFS-provided pamphlets, information and other literature describing observer duties, for example, the West Coast Groundfish Observer Program's sampling manual. Observer job information is available from the Observer Program Office's Web site at <http://www.nwfsc.noaa.gov/research/divisions/fram/observer/index.cfm>.

(B) For each observer employed by an observer provider, have a written contract or a written contract addendum signed by the observer and observer

provider prior to the observer's deployment with the following clauses:

(1) That all the observer's in-season catch messages between the observer and NMFS are delivered to the Observer Program Office as specified by the Observer Program instructions;

(2) That the observer inform the observer provider prior to the time of embarkation if he or she is experiencing any new mental illness or physical ailments or injury since submission of the physician's statement as required as a qualified observer candidate that would prevent him or her from performing their assigned duties; and

(3) That every observer completes a basic cardiopulmonary resuscitation/first aid course prior to the end of the NMFS West Coast Groundfish Observer Training class.

(iii) *Ensure that observers complete duties in a timely manner.* Observer providers must ensure that observers employed by that observer provider do the following in a complete and timely manner:

(A) Submit to NMFS all data, logbooks and reports and biological samples as required under the observer program policy deadlines.

(B) Report for his or her scheduled debriefing and complete all debriefing responsibilities; and

(C) Return all sampling and safety gear to the Observer Program Office at the termination of their contract.

(iv) *Observers provided to vessel.*

(A) Must have a valid West Coast Groundfish observer certification;

(B) Must not have informed the provider prior to the time of embarkation that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement, as required in paragraph (h)(5)(xi)(B) of this section that would prevent him or her from performing his or her assigned duties; and

(C) Must have successfully completed all NMFS required training and briefing before deployment.

(v) *Respond to industry requests for observers.* An observer provider must provide an observer for deployment pursuant to the terms of the contractual relationship with the vessel to fulfill vessel requirements for observer coverage under paragraphs (h)(5)(xi)(D) of this section. An alternate observer must be supplied in each case where injury or illness prevents the observer from performing his or her duties or where the observer resigns prior to completion of his or her duties. If the observer provider is unable to respond to an industry request for observer coverage from a vessel for whom the



provider is in a contractual relationship due to the lack of available observers by the estimated embarking time of the vessel, the provider must report it to NMFS at least 4 hours prior to the vessel's estimated embarking time.

(vi) *Provide observer salaries and benefits.* An observer provider must provide to its observer employees salaries and any other benefits and personnel services in accordance with the terms of each observer's contract.

(vii) *Provide observer deployment logistics.* (A) An observer provider must ensure each of its observers under contract:

(1) Has an individually assigned mobile or cell phones, in working order, for all necessary communication. An observer provider may alternatively compensate observers for the use of the observer's personal cell phone or pager for communications made in support of, or necessary for, the observer's duties.

(2) Calls into the NMFS deployment hotline upon departing and arriving into port for each trip to leave the following information: observer name, phone number, vessel departing on, expected trip end date and time.

(3) Remains available to NOAA Office for Law Enforcement and the Observer Program until the conclusion of debriefing.

(4) Receives all necessary transportation, including arrangements and logistics, of observers to the initial location of deployment, to all subsequent vessel assignments during that deployment, and to the debriefing location when a deployment ends for any reason; and

(5) Receives lodging, per diem, and any other services necessary to observers assigned to fishing vessels.

(i) An observer under contract may be housed on a vessel to which he or she is assigned; prior to their vessel's initial departure from port; for a period not to exceed twenty-four hours following the completion of an offload when the observer has duties and is scheduled to disembark; or for a period not to exceed twenty-four hours following the vessel's arrival in port when the observer is scheduled to disembark.

(ii) During all periods an observer is housed on a vessel, the observer provider must ensure that the vessel operator or at least one crew member is aboard.

(iii) Otherwise, each observer between vessels, while still under contract with a permitted observer provider, shall be provided with accommodations in accordance with the contract between the observer and the observer provider. If the observer provider is responsible for providing accommodations under

the contract with the observer, the accommodations must be at a licensed hotel, motel, bed and breakfast, or other shoreside accommodations that has an assigned bed for each observer that no other person may be assigned to for the duration of that observer's stay.

Additionally, no more than four beds may be in any room housing observers at accommodations meeting the requirements of this section.

(viii) *Observer deployment limitations and workload.* (A) Not deploy an observer on the same vessel more than 90 calendar days in a 12-month period, unless otherwise authorized by NMFS.

(B) Not exceed observer deployment limitations and workload as outlined in paragraph (h)(1)(ii) of this section.

(ix) *Verify vessel's safety decal.* An observer provider must verify that a vessel has a valid USCG safety decal as required under paragraph (h)(2)(ii)(B) of this section before an observer may get underway aboard the vessel. One of the following acceptable means of verification must be used to verify the decal validity:

(A) An employee of the observer provider, including the observer, visually inspects the decal aboard the vessel and confirms that the decal is valid according to the decal date of issuance; or

(B) The observer provider receives a hard copy of the USCG documentation of the decal issuance from the vessel owner or operator.

(x) *Maintain communications with observers.* An observer provider must have an employee responsible for observer activities on call 24 hours a day to handle emergencies involving observers or problems concerning observer logistics, whenever observers are at sea, in transit, or in port awaiting vessel reassignment.

(xi) *Maintain communications with the observer program office.* An observer provider must provide all of the following information by electronic transmission (e-mail), fax, or other method specified by NMFS.

(A) *Observer training, briefing, and debriefing registration materials.* This information must be submitted to the Observer Program Office at least 7 business days prior to the beginning of a scheduled West Coast groundfish observer certification training or briefing session.

(1) Training registration materials consist of the following:

(i) Date of requested training;

(ii) A list of observer candidates that includes each candidate's full name (*i.e.*, first, middle and last names), date of birth, and gender;

(iii) A copy of each candidate's academic transcripts and resume;

(iv) A statement signed by the candidate under penalty of perjury which discloses the candidate's criminal convictions;

(v) Projected observer assignments. Prior to the observer's completion of the training or briefing session, the observer provider must submit to the Observer Program Office a statement of projected observer assignments that include that includes each observer's name, current mailing address, e-mail address, phone numbers and port of embarkation ("home port"); and

(vi) Length of observers contract.

(2) Briefing registration materials consist of the following:

(i) Date and type of requested briefing session;

(ii) List of observers to attend the briefing session, that includes each observer's full name (first, middle, and last names);

(iii) Projected observer assignments. Prior to the observer's completion of the training or briefing session, the observer provider must submit to the Observer Program Office a statement of projected observer assignments that includes each observer's name, current mailing address, e-mail address, phone numbers and port of embarkation ("home port"); and

(iv) Length of observer contract.

(3) *Debriefing.* The West Coast Groundfish Observer Program will notify the observer provider which observers require debriefing and the specific time period the provider has to schedule a date, time, and location for debriefing. The observer provider must contact the West Coast Groundfish Observer program within 5 business days by telephone to schedule debriefings.

(i) Observer providers must immediately notify the observer program when observers end their contract earlier than anticipated.

(ii) [Reserved]

(B) *Physical examination.* A signed and dated statement from a licensed physician that he or she has physically examined an observer or observer candidate. The statement must confirm that, based on that physical examination, the observer or observer candidate does not have any health problems or conditions that would jeopardize that individual's safety or the safety of others while deployed, or prevent the observer or observer candidate from performing his or her duties satisfactorily. The statement must declare that, prior to the examination, the physician was made aware of the duties of the observer and the

dangerous, remote, and rigorous nature of the work by reading the NMFS-prepared information. The physician's statement must be submitted to the Observer Program Office prior to certification of an observer. The physical exam must have occurred during the 12 months prior to the observer's or observer candidate's deployment. The physician's statement will expire 12 months after the physical exam occurred. A new physical exam must be performed, and accompanying statement submitted, prior to any deployment occurring after the expiration of the statement.

(C) *Certificates of insurance.* Copies of "certificates of insurance", that names the NMFS Observer Program leader as the "certificate holder", shall be submitted to the Observer Program Office by February 1 of each year. The certificates of insurance shall verify the following coverage provisions and state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled.

(1) Maritime Liability to cover "seamen's" claims under the Merchant Marine Act (Jones Act) and General Maritime Law (\$1 million minimum).

(2) Coverage under the U.S. Longshore and Harbor Workers' Compensation Act (\$1 million minimum).

(3) States Worker's Compensation as required.

(4) Commercial General Liability.

(D) *Observer provider contracts.* If requested, observer providers must submit to the Observer Program Office a completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services under paragraph (h)(1)(i) of this section. Observer providers must also submit to the Observer Program Office upon request, a completed and unaltered copy of the current or most recent signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract and any agreements or policies with regard to observer compensation or salary levels) between the observer provider and the particular entity identified by the Observer Program or with specific observers. The copies must be submitted to the Observer Program Office via e-mail, fax, or mail within 5 business days of the request. Signed and valid contracts include the contracts an observer provider has with:

(1) Vessels required to have observer coverage as specified at paragraph (h)(1)(i) of this section; and

(2) Observers.

(E) *Change in observer provider management and contact information.* An observer provider must submit to the Observer Program office any change of management or contact information submitted on the provider's permit application under paragraphs (h)(4) of this section within 30 days of the effective date of such change.

(F) *Biological samples.* The observer provider must ensure that biological samples are stored/handled properly prior to delivery/transport to NMFS.

(G) *Observer status report.* Each Tuesday, observer providers must provide NMFS with an updated list of contact information for all observers that includes the observer's name, mailing address, e-mail address, phone numbers, port of embarkation ("home port"), fishery deployed the previous week and whether or not the observer is "in service", indicating when the observer has requested leave and/or is not currently working for the provider.

(H) Providers must submit to NMFS, if requested, copies of any information developed and used by the observer providers distributed to vessels, such as informational pamphlets, payment notification, description of observer duties, etc.

(I) *Other reports.* Reports of the following must be submitted in writing to the West Coast Groundfish Observer Program Office by the observer provider via fax or e-mail address designated by the Observer Program Office within 24 hours after the observer provider becomes aware of the information:

(1) Any information regarding possible observer harassment;

(2) Any information regarding any action prohibited under § 660.112 or § 600.725(o), (t) and (u);

(3) Any concerns about vessel safety or marine casualty under 46 CFR 4.05–1 (a)(1) through (7);

(4) Any observer illness or injury that prevents the observer from completing any of his or her duties described in the observer manual; and

(5) Any information, allegations or reports regarding observer conflict of interest or breach of the standards of behavior described in observer provider policy.

(xii) *Replace lost or damaged gear.* An observer provider must replace all lost or damaged gear and equipment issued by NMFS to an observer under contract to that provider. All replacements must be in accordance with requirements and procedures identified in writing by the Observer Program Office.

(xiii) *Maintain confidentiality of information.* An observer provider must ensure that all records on individual

observer performance received from NMFS under the routine use provision of the Privacy Act or as otherwise required by law remain confidential and are not further released to anyone outside the employ of the observer provider company to whom the observer was contracted except with written permission of the observer.

(xiv) *Must meet limitations on conflict of interest.* Observer providers:

(A) Must not have a direct financial interest, other than the provision of observer services, in the North Pacific or Pacific coast fishery managed under an FMP for the waters off the coasts of Alaska, Washington, Oregon, and California, including, but not limited to,

(1) Any ownership, mortgage holder, or other secured interest in a vessel, or shoreside processors facility involved in the catching, taking, harvesting or processing of fish,

(2) Any business involved with selling supplies or services to any vessel or shoreside processors participating in a fishery managed pursuant to an FMP in the waters off the coasts of Alaska, California, Oregon, and Washington, or

(3) Any business involved with purchasing raw or processed products from any vessel or shoreside processor participating in a fishery managed pursuant to an FMP in the waters off the coasts of Alaska, California, Oregon, and Washington.

(B) Must assign observers without regard to any preference by representatives of vessels other than when an observer will be deployed.

(C) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value except for compensation for providing observer services from anyone who conducts fishing or fish processing activities that are regulated by NMFS in the Pacific coast or North Pacific regions, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of observer providers.

(xv) *Must develop and maintain a policy addressing observer conduct and behavior* for their employees that serve as observers.

(A) The policy shall address the following behavior and conduct regarding:

(1) Observer use of alcohol;

(2) Observer use, possession, or distribution of illegal drugs and;

(3) Sexual contact with personnel of the vessel or processing facility to which the observer is assigned, or with any vessel or processing plant personnel who may be substantially affected by the performance or non-performance of the observer's official duties.

(B) An observer provider shall provide a copy of its conduct and behavior policy to each observer candidate and to the Observer Program by February 1 of each year.

(xvi) *Refuse to deploy an observer* on a requesting vessel if the observer provider has determined that the requesting vessel is inadequate or unsafe pursuant to those described at § 600.746 or U.S. Coast Guard and other applicable rules, regulations, statutes, or guidelines pertaining to safe operation of the vessel.

(6) *Observer certification and responsibilities*—(i) *Applicability*. Observer certification authorizes an individual to fulfill duties as specified in writing by the NMFS Observer Program Office while under the employ of a NMFS-permitted observer provider and according to certification requirements as designated under paragraph (h)(6)(iii) of this section.

(ii) *Observer certification official*. The Regional Administrator will designate a NMFS observer certification official who will make decisions for the Observer Program Office on whether to issue or deny observer certification.

(iii) *Certification requirements*—(A) *Initial certification*. NMFS may certify individuals who, in addition to any other relevant considerations:

(1) Are employed by an observer provider company permitted pursuant to § 660.140(h) at the time of the issuance of the certification;

(2) Have provided, through their observer provider:

(i) Information identified by NMFS at § 660.140(h) regarding an observer candidate's health and physical fitness for the job;

(ii) Meet all observer candidate education and health standards as specified in § 660.140(h); and

(iii) Have successfully completed NMFS-approved training as prescribed by the West Coast Groundfish Observer Program.

(B) Successful completion of training by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Observer Program.

(C) Have not been decertified under paragraph (h)(6)(ix) of this section.

(iv) *Denial of Certification*. The NMFS observer certification official will issue a written determination denying observer certification if the candidate fails to successfully complete training, or does not meet the qualifications for

certification for any other relevant reason.

(v) *Issuance of an observer certification*. An observer certification may be issued upon determination by the observer certification official that the candidate has successfully met all requirements for certification as specified at paragraph (h)(6)(iii) of this section. The following endorsements must be obtained in addition to observer certification, in order for an observer deployment.

(A) *West Coast Groundfish Observer Program training certification endorsement*. A training certification endorsement signifies the successful completion of the training course required to obtain observer certification. This endorsement expires when the observer has not been deployed and performed sampling duties as required by the observer Program office for a period of time, specified by the Observer Program, after his or her most recent debriefing. The observer can renew the endorsement by successfully completing training once more.

(B) *West Coast Groundfish Observer Program annual general endorsement*. Each observer must obtain an annual general endorsement to their certification prior to his or her first deployment within any calendar year subsequent to a year in which a training certification endorsement is obtained. To obtain an annual general endorsement, an observer must successfully complete the annual briefing, as specified by the Observer Program. All briefing attendance, performance, and conduct standards required by the Observer Program must be met.

(C) *West Coast Groundfish Observer Program deployment endorsement*. Each observer who has completed an initial deployment after their certification or annual briefing must receive a deployment endorsement to their certification prior to any subsequent deployments for the remainder of that year. An observer may obtain a deployment endorsement by successfully completing all briefing requirements, when applicable. The type of briefing the observer must attend and successfully complete will be specified in writing by the Observer Program during the observer's most recent debriefing.

(vi) *Maintaining the validity of an observer certification*. After initial issuance, an observer must keep their certification valid by meeting all of the following requirements specified below:

(A) Successfully perform their assigned duties as described in the Observer Manual or other written

instructions from the Observer Program Office including calling into the NMFS deployment hotline upon departing and arriving into port each trip to leave the following information: observer name, phone number, vessel name departing on, date and time of departure and date and time of expected return.

(B) Accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.

(C) Not disclose collected data and observations made on board the vessel or in the processing facility to any person except the owner or operator of the observed vessel or an authorized officer or NMFS.

(D) Successfully complete NMFS-approved annual briefings as prescribed by the West Coast Groundfish Observer Program.

(E) Successful completion of briefing by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other briefing requirements established by the Observer Program.

(F) Hold current basic cardiopulmonary resuscitation/first aid certification as per American Red Cross Standards.

(G) Successfully meet all expectations in all debriefings including reporting for assigned debriefings.

(H) Submit all data and information required by the observer program within the program's stated guidelines.

(I) Meet the minimum annual deployment period of 3 months at least once every 12 months.

[Alternative 1 for Paragraph (h)(6)(vii) (Council-Deemed)]

(vii) *Limitations on conflict of interest*. Observers:

(A) Must not have a direct financial interest in the vessels on which the observers are stationed or in the first receivers to which those vessels make deliveries, other than the provision of observer services.

(B) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS in the Pacific coast or North Pacific regions or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(C) May not serve as observers on any vessel or at any shore-based processor owned or operated by a person who employed the observer in the last two years.

(D) May not solicit or accept employment as a crew member or an employee of a vessel or shore-based processor while employed by an observer provider.

(E) Provisions for remuneration of observers under this section do not constitute a conflict of interest.

[Alternative 2 for Paragraph (h)(6)(vii) (NMFS-Proposed)]

(vii) Limitations on conflict of interest. Observers:

(A) Must not have a direct financial interest, other than the provision of observer services, in a fishery managed pursuant to an FMP for the waters off the coast of Alaska, or in a Pacific Coast fishery managed by either the State or Federal governments in waters off Washington, Oregon, or California, including but not limited to:

(1) Any ownership, mortgage holder, or other secured interest in a vessel, shore-based or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish,

(2) Any business involved with selling supplies or services to any vessel, shore-based or floating stationary processing facility; or

(3) Any business involved with purchasing raw or processed products from any vessel, shore-based or floating stationary processing facilities.

(B) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS in the Pacific coast or North Pacific regions or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(C) May not serve as observers on any vessel or at any shore-based owned or operated by a person who employed the observer in the last two years.

(D) May not solicit or accept employment as a crew member or an employee of a vessel or shore-based processor while employed by an observer provider.

(E) Provisions for remuneration of observers under this section do not constitute a conflict of interest.

(viii) *Standards of behavior.*

Observers must:

(A) Perform their duties as described in the Observer Manual or other written instructions from the Observer Program Office.

(B) Report to the Observer Program office and the NOAA OLE any time they refuse to board a vessel.

(C) Accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to the conservation of marine resources to their environment.

(D) Not disclose collected data and observations made on board the vessel to any person except the owner or operator of the observed vessel, an authorized officer, or NMFS.

(ix) *Suspension and decertification—*  
(A) *Suspension and decertification review official.* The Regional Administrator (or a designee) will designate an observer suspension and decertification review official(s), who will have the authority to review observer certifications and issue initial administrative determinations of observer certification suspension and/or decertification.

(B) *Causes for suspension or decertification.* The suspension and decertification official may initiate suspension or decertification proceedings against an observer:

(1) When it is alleged that the observer has not met applicable standards, including any of the following:

(i) Failed to satisfactorily perform duties as described or directed by the observer program; or

(ii) Failed to abide by the standards of conduct for observers, including conflicts of interest;

(2) Upon conviction of a crime or upon entry of a civil judgment for:

(i) Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties as specified in writing by the NMFS Observer Program;

(ii) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(iii) Commission of any other offense indicating a lack of integrity or honesty that seriously and directly affects the fitness of observers.

(C) *Issuance of initial administrative determination.* Upon determination that suspension or decertification is warranted, the suspension/decertification official will issue a written IAD to the observer via certified mail at the observer's most current address provided to NMFS. The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken.

(D) *Appeals.* A certified observer who receives an IAD that suspends or revokes his or her observer certification

may appeal within 30 of issuance of the IAD to the Office of Administrative Appeals pursuant to § 679.43.

(i) *Catch monitor requirements for IFQ first receivers—*(1) *Catch monitor coverage requirements.* A catch monitor is required be present at each IFQ first receiver whenever an IFQ landing is received, unless the first receiver has been granted a written waiver from the catch monitor requirements by NMFS.

(2) *Procurement of catch monitor services.* Owners or managers of each IFQ first receiver must arrange for catch monitor services from a certified catch monitor provider prior to accepting IFQ landings. IFQ first receivers are responsible for all associated costs including training time, debriefing time, and lodging while deployed.

(3) *Catch monitor safety.* (i) Each IFQ first receiver must adhere to all applicable rules, regulations, or statutes pertaining to safe operation and maintenance of a processing and/or receiving facility.

(ii) The working hours of each individual catch monitor will be limited as follows:

(A) An individual catch monitor shall not be required or permitted to work more than 16 hours per calendar day, with maximum of 14 hours being work other than the summary and submission of catch monitor data.

(B) Following monitoring shift of more than 10 hours, each catch monitor must be provided with a minimum 6 hours break before they may resume monitoring.

(4) *Catch monitor access.* (i) Each IFQ first receiver must allow catch monitors free and unobstructed access to the catch throughout the sorting process and the weighing process.

(ii) The IFQ first receiver must ensure that there is an observation area available to the catch monitor that meets the following standards:

(A) *Access to the observation area.* The observation area must be freely accessible to NMFS staff, NMFS-authorized personnel, or authorized officers at any time a valid catch monitoring plan is required.

(B) *Monitoring the flow of fish.* The catch monitor must have an unobstructed view or otherwise be able to monitor the entire flow of fish between the delivery point and a location where all sorting has taken place and each species has been weighed.

(C) *Adequate lighting.* Adequate lighting must be provided during periods of limited visibility.

(iii) Each IFQ first receiver must allow catch monitors free and unobstructed access to any documentation required

by regulation including fish tickets, scale printouts and scale test results.

(iv) Each IFQ first receiver must provide the catch monitors free and unobstructed access to a telephone line during the hours that Pacific whiting is being processed at the facility and 30 minutes after the processing of the last delivery each day.

(5) *Lockable cabinet.* Each IFQ first receiver must provide a secure, dry, and lockable cabinet or locker with the minimum interior dimensions of two feet wide by two feet tall by two feet deep for the exclusive use the catch monitor and NMFS staff or NMFS-authorized agents.

(6) *Plant liaison for the catch monitor.* Each IFQ first receiver must designate a plant liaison. The plant liaison is responsible for:

(i) Orienting new catch monitors to the facility;

(ii) Assisting in the resolution of catch monitoring concerns; and

(iii) Informing NMFS if changes must be made to the catch monitoring plan.

(7) *Reasonable assistance.* Each IFQ first receiver must provide reasonable assistance to the catch monitors to enable each catch monitor to carry out his or her duties. Reasonable assistance includes, but is not limited to: Informing the monitor when bycatch species will be weighed, and providing a secure place to store equipment and gear.

(j) *Catch weighing requirements—(1) Catch monitoring plan.* All first receivers must operate under a NMFS-accepted catch monitoring plan.

(2) *Sorting and weighing IFQ landings—(i) Approved scales.* The owner of an IFQ first receiver must ensure that all IFQ species received from a vessel making an IFQ landing are weighed on a scale(s) that meets the requirements specified at § 660.15(c).

(ii) *Printed record.* All scales identified in the catch monitoring plan accepted by NMFS during the first receiver site license application process, must produce a printed record for each delivery, or portion of a delivery, weighed on that scale, with the following exception: If approved by NMFS as part of the catch monitoring plan, scales not designed for automatic bulk weighing may be exempted from part or all of the printed record requirements. The printed record must include:

(A) The first receiver's name;

(B) The weight of each load in the weighing cycle;

(C) The total weight of fish in each landing, or portion of the landing that was weighed on that scale;

(D) The date the information is printed; and

(E) The name and vessel registration or documentation number of the vessel making the delivery. The scale operator may write this information on the scale printout in ink at the time of printing.

(iii) *Scales that may be exempt from printed report.* An IFQ first receiver that receives no more than 200,000 pounds of groundfish in any calendar month will be exempt from the requirement to produce a printed record provided that:

(A) The first receiver has not previously operated under a catch monitoring plan where a printed record was required;

(B) The first receiver ensures that all catch is weighed; and

(C) The catch monitor, NMFS staff, or authorized officer can verify that all catch is weighed.

(iv) *Retention of printed records.* An IFQ first receiver must maintain printouts on site until the end of the fishing year during which the printouts were made and make them available upon request by NMFS staff or an authorized officer for 3 years after the end of the fishing year during which the printout was made.

(v) *Weight monitoring.* An IFQ first receiver must ensure that it is possible for the catch monitor, NMFS staff, or authorized officer to verify the weighing of all catch.

(vi) *Catch sorting.* All fish delivered to the plant must be sorted and weighed by species as specified at § 660.130(d).

(vii) *Complete sorting.* Sorting and weighing must be completed prior to catch leaving the area that can be monitored from the catch monitor's observation area.

(viii) *Pacific whiting.* For Pacific Whiting taken with midwater trawl gear, IFQ first receivers may use an in-line conveyor or hopper type scale to derive an accurate total catch weight prior to sorting. Immediately following weighing of the total catch and prior to processing or transport away from the point of landing, the catch must be sorted to the species groups specified at § 660.130(d) and all incidental catch (groundfish and non groundfish species) must be accurately weighed and the weight of incidental catch deducted from the total catch weight to derive the weight of target species.

(ix) For all other IFQ landings the following weighing standards apply:

(A) A belt or automatic hopper scale may be used to weigh all of the catch prior to sorting. All but a single predominant species must then be reweighed.

(B) An in-line conveyor or automatic hopper scale may be used to weigh the

predominant species after catch has been sorted. Other species must be weighed in a manner that facilitates tracking of the weights of those species.

(C) IFQ species or species group may be weighed in totes on a platform scale capable of printing a label or tag and recording the label or tag information to memory for printing a report as specified at § 660.15. The label or tag must remain affixed to the tote until the tote is emptied. The label or tag must show the following information:

(1) The species or species group;

(2) The weight of the fish in the tote;

(3) The date the label or tag was printed; and

(4) The vessel name.

(D) *Totes and ice.* If a catch monitoring plan proposes the use of totes in which fish will be weighed, or a deduction for the weight of ice, the deduction must be accurately accounted for. No deduction may be made for the weight of water or slime. This standard may be met by:

(1) Taring the empty or pre-iced tote on the scale prior to filling with fish;

(2) Labeling each tote with an individual tare weight. This weight must be accurate within 500 grams (1 pound if scale is denominated in pounds) for any given tote and the average error for all totes may not exceed 200 grams (8 ounces for scales denominated in pounds);

(3) An alternate approach approved by NMFS. NMFS will only approve approaches that do not involve the estimation of the weight of ice or the weight of totes and allow NMFS staff or an authorized officer to verify that the deduction or tare weight is accurate.

(E) An alternate approach accepted by NMFS in the catch monitoring plan.

(3) *IFQ first receiver responsibilities relative to catch weighing and monitoring of catch weighing.* The owner of an IFQ first receiver must:

(i) *General.* (A) Ensure that all IFQ landings are sorted and weighed as specified at § 660.130(d) and in accordance with an approved catch monitoring plan.

(ii) *Catch monitors, NMFS staff, and authorized officers.* (A) Have a catch monitor on site the entire time an IFQ landing is being offloaded, sorted, or weighed.

(B) Notify the catch monitor of the offloading schedule.

(C) Provide catch monitors, NMFS staff, or an authorized officer with unobstructed access to any areas where IFQ species are or may be sorted or weighed at any time IFQ species are being landed or processed.

(D) Allow catch monitors, NMFS staff, or an authorized officer to observe the

weighing of catch on the scale and to read the scale display at any time.

(E) Ensure that printouts of the scale weight of each delivery or offload are made available to catch monitors, NMFS staff, or an authorized officer at the time printouts are generated.

(4) *Scale tests.* (i) All testing must meet the scale test standards specified at § 660.15(c).

(ii) *Inseason scale testing.* First receivers must allow, and provide reasonable assistance to a catch monitor, NMFS staff or an authorized officer to test scales used to weigh IFQ catch. A scale that does not pass an inseason test may not be used to weigh IFQ catch until the scale passes an inseason test or is approved for continued use by the weights and measures authorities of the State in which the scale is located.

(k) *Gear switching.* (1) Participants in the Shorebased IFQ Program may take IFQ species using any legal groundfish non-trawl gear (*i.e.*, gear switching) and are exempt from the gear endorsements at § 660.25(b)(3) for limited entry fixed gear permits, provided the following requirements are met:

(i) The vessel must be registered to a limited entry trawl permit.

(ii) The vessel must be registered to a vessel account that is not in deficit on any IFQ species.

(iii) The vessel operator must have submitted a valid gear declaration for the trip that declares "Limited entry groundfish non-trawl, shorebased IFQ," as specified in § 660.13(d)(5)(iv)(A), and does not declare any other designation (a Shorebased IFQ Program trip may not be combined with any other designation).

(iv) The vessel must comply with prohibitions applicable to limited entry fixed gear fishery as specified at § 660.212, gear restrictions applicable to limited entry fixed gear as specified in §§ 660.219 and 660.230(b), and management measures specified in § 660.230(d), including restrictions on the fixed gear allowed onboard, its usage, and applicable fixed gear groundfish conservation area restrictions, except that the vessel will not be subject to limited entry fixed gear trip limits when fishing in the Shorebased IFQ Program.

(v) The vessel must comply with the limited entry trawl trip limits for species/species groups not covered under the Shorebased IFQ Program or whiting trip limits outside the primary season.

(vi) The vessel must comply with recordkeeping and reporting requirements applicable to limited entry trawl gear as specified in § 660.113.

(vii) The vessel must comply with and observer requirements and all other provisions of the Shoreside IFQ Program as specified in this section.

(2) [Reserved]

(l) *Adaptive management program—*  
(1) *General.* The adaptive management program (AMP) is a set-aside of 10 percent of the non-whiting QS to address the following objectives:

(i) Community stability;

(ii) Processor stability;

(iii) Conservation;

(iv) Unintended/unforeseen consequences of IFQ management; or

(v) Facilitating new entrants.

(2) *Years one and two.* The 10 percent of non-whiting QS will be reserved for the AMP during years one and two of the Shorebased IFQ Program, but the resulting AMP QP will be issued to all QS permit owners in proportion to their non-whiting QS during years one and two.

23. In § 660.150;

a. Paragraph (g)(1) introductory text is revised, and paragraph (g)(1)(v) is removed;

b. Paragraph (a) introductory text and paragraphs (a)(3), (a)(4), (d), (f)(3), and (g)(3)(i)(C) are revised;

c. Paragraphs (b), (c), (e), (f)(2), (f)(4), (g)(1)(iv), (g)(2), (g)(3)(ii), (g)(4), and (h) through (k) are added; and

d. Paragraph (l) is removed to read as follows:

#### **§ 660.150 Mothership (MS) Coop Program.**

(a) *General.* The MS Coop Program requirements in this section will be effective beginning January 1, 2011, except for paragraphs (f)(3), (f)(5), (f)(6), (g)(3), (g)(5), and (g)(6) of this section, which are effective immediately. The MS Coop Program is a general term to describe the limited access program that applies to eligible harvesters and processors in the mothership sector of the Pacific whiting at-sea trawl fishery. Eligible harvesters and processors, including coop and non-coop fishery participants, must meet the requirements set forth in this section of the Pacific Coast groundfish regulations. Each year a vessel registered to a MS/CV-endorsed permit may fish in either the coop or non-coop portion of the MS Coop Program, but not both. In addition to the requirements of this section, the MS Coop Program is subject to the following groundfish regulations of subparts C and D:

\* \* \* \* \*

(3) Regulations set out in the following sections of subpart C: § 660.11 Definitions, § 660.12 Prohibitions, § 660.13 Recordkeeping and reporting, § 660.14 VMS requirements, § 660.15 Equipment requirements, § 660.16

Groundfish Observer Program, § 660.20 Vessel and gear identification, § 660.25 Permits, § 660.55 Allocations, § 660.60 Specifications and management measures, § 660.65 Groundfish harvest specifications, and §§ 660.70 through 660.79 Closed areas.

(4) Regulations set out in the following sections of subpart D: § 660.111 Trawl fishery definitions, § 660.112 Trawl fishery prohibitions, § 660.113 Trawl fishery recordkeeping and reporting, § 660.120 Trawl fishery crossover provisions, § 660.130 Trawl fishery management measures, and § 660.131 Pacific whiting fishery management measures.

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(b) *Participation requirements and responsibilities—*(1) *Mothership vessels.*

(i) *Mothership vessel participation requirements.* A vessel is eligible to receive and process catch as a mothership in the MS Coop Program if:

(A) The vessel is registered to a MS permit;

(B) The vessel is not used to fish as a catcher vessel in the mothership sector of the Pacific whiting fishery in the same calendar year; and

(C) The vessel is not used to fish as a C/P in the Pacific whiting fishery in the same calendar year.

(ii) *Mothership vessel responsibilities.* The owner and operator of a mothership vessel must:

(A) *Recordkeeping and reporting.* Maintain a valid declaration as specified at § 660.13(d), subpart C; and, maintain and submit all records and reports specified at § 660.113(c) including, economic data, scale tests records, and cease fishing reports.

(B) *Observers.* As specified at paragraph (j) of this section, procure observer services, maintain the appropriate level of coverage, and meet the vessel responsibilities.

(C) *Catch weighing requirements.* The owner and operator of a MS vessel must:

(1) Ensure that all catch is weighed in its round form on a NMFS-approved scale that meets the requirements described in section § 660.15(b), subpart C;

(2) Provide a NMFS-approved platform scale, belt scale, and test weights that meet the requirements described in section § 660.15(b), subpart C.

(2) *Mothership catcher vessels—*(i) *Mothership catcher vessel participation requirements—*(A) A vessel is eligible to harvest in the MS Coop Program if the following conditions are met:

(1) If the vessel is used to fish as a mothership catcher vessel for a permitted MS coop, the vessel is

registered to a limited entry permit with a trawl endorsement and NMFS has been notified that the vessel is authorized to fish for the coop.

(2) If the vessel is used to harvest fish in the non-coop fishery, the vessel is registered to a MS/CV endorsed limited entry permit.

(3) The vessel is not used to harvest fish or process as a mothership or catcher/processor vessel in the same calendar year.

(4) The vessel does not catch more than 30 percent of the Pacific whiting allocation for the mothership sector.

(B) [Reserved]

(ii) *Mothership catcher vessel responsibilities*—(A) *Observers*. As specified at paragraph (j) of this section, procure observer services, maintain the appropriate level of coverage, and meet the vessel responsibilities.

(B) *Recordkeeping and reporting*. Maintain a valid declaration as specified at § 660.13(d), subpart C; and, maintain and submit all records and reports specified at § 660.113(c) including, economic data and scale tests records, if applicable.

(3) *MS coops*—(i) *MS coop participation requirements*. For a MS coop to participate in the Pacific whiting mothership sector fishery it must:

(A) Be issued a MS coop permit;

(B) Be composed of MS/CV endorsed limited entry permit owners;

(C) Be formed voluntarily;

(D) Be a legally recognized entity that represents its members;

(E) Designate an individual as a coop manager; and

(F) Include at least 20 percent of all MS/CV endorsed permits as members. The coop membership percentage will be interpreted by rounding to the nearest whole permit (*i.e.* zero up to 0.5 rounds down and 0.5 up to 1.0 rounds up).

(ii) *MS coop responsibilities*. A MS coop is responsible for:

(A) Applying for and being registered to a MS coop permit;

(B) Organizing and coordinating harvest activities of vessels authorized to fish for the coop;

(C) Reassigning catch history assignments for use by coop members;

(D) Organizing and coordinating the transfer and leasing of catch allocations with other permitted coops through inter-coop agreements;

(E) Monitoring harvest activities and enforcing the catch limits of coop members;

(F) Submitting an annual report.

(G) Having a designated coop manager. The designated coop manager must:

(1) Serve as the contact person between NMFS, the Council, and other coops;

(2) Be responsible for the annual distribution of catch and bycatch allocations among coop members;

(3) Oversee reassignment of catch allocations within the coop;

(4) Oversee inter-coop catch allocation reassignments;

(5) Prepare and submit an annual report on behalf of the coop;

(6) Be authorized to receive or respond to any legal process in which the coop is involved; and

(7) Notify NMFS if the coop dissolves.

(iii) *MS coop compliance and joint/several liability*. An MS coop must comply with the provisions of this section. The MS coop, member limited entry permit owners, and owners and operators of vessels registered to member limited entry permits, are jointly and severally responsible for compliance with the provisions of this section. Pursuant to 15 CFR part 904, each MS coop, member permit owner, and owner and operator of a vessel registered to a coop member permit may be charged jointly and severally for violations of the provisions of this section. For purposes of enforcement, an MS coop is a legal entity that can be subject to NOAA enforcement action for violations of the provisions of this section.

(c) *MS Coop Program species and allocations*—(1) *MS Coop Program species*. MS Coop Program species are as follows:

(i) Species with formal allocations to the MS Coop Program are Pacific whiting, canary rockfish, darkblotched rockfish, Pacific Ocean perch, and widow rockfish;

(ii) Species with set-asides for the MS and C/P Coop Programs combined, as described in Tables 1d and 2d, subpart C.

(2) *Annual mothership sector sub-allocations*. Annual allocation amount(s) will be determined using the following procedure:

(i) *MS/CV catch history assignments*. Catch history assignments will be based on catch history using the following methodology:

(A) *Pacific whiting catch history assignment*. For each MS/CV endorsed limited entry permit, the permit's entire catch history assignment of Pacific whiting will be annually allocated to a single permitted MS coop or to the non-coop fishery. A MS/CV endorsed permit owner cannot divide the permit's catch history assignment between more than one MS coop or between a coop and the non-coop fishery for that year. Once assigned to a permitted MS coop or to

the non-coop fishery, the permit's catch history assignment remains with that permitted MS coop or non-coop fishery for that calendar year. When the mothership sector allocation is established through the final Pacific whiting specifications, the information for the conversion of catch history assignment to pounds will be made available to the public through a **Federal Register** announcement and/or public notice and/or the NMFS Web site. The amount of whiting from the catch history assignment will be issued to the nearest whole pound using standard rounding rules (*i.e.* zero up to 0.5 rounds down and 0.5 up to 1.0 rounds up).

(B) *Non-whiting groundfish species catch*—(1) *Non-whiting groundfish species with a mothership sector allocation* will be divided annually between the permitted coops and the non-coop fishery. The pounds associated with each permitted MS coop will be provided when the coop permit is issued.

(2) *Groundfish species with at-sea sector set-asides* will be managed on an annual basis unless there is a risk of a harvest specification being exceeded, unforeseen impact on another fisheries, or conservation concerns in which case inseason action may be taken. Set asides may be adjusted through the biennial specifications and management measures process as necessary.

(3) *Groundfish species not addressed in paragraph (1) or (2) above*, will be managed on an annual basis unless there is a risk of a harvest specification being exceeded, unforeseen impact on another fisheries, or conservation concerns in which case inseason action may be taken.

(4) *Halibut set-asides*. Annually a specified amount of the Pacific halibut will be held in reserve as a shared set-aside for bycatch in the at-sea Pacific whiting fisheries and the shorebased trawl sector south of 40°10' N lat.

(ii) *Annual coop allocations*—(A) *Pacific whiting*. Each permitted MS coop is authorized to harvest a quantity of Pacific whiting that is based on the sum of the catch history assignments for each member MS/CV endorsed permit identified in the NMFS-accepted coop agreement for a given calendar year. Other limited entry permits registered to vessels that will fish for the coop do not bring catch allocation to a permitted MS coop.

(B) *Non-whiting groundfish with allocations*. Sub-allocations of non-whiting groundfish species with allocations to permitted MS coops will be in proportion to the Pacific whiting



catch history assignments assigned to each permitted MS coop.

(iii) *Annual non-coop allocation*—(A) *Pacific whiting*. The non-coop whiting fishery is authorized to harvest a quantity of Pacific whiting that is remaining in the mothership sector annual allocation after the deduction of all coop allocations.

(B) *Non-whiting groundfish with allocations*. The sub-allocation to the non-coop fishery will be in proportion to the mothership catcher vessel Pacific whiting catch history assignments for the non-coop fishery.

(C) *Announcement of the non-coop fishery allocations*. Information on the amount of Pacific whiting and non-whiting groundfish with allocations that will be made available to the non-coop fishery when the final Pacific whiting specifications for the mothership sector is established and will be announced to the public through a **Federal Register** announcement and/or public notice and/or the NMFS Web site.

(3) *Reaching an allocation or sub-allocation*. When the mothership sector Pacific whiting allocation, Pacific whiting sub-allocation, or non-whiting groundfish catch allocation is reached or is projected to be reached, the following action may be taken:

(i) Further harvesting, receiving or at-sea processing by a mothership or catcher vessel in the mothership sector is prohibited when the mothership sector Pacific whiting allocation or non-whiting groundfish allocation is projected to be reached. No additional unprocessed groundfish may be brought on board after at-sea processing is prohibited, but a mothership may continue to process catch that was on board before at-sea processing was prohibited. Pacific whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the mothership sector.

(ii) When a permitted MS coop sub-allocation of Pacific whiting or non-whiting groundfish species is reached, further harvesting or receiving of groundfish by vessels fishing in the permitted MS coop must cease, unless the permitted MS coop is operating under an NMFS-accepted inter-coop agreement.

(iii) When the non-coop fishery sub-allocation of Pacific whiting or non-whiting groundfish species is projected to be reached, further harvesting or receiving of groundfish by vessels fishing in under the non-coop fishery must cease.

(4) *Non-whiting groundfish species reapportionment*. This paragraph describes the process for reapportioning non-whiting groundfish species with

allocations between permitted MS coops and the catcher/processor sector.

Reapportionment of mothership sector allocations to the catcher/processor will not occur until all permitted MS coops and the non-coop fishery have been closed by NMFS or have informed NMFS that they have ceased operations for the remainder of the calendar year.

(i) *Within the mothership sector*. The Regional Administrator may make available for harvest to permitted coops and the non-coop fishery that have not notified NMFS that they have ceased fishing for the year, the amounts of a permitted MS coop's non-whiting catch allocation remaining when a coop reaches its Pacific whiting allocation or when the designated coop manager notifies NMFS that a permitted coop has ceased fishing for the year. The reapportioned allocations will be in proportion to their original allocations.

(ii) *Between the mothership and catcher/processor sectors*. The Regional Administrator may make available for harvest to the catcher/processor sector of the Pacific whiting fishery, the amounts of the mothership sector's non-whiting catch allocation remaining when the Pacific whiting allocation is reached or participants in the sector do not intend to harvest the remaining allocation. The designated coop manager, or in the case of an inter-coop, all of the designated coop managers must submit a cease fishing report to NMFS indicating that harvesting has concluded for the year. At any time after greater than 80 percent of the Mothership sector Pacific whiting allocation has been harvested, the Regional Administrator may contact designated coop managers to determine whether they intend to continue fishing. When considering redistribution of non-whiting catch allocation, the Regional Administrator will take in to consideration the best available data on total projected fishing impacts. Reapportionment between permitted MS coops and the non-coop fishery within the mothership sector will be in proportion to their original coop allocations for the calendar year.

(iii) *Set-aside species*. No inseason management actions are associated with set asides.

(5) *Announcements*. The Regional Administrator will announce in the **Federal Register** when the mothership sector or the allocation of Pacific whiting or non-whiting groundfish with an allocation is reached, or is projected to be reached, and specify the appropriate action. In order to prevent exceeding an allocation and to avoid underutilizing the resource,

prohibitions against further taking and

retaining, receiving, or at-sea processing of Pacific whiting, or reapportionment of non-whiting groundfish with allocations may be made effective immediately by actual notice to fishers and processors, by e-mail, Internet (<http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Whiting-Management/index.cfm>), phone, fax, letter, press release, and/or USCG Notice to Mariners (monitor channel 16 VHF), followed by publication in the **Federal Register**, in which instance public comment will be sought for a reasonable period of time thereafter.

(6) *Redistribution of annual allocation*—(i) *Between permitted MS coops (inter-coop)*. (A) Through an inter-coop agreement, the designated coop managers of permitted MS coops may distribute Pacific whiting and non-whiting groundfish allocations among one or more permitted MS coops, provided the processor obligations at paragraph (c)(7) of this section have been met or a mutual agreement exception at paragraph (c)(7)(iv) of this section has been submitted to NMFS.

(B) In the case of a MS coop failure during the Pacific whiting primary season for the mothership sector, unused allocation associated with the catch history will not be available for harvest by the coop that failed, by any former members of the coop that failed, or any other MS coop for the remainder of that calendar year.

(ii) *Between the MS coop and non-coop fisheries*. Pacific whiting may not be redistributed between the coop and non-coop fisheries.

(ii) *Between Pacific whiting sectors*. Pacific whiting may not be redistributed between the mothership sector and catcher/processor sector. Whiting may not be redistributed to the Shorebased IFQ Program.

(7) *Processor obligation and mutual agreement exceptions*—(i) *Processor obligation*. Through the annual MS/CV endorsed limited entry permit renewal process, the MS/CV endorsed permit owner must identify to NMFS to which MS permit the MS/CV permit owner intends to obligate the catch history assignment associated with that permit if they are participating in the MS coop fishery. Only one MS permit may be designated (the obligation may not be split among MS permits).

(ii) *Expiration of a processor obligation*. Processor obligations expire at the end of each calendar year when the MS Coop Permit expires.

(iii) *Processor obligation when MS coop allocation is redistributed*. When a permitted MS coop redistributes Pacific whiting allocation within the permitted



MS coop or from one permitted MS coop to another permitted MS coop through an inter-coop agreement, such allocations must be delivered to the mothership registered to the MS permit to which the allocation was obligated under the processor obligation submitted to NMFS, unless a mutual agreement exception has been submitted to NMFS.

(iv) *Mutual agreement exception.* A MS/CV endorsed permit's catch history assignment can be released from a processor obligation through a mutual agreement exception. The MS/CV endorsed permit owner must submit a copy to NMFS of the written agreement that includes the initial MS permit owner's acknowledgment of the release of the MS/CV endorsed permit owner's processor obligation and the MS/CV endorsed permit owner must identify a processor obligation for a new MS permit.

(v) *MS permit withdrawal.* If a MS permit withdraws from the mothership fishery before the resulting amounts of catch history assignment have been announced by NMFS, any MS/CV endorsed permit obligated to the MS permit may elect to participate in the coop or non-coop fishery. In such an event, the MS permit owner must provide written notification of its withdrawal to NMFS and all MS/CV-endorsed permits that are obligated to the MS permit, and the owner of each MS/CV-endorsed permit obligated to the MS permit must provide written notification to NMFS of their intent to either participate in the non-coop fishery or the coop fishery, and if participating in the coop fishery must identify a processor obligation for a new MS permit.

(vi) *Submission of a mutual agreement exception or MS permit withdrawal.* Written notification of a mutual exception agreement or MS permit withdrawal must be submitted to NMFS, Northwest Region, Permits Office, Bldg. 1, 7600 Sand Point Way NE., Seattle, WA 98115.

(d) *MS coop permit and agreement—*

(1) *Eligibility and registration.* (i) *Eligibility.* To be an eligible coop entity a group of MS/CV endorsed permit owners (coop members) must be a recognized entity under the laws of the United States or the laws of a State and represent all of the coop members.

(ii) *Annual registration and deadline.* Each year, a coop entity intending to participate as a coop under the MS Coop Program must submit an application for a MS coop permit between February 1 and March 31 of the year in which it intends to fish. NMFS will not consider any applications received after March

31. A MS coop permit expires on December 31 of the year in which it was issued.

(iii) *Application for MS coop permit.* The designated coop manager, on behalf of the coop entity, must submit a complete application form and include each of the items listed in paragraph (A) below. Only complete applications will be considered for issuance of a MS coop permit. An application will not be considered complete if any required application fees and annual coop reports have not been received by NMFS. NMFS may request additional supplemental documentation as necessary to make a determination of whether to approve or disapprove the application. Application forms and instruction are available on the NMFS NWR Web site (<http://www.nwr.noaa.gov>) or by request from NMFS. The designated coop manager must sign the application acknowledging the responsibilities of a designated coop manager defined in paragraph (b)(3) of this section.

(A) *Coop agreement.* Signed copies of the coop agreement must be submitted to NMFS and the Council and available for public review before the coop is authorized to engage in fishing activities. A coop agreement must include all of the information listed in this paragraph to be considered a complete coop agreement. NMFS will only review complete coop agreements. A coop agreement will not be accepted unless it includes all of the required information; the descriptive items listed in this paragraph appear to meet the stated purpose; and information submitted is correct and accurate.

(1) *Coop agreement contents.* Each coop agreement must be signed by all of the coop members (MS/CV endorsed permit owners) and include the following information:

(i) A list of all vessels, and permit holders participating in the coop and their share of the allocated catch which must match the amount distributed to individual permit owners by NMFS.

(ii) All MS/CV endorsed limited entry member permits identified by permit number.

(iii) A processor obligation clause indicating that each MS/CV endorsed permit has notified a specific MS permit by September 1 of the previous year of that MS/CV endorsed permit's intent to obligate its catch history assignment to that MS permit.

(iv) A clause indicating that each member MS/CV endorsed permit's catch history assignment is based on the catch history assignment calculation by NMFS used for distribution to the coop.

(v) A description of the coop's plan to adequately monitor and account for the catch of Pacific whiting and non-whiting groundfish allocations, and to monitor and account for the catch of prohibited species.

(vi) A clause stating that if a permit is transferred during the effective period of the coop agreement, any new owners of that member permit would be coop members required to comply with membership restrictions in the coop agreement.

(vii) A description of the coop's enforcement and penalty provisions adequate to maintain catch of Pacific whiting and non-whiting groundfish within the allocations.

(viii) A description of measures to reduce catch of overfished species.

(ix) A clause describing the co-op manager's responsibility for managing inter-coop reassignments of catch history assignment, should any occur.

(x) A clause describing how the annual report will be produced to document the coop's catch, bycatch data, inseason catch history reassignments and any other significant activities undertaken by the coop during the year, and the submission deadlines for that report.

(xi) Identification of the designated coop manager.

(xii) A requirement that agreement by at least a majority of the members is required to dissolve the coop.

(xiii) Provisions that prohibit member permit owners that have incurred legal sanctions that prevent them from fishing groundfish in the Council region from fishing in the coop.

(2) *Department of Justice correspondence.* Each coop must submit a letter to the Department of Justice requesting a business review letter on the fishery coop. Copies of the letter and any correspondence with the Department of Justice regarding the request must be included in the application to NMFS for a MS Coop Permit.

(3) *Inter-coop agreement.* The coop entity must provide, at the time of annual application, copies of any inter-coop agreement(s) into which the coop has entered. Such agreements must incorporate and honor the provisions of the individual coop agreements for each coop that is a party to the inter-coop agreement. Inter-coop agreements are specified at paragraph (e) of this section.

(B) *Acceptance of a coop agreement—*  
(1) If NMFS does not accept the coop agreement, the coop permit application will be returned to the applicant with a letter stating the reasons the coop agreement was not accepted by NMFS.

(2) Coop agreements that are not accepted may be resubmitted for review by sufficiently addressing the deficiencies identified in the NMFS letter and resubmitting the entire coop permit application by the date specified in the NMFS letter.

(3) An accepted coop agreement that was submitted with the MS coop permit application and for which a MS coop permit was issued will remain in place through the end of the calendar year. The designated coop manager must resubmit a complete coop agreement to NMFS consistent with the coop agreement contents described in paragraph (d)(1)(iii)(A)(1) of this section if there is a material change to the coop agreement.

(4) Within 7 calendar days following a material change, the designated coop manager must notify NMFS of the material change. Within 30 calendar days, the designated coop manager must submit to NMFS the revised coop agreement with a letter that describes such changes. NMFS will review the material changes and provide a letter to the coop manager that either accepts the changes as given or does not accept the revised coop agreement with a letter stating the reasons that it was not accepted by NMFS. The coop may resubmit the coop agreement with further revisions to the material changes responding to NMFS concerns.

(iv) *Effective date of MS coop permit.* A MS coop permit will be effective upon the date approved by NMFS and will allow fishing from the start of the MS sector primary whiting season until the end of the calendar year or until one or more of the following events occur, whichever comes first:

(A) NMFS permanently closes the mothership sector fishing season for the year or a specific MS coop or the designated coop manager notifies NMFS that the coop has completed fishing for the calendar year,

(B) The coop has reached its Pacific whiting allocation,

(C) A material change to the coop agreement has occurred and the designated coop manager failed to notify NMFS within 7 calendar days of the material change and submit to NMFS the revised coop agreement with a letter that describes such changes within 30 calendar days, or

(D) NMFS has determined that a coop failure occurred.

(2) *Initial administrative determination.* For all complete applications, NMFS will issue an IAD that either approves or disapproves the application. If approved, the IAD will include a MS coop permit. If

disapproved, the IAD will provide the reasons for this determination.

(3) *Appeals.* An appeal to a MS coop permit action follows the same process as the general permit appeals process defined at § 660.25(g), subpart C.

(4) *Fees.* The Regional Administrator is authorized to charge fees for administrative costs associated with the issuance of a MS coop permit consistent with the provisions given at § 660.25(f), subpart C.

(5) *Cost recovery.* [Reserved]

(e) *Inter-coop agreements—(1) General.* Permitted MS coops may voluntarily enter into inter-coop agreements for the purpose of sharing permitted MS coop allocations of Pacific whiting and allocated non-whiting groundfish. If two or more permitted MS coops enter into an inter-coop agreement, the inter-coop agreement must incorporate and honor the provisions of each permitted MS coop subject to the inter-coop agreement.

(3) *Submission of inter-coop agreements.* Inter-coop agreements must be submitted to NMFS for acceptance.

(4) *Inter-coop agreement review process.* Each designated coop manager must submit a copy of the inter-coop agreement signed by both designated coop managers for review. Complete coop agreements containing all items listed under paragraph (d)(1)(iii)(A)(1) will be reviewed by NMFS.

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(f) \* \* \*

(2) *Renewal, change of permit ownership, or vessel registration—(i) Renewal.* A MS permit must be renewed annually consistent with the limited entry permit regulations given at § 660.25(b)(4), subpart C. If a vessel registered to the MS permit will operate as a mothership in the year for which the permit is renewed, the permit owner must make a declaration as part of the permit renewal that while participating in the whiting fishery it will operate solely as a mothership during the calendar year to which its limited entry permit applies. Any such declaration is binding on the vessel for the calendar year, even if the permit is transferred during the year, unless it is rescinded in response to a written request from the permit owner. Any request to rescind a declaration must be made by the permit holder and granted in writing by the Regional Administrator before any unprocessed whiting has been taken on board the vessel that calendar year.

(ii) *Change of permit ownership.* A MS permit is subject to the limited entry permit change in permit ownership regulations given at § 660.25(b)(4), subpart C.

(iii) *Change of vessel registration.* A MS permit is subject to the limited entry permit change of vessel registration regulations given at § 660.25(b)(4), subpart C.

(3) *Accumulation limits—(i) MS permit usage limit.* No person who owns an MS permit(s) may register the MS permit(s) to vessels that cumulatively process more than 45 percent of the annual mothership sector Pacific whiting allocation. For purposes of determining accumulation limits, NMFS requires that permit owners submit a complete trawl ownership interest form for the permit owner as part of annual renewal for the MS permit. An ownership interest form will also be required whenever a new permit owner obtains a MS permit as part of a permit transfer request. Accumulation limits will be determined by calculating the percentage of ownership interest a person has in any MS permit. Determination of ownership interest will subject to the individual and collective rule.

(ii) *Ownership—individual and collective rule.* The ownership that counts toward a person's accumulation limit will include:

(A) Any MS permit owned by that person, and

(B) A portion of any MS permit owned by an entity in which that person has an interest, where the person's share of interest in that entity will determine the portion of that entity's ownership that counts toward the person's limit.

(iii) [Reserved]

(iv) *Trawl identification of ownership interest form.* Any person that is applying for or renewing an MS permit shall document those persons that have an ownership interest in the permit greater than or equal to 2 percent. This ownership interest must be documented with the SFD via the Trawl Identification of Ownership Interest Form. SFD will not issue an MS Permit unless the Trawl Identification of Ownership Interest Form has been completed. NMFS may request additional information of the applicant as necessary to verify compliance with accumulation limits.

(4) *Appeals.* An appeal to a MS permit action follows the same process as the general permit appeals process defined at § 660.25(g), subpart C.

\* \* \* \* \*

(g) *Mothership catcher vessel (MS/CV) endorsed permit—(1) General.* Any vessel that delivers whiting to a mothership processor in the Pacific whiting fishery mothership sector must be registered to an MS/CV-endorsed permit, except that a vessel registered to

limited entry trawl permit without an MS/CV or C/P endorsement may fish for a coop if authorized by the coop. Within the MS Coop Program, an MS/CV endorsed permit may participate in an MS coop or in the non-coop fishery. A MS/CV endorsed permit is a limited entry permit and is subject to the limited entry permit provisions given at § 660.25(b), subpart C.

\* \* \* \* \*

(iv) *Restrictions on processing for MS/CV endorsed permits.* A vessel registered to an MS/CV-endorsed permit in a given year shall not engage in processing of Pacific whiting during that year.

\* \* \* \* \*

(2) *Renewal, change of permit owner, vessel registration, or combination—(i) Renewal.* A MS/CV endorsed permit must be renewed annually consistent with the limited entry permit regulations given at § 660.25(b)(4), subpart C. During renewal, all MS/CV endorsed limited entry permit owners must make a preliminary declaration regarding their intent to participate in the coop or non-coop portion of the MS Coop Program for the following year. If the owner of the MS/CV endorsed permit intends to participate in the coop portion of the MS Coop Program, they must also declare which MS vessel to which they intend to obligate the permit's catch history assignment. MS/CV endorsed permits not obligated to a permitted MS coop by March 31 of the fishing year will be assigned to the non-coop fishery. For an MS/CV endorsed permit that is not renewed, the following occurs:

(A) For the first year after the permit is not renewed, the permit will be extinguished, and the catch history assignment from that permit will be assigned to the non-coop fishery.

(B) In the year after the permit is extinguished (the second year after the permit is not renewed), the catch history assignment from that permit will be redistributed proportionally to all valid MS/CV endorsed permits.

(ii) *Change of permit ownership.* A MS/CV endorsed permit is subject to the limited entry permit change in permit ownership regulations given at § 660.25(b)(4), subpart C.

(iii) *Change of vessel registration.* A MS/CV endorsed permit is subject to the limited entry permit change of vessel registration regulations given at § 660.25(b)(4), subpart C.

(iv) *Combination.* An MS/CV endorsed permit may be combined with one or more other limited entry trawl permits; the resulting permit will be a single permit with an increased size

endorsement. If the MS/CV endorsed permit is combined with another limited entry trawl-endorsed permit other than a C/P endorsed permit, the resulting permit will be MS/CV endorsed. If a MS/CV endorsed permit is combined with a C/P endorsed permit, the resulting permit will be exclusively a C/P endorsed permit, and will not have an MS/CV endorsement. If a MS/CV endorsed permit is combined with another MS/CV endorsed permit, the combined catch history assignment of the permit(s) will be added to the active permit (the permit remaining after combination) and the other permit will be retired. NMFS will not approve a permit combination if it results in a person exceeding the accumulation limits specified at paragraph (g)(3) of this section. Any request to combine permits is subject to the provision provided at § 660.25(b), including the combination formula for resulting size endorsements.

\* \* \* \* \*

(3) \* \* \*

(i) \* \* \*

(C) *Trawl identification of ownership interest form.* Any person that owns a limited entry trawl permit and that is applying for or renewing an MS/CV endorsement shall document those persons that have an ownership interest in the permit greater than or equal to 2 percent. This ownership interest must be documented with the SFD via the Trawl Identification of Ownership Interest Form. SFD will not issue an MS/CV endorsement unless the Trawl Identification of Ownership Interest Form has been completed. NMFS may request additional information of the applicant as necessary to verify compliance with accumulation limits. Further, if SFD discovers through review of the Trawl Identification of Ownership Interest Form that a person owns or controls more than the accumulation limits, the person will be subject to divestiture provisions specified in paragraph (g)(3)(i)(D) of this section.

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(ii) *Catcher vessel usage limit.* No vessel may catch more than 30 percent of the mothership sector's whiting allocation.

(4) *Appeals.* An appeal to a MS/CV endorsed permit action follows the same process as the general permit appeals process defined at § 660.25(g), subpart C.

\* \* \* \* \*

(h) *Non-coop fishery—(1) Access to non-coop fishery allocation.* All vessels registered to the MS/CV endorsed permits assigned to the non-coop fishery

will have access to harvest and deliver the aggregate catch history assignment of all MS/CV permits assigned to the non-coop fishery.

(2) *Non-coop fishery closure.* The non-coop fishery will be closed by automatic action as specified at § 660.60(d) when the Pacific whiting or non-whiting allocations to the non-coop fishery have been reached or are projected to be reached.

(i) *Retention requirements.* Catcher vessels participating in the MS Coop Program may discard minor operational amounts of catch at sea if the observer has accounted for the discard (*i.e.*, a maximized retention fishery).

(j) *Observer requirements—(1) Observer coverage requirements.* (i) *Coverage.* (A) *Motherships.* Any vessel registered to a MS permit 125 ft (38.1 m) LOA or longer must carry two NMFS-certified observers, and any vessel registered to a MS permit mothership shorter than 125 ft (38.1 m) LOA must carry one NMFS-certified observer, each day that the vessel is used to take, retain, receive, land, process, or transport groundfish.

(B) *Catcher vessels.* Any vessel delivering catch to any mothership must carry one NMFS-certified observer each day that the vessel is used to take groundfish.

(ii) *Observer workload—(A) Motherships.* The time required for the observer to complete sampling duties must not exceed 12 consecutive hours in each 24-hour period.

(B) *Catcher vessels.* If an observer is unable to perform their duties for any reason, the vessel is required to be in port within 36 hours of the last haul sampled by the observer.

(iii) *Refusal to board.* Any boarding refusal on the part of the observer or vessel is reported to the observer program and NOAA OLE by the observer provider. The observer must be available for an interview with the observer program or NOAA OLE if necessary.

(2) *Vessel responsibilities.* An operator and/or crew of a vessel required to carry an observer must provide:

(i) *Accommodations and food—(A) Motherships.* Provide accommodations and food that are equivalent to those provided for officers, engineers, foremen, deck-bosses or other management level personnel of the vessel.

(B) *Catcher vessels—(1) Accommodations and food for trips less than 24 hours* must be equivalent to those provided for the crew.

(2) *Accommodations and food for trips of 24 hours or more* must be

equivalent to those provided for the crew and must include berthing space, a space that is intended to be used for sleeping and is provided with installed bunks and mattresses. A mattress or futon on the floor or a cot is not acceptable if a regular bunk is provided to any crew member, unless other arrangements are approved in advance by the Regional Administrator or their designee.

(ii) *Safe conditions.* Motherships and Catcher Vessels must:

(A) Maintain safe conditions on the vessel for the protection of observers including adherence to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel including, but not limited to, rules of the road, vessel stability, emergency drills, emergency equipment, vessel maintenance, vessel general condition, and port bar crossings. An observer may refuse boarding or reboarding a vessel and may request a vessel return to port if operated in an unsafe manner or if unsafe conditions are indentified.

(B) *Have on board* a valid Commercial Fishing Vessel Safety Decal that certifies compliance with regulations found in 33 CFR Chapter I and 46 CFR Chapter I, a certificate of compliance issued pursuant to 46 CFR 28.710 or a valid certificate of inspection pursuant to 46 U.S.C. 3311.

(iii) *Computer hardware and software*—(A) Motherships must:

(1) Provide hardware and software pursuant to regulations at §§ 679.50(g)(1)(iii)(B)(1) through 679.50(g)(1)(iii)(B)(3).

(2) Provide the observer(s) access to a computer required under paragraph (j)(2)(iii)(A) of this section, and that is connected to a communication device that provides a point-to-point connection to the NMFS host computer.

(3) Ensure that the mothership has installed the most recent release of NMFS data entry software provided by the Regional Administrator, or other approved software prior to the vessel receiving, catching or processing IFQ species.

(4) Ensure that the communication equipment required in paragraph (j)(2)(iii) of this section and that is used by observers to enter and transmit data, is fully functional and operational. “Functional” means that all the tasks and components of the NMFS supplied, or other approved, software described at paragraph (j)(2)(iii) of this section and the data transmissions to NMFS can be executed effectively aboard the vessel by the communications equipment.

(B) *Catcher vessels.* [Reserved]

(iv) *Vessel position.* Allow observer(s) access to the vessel’s navigation equipment and personnel, on request, to determine the vessel’s position.

(v) *Access.* Allow observer(s) free and unobstructed access to the vessel’s bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(vi) *Prior notification.* Notify observer(s) at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer.

(vii) *Records.* Allow observer(s) to inspect and copy any State or Federal logbook maintained voluntarily or as required by regulation.

(viii) *Assistance.* Provide all other reasonable assistance to enable observer(s) to carry out their duties, including, but not limited to:

(A) Measuring decks, codends, and holding bins.

(B) Providing the observer(s) with a safe work area.

(C) Collecting samples of catch.

(D) Collecting and carrying baskets of fish.

(E) Allowing the observer(s) to collect biological data and samples.

(F) Providing adequate space for storage of biological samples.

(ix) *Sample station and operational requirements.*

(A) *Motherships.* To allow the observer to carry out required duties, the vessel owner must provide an observer sampling station that meets the following requirements:

(1) *Accessibility.* The observer sampling station must be available to the observer at all times.

(2) *Location.* The observer sampling station must be located within 4 m of the location from which the observer samples unsorted catch.

(3) *Access.* Unobstructed passage must be provided between the observer sampling station and the location where the observer collects sample catch.

(4) *Minimum work space.* The observer must have a working area of at least 4.5 square meters, including the observer’s sampling table, for sampling and storage of fish to be sampled. The observer must be able to stand upright and have a work area at least 0.9 m deep in the area in front of the table and scale.

(5) *Table.* The observer sampling station must include a table at least 0.6 m deep, 1.2 m wide and 0.9 m high and no more than 1.1 m high. The entire surface area of the table must be

available for use by the observer. Any area for the observer sampling scale is in addition to the minimum space requirements for the table. The observer’s sampling table must be secured to the floor or wall.

(6) *Diverter board.* The conveyor belt conveying unsorted catch must have a removable board (“diverter board”) to allow all fish to be diverted from the belt directly into the observer’s sampling baskets. The diverter board must be located downstream of the scale used to weigh total catch. At least 1 m of accessible belt space, located downstream of the scale used to weigh total catch, must be available for the observer’s use when sampling.

(7) *Other requirements.* The sampling station must be in a well-drained area that includes floor grating (or other material that prevents slipping), lighting adequate for day or night sampling, and a hose that supplies fresh or sea water to the observer.

(8) *Observer sampling scale.* The observer sample station must include a NMFS-approved platform scale (pursuant to requirements at § 679.28(j)(2)) with a capacity of at least 50 kg located within 1 m of the observer’s sampling table. The scale must be mounted so that the weighing surface is no more than 0.7 m above the floor.

(B) *Catcher vessels.* To allow the observer to carry out the required duties, the vessel owner must provide an observer sampling station that is:

(1) *Accessible.* The observer sampling station must be available to the observer at all times.

(2) *Limits hazards.* To the extent possible, the area should be free and clear of hazards including, but not limited to, moving fishing gear, stored fishing gear, inclement weather conditions, and open hatches.

(x) *Transfer at-sea.* Observers may be transferred at-sea between motherships, between motherships and catcher-processors, or between a mothership and a catcher vessel. Transfers at-sea between catcher vessels is prohibited. For transfers, both vessels must:

(A) Ensure that transfers of observers at sea via small boat under its own power are carried out during daylight hours, under safe conditions, and with the agreement of observers involved.

(B) Notify observers at least 3 hours before observers are transferred, such that the observers can finish any sampling work, collect personal belongings, equipment, and scientific samples.

(C) Provide a safe pilot ladder and conduct the transfer to ensure the safety of observers during transfers.

(D) Provide an experienced crew member to assist observers in the small boat in which any transfer is made.

(3) *Procurement of observer services*—(i) *Motherships*—(A) Owners of vessels required to carry observers under paragraph (j)(1)(i) of this section must arrange for observer services from a permitted observer provider, except that:

(1) Vessels are required to procure observer services directly from NMFS when NMFS has determined and given notification that the vessel must carry NMFS staff or an individual authorized by NMFS in lieu of an observer provided by a permitted observer provider.

(2) Vessels are required to procure observer services directly from NMFS and a permitted observer provider when NMFS has determined and given notification that the vessel must carry NMFS staff and/or individuals authorized by NMFS, in addition to an observer provided by a permitted observer provider.

(B) [Reserved]

(ii) *Catcher vessels*—(A) Owners of vessels required to carry observers under paragraph (j)(1)(i) of this section must arrange for observer services from a permitted observer provider, except that:

(1) Vessels are required to procure observer services directly from NMFS when NMFS has determined and given notification that the vessel must carry NMFS staff or an individual authorized by NMFS in lieu of an observer provided by a permitted observer provider.

(2) Vessels are required to procure observer services directly from NMFS and a permitted observer provider when NMFS has determined and given notification that the vessel must carry NMFS staff and/or individuals authorized by NMFS, in addition to an observer provided by a permitted observer provider.

(B) [Reserved]

(4) *Application to become an observer provider*—(i) *Mothership observers*. Any observer provider holding a valid permit issued by the North Pacific Groundfish Observer Program in 2010 can supply observer services and will be issued a West Coast Groundfish Observer Program permit.

(ii) *Catcher vessel observers*. [Reserved]

(5) *Observer provider responsibilities*—(i) *Provide qualified candidates to serve as observers*. Observer providers must provide qualified candidates to serve as observers. To be qualified, a candidate must have:

(A) A Bachelor's degree or higher from an accredited college or university with a major in one of the natural sciences;

(B) Successfully completed a minimum of 30 semester hours or equivalent in applicable biological sciences with extensive use of dichotomous keys in at least one course;

(C) Successfully completed at least one undergraduate course each in math and statistics with a minimum of 5 semester hours total for both; and

(D) Computer skills that enable the candidate to work competently with standard database software and computer hardware.

(ii) *Prior to hiring an observer candidate*—(A) *Motherships*.

(1) The observer provider must provide the candidate a copy of NMFS-provided pamphlets, information and other literature describing observer duties (*i.e.* The At-Sea Hake Observer Program's Observer Manual) prior to hiring the candidate. Observer job information is available from the Observer Program Office's Web site at <http://www.nwfsc.noaa.gov/research/divisions/ram/observer/atseahake.cfm>.

(2) *Observer contracts*. The observer provider must have a written contract or a written contract addendum that is signed by the observer and observer provider prior to the observer's deployment with the following clauses:

(i) That all the observer's catch reports required to be sent while deployed are delivered to the Observer Program Office as specified by written Observer Program instructions;

(ii) That the observer inform the observer provider prior to the time of embarkation if he or she is experiencing any new mental illness or physical ailments or injury that would prevent the candidate from performing their assigned duties of an observer and which were not documented in the physician's statement submitted by the candidate;

(iii) That the observer completes duties in a timely manner. An observer provider must ensure that observers employed by that observer provider do the following in a complete and timely manner: Once an observer is scheduled for a final deployment debriefing, submit to NMFS all data, reports required by the Observer Manual, and biological samples from the observer's deployment by the completion of the electronic vessel and/or processor survey(s); report for the scheduled debriefing and complete all debriefing responsibilities; report to the observer program office and the NOAA OLE any refusal to board an assigned vessel.

(iv) That all sampling and safety gear will be returned to the Observer Program Office.

(B) *Catcher vessels*—(1) Provide the candidate a copy of NMFS-provided pamphlets, information and other literature describing observer duties, for example, the West Coast Groundfish Observer Program's sampling manual. Observer job information is available from the Observer Program Office's Web site at <http://www.nwfsc.noaa.gov/research/divisions/ram/observer/index.cfm>.

(2) For each observer employed by an observer provider, have a written contract or a written contract addendum that is signed by the observer and observer provider prior to the observer's deployment with the following clauses:

(i) That all of the observer's in-season catch messages and catch reports between the observer and NMFS are delivered to the Observer Program Office as specified by the Observer Program instructions;

(ii) That the observer inform the observer provider prior to the time of embarkation if he or she is experiencing any new mental illness or physical ailments or injury since submission of the physician's statement as required as a qualified observer candidate that would prevent him or her from performing their assigned duties;

(iii) That the observer completes a basic cardiopulmonary resuscitation/first aid course prior to the end of the NMFS West Coast Groundfish Observer Training class.

(iii) *Observers provided to vessels*—(A) *Motherships*. Observers provided to mothership vessels:

(1) Must have a valid North Pacific groundfish observer certification endorsements and an At-Sea Hake Observer Program certification;

(2) Must not have not informed the provider prior to the time of embarkation that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement that would prevent him or her from performing his or her assigned duties; and

(3) Must have successfully completed all NMFS required training and briefing before deployment.

(B) *Catcher vessels*. Observers provided to catcher vessels:

(1) Must have a valid West Coast Groundfish observer certification;

(2) Must have not informed the provider prior to the time of embarkation that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's

statement, as required in paragraph (j)(5)(x)(B)(2) of this section that would prevent him or her from performing his or her assigned duties; and

(3) Must have successfully completed all NMFS required training and briefing before deployment.

(iv) *Respond to industry requests for observers.* An observer provider must provide an observer for deployment pursuant to the terms of the contractual relationship with the vessel to fulfill vessel requirements for observer coverage specified at paragraph (j)(1)(i) of this section. An alternate observer must be supplied in each case where injury or illness prevents the observer from performing his or her duties or where the observer resigns prior to completion of his or her duties. If the observer provider is unable to respond to an industry request for observer coverage from a vessel for whom the provider is in a contractual relationship due to lack of available observers by the estimated embarking time of the vessel, the provider must report it to the observer program at least 4 hours prior to the vessel's estimated embarking time.

(v) *Provide observer salaries and benefits.* An observer provider must provide to its observer employees salaries and any other benefits and personnel services in accordance with the terms of each observer's contract.

(vi) *Provide observer deployment logistics—(A) Motherships.* An observer provider must provide to each of its observers under contract:

(1) All necessary transportation, including arrangements and logistics, of observers to the initial location of deployment, to all subsequent vessel assignments during that deployment, and to the debriefing location when a deployment ends for any reason; and

(2) Lodging, per diem, and any other services necessary to observers assigned to fishing vessels.

(3) An observer under contract may be housed on a vessel to which he or she is assigned:

(i) Prior to their vessel's initial departure from port;

(ii) For a period not to exceed twenty-four hours following the completion of an offload when the observer has duties and is scheduled to disembark; or

(iii) For a period not to exceed twenty-four hours following the vessel's arrival in port when the observer is scheduled to disembark.

(iv) During all periods an observer is housed on a vessel, the observer provider must ensure that the vessel operator or at least one crew member is aboard.

(v) An observer under contract who is between vessel assignments must be provided with shoreside accommodations pursuant to the terms of the contract between the observer provider and the observers. If the observer provider is responsible for providing accommodations under the contract with the observer, the accommodations must be at a licensed hotel, motel, bed and breakfast, or other shoreside accommodations for the duration of each period between vessel or shoreside assignments. Such accommodations must include an assigned bed for each observer and no other person may be assigned that bed for the duration of that observer's stay. Additionally, no more than four beds may be in any room housing observers at accommodations meeting the requirements of this section.

(B) *Catcher vessels.* An observer provider must ensure each of its observers under contract:

(1) Has an individually assigned mobile or cell phones, in working order, for all necessary communication. An observer provider may alternatively compensate observers for the use of the observer's personal cell phone or pager for communications made in support of, or necessary for, the observer's duties.

(2) Calls into the NMFS deployment hotline upon departing and arriving into port for each trip to leave the following information: Observer name, phone number, vessel departing on, expected trip end date and time.

(3) Remains available to NOAA OLE and the Observer Program until the conclusion of debriefing.

(4) Receives all necessary transportation, including arrangements and logistics, of observers to the initial location of deployment, to all subsequent vessel assignments during that deployment, and to the debriefing location when a deployment ends for any reason; and

(5) Receives lodging, per diem, and any other services necessary to observers assigned to fishing vessels.

(i) An observer under contract may be housed on a vessel to which he or she is assigned: Prior to their vessel's initial departure from port; for a period not to exceed 24 hours following the completion of an offload when the observer has duties and is scheduled to disembark; or for a period not to exceed twenty-four hours following the vessel's arrival in port when the observer is scheduled to disembark.

(ii) During all periods an observer is housed on a vessel, the observer provider must ensure that the vessel operator or at least one crew member is aboard.

(iii) Otherwise, each observer between vessels, while still under contract with a permitted observer provider, shall be provided with accommodations in accordance with the contract between the observer and the observer provider. If the observer provider is responsible for providing accommodations under the contract with the observer, the accommodations must be at a licensed hotel, motel, bed and breakfast, or other shoreside accommodations that has an assigned bed for each observer that no other person may be assigned to for the duration of that observer's stay. Additionally, no more than four beds may be in any room housing observers at accommodations meeting the requirements of this section.

(vii) *Observer deployment limitations—(A) Motherships.* Unless alternative arrangements are approved by the Observer Program Office, an observer provider must not:

(1) Deploy an observer on the same vessel more than 90 days in a 12-month period;

(2) Deploy an observer for more than 90 days in a single deployment;

(3) Include more than four vessels assignments in a single deployment, or

(4) Disembark an observer from a vessel before that observer has completed his or her sampling or data transmission duties.

(B) *Catcher vessels.* Not deploy an observer on the same vessel more than 90 calendar days in a 12-month period.

(viii) *Verify vessel's safety decal.* An observer provider must verify that a vessel has a valid USCG safety decal as required under paragraph (j)(2)(ii)(B) of this section before an observer may get underway aboard the vessel. One of the following acceptable means of verification must be used to verify the decal validity:

(A) The observer provider or employee of the observer provider, including the observer, visually inspects the decal aboard the vessel and confirms that the decal is valid according to the decal date of issuance; or

(B) The observer provider receives a hard copy of the USCG documentation of the decal issuance from the vessel owner or operator.

(ix) *Maintain communications with observers.* An observer provider must have an employee responsible for observer activities on call 24 hours a day to handle emergencies involving observers or problems concerning observer logistics, whenever observers are at sea, in transit, or in port awaiting vessel reassignment.

(x) *Maintain Communications With The Observer Program Office.* An observer provider must provide all of

the following information by electronic transmission (e-mail), fax, or other method specified by NMFS.

(A) *Motherships*—(1) *Training and briefing registration materials.* The observer provider must submit training and briefing registration materials to the Observer Program Office at least 5 business days prior to the beginning of a scheduled observer at-sea hake training or briefing session.

(i) Registration materials consist of the date of requested training or briefing with a list of observers including each observer's full name (*i.e.*, first, middle and last names).

(ii) *Projected observer assignments.* Prior to the observer's completion of the training or briefing session, the observer provider must submit to the Observer Program Office a statement of projected observer assignments that include the observer's name; vessel, gear type, and vessel/processor code; port of embarkation; and area of fishing.

(2) *Observer debriefing registration.* The observer provider must contact the At-Sea Hake Observer Program within 5 business days after the completion of an observer's deployment to schedule a date, time and location for debriefing. Observer debriefing registration information must be provided at the time of debriefing scheduling and must include the observer's name, cruise number, vessel name(s) and code(s), and requested debriefing date.

(3) *Observer provider contracts.* If requested, observer providers must submit to the Observer Program Office a completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services under paragraph (j)(1)(i) of this section. Observer providers must also submit to the Observer Program Office upon request, a completed and unaltered copy of the current or most recent signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract and any agreements or policies with regard to observer compensation or salary levels) between the observer provider and the particular entity identified by the Observer Program or with specific observers. The copies must be submitted to the Observer Program Office via fax or mail within 5 business days of the request. Signed and valid contracts include the contracts an observer provider has with:

(i) Vessels required to have observer coverage as specified at paragraph (j)(1)(i) of this section; and

(ii) Observers.

(4) *Change in observer provider management and contact information.*

Observer providers must submit notification of any other change to provider contact information, including but not limited to, changes in contact name, phone number, e-mail address, and address.

(5) *Other reports.* Reports of the following must be submitted in writing to the At-Sea Hake Observer Program Office by the observer provider via fax or e-mail address designated by the Observer Program Office within 24 hours after the observer provider becomes aware of the information:

(i) Any information regarding possible observer harassment;

(ii) Any information regarding any action prohibited under §§ 660.112 or 600.725(o), (t) and (u);

(iii) Any concerns about vessel safety or marine casualty under 46 CFR 4.05–1 (a)(1) through (7);

(iv) Any observer illness or injury that prevents the observer from completing any of his or her duties described in the observer manual; and

(v) Any information, allegations or reports regarding observer conflict of interest or breach of the standards of behavior described in observer provider policy.

(B) *Catcher vessels.* An observer provider must provide all of the following information by electronic transmission (e-mail), fax, or other method specified by NMFS.

(1) *Observer training, briefing, and debriefing registration materials.* This information must be submitted to the Observer Program Office at least 7 business days prior to the beginning of a scheduled West Coast groundfish observer certification training or briefing session.

(i) Training registration materials consist of the following: Date of requested training; a list of observer candidates that includes each candidate's full name (*i.e.*, first, middle and last names), date of birth, and gender; a copy of each candidate's academic transcripts and resume; a statement signed by the candidate under penalty of perjury which discloses the candidate's criminal convictions; projected observer assignments—Prior to the observer's completion of the training or briefing session, the observer provider must submit to the Observer Program Office a statement of projected observer assignments that include that includes each observer's name, current mailing address, e-mail address, phone numbers and port of embarkation (“home port”); and length of observers contract.

(ii) Briefing registration materials consist of the following: Date and type of requested briefing session; list of observers to attend the briefing session, that includes each observer's full name (first, middle, and last names); projected observer assignments—Prior to the observer's completion of the training or briefing session, the observer provider must submit to the Observer Program Office a statement of projected observer assignments that include that includes each observer's name, current mailing address, e-mail address, phone numbers and port of embarkation (“home port”); and length of observer contract.

(iii) *Debriefing.* The West Coast Groundfish Observer Program will notify the observer provider which observers require debriefing and the specific time period the provider has to schedule a date, time, and location for debriefing. The observer provider must contact the West Coast Groundfish Observer program within 5 business days by telephone to schedule debriefings. Observer providers must immediately notify the observer program when observers end their contract earlier than anticipated.

(2) *Physical examination.* A signed and dated statement from a licensed physician that he or she has physically examined an observer or observer candidate. The statement must confirm that, based on that physical examination, the observer or observer candidate does not have any health problems or conditions that would jeopardize that individual's safety or the safety of others while deployed, or prevent the observer or observer candidate from performing his or her duties satisfactorily. The statement must declare that, prior to the examination, the physician was made aware of the duties of the observer and the dangerous, remote, and rigorous nature of the work by reading the NMFS-prepared information. The physician's statement must be submitted to the Observer Program Office prior to certification of an observer. The physical exam must have occurred during the 12 months prior to the observer's or observer candidate's deployment. The physician's statement will expire 12 months after the physical exam occurred. A new physical exam must be performed, and accompanying statement submitted, prior to any deployment occurring after the expiration of the statement.

(3) *Certificates of insurance.* Copies of “certificates of insurance,” that names the NMFS Observer Program leader as the “certificate holder”, shall be submitted to the Observer Program Office by February 1 of each year. The



certificates of insurance shall verify the following coverage provisions and state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled.

(i) Maritime Liability to cover "seamen's" claims under the Merchant Marine Act (Jones Act) and General Maritime Law (\$1 million minimum).

(ii) Coverage under the U.S. Longshore and Harbor Workers' Compensation Act (\$1 million minimum).

(iii) States Worker's Compensation as required.

(iv) Commercial General Liability.

(4) *Observer provider contracts.* If requested, observer providers must submit to the Observer Program Office a completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services under paragraph (j)(1)(i) of this section. Observer providers must also submit to the Observer Program Office upon request, a completed and unaltered copy of the current or most recent signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract and any agreements or policies with regard to observer compensation or salary levels) between the observer provider and the particular entity identified by the Observer Program or with specific observers. The copies must be submitted to the Observer Program Office via fax or mail within 5 business days of the request. Signed and valid contracts include the contracts an observer provider has with:

(i) Vessels required to have observer coverage as specified at paragraph (j)(1)(i) of this section; and

(ii) Observers.

(5) *Change in observer provider management and contact information.* An observer provider must submit to the Observer Program office any change of management or contact information submitted on the provider's permit application under paragraphs (j)(4) of this section within 30 days of the effective date of such change.

(6) *Boarding refusals.* The observer provider must report to NMFS any trip that has been refused by an observer within 24 hours of the refusal.

(7) *Biological samples.* The observer provider must ensure that biological samples are stored/handled properly prior to delivery/transport to NMFS.

(8) *Observer status report.* Each Tuesday, observer providers must provide NMFS with an updated list of

contact information for all observers that includes the observer's name, mailing address, e-mail address, phone numbers, port of embarkation ("home port"), fishery deployed the previous week and whether or not the observer is "in service," indicating when the observer has requested leave and/or is not currently working for the provider.

(9) Providers must submit to NMFS, if requested, copies of any information developed and used by the observer providers distributed to vessels, such as informational pamphlets, payment notification, description of observer duties, etc.

(10) *Other reports.* Reports of the following must be submitted in writing to the At-Sea Hake or West Coast Groundfish Observer Program Office by the observer provider via fax or e-mail address designated by the Observer Program Office within 24 hours after the observer provider becomes aware of the information:

(i) Any information regarding possible observer harassment;

(ii) Any information regarding any action prohibited under §§ 660.112 or 600.725(o), (t) and (u);

(iii) Any concerns about vessel safety or marine casualty under 46 CFR 4.05–1 (a)(1) through (7);

(iv) Any observer illness or injury that prevents the observer from completing any of his or her duties described in the observer manual; and

(v) Any information, allegations or reports regarding observer conflict of interest or breach of the standards of behavior described in observer provider policy.

(xi) *Replace lost or damaged gear.* An observer provider must replace all lost or damaged gear and equipment issued by NMFS to an observer under contract to that provider. All replacements must be in accordance with requirements and procedures identified in writing by the Observer Program Office.

(xii) *Maintain confidentiality of information.* An observer provider must ensure that all records on individual observer performance received from NMFS under the routine use provision of the Privacy Act or as otherwise required by law remain confidential and are not further released to anyone outside the employ of the observer provider company to whom the observer was contracted except with written permission of the observer.

(xiii) *Limitations on conflict of interest.* Observer providers must meet limitations on conflict of interest. Observer providers:

(A) Must not have a direct financial interest, other than the provision of observer services, in the North Pacific or

Pacific Coast Groundfish fishery managed under an FMP for the waters off the coasts of Alaska, Washington, Oregon, and California, including, but not limited to,

(1) Any ownership, mortgage holder, or other secured interest in a vessel, or shoreside processor facility involved in the catching, taking, harvesting or processing of fish,

(2) Any business involved with selling supplies or services to any vessel or shoreside processors participating in a fishery managed pursuant to an FMP in the waters off the coasts of Alaska, California, Oregon, and Washington, or

(3) Any business involved with purchasing raw or processed products from any vessel or shoreside processor participating in a fishery managed pursuant to an FMP in the waters off the coasts of Alaska, California, Oregon, and Washington.

(B) Must assign observers without regard to any preference by representatives of vessels other than when an observer will be deployed.

(C) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value except for compensation for providing observer services from anyone who conducts fishing or fish processing activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of observer providers.

(xiv) *Observer conduct and behavior.* Observer providers must develop and maintain a policy addressing observer conduct and behavior for their employees that serve as observers. The policy shall address the following behavior and conduct regarding:

(A) Observer use of alcohol;

(B) Observer use, possession, or distribution of illegal drugs and;

(C) Sexual contact with personnel of the vessel or processing facility to which the observer is assigned, or with any vessel or processing plant personnel who may be substantially affected by the performance or nonperformance of the observer's official duties.

(D) An observer provider shall provide a copy of its conduct and behavior policy by February 1 of each year, to: Observers, observer candidates and; the Observer Program Office.

(xv) *Refusal to deploy an observer.* Observer providers may refuse to deploy an observer on a requesting vessel if the observer provider has determined that the requesting vessel is inadequate or unsafe pursuant to those regulations described at § 600.746 or U.S. Coast Guard and other applicable rules, regulations, statutes, or guidelines



pertaining to safe operation of the vessel.

(6) *Observer certification and responsibilities.*

(i) *Applicability.* Observer certification authorizes an individual to fulfill duties as specified in writing by the NMFS Observer Program Office while under the employ of a NMFS-permitted observer provider and according to certification endorsements as designated under paragraph (j)(6)(iii) of this section.

(ii) *Observer certification official.* The Regional Administrator will designate a NMFS observer certification official who will make decisions for the Observer Program Office on whether to issue or deny observer certification.

(iii) *Certification requirements.*

(A) *Initial certification.* NMFS may certify individuals who, in addition to any other relevant considerations:

(1) Are employed by an observer provider company permitted pursuant to § 679.50 at the time of the issuance of the certification;

(2) Have provided, through their observer provider:

(i) Information identified by NMFS at § 679.50 regarding an observer candidate's health and physical fitness for the job;

(ii) Meet all observer education and health standards as specified in § 679.50 and

(iii) Have successfully completed NMFS-approved training as prescribed by the At-Sea Hake and/or the West Coast Groundfish Observer Program. Successful completion of training by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Observer Program; and having not been decertified under paragraph (j)(6)(ix) of this section, or pursuant to § 679.50.

(B) [Reserved]

(iv) *Denial of a certification.* The NMFS observer certification official will issue a written determination denying observer certification if the candidate fails to successfully complete training, or does not meet the qualifications for certification for any other relevant reason.

(v) *Issuance of an observer certification.* An observer certification will be issued upon determination by the observer certification official that the candidate has successfully met all requirements for certification as specified in paragraph (j)(6)(iii) of this

section. The following endorsements must be obtained, in addition to observer certification, in order for an observer to deploy.

(A) *Motherships*—(1) *North Pacific Groundfish Observer Program certification training endorsement.* A certification training endorsement signifies the successful completion of the training course required to obtain observer certification. This endorsement expires when the observer has not been deployed and performed sampling duties as required by the Observer Program Office for a period of time, specified by the Observer Program, after his or her most recent debriefing. The observer can renew the endorsement by successfully completing certification training once more.

(2) *North Pacific Groundfish Observer Program annual general endorsements.* Each observer must obtain an annual general endorsement to their certification prior to his or her first deployment within any calendar year subsequent to a year in which a certification training endorsement is obtained. To obtain an annual general endorsement, an observer must successfully complete the annual briefing, as specified by the Observer Program. All briefing attendance, performance, and conduct standards required by the Observer Program must be met.

(3) *North Pacific Groundfish Observer Program deployment endorsements.* Each observer who has completed an initial deployment after certification or annual briefing must receive a deployment endorsement to their certification prior to any subsequent deployments for the remainder of that year. An observer may obtain a deployment endorsement by successfully completing all pre-cruise briefing requirements. The type of briefing the observer must attend and successfully complete will be specified in writing by the Observer Program during the observer's most recent debriefing.

(4) *At-Sea Hake Observer Program endorsements.* A Pacific hake fishery endorsement is required for purposes of performing observer duties aboard vessels that process groundfish at sea in the Pacific whiting fishery. A Pacific whiting fishery endorsement to an observer's certification may be obtained by meeting the following requirements:

(i) Be a prior NMFS-certified observer in the groundfish fisheries off Alaska;

(ii) Receive an evaluation by NMFS for his or her most recent deployment that indicated that the observer's performance met Observer Program expectations for that deployment;

successfully complete a NMFS-approved observer training and/or Pacific whiting briefing as prescribed by the Observer Program; and comply with all of the other requirements of this section.

(B) *Catcher vessels.* The following endorsements must be obtained in addition to observer certification, in order for an observer to deploy.

(1) *West Coast Groundfish Observer Program training certification endorsement.* A training certification endorsement signifies the successful completion of the training course required to obtain observer certification. This endorsement expires when the observer has not been deployed and performed sampling duties as required by the observer Program office for a period of time, specified by the Observer Program, after his or her most recent debriefing. The observer can renew the endorsement by successfully completing training once more.

(2) *West Coast Groundfish Observer Program annual general endorsement.* Each observer must obtain an annual general endorsement to their certification prior to his or her first deployment within any calendar year subsequent to a year in which a training certification endorsement is obtained. To obtain an annual general endorsement, an observer must successfully complete the annual briefing, as specified by the Observer Program. All briefing attendance, performance, and conduct standards required by the Observer Program must be met.

(3) *West Coast Groundfish Observer Program deployment endorsement.* Each observer who has completed an initial deployment after their certification or annual briefing must receive a deployment endorsement to their certification prior to any subsequent deployments for the remainder of that year. An observer may obtain a deployment endorsement by successfully completing all briefing requirements, when applicable. The type of briefing the observer must attend and successfully complete will be specified in writing by the Observer Program during the observer's most recent debriefing.

(vi) *Maintaining the validity of observer certification.* After initial issuance, an observer must keep their certification valid by meeting all of the following requirements specified below:

(A) *Motherships*—(1) Successfully perform their assigned duties as described in the Observer Manual or other written instructions from the Observer Program Office including calling into the NMFS deployment

hotline upon departing and arriving into port each trip to leave the following information: Observer name, phone number, vessel name departing on, date and time of departure and date and time of expected return.

(2) Accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.

(3) Not disclose collected data and observations made on board the vessel or in the processing facility to any person except the owner or operator of the observed vessel or an authorized officer or NMFS.

(4) Successfully complete NMFS-approved annual briefings as prescribed by the At-Sea Hake Observer Program.

(5) Successful completion of briefing by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other briefing requirements established by the Observer Program.

(6) Successfully meet all expectations in all debriefings including reporting for assigned debriefings.

(7) Submit all data and information required by the observer program within the program's stated guidelines.

(B) *Catcher vessels.* After initial issuance, an observer must keep their certification valid by meeting all of the following requirements specified below:

(1) Successfully perform their assigned duties as described in the Observer Manual or other written instructions from the Observer Program Office including calling into the NMFS deployment hotline upon departing and arriving into port each trip to leave the following information: Observer name, phone number, vessel name departing on, date and time of departure and date and time of expected return.

(2) Accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.

(3) Not disclose collected data and observations made on board the vessel or in the processing facility to any person except the owner or operator of the observed vessel or an authorized officer or NMFS.

(4) Successfully complete NMFS-approved annual briefings as prescribed by the West Coast Groundfish Observer Program.

(5) Successful completion of briefing by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other briefing requirements established by the Observer Program.

(6) Hold current basic cardiopulmonary resuscitation/first aid certification as per American Red Cross Standards.

(7) Successfully meet all expectations in all debriefings including reporting for assigned debriefings.

(8) Submit all data and information required by the observer program within the program's stated guidelines.

(9) Meet the minimum annual deployment period of 3 months at least once every 12 months.

[Alternative 1 for paragraph (j)(6)(vii) (Council-deemed)]

(vii) *Limitations on conflict of interest.* Observers:

(A) Must not have a direct financial interest in the vessels on which the observers are stationed, or in the vessels receiving deliveries from or making deliveries to those vessels, other than the provision of observer services.

(B) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS in the Pacific coast or North Pacific regions or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(C) May not serve as observers on any vessel owned or operated by a person who employed the observer in the last two years.

(D) May not solicit or accept employment as a crew member or an employee of a vessel or shoreside processor while employed by an observer provider.

(E) Provisions for remuneration of observers under this section do not constitute a conflict of interest.

[Alternative 2 for paragraph (j)(6)(vii) (NMFS-proposed)]

(vii) *Limitations on conflict of interest.* Observers:

(A) Must not have a direct financial interest, other than the provision of observer services, in a fishery managed pursuant to an FMP for the waters off the coast of Alaska, or in a Pacific Coast fishery managed by either the State or Federal governments in waters off

Washington, Oregon, or California, including but not limited to:

(1) Any ownership, mortgage holder, or other secured interest in a vessel, shore-based or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish,

(2) Any business involved with selling supplies or services to any vessel, shore-based or floating stationary processing facility; or

(3) Any business involved with purchasing raw or processed products from any vessel, shore-based or floating stationary processing facilities.

(B) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS in the Pacific coast or North Pacific regions or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(C) May not serve as observers on any vessel or at any shore-based owned or operated by a person who employed the observer in the last two years.

(D) May not solicit or accept employment as a crew member or an employee of a vessel or shore-based processor while employed by an observer provider.

(E) Provisions for remuneration of observers under this section do not constitute a conflict of interest.

(viii) *Standards of behavior.* (A) Observers must:

(1) Perform their assigned duties as described in the Observer Manual or other written instructions from the Observer Program Office.

(2) Report to the observer program office and the NMFS OLE any time they refuse to board.

(3) Accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.

(4) Not disclose collected data and observations made on board the vessel or in the processing facility to any person except the owner or operator of the observed vessel or processing facility, an authorized officer, or NMFS.

(B) [Reserved]

(ix) *Suspension and decertification—*

(A) *Suspension and decertification review official.* The Regional Administrator (or a designee) will designate an observer suspension and decertification review official(s), who will have the authority to review observer certifications and issue initial administrative determinations of

observer certification suspension and/or decertification.

(B) *Causes for suspension or decertification.* The suspension/decertification official may initiate suspension or decertification proceedings against an observer:

(1) When it is alleged that the observer has not met applicable standards, including any of the following:

(i) Failed to satisfactorily perform duties of observers as specified in writing by the NMFS Observer Program; or

(ii) Failed to abide by the standards of conduct for observers, including conflicts of interest;

(2) Upon conviction of a crime or upon entry of a civil judgment for:

(i) Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties as specified in writing by the NMFS Observer Program;

(ii) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(iii) Commission of any other offense indicating a lack of integrity or honesty that seriously and directly affects the fitness of observers.

(C) *Issuance of initial administrative determination.* Upon determination that suspension or decertification is warranted, the suspension/decertification official will issue a written IAD to the observer via certified mail at the observer's most current address provided to NMFS. The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken.

(D) *Appeals.* A certified observer who receives an IAD that suspends or revokes his or her observer certification may appeal the IAD within 30 days of its issuance to the Office of Administrative Appeals pursuant to § 679.43.

(k) *MS coop failure*—(1) The Regional Administrator will determine that a permitted MS coop is considered to have failed if:

(i) The coop members dissolve the coop, or

(ii) The coop membership falls below 20 percent of the MS/CV endorsed limited entry permits, or

(iii) The coop agreement is no longer valid.

(2) If a permitted MS coop dissolves, the designated coop manager must notify NMFS SFD in writing of the dissolution of the coop.

(3) In the event of a NMFS determined coop failure, or reported failure, the designated coop manager will be

notified in writing about NMFS' determination. Upon notification of a coop failure, fishing under the MS coop permit will no longer be allowed. Should a coop failure determination be made during the Pacific whiting primary season for the mothership sector, unused allocation associated with the catch history will not be available for harvest by the coop that failed, by any former members of the coop that failed, or any other MS coop for the remainder of that calendar year.

24. In § 660.160:

a. Paragraphs (a)(3) and (a)(4) are revised;

b. Paragraphs (g) and (h) are removed;

c. Paragraphs (b) through (f) are redesignated as paragraphs (c) through (g);

d. A new paragraph (b) is added;

e. Text is added to the newly designated paragraph (c)(2);

f. New paragraphs (c)(3) through (c)(7), (d), and (e)(2) through (e)(4) are added;

g. The newly designated paragraphs (e)(1) introductory text, and (e)(5) are revised;

h. The newly designated paragraph (e)(7) is redesignated as paragraph (e)(6);

i. Text is added to the newly designated paragraph (g); and

j. A new paragraph (h) is added to read as follows:

**§ 660.160 Catcher/processor (C/P) Coop Program.**

\* \* \* \* \*

(a) \* \* \*

(3) Regulations set out in the following sections of subpart C: § 660.11 Definitions, § 660.12 Prohibitions, § 660.13 Recordkeeping and reporting, § 660.14 VMS requirements, § 660.15 Equipment requirements, § 660.16 Groundfish Observer Program, § 660.20 Vessel and gear identification, § 660.25 Permits, § 660.55 Allocations, § 660.60 Specifications and management measures, § 660.65 Groundfish harvest specifications, and §§ 660.70 through 660.79 Closed areas.

(4) Regulations set out in the following sections of subpart D: § 660.111 Trawl fishery definitions, § 660.112 Trawl fishery prohibitions, § 660.113 Trawl fishery recordkeeping and reporting, § 660.120 Trawl fishery crossover provisions, § 660.130 Trawl fishery management measures, and § 660.131 Pacific whiting fishery management measures.

\* \* \* \* \*

(b) *Participation requirements and responsibilities*—(1) *C/P vessels*—(i) *C/P vessel participation requirements.* A vessel is eligible to fish as a catcher/processor in the C/P Coop Program if:

(A) The vessel is registered to a C/P endorsed limited entry trawl permit.

(B) The vessel is not used to harvest fish as a catcher vessel in the mothership coop program in the same calendar year.

(C) The vessel is not used to fish as a mothership in the MS Coop Program in the same calendar year.

(ii) *C/P vessel responsibilities.* The owner and operator of a catcher/processor vessel must:

(A) *Recordkeeping and reporting.* Maintain a valid declaration as specified at § 660.13(d), subpart C; and maintain and submit all records and reports specified at § 660.113(d) including, economic data, scale tests records, and cease fishing reports.

(B) *Observers.* As specified at paragraph (g) of this section, procure observer services, maintain the appropriate level of coverage, and meet the vessel responsibilities.

(C) *Catch weighing requirements.* The owner and operator of a C/P vessel must:

(1) Ensure that all catch is weighed in its round form on a NMFS-approved scale that meets the requirements described in § 660.15(b), subpart C;

(2) Provide a NMFS-approved platform scale, belt scale, and test weights that meet the requirements described in § 660.15(b), subpart C.

(2) *C/P coops*—(i) *C/P coop participation requirements.* For a C/P coop to participate in the catcher/processor sector of the Pacific whiting fishery, the C/P coop must:

(A) Be issued a C/P coop permit;

(B) Be composed of all C/P endorsed limited entry permits and their owners;

(C) Be formed voluntarily;

(D) Be a legally recognized entity that represents its members; and

(E) Designate an individual as a coop manager.

(ii) *C/P coop responsibilities.* A C/P coop is responsible for:

(A) Applying for and being registered to a C/P coop permit;

(B) Organizing and coordinating harvest activities of vessels that fish for the coop;

(C) Allocating catch for use by specific coop members;

(D) Monitoring harvest activities and enforcing the catch limits of coop members;

(E) Submitting an annual report.

(F) Having a designated coop manager. The designated coop manager must:

(1) Serve as the contact person with NMFS and the Council;

(2) Be responsible for the annual distribution of catch and bycatch allocations among coop members;

(3) Prepare and submit an annual report on behalf of the coop; and,

(4) Be authorized to receive or respond to any legal process in which the coop is involved; and

(5) Notify NMFS if the coop dissolves.

(iii) *C/P coop compliance and joint/several liability.* A C/P coop must comply with the provisions of this section. The C/P coop, member limited entry permit owners, and owners and operators of vessels registered to member limited entry permits, are jointly and severally responsible for compliance with the provisions of this section. Pursuant to 15 CFR part 904, each C/P coop, member permit owner, and owner and operator of a vessel registered to a coop member permit may be charged jointly and severally for violations of the provisions of this section. For purposes of enforcement, a C/P coop is a legal entity that can be subject to NOAA enforcement action for violations of the provisions of this section.

\* \* \* \* \*

(c) \* \* \*

(2) *C/P Coop Program annual allocations.* The C/P Coop Program allocation of Pacific whiting is equal to the catcher/processor sector allocation. Only a single coop may be formed in the catcher/processor sector with the one permitted coop receiving the catcher/processor sector allocation.

(3) *Non-whiting groundfish species—*  
(i) Non-whiting groundfish species with a catcher/processor sector allocation are established in accordance with regulation at § 660.55(i). The pounds associated with each species will be provided when the coop permit is issued.

(ii) Groundfish species with at-sea sector set-asides will be managed on an annual basis unless there is a risk of a harvest specification being exceeded, unforeseen impact on another fisheries, or conservation concerns in which case inseason action may be taken. Set asides may be adjusted through the biennial specifications and management measures process as necessary.

(iii) Groundfish species not addressed under paragraph (i) or (ii) above, will be managed on an annual basis unless there is a risk of a harvest specification being exceeded, unforeseen impact on another fisheries, or conservation concerns in which case inseason action may be taken.

(4) *Halibut set-asides.* Annually a specified amount of the Pacific halibut will be held in reserve as a shared set-aside for bycatch in the at-sea Pacific whiting fisheries and the shorebased trawl sector south of 40°10' N lat.

(5) *Non-whiting groundfish species reapportionment.* The Regional Administrator may make available for harvest to the mothership sector of the Pacific whiting fishery, the amounts of the catcher/processor sector's non-whiting catch allocation remaining when the catcher/processor sector reaches its Pacific whiting allocation or participants in the catcher/processor sector do not intend to harvest the remaining sector allocation. The designated coop manager must submit a cease fishing report to NMFS indicating that harvesting has concluded for the year. At any time after greater than 80 percent of the catcher/processor sector Pacific whiting allocation has been harvested, the Regional Administrator may contact the designated coop manager to determine whether they intend to continue fishing. When considering redistribution of non-whiting catch allocation, the Regional Administrator will take into consideration the best available data on total projected fishing impacts.

(6) *Reaching the catcher/processor sector allocation.* When the catcher/processor sector allocation of Pacific whiting or non-whiting groundfish catch allocation is reached or is projected to be reached, further taking and retaining, receiving, or at-sea processing by a catcher/processor is prohibited. No additional unprocessed groundfish may be brought on board after at-sea processing is prohibited, but a catcher/processor may continue to process catch that was on board before at-sea processing was prohibited. The catcher/processor sector will close when the allocation of any one species is reached or projected to be reached.

(7) *Announcements.* The Regional Administrator will announce in the **Federal Register** when the catcher/processor sector allocation of Pacific whiting or non-whiting groundfish with an allocation is reached, or is projected to be reached, and specify the appropriate action. In order to prevent exceeding an allocation and to avoid underutilizing the resource, prohibitions against further taking and retaining, receiving, or at-sea processing of Pacific whiting, or reapportionment of non-whiting groundfish with allocations may be made effective immediately by actual notice to fishers and processors, by e-mail, Internet (<http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Whiting-Management/index.cfm>), phone, fax, letter, press release, and/or USCG Notice to Mariners (monitor channel 16 VHF), followed by publication in the **Federal Register**, in which instance public comment will be

sought for a reasonable period of time thereafter.

(d) *C/P coop permit and agreement—*  
(1) *Eligibility and registration—*(i) *Eligibility.* To be an eligible coop entity a group of C/P endorsed permit owners (coop members) must be a recognized entity under the laws of the United States or the laws of a State and that represents all of the coop members.

(ii) *Annual registration and deadline.* Each year, the coop entity must submit a complete application to NMFS for a C/P coop permit. The application must be submitted to NMFS by between February 1 and March 31 of the year in which it intends to participate. NMFS will not consider any applications received after March 31. A C/P coop permit expires on December 31 of the year in which it was issued.

(iii) *Application for a C/P coop permit.* The designated coop manager, on behalf of the coop entity, must submit a complete application form and include each of the items listed in paragraph (d)(1)(iii)(A) of this section. Only complete applications will be considered for issuance of a C/P coop permit. An application will not be considered complete if any required application fees and annual coop reports have not been received by NMFS. NMFS may request additional supplemental documentation as necessary to make a determination of whether to approve or disapprove the application. Application forms and instruction are available on the NMFS NWR Web site (<http://www.nwr.noaa.gov>) or by request from NMFS. The designated coop manager must sign the application acknowledging the responsibilities of a designated coop manager defined in paragraph (b)(2) of this section.

(A) *Coop agreement.* Signed copies of the coop agreement must be submitted to NMFS and the Council and available for public review before the coop is authorized to engage in fishing activities. A coop agreement must include all of the information listed in this paragraph to be considered a complete coop agreement. NMFS will only review complete coop agreements. A coop agreement will not be accepted unless it includes all of the required information; the descriptive items listed in this paragraph appear to meet the stated purpose; and information submitted is correct and accurate.

(1) *Coop agreement contents.* The coop agreement must be signed by the coop members (C/P endorsed permit owners) and include the following information:

(i) A list of all vessels registered to C/P endorsed permits that the member

permit owners intend to use for fishing under the C/P coop permit.

(ii) All C/P endorsed limited entry member permits identified by permit number.

(iii) A description of the coop's plan to adequately monitor and account for the catch of Pacific whiting and non-whiting groundfish allocations, and to monitor and account for the catch of prohibited species.

(iv) A clause stating that if a permit is transferred during the effective period of the co-op agreement, any new owners of that member permit would be coop members and are required to comply with membership restrictions in the coop agreement.

(v) A description of the coop's enforcement and penalty provisions adequate to maintain catch of Pacific whiting and non-whiting groundfish within the allocations.

(vi) A description of measures to reduce catch of overfished species.

(vii) A clause describing how the annual report will be produced to document the coop's catch, bycatch data, and any other significant activities undertaken by the coop during the year, and the submission deadlines for that report.

(viii) Identification of the designated coop manager.

(2) *Department of Justice correspondence.* Each coop must submit a letter to the Department of Justice requesting a business review letter on the fishery coop. Copies of the letter and any correspondence with the Department of Justice regarding the request must be included in the application to NMFS for a C/P coop permit.

(B) *Acceptance of a coop agreement—*(1) If NMFS does not accept the coop agreement, the coop permit application will be returned to the applicant with a letter stating the reasons the coop agreement was not accepted by NMFS.

(2) Coop agreements that are not accepted may be resubmitted for review by sufficiently addressing the deficiencies identified in the NMFS letter and resubmitting the entire coop permit application by the date specified in the NMFS letter.

(3) An accepted coop agreement that was submitted with the C/P coop permit application and for which a C/P coop permit was issued will remain in place through the end of the calendar year. The designated coop manager must resubmit a complete coop agreement to NMFS consistent with the coop agreement contents described in this paragraph if there is a material change to the coop agreement.

(4) Within 7 calendar days following a material change, the designated coop manager must notify NMFS of the material change. Within 30 calendar days, the designated coop manager must submit to NMFS the revised coop agreement with a letter that describes such changes. NMFS will review the material changes and provide a letter to the coop manager that either accepts the changes as given or does not accept the revised coop agreement with a letter stating the reasons that it was not accepted by NMFS. The coop may resubmit the coop agreement with further revisions to the material changes responding to NMFS concerns.

(iv) *Effective date of C/P coop permit.* A C/P coop permit will be effective on the date approved by NMFS and will allow fishing from the start of the C/P sector primary whiting season until the end of the calendar year or until one or more of the following events occur, whichever comes first:

(A) NMFS closes the C/P sector fishing season for the year or the designated coop manager notifies NMFS that the coop has completed fishing for the calendar year,

(B) The C/P coop has reached its Pacific whiting allocation,

(C) A material change to the coop agreement has occurred and the designated coop manager failed to notify NMFS within 7 calendar days of the material change and submit to NMFS the revised coop agreement with a letter that describes such changes within 30 calendar days, or

(D) NMFS has determined that a coop failure occurred.

(2) *Initial administrative determination.* For all complete applications, NMFS will issue an IAD that either approves or disapproves the application. If approved, the IAD will include a C/P coop permit. If disapproved, the IAD will provide the reasons for this determination.

(3) *Appeals.* An appeal to a C/P coop permit action follows the same process as the general permit appeals process defined at § 660.25(g), subpart C.

(4) *Fees.* The Regional Administrator is authorized to charge fees for administrative costs associated with the issuance of a C/P coop permit consistent with the provisions given at § 660.25(f), subpart C.

(5) *Cost recovery.* [Reserved]

(e) *C/P endorsed permit—*(1) *General.* Any vessel participating in the C/P sector of the non-Tribal primary Pacific whiting fishery during the season described at § 660.131(b) of this subpart must be registered to a valid limited entry permit with a C/P endorsement. A C/P endorsed permit is a limited entry

permit and is subject to the limited entry permit provisions given at § 660.25(b), subpart C.

\* \* \* \* \*

(2) *Renewal, change in permit ownership, vessel registration, or combination.*

(i) *Renewal.* A C/P endorsed permit must be renewed annually consistent with the limited entry permit regulations given at § 660.25(b)(4), subpart C. If a vessel registered to the C/P endorsed permit will operate as a mothership in the year for which the permit is renewed, the permit owner must make a declaration as part of the permit renewal that while participating in the whiting fishery they will operate solely as a mothership during the calendar year to which its limited entry permit applies. Any such declaration is binding on the vessel for the calendar year, even if the permit is transferred during the year, unless it is rescinded in response to a written request from the permit owner. Any request to rescind a declaration must be made by the permit holder and granted in writing by the Regional Administrator before any unprocessed whiting has been taken on board the vessel that calendar year.

(ii) *Change of permit ownership.* A C/P endorsed permit is subject to the limited entry permit change in permit ownership regulations given at § 660.25(b)(4), subpart C.

(iii) *Change of vessel registration.* A C/P endorsed permit is subject to the limited entry permit change of vessel registration regulations given at § 660.25(b)(4), subpart C.

(iv) *Combination.* If two or more permits are combined, the resulting permit is one permit with an increased size endorsement. A C/P endorsed permit that is combined with another limited entry trawl-endorsed permit that does not have a C/P endorsement will result in a single trawl limited entry permit with a C/P endorsement with a larger size endorsement. Any request to combine permits is subject to the provisions provided at § 660.25(b), including the combination formula for resulting size endorsements.

(3) *Appeals.* An appeal to a C/P endorsed permit action follows the same process as the general permit appeals process defined at § 660.25(g), subpart C.

(4) *Fees.* The Regional Administrator is authorized to charge fees for the administrative costs associated with review and issuance of a C/P endorsement consistent with the provisions at § 660.25(f), subpart C.

(5) *Cost recovery.* [Reserved]

\* \* \* \* \*

(g) *Observer requirements*—(1) *Observer coverage requirements*—(i) *Coverage*. Any vessel registered to a C/P endorsed limited entry trawl permit that is 125 ft (38.1 m) LOA or longer must carry two NMFS-certified observers, and any vessel registered to a C/P endorsed limited entry trawl permit that is shorter than 125 ft (38.1 m) LOA must carry one NMFS-certified observer, each day that the vessel is used to take, retain, receive, land, process, or transport groundfish.

(ii) *Observer workload*. The time required for the observer to complete sampling duties must not exceed 12 consecutive hours in each 24-hour period.

(iii) *Refusal to board*. Any boarding refusal on the part of the observer or vessel is reported to the observer program and NOAA OLE by the observer provider. The observer must be available for an interview with the observer program or NOAA OLE if necessary.

(2) *Vessel responsibilities*. An operator and/or crew of a vessel required to carry an observer must provide:

(i) *Accommodations and food*. Provide accommodations and food that are equivalent to those provided for officers, engineers, foremen, deck-bosses or other management level personnel of the vessel.

(ii) *Safe conditions*—(A) Maintain safe conditions on the vessel for the protection of observers including adherence to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel, including but not limited to, rules of the road, vessel stability, emergency drills, emergency equipment, vessel maintenance, vessel general condition, and port bar crossings. An observer may refuse boarding or reboarding a vessel and may request a vessel to return to port if operated in an unsafe manner or if unsafe conditions are identified.

(B) *Have on board* a valid Commercial Fishing Vessel Safety Decal that certifies compliance with regulations found in 33 CFR Chapter I and 46 CFR Chapter I, a certificate of compliance issued pursuant to 46 CFR 28.710 or a valid certificate of inspection pursuant to 46 U.S.C. 3311.

(iii) *Computer hardware and software*. Catcher/processor vessels must:

(A) Provide hardware and software pursuant to regulations at §§ 679.50(g)(1)(iii)(B)(1) through 679.50(g)(1)(iii)(B)(3).

(B) Provide the observer(s) access to a computer required under paragraph (g)(2)(iii) of this section that is

connected to a communication device that provides a point-to-point connection to the NMFS host computer.

(C) Ensure that the catcher/processor has installed the most recent release of NMFS data entry software provided by the Regional Administrator, or other approved software prior to the vessel receiving, catching or processing IFQ species.

(D) Ensure that the communication equipment required in paragraph (g)(2)(iii) of this section and used by observers to enter and transmit data, is fully functional and operational.

“Functional” means that all the tasks and components of the NMFS supplied, or other approved, software described at paragraph (g)(2)(iii) of this section and the data transmissions to NMFS can be executed effectively aboard the vessel by the communications equipment.

(iv) *Vessel position*. Allow observer(s) access to, the vessel’s navigation equipment and personnel, on request, to determine the vessel’s position.

(v) *Access*. Allow observer(s) free and unobstructed access to the vessel’s bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(vi) *Prior notification*. Notify observer(s) at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer.

(vii) *Records*. Allow observer(s) to inspect and copy any State or Federal logbook maintained voluntarily or as required by regulation.

(viii) *Assistance*. Provide all other reasonable assistance to enable observer(s) to carry out their duties, including, but not limited to:

(A) Measuring decks, codends, and holding bins.

(B) Providing the observer(s) with a safe work area.

(C) Collecting samples of catch when requested by the observer(s).

(D) Collecting and carrying baskets of fish when requested by the observer(s).

(E) Allowing the observer(s) to collect biological data and samples.

(F) Providing adequate space for storage of biological samples.

(ix) *Sample Station and Operational Requirements for catcher/processor vessels*. This paragraph contains the requirements for observer sampling stations. To allow the observer to carry out the required duties, the vessel owner must provide an observer sampling station that meets the following requirements:

(A) *Accessibility*. The observer sampling station must be available to the observer at all times.

(B) *Location*. The observer sampling station must be located within 4 m of the location from which the observer samples unsorted catch.

(C) *Access*. Unobstructed passage must be provided between the observer sampling station and the location where the observer collects sample catch.

(D) *Minimum work space*. The observer must have a working area of at least 4.5 square meters, including the observer’s sampling table, for sampling and storage of fish to be sampled. The observer must be able to stand upright and have a work area at least 0.9 m deep in the area in front of the table and scale.

(E) *Table*. The observer sampling station must include a table at least 0.6 m deep, 1.2 m wide and 0.9 m high and no more than 1.1 m high. The entire surface area of the table must be available for use by the observer. Any area for the observer sampling scale is in addition to the minimum space requirements for the table. The observer’s sampling table must be secured to the floor or wall.

(F) *Diverter board*. The conveyor belt conveying unsorted catch must have a removable board (“diverter board”) to allow all fish to be diverted from the belt directly into the observer’s sampling baskets. The diverter board must be located downstream of the scale used to weigh total catch. At least 1 m of accessible belt space, located downstream of the scale used to weight total catch, must be available for the observer’s use when sampling.

(G) *Other Requirements*. The sampling station must be in a well-drained area that includes floor grating (or other material that prevents slipping), lighting adequate for day or night sampling, and a hose that supplies fresh or sea water to the observer.

(H) *Observer Sampling Scale*. The observer sample station must include a NMFS-approved platform scale (pursuant to requirements at § 679.28(d)(5)) with a capacity of at least 50 kg located within 1 m of the observer’s sampling table. The scale must be mounted so that the weighing surface is no more than 0.7 m above the floor.

(x) *Transfer At-sea*. Observers may be transferred at-sea between catcher-processors, between catcher-processors and motherships, or between a catcher-processor and a catcher vessel. Transfers at-sea between catcher vessels is prohibited. For transfers, both vessels must:

(A) Ensure that transfers of observers at sea via small boat under its own power are carried out during daylight hours, under safe conditions, and with the agreement of observers involved.

(B) Notify observers at least 3 hours before observers are transferred, such that the observers can finish any sampling work, collect personal belongings, equipment, and scientific samples.

(C) Provide a safe pilot ladder and conduct the transfer to ensure the safety of observers during transfers.

(D) Provide an experienced crew member to assist observers in the small boat in which any transfer is made.

(3) *Procurement of observer services—*

(i) Owners of vessels required to carry observers under paragraph (g)(1) of this section must arrange for observer services from a permitted observer provider, except that:

(A) Vessels are required to procure observer services directly from NMFS when NMFS has determined and given notification that the vessel must carry NMFS staff or an individual authorized by NMFS in lieu of an observer provided by a permitted observer provider.

(B) Vessels are required to procure observer services directly from NMFS and a permitted observer provider when NMFS has determined and given notification that the vessel must carry NMFS staff and/or individuals authorized by NMFS, in addition to an observer provided by a permitted observer provider.

(ii) [Reserved]

(4) *Application to become an observer provider.* Any observer provider holding a valid permit issued by the North Pacific Groundfish Observer Program in 2010 can supply observer services and will be issued a West Coast Groundfish Observer Program permit.

(5) *Observer provider responsibilities—(i) Provide qualified candidates to serve as observers.* Observer providers must provide qualified candidates to serve as observers. To be qualified, a candidate must have:

(A) A Bachelor's degree or higher from an accredited college or university with a major in one of the natural sciences;

(B) Successfully completed a minimum of 30 semester hours or equivalent in applicable biological sciences with extensive use of dichotomous keys in at least one course;

(C) Successfully completed at least one undergraduate course each in math and statistics with a minimum of 5 semester hours total for both; and

(D) Computer skills that enable the candidate to work competently with standard database software and computer hardware.

(ii) *Prior to hiring observer candidate.* The observer provider must provide the candidate a copy of NMFS-provided pamphlets, information and other literature describing observer duties (*i.e.* The At-Sea Hake Observer Program's Observer Manual) prior to hiring an observer candidate. Observer job information is available from the Observer Program Office's Web site at <http://www.nwfsc.noaa.gov/research/divisions/ram/observer/atseahake.cfm>.

(iii) *Observer contracts.* The observer provider must have a written contract or a written contract addendum that is signed by the observer and observer provider prior to the observer's deployment with the following clauses:

(A) That all the observer's catch reports required to be sent while deployed are delivered to the Observer Program Office as specified by written Observer Program instructions;

(B) That the observer inform the observer provider prior to the time of embarkation if he or she is experiencing any new mental illness or physical ailment or injury that would prevent the candidate from performing the assigned duties of an observer and which were not documented in the physician's statement submitted by the candidate;

(C) That the observer completes duties in a timely manner. An observer provider must ensure that observers employed by that observer provider do the following in a complete and timely manner:

(1) Once an observer is scheduled for a final deployment debriefing, submit to NMFS all data, reports required by the Observer Manual, and biological samples from the observer's deployment by the completion of the electronic vessel and/or processor survey(s);

(2) Report for the scheduled debriefing and complete all debriefing responsibilities;

(3) Report to the observer program office and the NOAA OLE any refusal to board an assigned vessel, and

(4) Return all sampling and safety gear to the Observer Program Office.

(iv) *Observers provided to vessels.* Observers provided to catcher processors:

(A) Must have a valid North Pacific groundfish observer certification endorsements and an At-Sea Hake Observer Program certification;

(B) Must not have informed the provider prior to the time of embarkation that he or she is experiencing a mental illness or a physical ailment or injury developed

since submission of the physician's statement that would prevent him or her from performing his or her assigned duties; and

(C) Must have successfully completed all NMFS required training and briefing before deployment.

(v) *Respond to industry requests for observers.* An observer provider must provide an observer for deployment as requested pursuant to the contractual relationship with the vessel to fulfill vessel requirements for observer coverage specified under paragraph (g)(1) of this section. An alternate observer must be supplied in each case where injury or illness prevents the observer from performing his or her duties or where the observer resigns prior to completion of his or her duties. If the observer provider is unable to respond to an industry request for observer coverage from a vessel for whom the provider is in a contractual relationship due to lack of available observers by the estimated embarking time of the vessel, the provider must report it to the observer program at least 4 hours prior to the vessel's estimated embarking time.

(vi) *Provide observer salaries and benefits.* An observer provider must provide to its observer employees salaries and any other benefits and personnel services in accordance with the terms of each observer's contract.

(vii) *Provide observer deployment logistics.* An observer provider must provide to each of its observers under contract:

(A) All necessary transportation, including arrangements and logistics, of observers to the initial location of deployment, to all subsequent vessel assignments during that deployment, and to the debriefing location when a deployment ends for any reason; and

(B) Lodging, per diem, and any other services necessary to observers assigned to fishing vessels.

(1) An observer under contract may be housed on a vessel to which he or she is assigned:

(i) Prior to their vessel's initial departure from port;

(ii) For a period not to exceed 24 hours following the completion of an offload when the observer has duties and is scheduled to disembark; or

(iii) For a period not to exceed twenty-four hours following the vessel's arrival in port when the observer is scheduled to disembark.

(2) [Reserved]

(C) During all periods an observer is housed on a vessel, the observer provider must ensure that the vessel operator or at least one crew member is aboard.



(D) An observer under contract who is between vessel assignments must be provided with shoreside accommodations in accordance with the contract between the observer and the observer provider. If the provider is providing accommodations, it must be at a licensed hotel, motel, bed and breakfast, or other shoreside accommodations for the duration of each period between vessel or shoreside assignments. Such accommodations must include an assigned bed for each observer and no other person may be assigned that bed for the duration of that observer's stay. Additionally, no more than four beds may be in any room housing observers at accommodations meeting the requirements of this section.

(viii) *Deployment limitations.* An observer provider must not exceed observer deployment limitations specified in this paragraph unless alternative arrangements are approved by the Observer Program Office. An observer provider must not:

(A) Deploy an observer on the same vessel for more than 90 days in a 12-month period;

(B) Deploy an observer for more than 90 days in a single deployment;

(C) Include more than four vessel assignments in a single deployment, or

(D) Disembark an observer from a vessel before that observer has completed his or her sampling or data transmission duties.

(ix) *Verify vessel's safety decal.* An observer provider must verify that a vessel has a valid USCG safety decal as required under paragraph (g)(2)(ii)(B) of this section before an observer may get underway aboard the vessel. One of the following acceptable means of verification must be used to verify the decal validity:

(A) The observer provider or employee of the observer provider, including the observer, visually inspects the decal aboard the vessel and confirms that the decal is valid according to the decal date of issuance; or

(B) The observer provider receives a hard copy of the USCG documentation of the decal issuance from the vessel owner or operator.

(x) *Maintain communications with observers.* An observer provider must have an employee responsible for observer activities on call 24 hours a day to handle emergencies involving observers or problems concerning observer logistics, whenever observers are at sea, in transit, or in port awaiting vessel reassignment.

(xi) *Maintain communications with the observer program.* An observer provider must provide all of the

following information by electronic transmission (e-mail), fax, or other method specified by NMFS.

(A) *Observer training and briefing.* Observer training and briefing registration materials must be submitted to the Observer Program Office at least 5 business days prior to the beginning of a scheduled observer at-sea hake training or briefing session. Registration materials consist of the following: The date of requested training or briefing with a list of observers including each observer's full name (*i.e.*, first, middle and last names).

(B) *Projected observer assignments.* Prior to the observer's completion of the training or briefing session, the observer provider must submit to the Observer Program Office a statement of projected observer assignments that include the observer's name; vessel, gear type, and vessel/processor code; port of embarkation; and area of fishing.

(C) *Observer debriefing registration.* The observer provider must contact the At-Sea Hake Observer Program within 5 business days after the completion of an observer's deployment to schedule a date, time and location for debriefing. Observer debriefing registration information must be provided at the time of debriefing scheduling and must include the observer's name, cruise number, vessel name(s) and code(s), and requested debriefing date.

(D) *Observer provider contracts.* If requested, observer providers must submit to the Observer Program Office a completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services under paragraph (g)(1) of this section. Observer providers must also submit to the Observer Program Office upon request, a completed and unaltered copy of the current or most recent signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract and any agreements or policies with regard to observer compensation or salary levels) between the observer provider and the particular entity identified by the Observer Program or with specific observers. The copies must be submitted to the Observer Program Office via fax or mail within 5 business days of the request. Signed and valid contracts include the contracts an observer provider has with:

(1) Vessels required to have observer coverage as specified at paragraph (g)(1) of this section; and

(2) Observers.

(E) *Change in observer provider management and contact information.* Observer providers must submit notification of any other change to provider contact information, including but not limited to, changes in contact name, phone number, e-mail address, and address.

(F) *Other reports.* Reports of the following must be submitted in writing to the At-Sea Hake Observer Program Office by the observer provider via fax or e-mail address designated by the Observer Program Office within 24 hours after the observer provider becomes aware of the information:

(1) Any information regarding possible observer harassment;

(2) Any information regarding any action prohibited under §§ 660.112 or 600.725(o), (t) and (u);

(3) Any concerns about vessel safety or marine casualty under 46 CFR 4.05–1 (a)(1) through (7);

(4) Any observer illness or injury that prevents the observer from completing any of his or her duties described in the observer manual; and

(5) Any information, allegations or reports regarding observer conflict of interest or breach of the standards of behavior described in observer provider policy.

(xii) *Replace lost or damaged gear.* An observer provider must replace all lost or damaged gear and equipment issued by NMFS to an observer under contract to that provider. All replacements must be in accordance with requirements and procedures identified in writing by the Observer Program Office.

(xiii) *Maintain confidentiality of information.* An observer provider must ensure that all records on individual observer performance received from NMFS under the routine use provision of the Privacy Act or other applicable law remain confidential and are not further released to anyone outside the employ of the observer provider company to whom the observer was contracted except with written permission of the observer.

(xiv) *Conflict of interest.* An observer provider must meet limitations on conflict of interest. Observer providers:

(A) Must not have a direct financial interest, other than the provision of observer services, in a fishery managed under an FMP for the waters off the coasts of Alaska, Washington, Oregon, and California, including, but not limited to,

(1) Any ownership, mortgage holder, or other secured interest in a vessel or shoreside processor facility involved in the catching, taking, harvesting or processing of fish,



(2) Any business involved with selling supplies or services to any vessel or shoreside processors participating in a fishery managed pursuant to an FMP in the waters off the coasts of Alaska, California, Oregon, and Washington, or

(3) Any business involved with purchasing raw or processed products from any vessel or shoreside processor participating in a fishery managed pursuant to an FMP in the waters off the coasts of Alaska, California, Oregon, and Washington.

(B) Must assign observers without regard to any preference by representatives of vessels other than when an observer will be deployed.

(C) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value except for compensation for providing observer services from anyone who conducts fishing or fish processing activities that are regulated by NMFS in the Pacific coast or North Pacific regions, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of observer providers.

(xv) *Observer conduct and behavior.* An observer provider must develop and maintain a policy addressing observer conduct and behavior for their employees that serve as observers. The policy shall address the following behavior and conduct:

(A) Observer use of alcohol;

(B) Observer use, possession, or distribution of illegal drugs and;

(C) Sexual contact with personnel of the vessel or processing facility to which the observer is assigned, or with any vessel or processing plant personnel who may be substantially affected by the performance or non-performance of the observer's official duties.

(D) An observer provider shall provide a copy of its conduct and behavior policy by February 1 of each year, to observers, observer candidates, and the Observer Program Office.

(xvi) *Refusal to deploy an observer.* Observer providers may refuse to deploy an observer on a requesting vessel if the observer provider has determined that the requesting vessel is inadequate or unsafe pursuant to those regulations described at § 600.746 or U.S. Coast Guard and other applicable rules, regulations, statutes, or guidelines pertaining to safe operation of the vessel.

(6) *Observer certification and responsibilities—(i) Observer certification—(A) Applicability.* Observer certification authorizes an individual to fulfill duties as specified in writing by the NMFS Observer Program Office while under the employ

of a NMFS-permitted observer provider and according to certification endorsements as designated under paragraph (g)(6)(i)(C) of this section.

(B) *Observer certification official.* The Regional Administrator will designate a NMFS observer certification official who will make decisions for the Observer Program Office on whether to issue or deny observer certification.

(C) *Certification requirements.* NMFS may certify individuals who, in addition to any other relevant considerations:

(1) Are employed by an observer provider company holding a valid North Pacific Groundfish Observer Program permit at the time of the issuance of the certification to the observer;

(2) Have provided, through their observer provider:

(i) Information set forth at § 679.50 regarding an observer candidate's health and physical fitness for the job;

(ii) Meet all observer education and health standards as specified in § 679.50 and

(iii) Have successfully completed NMFS-approved training as prescribed by the At-Sea Hake Observer Program. Successful completion of training by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Observer Program.

(3) Have not been decertified under paragraph (g)(6)(i)(I) of this section, or pursuant to § 679.50.

(D) *Denial of a certification.* The NMFS observer certification official will issue a written determination denying observer certification if the candidate fails to successfully complete training, or does not meet the qualifications for certification for any other relevant reason.

(E) *Issuance of an observer certification.* An observer certification may be issued upon determination by the observer certification official that the candidate has successfully met all requirements for certification as specified in paragraph (g)(6)(i)(C) of this section. The following endorsements must be obtained, in addition to observer certification, in order for an observer to deploy.

(1) *North Pacific Groundfish Observer Program certification training endorsement.* A certification training endorsement signifies the successful completion of the training course required to obtain observer certification. This endorsement expires when the observer has not been deployed and

performed sampling duties as required by the Observer Program Office for a period of time, specified by the Observer Program, after his or her most recent debriefing. The observer can renew the endorsement by successfully completing certification training once more.

(2) *North Pacific Groundfish Observer Program annual general endorsements.* Each observer must obtain an annual general endorsement to their certification prior to his or her first deployment within any calendar year subsequent to a year in which a certification training endorsement is obtained. To obtain an annual general endorsement, an observer must successfully complete the annual briefing, as specified by the Observer Program. All briefing attendance, performance, and conduct standards required by the Observer Program must be met.

(3) *North Pacific Groundfish Observer Program deployment endorsements.* Each observer who has completed an initial deployment after certification or annual briefing must receive a deployment endorsement to their certification prior to any subsequent deployments for the remainder of that year. An observer may obtain a deployment endorsement by successfully completing all pre-cruise briefing requirements. The type of briefing the observer must attend and successfully complete will be specified in writing by the Observer Program during the observer's most recent debriefing.

(4) *At-Sea Hake Observer Program endorsements.* A Pacific hake fishery endorsement is required for purposes of performing observer duties aboard vessels that process groundfish at sea in the Pacific whiting fishery. A Pacific whiting fishery endorsement to an observer's certification may be obtained by meeting the following requirements:

(i) Be a prior NMFS-certified observer in the groundfish fisheries off Alaska, unless an individual with this qualification is not available;

(ii) Receive an evaluation by NMFS for his or her most recent deployment that indicated that the observer's performance met Observer Program expectations for that deployment;

(iii) Successfully complete a NMFS-approved observer training and/or Pacific whiting briefing as prescribed by the Observer Program; and

(iv) Comply with all of the other requirements of this section.

(F) *Maintaining the validity of observer certification.* After initial issuance, an observer must keep their

certification valid by meeting all of the following requirements specified below:

(1) Successfully perform their assigned duties as described in the Observer Manual or other written instructions from the Observer Program Office including calling into the NMFS deployment hotline upon departing and arriving into port each trip to leave the following information: observer name, phone number, vessel name departing on, date and time of departure and date and time of expected return.

(2) Accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.

(3) Not disclose collected data and observations made on board the vessel or in the processing facility to any person except the owner or operator of the observed vessel or an authorized officer or NMFS.

(4) Successfully complete NMFS-approved annual briefings as prescribed by the At-Sea Hake Observer Program.

(5) Successful completion of briefing by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other briefing requirements established by the Observer Program.

(6) Successfully meet all expectations in all debriefings including reporting for assigned debriefings.

(7) Submit all data and information required by the observer program within the program's stated guidelines.

[Alternative 1 for paragraph (g)(6)(i)(G) (Council-deemed)]

(G) *Limitations on conflict of interest.* Observers:

(1) Must not have a direct financial interest in the vessels on which the observers are stationed, other than the provision of observer services.

(2) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(3) May not serve as observers on any vessel owned or operated by a person who employed the observer in the last two years.

(4) May not solicit or accept employment as a crew member or an employee of a vessel or shore-based

processor while employed by an observer provider.

(5) Provisions for remuneration of observers under this section do not constitute a conflict of interest.

[Alternative 2 for paragraph (g)(6)(i)(G) (NMFS-proposed)]

(G) *Limitations on conflict of interest.* Observers:

(1) Must not have a direct financial interest, other than the provision of observer services, in a fishery managed pursuant to an FMP for the waters off the coast of Alaska, or in a Pacific Coast fishery managed by either the State or Federal governments in waters off Washington, Oregon, or California, including but not limited to:

(i) Any ownership, mortgage holder, or other secured interest in a vessel, shore-based or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish,

(ii) Any business involved with selling supplies or services to any vessel, shore-based or floating stationary processing facility; or

(iii) Any business involved with purchasing raw or processed products from any vessel, shore-based or floating stationary processing facilities.

(2) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS in the Pacific coast or North Pacific regions or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(3) May not serve as observers on any vessel or at any shore-based owned or operated by a person who employed the observer in the last two years.

(4) May not solicit or accept employment as a crew member or an employee of a vessel or shore-based processor while employed by an observer provider.

(5) Provisions for remuneration of observers under this section do not constitute a conflict of interest.

(H) *Standards of behavior.* Observers must:

(1) Perform their assigned duties as described in the Observer Manual or other written instructions from the Observer Program Office.

(2) Report to the observer program office and the NOAA Office of Law Enforcement any time they refuse to board a vessel.

(3) Accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations

relevant to conservation of marine resources or their environment.

(4) Not disclose collected data and observations made on board the vessel or in the processing facility to any person except the owner or operator of the observed vessel or processing facility, an authorized officer, or NMFS.

(I) *Suspension and decertification.*

(1) *Suspension and decertification review official.* The Regional Administrator (or a designee) will designate an observer suspension and decertification review official(s), who will have the authority to review observer certifications and issue initial administrative determinations of observer certification suspension and/or decertification.

(2) *Causes for suspension or decertification.* The suspension/decertification official may initiate suspension or decertification proceedings against an observer:

(i) When it is alleged that the observer has committed any acts or omissions of any of the following: Failed to satisfactorily perform the duties of observers as specified in writing by the NMFS Observer Program; or failed to abide by the standards of conduct for observers (including conflicts of interest);

(ii) Upon conviction of a crime or upon entry of a civil judgment for: Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties as specified in writing by the NMFS Observer Program; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or commission of any other offense indicating a lack of integrity or honesty that seriously and directly affects the fitness of observers.

(3) *Issuance of initial administrative determination.* Upon determination that suspension or decertification is warranted, the suspension/decertification official will issue a written IAD to the observer via certified mail at the observer's most current address provided to NMFS. The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken.

(4) *Appeals.* A certified observer who receives an IAD that suspends or revokes the observer certification may appeal the determination within 30 days of its issuance to the Office of Administrative Appeals pursuant to § 679.43.

(h) *C/P coop failure*—(1) The Regional Administrator will determine that a permitted C/P coop is considered to

have failed if any one of the following occurs:

(i) Any current C/P endorsed limited entry trawl permit is not identified as a C/P coop member in the coop agreement submitted to NMFS during the C/P coop permit application process;

(ii) Any current C/P endorsed permit withdraws from the C/P coop agreement;

(iii) The coop members voluntarily dissolve the coop; or

(iv) The coop agreement is no longer valid.

(2) If the permitted C/P coop dissolves, the designated coop manager must notify NMFS SFD in writing of the dissolution of the coop.

(3) The Regional Administrator may make an independent determination of a coop failure based on factual information collected by or provided to NMFS.

(4) In the event of a NMFS-determined coop failure, or reported failure, the designated coop manager will be notified in writing about NMFS' determination.

(i) Upon notification of a coop failure, the C/P coop permit will no longer be in effect.

(ii) The C/P sector will convert to an IFQ-based fishery beginning the following calendar year after a coop failure, or as soon as practicable thereafter. NMFS will develop additional regulations, as necessary to implement an IFQ fishery for the C/P sector. Each C/P endorsed permit would receive an equal distribution of QS from the total IFQ for the catcher/processor sector allocation.

25. In § 660.212, the introductory text, and paragraphs (a)(2) and (c)(1), are revised to read as follows:

**§ 660.212 Fixed gear fishery—prohibitions.**

These prohibitions are specific to the limited entry fixed gear fisheries and to the limited entry trawl fishery Shorebased IFQ Program under gear switching. General groundfish prohibitions are found at § 660.12, subpart C. In addition to the general groundfish prohibitions specified in § 660.12, subpart C, it is unlawful for any person to:

(a) \* \* \*

(2) Take, retain, possess, or land more than a single cumulative limit of a

particular species, per vessel, per applicable cumulative limit period, except for sablefish taken in the limited entry, fixed gear sablefish primary season from a vessel authorized to fish in that season, as described at § 660.231, subpart E and except for IFQ species taken in the Shorebased IFQ Program from a vessel authorized under gear switching provisions as described at § 660.140.

\* \* \* \*

(c) *Fishing in conservation areas*—(1) Operate a vessel registered to a limited entry permit with a longline, trap (pot), or trawl endorsement and longline and/or trap gear onboard in an applicable GCA (as defined at § 660.230(d)), except for purposes of continuous transiting, with all groundfish longline and/or trap gear stowed in accordance with § 660.212(a) or except as authorized in the groundfish management measures at § 660.230.

\* \* \* \*

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## AREAS OF THE PROPOSED COMPONENTS RULE ON WHICH NMFS HAS REQUESTED SPECIFIC COMMENT

The following text is excerpted from the preamble to the components rule. It provides those sections of the preamble in which NMFS specifically asked for public comment. The preamble and components rule are provided in their entirety as Agenda Item I.5.a, Attachment 5.

### Permits

....

With respect to transfer of MS/CV-endorsed permits, the Council motion included a provision (Appendix D, Page D-34) that would allow an MS/CV-endorsed permit to have two changes in vessel registration in the same calendar year, provided that the second change in vessel registration would return the registration to the original vessel assigned to the permit in that year. Transfer rules for limited entry trawl permits without an MS/CV endorsement, however, limit the permit owner to only one transfer in a given year. During its March 2010 meeting, the Council considered that because vessels registered to an MS/CV-endorsed permit would be able to deliver whiting to the MS sector and would also potentially be able to deliver IFQ groundfish to shorebased first receivers, it may be possible for owners of an MS/CV endorsed permit to circumvent the restrictions on transfers of limited entry permits in the Shorebased IFQ Program for owners of permits that lack an MS/CV-endorsement. Consequently, the Council decided that if the owner of an MS/CV-endorsed permit were to transfer registration of the permit a second time, the vessel to which the permit is transferred to would not be eligible to fish in the Shorebased IFQ Program under that permit during the remainder of the year. The Council's motion on this issue did not address the timing of when the second transfer would be effective. Under the regulations being proposed, the second transfer would be effective at the start of the next cumulative limit period (i.e., 2-month period). If there are no trip limits for the mothership fishery, then this restriction on the effective date of transfers may not be necessary. NMFS solicits public comment on the effective date for a second transfer within the same year of an MS/CV-endorsed limited entry permit.

### Conflict of Interest Regulations in the Observer or Catch Monitor Programs

The proposed regulations, as deemed by the Council, contain language on conflict of interest provisions for observers . . . . However, NMFS has concerns with the language and believes it has the potential to undermine the integrity of the shorebased and at-sea monitoring programs . . . . NMFS intends to use its authority under section 305(d) of the MSA to publish language in the final rule that differs from what was deemed by the Council. This proposed rule includes both the Council-deemed regulatory language and the language proposed by NMFS. The regulatory language labeled Alternative 1 in the conflict of interest provisions for observers (§§ 660.140(h)(6)(vii), 660.150(j)(6)(vii), and 660.160(g)(6)(i)(G)) and for catch monitors (§ 660.18(c)) is the Council-deemed language, and Alternative 2 is the language NMFS proposes to publish in the final rule. [See appendix to this attachment for example language for the alternatives.]

NMFS specifically requests comment on these conflict of interest provisions for observers and catch monitors, and on NMFS's intent to publish Alternative 2 to make these requirements consistent within the region and with other NMFS programs.

## Ownership Information

....

In some cases, the structure of the ownership interests may raise questions as to how NMFS interprets the ownership interest in order to make its determination. NMFS has identified two such instances: (1) joint ownership, and (2) ownership by a trust. Each of these situations is addressed in the proposed rule, and NMFS specifically requests comments on the implications of its interpretations of these ownership structures, or of any other ownership structure not previously identified that may raise questions.

A joint ownership situation exists where more than one person claims an interest indivisible from that of another person, such that the total ownership interest is greater than 100 percent. An example of this would be a joint tenancy, a form of property ownership where two parties (often a husband and wife) each own 100 percent, and in the event of death of one of them, the survivor would retain the indivisible 100 percent already owned. In these situations, NMFS would credit each owner with the full percent claimed (e.g., in this example, 100 percent each), even though the sum of all ownership interests would exceed 100 percent. . . .

Ownership by a trust creates another area where questions arise regarding compliance with accumulation limits. In any consideration of trusts, there are three parties that need to be considered: the trustee, the beneficiaries, and the trustor. . . . Because a trust vests the legal title to the property in the trustee, under the proposed rule NMFS would credit ownership to the trustee. If there is more than one trustee (i.e., "co-trustees"), NMFS would consider each trustee to have 100 percent ownership of the trust property. . . .

## Maximized Retention in the Pacific Whiting IFQ Fishery

Under current practices in the maximized retention Pacific whiting fisheries, some minor amounts of operational discard are allowed. Under trawl rationalization, any minor operational amounts of discard would be estimated by the observer and deducted from allocations. NMFS raised this issue at the Council's March 2010 meeting for the maximized retention fishery in the mothership sector (Agenda Item E.6.b, NMFS Report 1, March 2010, #25). For the Shorebased IFQ Program, however, the Council motion at Appendix D, A-2.3.1, p. D-13 states: "Whiting: Maximized retention vessels: Discarding of fish covered by IFQ or IBQ, and nongroundfish species prohibited." The proposed rule adopts this language at § 660.140(g)(2), which states: "Maximized retention vessels participating in the Pacific whiting IFQ fishery are prohibited from discarding any IFQ species/species group and nongroundfish species[:]" however, this language is potentially ambiguous in that it refers to maximized retention vessels, but prohibits discarding. NMFS specifically requests public comment on any implications that the prohibition on discarding may have on the prosecution of a maximized retention fishery, and further requests comment on what should constitute discarding under this provision of the Shorebased IFQ Program.

## Weight Limits and Conversions

Groundfish allocations, harvest guidelines, and quotas are expressed in round weight. In cases where fish are landed dressed (headed and gutted, or in the case of Pacific whiting, headed and gutted with tails removed (neither activity is considered processing under the groundfish regulations which prohibit processing at-sea for the shorebased fishery), catch weight conversions are used to determine actual round weight of the harvested fish.. . .

Due to the increased individual accountability of catch (landings and discards) and the individual allocations of harvest opportunity under the Shorebased IFQ Program, NMFS proposes to revise regulations at § 660.60(h)(5)(ii) to create more consistent use of weight

conversion factors coastwide. Currently, some discrepancies exist between the weight conversions used by the states of Washington, Oregon, and California. . . .

NMFS specifically requests public comment on the actual values and implications of the proposed conversion factors.

#### Gear Switching Provisions

. . . .

One issue under consideration with regards to gear switching is how often a fisherman would be able to declare and switch gears. Although the declaration system managed by the NMFS Office of Law Enforcement can manage frequent changes in vessel declarations as would be the case for frequent gear switching, NMFS believes the process must be managed in an orderly fashion so as to not compromise the efficient management of the observer program by the Northwest Fisheries Science Center. NMFS specifically requests comment regarding the impact of any restrictions on changes in declarations on gear switching in the Shorebased IFQ Program.

#### IFQ Carryover Provision

. . . . a vessel account that incurs a deficit (a negative balance for any IFQ species) that is lower than the carryover limit where the vessel account owner is unable to transfer QP or IBQ pounds into the vessel account to cure the deficit within 30 days, the vessel account owner could cure the deficit by declaring the vessel out of the fishery for the remainder of the year and transferring sufficient QP or IBQ pounds into the vessel account within 30 days of NMFS's issuance of QP and IBQ pounds in the following year.

During discussions at the RDW, some commenters expressed concern that the requirement to declare out of the fishery for the remainder of the year in order to invoke the carryover provision for a deficit would be overly restrictive and that, in their view, a vessel that declares out of the IFQ fishery under the carryover provision should be able to declare back into the fishery if able to obtain sufficient QP or IBQ pounds later in the year . . . .

. . . . NMFS specifically highlights this issue to solicit public comment.

#### At-sea Sector Donation Program

A management measure that may no longer be necessary or may need further revision is the optional "bycatch reduction and full utilization program for at-sea processors" (called bycatch reduction and donation program) . . . . Under trawl rationalization, the at-sea sector regulations may not require vessels to be subject to trip limits for groundfish species other than Pacific whiting outside of the primary whiting season. Therefore, the donation program may no longer be necessary or may require minor adjustments. . . . NMFS specifically requests comment on the implications of removing or retaining this program and suggested language revisions.

#### Processor Obligations

. . . .

In developing the regulations for the processor obligation provision, NMFS discovered that there may be some confusion over the extent of the annual obligation of an MS/CV endorsed permit to a specific processor . . . . Accordingly, NMFS has clarified the regulation to specify that the processor obligation refers only to the commitment of the permit's catch history assignment to a given MS permit, and specifically requests comment on the implications that this interpretation may have on anticipated operations within the MS Coop Program.

Appendix  
Alternatives on Conflict of Interest Regulations

660.18(c) (shaded text = no difference between the alternatives)

[Similar alternatives for observers are in 660.140(h)(6)(vii), 660.150(j)(6)(vii) and 660.160(g)(6)(i)(G).]

**[Alternative 1 for paragraph (c) (Council-deemed)]**

(c) Limitations on conflict of interest for catch monitors. (1) Catch monitors must not have a direct financial interest in the first receivers at which they serve as catch monitors or vessels that deliver to those first receivers, other than the provision of observer or catch monitor services. (2) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS or has interests that may be substantially affected by the performance or nonperformance of the catch monitor's official duties. (3) May not serve as a catch monitor at any shoreside or floating stationary processing facility owned or operated where a person was previously employed in the last two years. (4) May not solicit or accept employment as a crew member or an employee of a vessel, or shoreside processor while employed by a catch monitor provider. (5) Provisions for remuneration of catch monitors under this section do not constitute a conflict of interest.

**[Alternative 2 for paragraph (c) (NMFS-proposed)]**

(c) Limitations on conflict of interest for catch monitors. (1) Catch monitors must not have a direct financial interest, other than the provision of observer or catch monitor services, in a North Pacific fishery managed pursuant to an FMP for the waters off the coast of Alaska, Alaska state waters, or in a Pacific Coast fishery managed by either the state or Federal governments in waters off Washington, Oregon, or California, including but not limited to:

- (i) Any ownership, mortgage holder, or other secured interest in a vessel, shore-based or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish,
- (ii) Any business involved with selling supplies or services to any vessel, shore-based or floating stationary processing facility; or
- (iii) Any business involved with purchasing raw or processed products from any vessel, shore-based or floating stationary processing facilities.

(2) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS or has interests that may be substantially affected by the performance or nonperformance of the catch monitor's official duties. (3) May not serve as a catch monitor at any shoreside or floating stationary processing facility owned or operated where a person was previously employed in the last two years. (4) May not solicit or accept employment as a crew member or an employee of a vessel, or shoreside processor while employed by a catch monitor provider. (5) Provisions for remuneration of catch monitors under this section do not constitute a conflict of interest.

NMFS RESPONSE TO COUNCIL STAFF DOCUMENT -  
“AREAS OF THE PROPOSED COMPONENTS RULE  
ON WHICH NMFS HAS REQUESTED SPECIFIC COMMENT”

NMFS appreciates the Council staff providing a list of items for the Council and the public where NMFS specifically requested comment in the preamble of the program components proposed rule (75 FR 53380, August 31, 2010). However, NMFS is concerned that the Council staff document (Agenda Item I.5.a, Attachment 6, September 2010) does not provide NMFS full rationale for all of the items listed. Therefore, NMFS is providing this supplemental with the full rationale from the preamble included for these items (additional rationale is in italics). As stated in the Council staff preamble, the preamble and components rule are provided in their entirety as Agenda Item I.5.a, Attachment 5.

Permits (p. 53382 of the proposed rule)

*Under the proposed initial issuance rule, several new permits that could be registered to a vessel would be issued. The program components proposed rule sets forth the rules for registration and transfer of registration that would apply to these permits. Consistent with current regulations, when the owner of a limited entry trawl permit registered to a vessel operating in the Shorebased IFQ Program transfers the registration to another vessel, the registration would be effective at the start of the next cumulative trip limit period. This provision would remain in place because trip limits would remain in place in the Shorebased IFQ Program (for non-IFQ species and for Pacific whiting outside the primary whiting season). A transfer of registration for MS/CV-endorsed limited entry trawl permits would also be effective at the start of the next cumulative limit period because vessels registered to MS/CV-endorsed permits would be eligible to participate in both the Shorebased IFQ Program and the MS Coop Program. Transfers of MS permits and C/P-endorsed limited entry trawl permits would be effective immediately upon reissuance to the new vessel, because neither of these permits would be affected by trip limits.*

With respect to transfer of MS/CV-endorsed permits, the Council motion included a provision (Appendix D, Page D-34) that would allow an MS/CV-endorsed permit to have two changes in vessel registration in the same calendar year, provided that the second change in vessel registration would return the registration to the original vessel assigned to the permit in that year. Transfer rules for limited entry trawl permits without an MS/CV endorsement, however, limit the permit owner to only one transfer in a given year. During its March 2010 meeting, the Council considered that because vessels registered to an MS/CV-endorsed permit would be able to deliver whiting to the MS sector and would also potentially be able to deliver IFQ groundfish to shorebased first receivers, it may be possible for owners of an MS/CV endorsed permit to circumvent the restrictions on transfers of limited entry permits in the Shorebased IFQ Program for owners of permits that lack an MS/CV-endorsement. Consequently, the Council decided that if the owner of an MS/CV-endorsed permit were to transfer registration of the permit a second time, the vessel to which the permit is transferred to would not be eligible to fish in the Shorebased IFQ Program under that permit during the remainder of the year. The Council's motion on this issue did not address the timing of when the second transfer would be effective. Under the regulations being proposed, the second transfer would be effective at the start of the next cumulative limit period (i.e., 2-month period). If there are no trip limits for the mothership



fishery, then this restriction on the effective date of transfers may not be necessary. NMFS solicits public comment on the effective date for a second transfer within the same year of an MS/CV-endorsed limited entry permit.

Conflict of Interest Regulations in the Observer or Catch Monitor Programs  
(p. 53385 of the proposed rule)

The proposed regulations, as deemed by the Council, contain language on conflict of interest provisions for observers (§§ 660.140(h)(6)(vii), 660.150(j)(6)(vii), and 660.160(g)(6)(i)(G)) and catch monitors (§ 660.18(c)). However, NMFS has concerns with the language and believes it has the potential to undermine the integrity of the shorebased and at-sea monitoring programs.

*The data coming from observers aboard fishing vessels and catch monitors at shorebased first receivers is crucial to NMFS's ability to sustainably manage groundfish in general, and would be particularly important during management of the pending groundfish trawl rationalization program. A crucial component of NMFS's tracking and monitoring system for the trawl rationalization program is the collection of timely and accurate landings and discard data to allow managers to ensure that landings stay within prescribed limits in order to prevent overfishing and promote rebuilding. Such landings and discard data would also provide fishermen with an accurate accounting of their harvesting activities so that they can efficiently plan their fishing operations. Maintaining strict conflict of interest standards for monitors and observers would give managers and fishermen a high level of assurance that they are basing their decisions on accurate data. NMFS believes that the changes proposed by the Council would unacceptably reduce the assurance that NMFS is receiving the best available information from its monitoring programs.*

*In addition, if the language deemed by the Council were to be implemented, there would be inconsistent conflict of interest requirements within NMFS regulations, both between the regions, and on the West Coast. The conflict of interest requirements that were presented to the Council at its June 2010 meeting (see [http://www.pcouncil.org/wp-content/uploads/B6a\\_ATT2\\_DRAFT\\_PRGRM\\_COMPONENTS\\_JUNE2010BB.pdf](http://www.pcouncil.org/wp-content/uploads/B6a_ATT2_DRAFT_PRGRM_COMPONENTS_JUNE2010BB.pdf); requirements for catch monitors starting on page 9, and for observers on page 41) are consistent with conflict of interest standards set forth in the NMFS policy statement 04-109-01, National Minimum Eligibility Standards for Marine Fisheries Observers, implemented on August 6, 2007. In addition, the provisions proposed by NMFS are consistent with existing requirements in the WCGOP, which will remain in place for the fixed gear and open access fleets. NMFS believes that the changes proposed by the Council would create discrepancies both within the region and nationally, and would place undue administrative burdens on NMFS.*

*Because of these reasons, NMFS intends to use its authority under section 305(d) of the MSA to publish language in the final rule that differs from what was deemed by the Council. This proposed rule includes both the Council-deemed regulatory language and the language proposed by NMFS. The regulatory language labeled Alternative 1 in the conflict of interest provisions for observers (§§ 660.140(h)(6)(vii), 660.150(j)(6)(vii), and 660.160(g)(6)(i)(G)) and for catch monitors (§ 660.18(c)) is the Council-deemed language, and Alternative 2 is the language NMFS proposes to publish in the final rule. [See appendix to this attachment for example language for the alternatives.]*

NMFS specifically requests comment on these conflict of interest provisions for observers and catch monitors, and on NMFS's intent to publish Alternative 2 to make these requirements consistent within the region and with other NMFS programs.

Ownership Information (p. 53386 of the proposed rule)

...

In some cases, the structure of the ownership interests may raise questions as to how NMFS interprets the ownership interest in order to make its determination. NMFS has identified two such instances: (1) joint ownership, and (2) ownership by a trust. Each of these situations is addressed in the proposed rule, and NMFS specifically requests comments on the implications of its interpretations of these ownership structures, or of any other ownership structure not previously identified that may raise questions.

A joint ownership situation exists where more than one person claims an interest indivisible from that of another person, such that the total ownership interest is greater than 100 percent. An example of this would be a joint tenancy, a form of property ownership where two parties (often a husband and wife) each own 100 percent, and in the event of death of one of them, the survivor would retain the indivisible 100 percent already owned. In these situations, NMFS would credit each owner with the full percent claimed (e.g., in this example, 100 percent each), even though the sum of all ownership interests would exceed 100 percent. *NMFS believes that for some owners, the benefits of joint tenancy may be greater than the parties' concern for accumulation limits, particularly if they are more interested in estate planning than accumulation of privileges, and that if the parties to a joint tenancy don't want to avoid individual accountability for the entire ownership interest, they would have the option of restructuring.*

Ownership by a trust creates another area where questions arise regarding compliance with accumulation limits. In any consideration of trusts, there are three parties that need to be considered: the trustee, the beneficiaries, and the trustor. *Generally speaking, the trustee manages the property held in the trust according to the terms of the trust document for the benefit of the beneficiaries of the trust. The beneficiaries are equitable owners of the property, but generally, since they are not the legal owners do not exercise control over the property. The trustor is the party that sets up and grants property to the trust.* Because a trust vests the legal title to the property in the trustee, under the proposed rule NMFS would credit ownership to the trustee. If there is more than one trustee (i.e., "co-trustees"), NMFS would consider each trustee to have 100 percent ownership of the trust property. *NMFS recognizes that whether other parties besides the trustee would be impacted by ownership and control rules depends upon the nature of the trust and how it is set up. For instance, a trustor might retain authority to take the property back from the trust (i.e., a revocable trust), or, in some circumstances, beneficiaries could assert control over the trust property, modify the trust document, and/or wrest the legal ownership away from the trustee. For both of these cases, ownership would not appear to be an issue unless the trustor or beneficiaries gain actual legal ownership of the trust property, however, whether control rules would be implicated is harder to say and would depend upon the trust document. Thus, the program components rule includes provisions that NMFS may ask for additional information it believes to be necessary for its determination.*

Maximized Retention in the Pacific Whiting IFQ Fishery (p. 53389 of the proposed rule)

Under current practices in the maximized retention Pacific whiting fisheries, some minor amounts of operational discard are allowed. Under trawl rationalization, any minor operational amounts of discard would be estimated by the observer and deducted from allocations. NMFS raised this issue at the Council's March 2010 meeting for the maximized retention fishery in the mothership sector (Agenda Item E.6.b, NMFS Report 1, March 2010, #25). For the Shorebased IFQ Program, however, the Council motion at Appendix D, A-2.3.1, p. D-13 states: "Whiting: Maximized retention vessels: Discarding of fish covered by IFQ or IBQ, and nongroundfish species prohibited." The proposed rule adopts this language at § 660.140(g)(2), which states: "Maximized retention vessels participating in the Pacific whiting IFQ fishery are prohibited from discarding any IFQ species/species group and nongroundfish species[;]" however, this language is potentially ambiguous in that it refers to maximized retention vessels, but prohibits discarding. NMFS specifically requests public comment on any implications that the prohibition on discarding may have on the prosecution of a maximized retention fishery, and further requests comment on what should constitute discarding under this provision of the Shorebased IFQ Program.

Weight Limits and Conversions (p. 53390 of the proposed rule)

Groundfish allocations, harvest guidelines, and quotas are expressed in round weight. In cases where fish are landed dressed (headed and gutted, or in the case of Pacific whiting, headed and gutted with tails removed (neither activity is considered processing under the groundfish regulations which prohibit processing at-sea for the shorebased fishery), catch weight conversions are used to determine actual round weight of the harvested fish. *To derive the weight of round fish harvested by a vessel that delivers dressed fish, a weight conversion factor is multiplied by the dressed weight.*

Due to the increased individual accountability of catch (landings and discards) and the individual allocations of harvest opportunity under the Shorebased IFQ Program, NMFS proposes to revise regulations at § 660.60(h)(5)(ii) to create more consistent use of weight conversion factors coastwide. Currently, some discrepancies exist between the weight conversions used by the states of Washington, Oregon, and California. *The use of state weight conversions would remain in place for the limited entry fixed gear and open access fisheries because they would continue to be managed under sector allocations (rather than individual quotas) and would continue to be tracked under the state paper fish ticket system. However, under trawl rationalization, landings of groundfish in the Shorebased IFQ Program would be reported through a Federal electronic fish ticket system in addition to the state paper fish ticket system. A consistent, accurate round weight must be reported on the electronic fish ticket submitted to NMFS, and would be used to determine total catch in the Shorebased IFQ Program.*

*The use of different weight conversions in the different states for catch estimates under the Shorebased IFQ Program may influence vessels to make deliveries based on conversion factors perceived to be more favorable for a particular species, especially if landing near a state border. Another concern from using different state weight conversions would be discrepancies in reported landings values. NMFS believes that the use of consistent coastwide conversion factors in the Shoreside IFQ Program would provide consistency in catch estimates between states, prevent artificial influences on individual landings choices, and benefit NMFS's ability to track landings values. Thus, NMFS proposes Federal conversion factors for species within the scope of the IFQ program at § 660.60(h)(5)(ii) based on published values.*

*The new catch weight conversion values for dressed IFQ species proposed by this action were derived from an Alaska Sea Grant College Program publication titled, "Recoveries and Yields from Pacific Fish and Shellfish" (Marine Advisory Bulletin number 37, 2004). For Pacific whiting that has been dressed (headed and gutted) with tails removed, the weight conversion was derived from the value for pollock as published at § 679 for the Alaska groundfish fishery. NMFS informed the Council at its March 2010 meeting of its intent to use published values for these weight conversions, however, NMFS specifically requests public comment on the actual values and implications of the proposed conversion factors.*

Gear Switching Provisions (p. 53391 of the proposed rule)

...  
One issue under consideration with regards to gear switching is how often a fisherman would be able to declare and switch gears. Although the declaration system managed by the NMFS Office of Law Enforcement can manage frequent changes in vessel declarations as would be the case for frequent gear switching, NMFS believes the process must be managed in an orderly fashion so as to not compromise the efficient management of the observer program by the Northwest Fisheries Science Center. NMFS specifically requests comment regarding the impact of any restrictions on changes in declarations on gear switching in the Shorebased IFQ Program.

IFQ Carryover Provision (p. 53392 of the proposed rule)

... a vessel account that incurs a deficit (a negative balance for any IFQ species) that is lower than the carryover limit where the vessel account owner is unable to transfer QP or IBQ pounds into the vessel account to cure the deficit within 30 days, the vessel account owner could cure the deficit by declaring the vessel out of the fishery for the remainder of the year and transferring sufficient QP or IBQ pounds into the vessel account within 30 days of NMFS's issuance of QP and IBQ pounds in the following year. *In the case of a deficit, the carryover limit would be based on the cumulative total QP or IBQ pounds in the account (used and unused, less any transfers out of the account and any prior carryover amounts) at the date upon which the deficit was documented. If a vessel declares out of the fishery for the remainder of the year, remaining QP or IBQ pounds in the vessel account (species for which there is no deficit) would still be transferable.*

During discussions at the RDW, some commenters expressed concern that the requirement to declare out of the fishery for the remainder of the year in order to invoke the carryover provision for a deficit would be overly restrictive and that, in their view, a vessel that declares out of the IFQ fishery under the carryover provision should be able to declare back into the fishery if able to obtain sufficient QP or IBQ pounds later in the year. *Under the proposed rule, a vessel would be able to declare back into the Shorebased IFQ Program if it cures the deficit in the same year in which the deficit occurs, however, if a vessel opts to do so, it would no longer meet the requirements for the carryover provision. Instead, the vessel would be subject to enforcement for a violation of the requirement to cure a deficit within 30 days of the date the deficit is documented. The Council was emphatic on the importance of curing deficits within 30 days, and that the carryover provision was a narrow exception to this requirement. If a vessel were allowed to declare out of the fishery under the carryover provision, and subsequently declare back into the fishery before the end of the year, a vessel could effectively circumvent the requirement to cure a deficit within 30 days. The RDW did not achieve consensus regarding this issue, and it was suggested that if any approach different from that in this proposed rule were*

*considered preferable, the Council could address it in the trailing amendments for the rationalization program. Thus, NMFS specifically highlights this issue to solicit public comment.*

At-sea Sector Donation Program (p. 53393 of the proposed rule)

A management measure that may no longer be necessary or may need further revision is the optional “bycatch reduction and full utilization program for at-sea processors” (called bycatch reduction and donation program). *The bycatch reduction and donation program was established to allow vessels harvesting unsorted catch to retain and donate amounts of groundfish that were in excess of trip limits.* Under trawl rationalization, the at-sea sector regulations may not require vessels to be subject to trip limits for groundfish species other than Pacific whiting outside of the primary whiting season. Therefore, the donation program may no longer be necessary or may require minor adjustments. *In this proposed rule, the bycatch reductions and donation program remains as stated in existing regulations.* NMFS specifically requests comment on the implications of removing or retaining this program and suggested language revisions.

Processor Obligations (p. 53395 of the proposed rule)

...

In developing the regulations for the processor obligation provision, NMFS discovered that there may be some confusion over the extent of the annual obligation of an MS/CV endorsed permit to a specific processor. *The Council motion states that “Each year, a permit will obligate to a processor all of its catch for a coming year[.]” and that “CV(MS) permits will be obligated to a single MS permit for an entire year[.]” (Appendix D, B-2.4, p. D-31).* As the motion further describes this obligation, it refers to the obligation as a “linkage” between the MS/CV-endorsed permit and the MS permit, and states that the “CV permit must notify the MS permit that the CV permit QP will be linked to.” *Id.* at p. D-32 (emphasis added). Because of this language in the Council motion, NMFS believes the nature and extent of the processor obligation is the commitment of the annual catch history assignment associated with the MS/CV-endorsed permit, analogous to QP in the Shorebased IFQ Program. Draft regulations provided to the Council for review as part of the deeming process referred only to the obligation of the MS/CV-endorsed permit to the MS permit, and did not specify the nature or extent of that obligation. Members of the Council’s RDW expressed concern that such language could be interpreted to require all deliveries of a vessel registered to the MS/CV-endorsed permit to be delivered to the mothership registered to the MS permit, not just deliveries of the fish associated with the MS/CV-endorsed permit’s catch history assignment, and that under such an interpretation, for a vessel to deliver to a processor other than that to which its permit is obligated would require registration of the vessel to another permit or release of the permit through mutual agreement with the processor to which the permit is obligated. For the reasons described above, NMFS does not believe that such an interpretation comports with the intent of the Council motion. Accordingly, NMFS has clarified the regulation to specify that the processor obligation refers only to the commitment of the permit’s catch history assignment to a given MS permit, and specifically requests comment on the implications that this interpretation may have on anticipated operations within the MS Coop Program.

Appendix  
Alternatives on Conflict of Interest Regulations

660.18(c) (shaded text = no difference between the alternatives)

[Similar alternatives for observers are in 660.140(h)(6)(vii), 660.150(j)(6)(vii) and 660.160(g)(6)(i)(G).]

**[Alternative 1 for paragraph (c) (Council-deemed)]**

(c) Limitations on conflict of interest for catch monitors. (1) Catch monitors must not have a direct financial interest in the first receivers at which they serve as catch monitors or vessels that deliver to those first receivers, other than the provision of observer or catch monitor services.

(2) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS or has interests that may be substantially affected by the performance or nonperformance of the catch monitor's official duties.

(3) May not serve as a catch monitor at any shoreside or floating stationary processing facility owned or operated where a person was previously employed in the last two years.

(4) May not solicit or accept employment as a crew member or an employee of a vessel, or shoreside processor while employed by a catch monitor provider.

(5) Provisions for remuneration of catch monitors under this section do not constitute a conflict of interest.

**[Alternative 2 for paragraph (c) (NMFS-proposed)]**

(c) Limitations on conflict of interest for catch monitors. (1) Catch monitors must not have a direct financial interest, other than the provision of observer or catch monitor services, in a North Pacific fishery managed pursuant to an FMP for the waters off the coast of Alaska, Alaska state waters, or in a Pacific Coast fishery managed by either the state or Federal governments in waters off Washington, Oregon, or California, including but not limited to:

(i) Any ownership, mortgage holder, or other secured interest in a vessel, shore-based or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish,

(ii) Any business involved with selling supplies or services to any vessel, shore-based or floating stationary processing facility; or

(iii) Any business involved with purchasing raw or processed products from any vessel, shore-based or floating stationary processing facilities.

(2) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS or has interests that may be substantially affected by the performance or nonperformance of the catch monitor's official duties.

(3) May not serve as a catch monitor at any shoreside or floating stationary processing facility owned or operated where a person was previously employed in the last two years.

(4) May not solicit or accept employment as a crew member or an employee of a vessel, or shoreside processor while employed by a catch monitor provider.

(5) Provisions for remuneration of catch monitors under this section do not constitute a conflict of interest.

ENFORCEMENT CONSULTANTS REPORT ON STATUS AND FOLLOW-UP ON  
IMPLEMENTATION OF AMENDMENT 20 (TRAWL RATIONALIZATION) AND  
AMENDMENT 21 (INTERSECTOR ALLOCATION)

Regarding transfer of limited entry (LE) trawl permits under Amendment 21, the Enforcement Consultants (EC) would like to recommend to the Council that if trip limits are applicable in any sector under trawl rationalization, then the effective date for the transfer of LE trawl permits in that sector should coincide with the beginning of that sector's cumulative trip limit periods to avoid the potential for "double dipping."

For example: if both the at-sea sector and shoreside sectors have trip limits for yellowtail, and our recommendation is not implemented, a vessel could fish one sector early in the period, have their LE trawl permit transferred to another vessel, effective immediately, and then fish in the at-sea sector later in the same trip period, thus benefitting from two trip limits in the same period.

This same scenario could occur within a sector as well, i.e. vessel one fishes under permit A early in the period, transfers permit A to vessel 2 who in turn fishes on that permit in the latter part of the same trip period.

PFCM  
09/15/10

GROUND FISH ADVISORY SUBPANEL REPORT ON  
STATUS AND FOLLOW-UP ON IMPLEMENTATION OF AMENDMENT 20 (TRAWL  
RATIONALIZATION) AND AMENDMENT 21 (INTERSECTOR ALLOCATION)

The Groundfish Advisory Subpanel (GAP) discussed the Status and Follow-up on Implementation of Amendment 20 (Trawl Rationalization) and Amendment 21 (Intersector Allocation) with Mr. Jim Seger and Ms. Jamie Goen. The GAP has no comment on the technical corrections in Agenda Item I.5.a, Attachment 1; however, the GAP offers the following comments and recommendations regarding the National Marine Fisheries Service (NMFS) request for comments (Agenda Item I.5.a, Supplemental Attachment 7). The GAP notes that any recommended changes to the final components rule can be made through the public comment process. However, if recommended changes cannot be made through this process, the GAP recommends modifications to the components rule be considered in one or more trailing amendments.

Permit Transfers

Most limited entry permits may be transferred only one time per year and transfers are effective at the end of the bimonthly cumulative limit period. Mothership catch vessel (MS/CV) permits may be transferred twice during the year as long as the vessel to which the second transfer is made declares that it will not participate in the shoreside individual fishing quota (IFQ) fishery. NMFS requested comment on the effectiveness date that should be used for the second transfer of an MS/CV permit.

The GAP believes MS/CV permit transfers should be effective immediately. There is a need for flexibility in transferring permits to vessels, for example, to accommodate vessel break downs and other logistic problems that can occur during the mothership fishery. There is no reason to delay permit transfer in this fishery.

Conflict of Interest in the Observer or Catch Monitoring Program

The Council deemed a set of conflict of interest regulations which were substantially more liberal than those put forward by NMFS. NMFS has expressed its intent to approve a set of conflict of interest regulations different than those deemed by the Council.

The GAP believes the NMFS-proposed conflict of interest regulations are overly restrictive and could result in a problem finding qualified observers. The GAP recommends conflict of interest for observers and catch monitors be defined in regulations as having any interest in any west coast groundfish first receiver, west coast groundfish trawl-permitted vessel, or in any west coast groundfish quota share ownership. Such a regulation prevents the harm that potentially could come from biased observers or catch monitors without limiting the pool of qualified individuals.



### Ownership Information

Joint ownership (e.g., husband and wife) and ownership in trust involving trustee, beneficiaries, and trustor present special challenges for the interpretation of ownership structures with respect to application of control limits. NMFS has made proposals on how to handle these situations and requested comment.

The GAP is concerned that the current treatment of trusts as contemplated by NMFS (as found in Agenda item I.5.a, Supplemental Attachment 7) creates a potential loophole to exceed control caps. That document notes that control rules may be violated depending on the specific language of the trust document. The GAP points out that it is not only the language of the trust document that may trigger control concerns, but also how the trust is executed.

While transparency will help eliminate most types of trust abuse by allowing linkages to be seen between trustors, trustees, and beneficiaries, there are certain types of arrangements which could potentially allow an individual to control quota share in excess of the control caps through the use of a trust vehicle. One example would be if an employer established several trusts with different employees and surreptitiously controlled the quota associated with each trust. Without digging deep to determine relationships, the trusts would appear on the surface to be innocuous.

The GAP discussed one potential solution which would credit the beneficiary, the trustee, and the trustor each with 100 percent of the quota share in the trust. We do not think this is the only or necessarily best solution to the problem.

### Maximized Retention in the Pacific Whiting IFQ Fishery

The term “maximized retention” usually implies some minor amount of allowable discarding but the language of the Council’s Amendment 20 motion states that “maximized retention vessels” will not be allowed to discard. NMFS is seeking comment on the impact of this prohibition on prosecution of the maximized retention fishery and on what should constitute discarding.

The GAP believes there needs to be consistency in the maximized retention regulations for shoreside vessels declaring into the primary whiting season and catcher vessels in the at-sea mothership fishery. Currently, minor amounts of operational discards are allowed by catcher vessels in the mothership fishery to foster safety at sea, etc. The current proposed regulations allow minor amounts of operational discards in the mothership fishery but not the shoreside whiting IFQ fishery. The GAP believes the same regulations allowing minor amounts of operational discards should be implemented in the whiting IFQ fishery for the same reasons this allowance is continued in the proposed regulations for the mothership fishery. The GAP agrees the amount of any operational discards should be estimated by on board observers and covered by the quota pounds in the vessel’s account.

### Weight Limits and Conversions

The IFQ program requires conversion factors be applied to fish landed headed and gutted. For some species, these factors are not standardized among the states. NMFS proposed a standard set of conversion factors for the federal catch monitoring system and has requested comment.

The GAP agrees with federal weight limit and conversion standards. The GAP requests consideration to allow the Council and NMFS to make routine adjustments for additional conversion categories.

### Gear Switching Provisions

NMFS has requested comment on aspects of the gear declaration process which might limit how often a vessel could switch gears.

The GAP recommends maximum flexibility on gear switching provisions and believes the proposed regulations provide that flexibility.

### IFQ Carryover Provision

Under the proposed rule, a vessel with a deficit that is within its carryover limit must cover that deficit within 30 days or opt-out of the fishery for the remainder of the year. NMFS requested comment on this issue.

The GAP believes the proposed regulations are unnecessarily restrictive. Situations may arise such that early in the year a vessel may not be able to acquire quota pounds (QP) at a reasonable price (e.g., yelloweye or canary rockfish) but that such pounds may become available at a more reasonable price later in the year. If a vessel covers its deficit during the year, there is no strong rationale for not allowing that vessel to re-enter the fishery. The GAP recommends that, instead of a provision allowing the vessel to opt out for the entire year or to pay a fine to opt back into the fishery if the deficit is covered with QP after the 30-day limit, the provision should allow the vessel to opt back into the fishery once the deficit is covered after the 30-day limit without incurring a fine. This flexibility is needed to allow more time to acquire QP for constraining species such as yelloweye, where QP may not be readily available.

### At-sea Sector Donation Program

NMFS has included the donation program as part of the proposed rule but questioned the need for it if there are no bimonthly limits on bycatch of non-whiting species. NMFS asked for public comment on this issue. This issue raises the question of whether or not the 2011-2012 biennial specifications included cumulative limits for non-whiting groundfish for the at-sea sectors. The Council staff understanding is that such limits are included as part of the proposed biennial specifications.

The GAP agrees with the staff perspective that the current trip limits would continue in this next biennial cycle to avoid non-whiting species targeting. The GAP believes that catch in excess of these trip limits in the at-sea whiting fisheries should be allowed to be donated instead of discarded.

### Processor Obligations

In some portions of the plan amendment language there was ambiguity as to whether the obligation to deliver to mothership processors was for all the catch taken by a catcher vessel in the mothership fishery or for all the catch allocated to the catcher vessel's permit. NMFS has interpreted the language as applying to all the catch allocated to the catcher vessel's permit but has asked for comment on this issue.

The GAP agrees with the proposed rule for MS/CV processor obligations.

## GROUNDFISH MANAGEMENT TEAM REPORT ON STATUS AND FOLLOW-UP OF AMENDMENTS 20 (TRAWL RATIONALIZATION) AND 21 (INTERSECTOR ALLOCATION)

The Groundfish Management Team (GMT) briefly reviewed Agenda Item I.5.a, Attachment 5 Proposed Components Rule. We would like to highlight two brief issues to the Council. We thank Jim Seger, Jamie Goen, and James Mize for their briefings to the GMT.

### 1. Stock Management Units

The Council motions under Amendment 20 specified that the stock management units for individual fishing quotas (IFQs) be based on species groups and areas for which there are optimum yields (OYs) (or now annual catch limits [ACLs]; see Agenda Item I.1.a, Attachment 2, April 2010, D.2.1.2). The accumulation limits are also based on the IFQ species groups or areas. **The GMT, therefore, recommends that the tables and text on pages 53425-53426 in the Components Rule (Table 1) be amended to reflect the species groups and areas for which ACLs were decided in the 2011-2012 harvest specifications and management measures process, identified in Table 2.**

Table 1. Species list of IFQ species shown in the Components Rule.

IFQ Species	
ROUNDFISH	ROCKFISH
Lingcod	Pacific ocean perch
Pacific cod	Widow rockfish
Pacific whiting	Canary rockfish
Sablefish north of 36° N. lat.	Chilipepper rockfish
Sablefish south of 36° N. lat.	Bocaccio
FLATFISH	Splitnose rockfish
Dover sole	Yellowtail rockfish
English sole	Shortspine thornyhead north of 34° 27' N. lat.
Petrale sole	Shortspine thornyhead south of 34° 27' N. lat.
Arrowtooth flounder	Longspine thornyhead north of 34° 27' N. lat.
Starry flounder	Cowcod
Other Flatfish stock complex	Darkblotched
	Yelloweye
	Minor Rockfish North slope species complex
Pacific halibut (IBQ) north of 40°10'	Minor Rockfish North shelf species complex
	Minor Rockfish South slope species complex
	Minor Rockfish South shelf species complex

Table 2. Revised list of IFQ species based on 2011-2012 ABC/OY table

IFQ Species	
ROUNDFISH	ROCKFISH
<i>Lingcod north of 42° N. lat.</i>	<i>Pacific ocean perch north of 40°10' N. lat.</i>
<i>Lingcod south of 42° N. lat.</i>	Widow rockfish
Pacific cod	Canary rockfish
Pacific whiting	<i>Chilipepper rockfish south of 40°10' N. lat.</i>
Sablefish north of 36° N. lat.	<i>Bocaccio south of 40°10' N. lat.</i>
Sablefish south of 36° N. lat.	<i>Splitnose rockfish south of 40°10' N. lat.</i>
FLATFISH	<i>Yellowtail rockfish north of 40°10' N. lat.</i>
Dover sole	Shortspine thornyhead north of 34° 27' N. lat.
English sole	Shortspine thornyhead south of 34° 27' N. lat.
Petrable sole	Longspine thornyhead north of 34° 27' N. lat.
Arrowtooth flounder	<i>Cowcod south of 40°10' N. lat.</i>
Starry flounder	Darkblotched
Other Flatfish stock complex	Yelloweye
	<i>Minor shelf rockfish complex north of 40°10' N. lat.</i>
	<i>Minor shelf rockfish complex south of 40°10' N. lat.</i>
Pacific halibut (IBQ) north of 40°10' N. lat.	<i>Minor slope rockfish complex north of 40°10' N. lat.</i>
	<i>Minor slope rockfish complex south of 40°10' N. lat.</i>

*italics* denote changes

## 2. Weight Conversion Factors

The Proposed Components Rule contains species-specific conversion factors for species that may be dressed prior to landing under the Shorebased IFQ program (p. 53413). The proposed rule provides conversion factors for the IFQ program and limited entry fixed gear/open access fisheries separately (Table 3).

The rules for landing of fish are currently set by the states. Oregon regulation allows the delivery of dressed sablefish, lingcod, Pacific whiting, and skate using conversion factors shown under Oregon Administrative Rule (Table 3). California allows only sablefish to be landed by certain commercial vessels using a conversion factor of 1.6. Washington allows only whole fish (round) landings except for lingcod and sablefish and uses the conversions in the groundfish regulations. As we understand it, the IFQ program is not intended to alter these state rules. Many of the conversion factors should be unnecessary if the rules are followed. The states may, of course, change those rules in the future.

In reviewing the conversion factors, the GMT discussion concluded the following:

- It is desirable to have coastwide conversion rates for several reasons.
- Conversion factors should be based on the condition/cut of the fish. Different conversion factors by gear type would not be appropriate.
- The states use separate conversion factors for certain stocks now, yet there is only one conversion to round pounds per state. With the federal IFQ landings tracking using

different conversion factors, there would be two conversions per state and dueling numbers for certain stocks.

- It is unlikely that California, and perhaps the other states, could alter their conversion factor for sablefish in a timely fashion. California's conversion factor is set by statute. It would seem preferable if the Federal conversion factors match the state factors until the state factors can be changed.
- We briefly reviewed the source of the proposed conversion factors and understand it is the best available information on the topic.<sup>1</sup> The report lists references and sources but not data and methodologies. Source studies appear to have been conducted in multiple locations in the Pacific. We did not have time to track down the justification for the current conversion factors used by the states.
- We see a benefit to further splitting of the proposed conversion factors based on body type both for flatfishes and rockfishes. If we had the data on which the conversion factors were calculated, the analysis could be quite simple.
- The PacFIN Committee would be a good forum for discussion of this issue.

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<sup>1</sup> Crapo, C., B. Paust, and J. Babbitt. *Recoveries and Yields from Pacific Fish and Shellfish* (2004).  
<http://seagrant.uaf.edu/bookstore/pubs/MAB-37.html>

Table 3. Conversion factors shown by the Program Components Proposed Rule and those currently used by the state of Oregon (Oregon Administrative Rule 635-006-0215).

Species	Process	ODFW	Program Components	
			IFQ	LEFG/OA
Sablefish	Headed and gutted	1.6	1.47 <sup>a</sup>	1.6 <sup>a</sup>
	Glazed	0.95		
Lingcod	Gilled and gutted	1.1	1.1	1.1
	Headed and gutted	1.5	1.43	1.5 <sup>a</sup>
Pacific whiting	Filet	2.86		
	Headed and gutted	1.56	1.67 - 2.0 <sup>b</sup>	
Skates		2.6		
Rockfish			1.66 - 1.75 <sup>c</sup>	
POP	Headed and gutted <sup>a</sup>		1.6	
Pacific cod	Headed and gutted <sup>a</sup>		1.58	
Dover sole	Headed and gutted <sup>a</sup>		1.53	
English sole	Headed and gutted <sup>a</sup>		1.53	
Other FF	Headed and gutted <sup>a</sup>		1.53	
Petrale sole	Headed and gutted <sup>a</sup>		1.51	
Arrowtooth flounder	Headed and gutted <sup>a</sup>		1.35	
Starry flounder	Headed and gutted <sup>a</sup>		1.49	

<sup>a</sup>Eviscerated

<sup>b</sup>Headed and gutted (head removed just in front of collar bone and viscera removed) = 1.75;  
headed and gutted, western cut = 1.66; Headed and gutted eastern cut = 2.0

<sup>c</sup>Headed, gutted, eviscerated = 1.75; headed and gutted western cut = 1.66  
headed, gutted, eastern cut = 2.0

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09/15/10



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
Northwest Region  
7600 Sand Point Way NE  
Seattle, Washington 98115

August 26, 2010

The Honorable Mike Thompson  
U.S. House of Representatives  
Washington, D.C. 20515

RECEIVED

PFMC

Dear Representative Thompson:

Thank you for your letter, dated July 27, 2010, to National Oceanic and Atmospheric Administration (NOAA) Administrator, Dr. Jane Lubchenco, pertaining to the west coast trawl catch shares program. At Dr. Lubchenco's request, I am providing additional details on the important aspects of the program that you raised in your letter. I also hope to meet with you and your staff in the near future to discuss these issues further. In responding, please allow me first to express my appreciation for your long-term service on behalf of marine fisheries and marine conservation, and your continued attention to the needs of the fishery and the fishing communities that depend upon them.

Your letter requested that NOAA disapprove the catch shares program for the west coast groundfish trawl fishery or remand it to the Pacific Fishery Management Council (Council). Due to NOAA's commitment to the tight schedule governing review of the program and the need to respond to the Council's proposed amendments within 95 days, as dictated by the Magnuson-Stevens Fishery Conservation and Management Act, on August 9<sup>th</sup> I approved (with minor technical modifications) the west coast trawl catch shares program. This decision was carefully considered, and based upon a review of the record as a whole. I describe briefly the history of the development of the program by the Council because it is relevant to your request.

This program has as its origins and primary sponsorship the members of the Pacific Fishery Management Council, who have repeatedly endorsed the program and recommended that NOAA and the Secretary of Commerce endorse it, approve it and implement it promptly, starting in January, 2011. The Pacific Council worked very hard over the last seven years on this major restructuring of our west coast trawl ground-fish program. In 2003, the Council initiated its consideration of trawl rationalization in response to requests from a cross-section of fishing industry leaders and their concern about severe economic stress and un-sustainability in the fishery. The trawl fishery is in a difficult position, caught between the severely compromised status of a number of weak ground-fish stocks and the need to rebuild these same stocks by reducing harvest-related impacts. These two facts translate into necessary catch limitations for the fishery that are not a product of the catch shares program, but are, on the contrary, a driving factor that led the Council to initiate consideration of a catch shares program as a possible solution.

After a comprehensive public process, the Council decided that switching to a properly designed catch shares program is the best course for the fishery, the fishing industry,



and the families and communities that depend upon the fishery. The Council established several expert advisory bodies, and held specialized workshops to make recommendations on possible program elements; all were open to the public. Over the course of many meetings, the Council considered and analyzed numerous different approaches to this restructuring and ultimately adopted a final catch share program, embodied in Amendments 20 and 21 to the Pacific Coast Groundfish fishery management plan. Discussion of the various considerations was extensive; over 100 individuals testified at one Council meeting alone. NOAA and the Council believe that the catch shares program that evolved from this process offers substantial conservation and economic benefits. It is precisely for these two objectives that the Council and I have recommended it to Secretary of Commerce, Gary Locke, and the Secretary has approved it. I would note in passing that the Council recently reaffirmed its support for the program by a significant vote of 17 in favor and 1 opposed – reflecting the depth of commitment to the restructuring of the trawl program.

You have raised several specific issues in your letter that NOAA and the Council have examined extensively. Please allow me to comment briefly on each.

**Implementation Costs.** The initial costs of implementing this catch shares program are high and must be reduced. The Council members have repeatedly affirmed their strong support for the 100% observer coverage requirement as a core element of the accountability and conservation benefits expected to result from the program. However, we will continue to examine adjustments in the details of the observer program to capture additional efficiencies in the manner in which the observer program is executed. There is, in fact, considerable flexibility available to the industry to design strategies for cooperatively sharing observers and data management capabilities to reduce per unit costs, and we are confident that the first year of implementation will yield valuable lessons on these opportunities for efficiencies. It is difficult to predict with precision exactly how the industry will respond and the degree to which it will coordinate closely in sharing observer and monitoring costs, but we expect considerable efforts along these lines as has been evidenced in other fisheries governed by catch shares programs. Furthermore, the Council is considering potential costs savings that might be achieved by modifying the educational requirements for shore-side monitors and at-sea observers and using less expensive at-sea monitoring technologies, such as electronic monitoring for certain vessel or gear types.

Additionally, the existing estimates of initial implementation costs are conservative, and therefore, likely overestimates. The cost issue is real, but we also believe there are both short and long-term solutions for it. In the short term, NOAA is committed to share 90% of the permit monitoring costs for the first year if Congress approves the Administration's budget request for the coming year.

**Initial Allocation and Gifting of Public Resources.** The Council carefully considered this fundamental topic at the start of this endeavor and reviewed a wide range of public testimony on it before proceeding. I acknowledge as a matter of principle that reasonable people differ on this topic. As a legal matter, the fishery resources will continue to be in the public trust. In our practical approach to the topic, we designed the program to ensure that the legal character of the



established quotas do not create private property rights that can give rise to takings claims if at a future time we seek to restructure the trawl program using other tools.

However, as a financial matter, we recognize that quota has current value, and thus the initial allocation of quota confers that value on its recipients. To achieve an allocation that is in the judgment of the Council members fair and equitable, the program specifies that approximately half of the initial allocation be allocated equally among all permit holders and that about half be split among those who have been active participants in the fishery during the 1994-2003 qualifying period, based on their individual catch production record.

Quota shares and improved observer coverage will become the primary tools to manage trawl fishing effort and harvest, replacing the traditional approach of managing landings through bimonthly cumulative harvest limits. Under IFQs, the government gets out of managing fishing effort through bimonthly limits. Instead, the overall fishing effort is limited by quotas; fishermen may go fishing when it is most advantageous to them. They may also trade or exchange fishing quotas as they judge most appropriate, subject to strict accumulation limits and other requirements.

**Participation.** I share your concern about the potential for quota shares to be controlled by entities without a direct interest in the fishery. This issue is one that received a substantial amount of discussion by the Council during program development. The program contains a number of provisions to ensure the annually issued quota pounds would be available in the fishery each year and to encourage control by fishermen. For example, there are requirements that quota pounds be transferred only to and among vessels and that all quota pounds be transferred to a vessel account every year. We will monitor this issue closely and will likely revisit it during program reviews.

**Consolidation and Equity.** Consolidation is an intended outcome of this catch shares program in light of the current overcapitalized status of the fleet. Notably, the current distribution of catch among vessels shows too many vessels and not enough catch; many vessels are not economically profitable businesses, do not currently support crew members, and do not support ancillary community economic benefits. However, the Council has been vigilant on the topic of accumulation limits to ensure that quota ownership is not overly consolidated into the hands of a few corporate entities. The Council has worked hard on the accumulation limits of the program to minimize opportunities for circumvention, and is confident in its strong approach on this important component of the program.

**Spill-over.** The spillover of existing vessels and effort into other fisheries was a concern considered by the Council as it weighted all the tradeoffs involved with implementing the program. The Council's Final Environmental Impact Statement identifies the same fisheries of concern that you identify in your letter. Studies show that spillover impacts on other fisheries depend on how well those other fisheries are managed. The impact will be less in fisheries with adequate harvest controls. Your letter notes that surplus trawl vessels may be reactivated with permits from other Federal fisheries and highlights concern for resulting impacts on the fixed gear ground-fish, pink shrimp, and Dungeness crab fisheries of the west coast. Of these fisheries, only the fixed gear ground-fish fishery is a Federal fishery and that fishery is an

already largely rationalized fishery that will effectively control any spillover problems. The other two fisheries are state-managed fisheries. The Council, including its state agency representatives, considered potential impacts on these fisheries and concluded that since these fisheries were state managed, it would be best to address the issue outside the Council process.

This restructuring of the trawl program represents the most complex catch shares program undertaking in the United States, and it is indeed complicated. We fully expect to refine the details of the program in parallel with its implementation as we learn more about what is working and what requires adjustment. Continued refinement has been essential to every other catch shares program implemented domestically; the number of amendments to each in the immediate out-years is impressive, and speaks to the learning and positive adaptation that occurs and is anticipated here. As such, NMFS is working with the Council on development of a set of trailing amendments this fall. In addition to considering observer program costs, we will look at refining the adaptive management elements of the program and developing provisions to authorize community fishing associations to hold and pool quota to achieve a variety of purposes.

The fact that work will continue on refinements to the program, both administratively and by formal amendment, brings us to your final point on the issue of the schedule for implementation. One might argue that the prudent course would be to defer implementation while these additional details are refined, or while improvements in electronic monitoring can take hold. On this issue, the Council has repeatedly considered and voted against every proposal to delay or postpone the implementation of the program, with the latest occurring just this past June. Each time, the Council rejected these options in favor of prompt implementation of the program by January, 2011, reflecting the conclusion that implementation should proceed, as delay would saddle fishing communities with continued deterioration of economic benefits and would leave the Council to confront the same fundamental problems that has led it to adopt the present set of important changes to the fishery. The Council has therefore decided after careful consideration to proceed, and by approving the Council's proposed amendments on August 9<sup>th</sup>, I concurred with that recommendation.

In closing, I again express my appreciation for your longstanding leadership of and support for our efforts in managing our marine resources and for the families and coastal communities that depend upon those resources. I welcome an opportunity to visit with you and your staff to further discuss these important topics.

Sincerely,



William W. Stelle, Jr.  
Regional Administrator

cc. Dr. Lubchenco  
Mr. Eric Schwaab  
Mr. Mark Cedergreen, Chairman, PFMC



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**NATIONAL MARINE FISHERIES SERVICE**  
Northwest Region  
7600 Sand Point Way NE  
Seattle, Washington 98115

August 26, 2010

RECEIVED

AUG 26 2010

PFMC

The Honorable Peter DeFazio  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Representative DeFazio:

Thank you for your letter, dated July 27, 2010, to National Oceanic and Atmospheric Administration (NOAA) Administrator, Dr. Jane Lubchenco, pertaining to the west coast trawl catch shares program. At Dr. Lubchenco's request, I am providing additional details on the important aspects of the program that you raised in your letter. I also hope to meet with you and your staff in the near future to discuss these issues further. In responding, please allow me first to express my appreciation for your long-term service on behalf of marine fisheries and marine conservation, and your continued attention to the needs of the fishery and the fishing communities that depend upon them.

Your letter requested that NOAA disapprove the catch shares program for the west coast groundfish trawl fishery or remand it to the Pacific Fishery Management Council (Council). Due to NOAA's commitment to the tight schedule governing review of the program and the need to respond to the Council's proposed amendments within 95 days, as dictated by the Magnuson-Stevens Fishery Conservation and Management Act, on August 9<sup>th</sup> I approved (with minor technical modifications) the west coast trawl catch shares program. This decision was carefully considered, and based upon a review of the record as a whole. I describe briefly the history of the development of the program by the Council because it is relevant to your request.

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and the families and communities that depend upon the fishery. The Council established several expert advisory bodies, and held specialized workshops to make recommendations on possible program elements; all were open to the public. Over the course of many meetings, the Council considered and analyzed numerous different approaches to this restructuring and ultimately adopted a final catch share program, embodied in Amendments 20 and 21 to the Pacific Coast Groundfish fishery management plan. Discussion of the various considerations was extensive; over 100 individuals testified at one Council meeting alone. NOAA and the Council believe that the catch shares program that evolved from this process offers substantial conservation and economic benefits. It is precisely for these two objectives that the Council and I have recommended it to Secretary of Commerce, Gary Locke, and the Secretary has approved it. I would note in passing that the Council recently reaffirmed its support for the program by a significant vote of 17 in favor and 1 opposed – reflecting the depth of commitment to the restructuring of the trawl program.

You have raised several specific issues in your letter that NOAA and the Council have examined extensively. Please allow me to comment briefly on each.

**Implementation Costs.** The initial costs of implementing this catch shares program are high and must be reduced. The Council members have repeatedly affirmed their strong support for the 100% observer coverage requirement as a core element of the accountability and conservation benefits expected to result from the program. However, we will continue to examine adjustments in the details of the observer program to capture additional efficiencies in the manner in which the observer program is executed. There is, in fact, considerable flexibility available to the industry to design strategies for cooperatively sharing observers and data management capabilities to reduce per unit costs, and we are confident that the first year of implementation will yield valuable lessons on these opportunities for efficiencies. It is difficult to predict with precision exactly how the industry will respond and the degree to which it will coordinate closely in sharing observer and monitoring costs, but we expect considerable efforts along these lines as has been evidenced in other fisheries governed by catch shares programs. Furthermore, the Council is considering potential costs savings that might be achieved by modifying the educational requirements for shore-side monitors and at-sea observers and using less expensive at-sea monitoring technologies, such as electronic monitoring for certain vessel or gear types.

Additionally, the existing estimates of initial implementation costs are conservative, and therefore, likely overestimates. The cost issue is real, but we also believe there are both short and long-term solutions for it. In the short term, NOAA is committed to share 90% of the permit monitoring costs for the first year if Congress approves the Administration's budget request for the coming year.

**Initial Allocation and Gifting of Public Resources.** The Council carefully considered this fundamental topic at the start of this endeavor and reviewed a wide range of public testimony on it before proceeding. I acknowledge as a matter of principle that reasonable people differ on this topic. As a legal matter, the fishery resources will continue to be in the public trust. In our practical approach to the topic, we designed the program to ensure that the legal character of the

established quotas do not create private property rights that can give rise to takings claims if at a future time we seek to restructure the trawl program using other tools.

However, as a financial matter, we recognize that quota has current value, and thus the initial allocation of quota confers that value on its recipients. To achieve an allocation that is in the judgment of the Council members fair and equitable, the program specifies that approximately half of the initial allocation be allocated equally among all permit holders and that about half be split among those who have been active participants in the fishery during the 1994-2003 qualifying period, based on their individual catch production record.

Quota shares and improved observer coverage will become the primary tools to manage trawl fishing effort and harvest, replacing the traditional approach of managing landings through bimonthly cumulative harvest limits. Under IFQs, the government gets out of managing fishing effort through bimonthly limits. Instead, the overall fishing effort is limited by quotas; fishermen may go fishing when it is most advantageous to them. They may also trade or exchange fishing quotas as they judge most appropriate, subject to strict accumulation limits and other requirements.

**Participation.** I share your concern about the potential for quota shares to be controlled by entities without a direct interest in the fishery. This issue is one that received a substantial amount of discussion by the Council during program development. The program contains a number of provisions to ensure the annually issued quota pounds would be available in the fishery each year and to encourage control by fishermen. For example, there are requirements that quota pounds be transferred only to and among vessels and that all quota pounds be transferred to a vessel account every year. We will monitor this issue closely and will likely revisit it during program reviews.

**Consolidation and Equity.** Consolidation is an intended outcome of this catch shares program in light of the current overcapitalized status of the fleet. Notably, the current distribution of catch among vessels shows too many vessels and not enough catch; many vessels are not economically profitable businesses, do not currently support crew members, and do not support ancillary community economic benefits. However, the Council has been vigilant on the topic of accumulation limits to ensure that quota ownership is not overly consolidated into the hands of a few corporate entities. The Council has worked hard on the accumulation limits of the program to minimize opportunities for circumvention, and is confident in its strong approach on this important component of the program.

**Spill-over.** The spillover of existing vessels and effort into other fisheries was a concern considered by the Council as it weighted all the tradeoffs involved with implementing the program. The Council's Final Environmental Impact Statement identifies the same fisheries of concern that you identify in your letter. Studies show that spillover impacts on other fisheries depend on how well those other fisheries are managed. The impact will be less in fisheries with adequate harvest controls. Your letter notes that surplus trawl vessels may be reactivated with permits from other Federal fisheries and highlights concern for resulting impacts on the fixed gear ground-fish, pink shrimp, and Dungeness crab fisheries of the west coast. Of these fisheries, only the fixed gear ground-fish fishery is a Federal fishery and that fishery is an

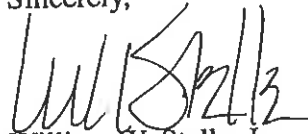
already largely rationalized fishery that will effectively control any spillover problems. The other two fisheries are state-managed fisheries. The Council, including its state agency representatives, considered potential impacts on these fisheries and concluded that since these fisheries were state managed, it would be best to address the issue outside the Council process.

This restructuring of the trawl program represents the most complex catch shares program undertaking in the United States, and it is indeed complicated. We fully expect to refine the details of the program in parallel with its implementation as we learn more about what is working and what requires adjustment. Continued refinement has been essential to every other catch shares program implemented domestically; the number of amendments to each in the immediate out-years is impressive, and speaks to the learning and positive adaptation that occurs and is anticipated here. As such, NMFS is working with the Council on development of a set of trailing amendments this fall. In addition to considering observer program costs, we will look at refining the adaptive management elements of the program and developing provisions to authorize community fishing associations to hold and pool quota to achieve a variety of purposes.

The fact that work will continue on refinements to the program, both administratively and by formal amendment, brings us to your final point on the issue of the schedule for implementation. One might argue that the prudent course would be to defer implementation while these additional details are refined, or while improvements in electronic monitoring can take hold. On this issue, the Council has repeatedly considered and voted against every proposal to delay or postpone the implementation of the program, with the latest occurring just this past June. Each time, the Council rejected these options in favor of prompt implementation of the program by January, 2011, reflecting the conclusion that implementation should proceed, as delay would saddle fishing communities with continued deterioration of economic benefits and would leave the Council to confront the same fundamental problems that has led it to adopt the present set of important changes to the fishery. The Council has therefore decided after careful consideration to proceed, and by approving the Council's proposed amendments on August 9<sup>th</sup>, I concurred with that recommendation.

In closing, I again express my appreciation for your longstanding leadership of and support for our efforts in managing our marine resources and for the families and coastal communities that depend upon those resources. I welcome an opportunity to visit with you and your staff to further discuss these important topics.

Sincerely,



William W. Stelle, Jr.  
Regional Administrator

cc. Dr. Lubchenco  
Mr. Eric Schwaab  
Mr. Mark Cedergreen, Chairman, PFMF

## POTENTIAL TRAILING ACTIONS TO AMENDMENT 20 ON TRAWL RATIONALIZATION

The Council has scheduled initial consideration of trailing actions on the trawl catch shares program for the September 2010 Council meeting. Potential trailing actions could include both plan amendments and regulatory amendments. Most of the detail of the adopted catch share plan is contained in Appendix E to the Groundfish Fishery Management Plan (FMP). The FMP specifies that the portions of the trawl catch share program described in the appendix can be modified through a regulatory amendment process, rather than a plan amendment. After the regulatory amendment is completed, the appendix would then be updated to reflect changes in the regulations. The FMP also states that the Council will establish a process for considering recommended changes to the regulations. Unless the Council wants to establish a different process for trawl catch share program regulatory amendments, the Council can specify that it will use its existing regulatory amendment procedures for that purpose (Agenda Item I.6.a, Attachment 1).

Agenda Item I.6.a, Attachment 2, provides a list and description of some of the main trailing action possibilities that have been mentioned in the final environmental impact statement, by the Council, by Council advisory bodies, or by the public. At this meeting, the Council should decide on a list of topics for formal scoping and identify a potential calendar for the individual candidate topics. In addition to issues brought up under the agenda item by advisors and the public, the Council may wish to consider for inclusion issues identified during its review of the proposed components rule or issues related to the disapproved parts of Amendment 20, both of which were covered under Agenda Item I.5.

In considering a Council calendar for the individual candidate topics, the Council may wish to discuss date completion targets and workload implications. With regard to target completion dates, the Council may wish to separate candidate issues into different time schedules due to reasons of complexity, priority, and the length of time that would be required if all are taken up collectively on the same schedule. With regard to workload implications and the uncertainties of the CY2011 Council budget, the Council may wish to separate a few issues from the list for expedited treatment. The Council has received \$30k to assist in initiating consideration of trailing amendments with some emphasis for issues related to Community Fishing Associations.

As a process efficiency measure, the Council may wish to appoint a group to assist it in scoping and/or begin work on some topics selected for immediate priority. Because of public notice requirements, this group would not be able to have its first meeting until just prior to the November Council meeting. If the Council appoints a workgroup, it should consider both constituent membership and agency support. Workgroups are able to operate most effectively when agency expertise is available during the workgroup meetings. Presence of agency personnel at workgroup meetings may also benefit the decision process at Council meetings.

**Council Action:**

1. **Decide on the process to be followed for regulatory amendments modifying Appendix E to the groundfish FMP.**
2. **Develop a list of scoping topics for trailing actions and amendments and decide whether additional topics will be considered in November.**
3. **Decide on need for a workgroup on trailing amendments and the scope of issues to be assigned to the workgroup.**

**Reference Materials:**

1. Agenda Item I.6.a, Attachment 1: Regulatory Amendment Process Provisions of the Pacific Coast Groundfish FMP.
2. Agenda Item I.6.a, Attachment 2: Potential Trailing Actions on Trawl Rationalization.
3. Agenda Item I.6.c, Public Comment.

**Agenda Order:**

- a. Agenda Item Overview **Jim Seger**
- b. Reports and Comments of Advisory Bodies and Management Entities
- c. Public Comment
- d. **Council Action:** Designate Amendment Process, Prioritize Issues, and Provide Guidance on Trailing Actions for the Trawl Rationalization Program

PFMC

08/27/10



## REGULATORY AMENDMENT PROCESS PROVISIONS OF THE PACIFIC COAST GROUND FISH FISHERY MANAGEMENT PLAN

### 6.2 General Procedures for Establishing and Adjusting Management Measures

#### D. Full Rulemaking For Actions Normally Requiring at Least Two Council Meetings and Two *Federal Register* Rules (Regulatory Amendment)

These include any proposed management measure that is highly controversial or any measure that directly allocates the resource. These also include management measures that are intended to have permanent effect and are discretionary, and for which the impacts have not been previously analyzed. Full rulemakings will normally use a two-Council-meeting process, although additional meetings may be required to fully develop the Council's recommendations on a full rulemaking issue. Regulatory measures to implement an FMP amendment will be developed through the full rulemaking process. The Secretary will publish a proposed rule in the *Federal Register* with an appropriate period for public comment followed by publication of a final rule in the *Federal Register*.

Council-recommended management measures addressing a resource conservation issue must be based upon the identification of a point of concern through that decision-making framework, consistent with the specific procedures and criteria listed in Section 6.2.2.

Council-recommended management measures addressing social or economic issues must be consistent with the specific procedures and criteria described in Section 6.2.3.

Council-recommended changes to habitat protection measures must be consistent with the specific procedures and criteria described in Section 6.2.4.

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#### **6.2.2 Resource Conservation Issues—The Points of Concern Framework**

The points of concern process is the Council's second major tool (along with setting harvest levels) in exercising its resource stewardship responsibilities. The Council developed the points of concern criteria to assist it in determining when a focused review on a particular species or species group is warranted, which might result in the need to recommend the implementation of specific management measures to address the resource conservation issue. This process is intended to foster a continuous and vigilant review of the Pacific Coast groundfish stocks and fishery to prevent unintended overfishing or other resource damage. To facilitate this process, a Council-appointed management team (the GMT or other entity) will monitor the fishery throughout the year, taking into account any new information on the status of each species or species group. By this means, they will identify resource conservation issues requiring a management response. The Council is authorized by this FMP to act based solely on evidence that one or more of these points of concern criteria has been met. This allows the Council to respond quickly and directly to a resource conservation issue. In conducting this review, the GMT or other entity will use the most current catch, effort, and other relevant data from the fishery.

In the course of the continuing review, a point of concern occurs when any one or more of the following situations occurs or is expected to occur:

1. Catch for the calendar year is projected to exceed the best current estimate of ABC for those species for which an OY, HG or quota is not specified.
2. Catch for the calendar year is projected to exceed the current OY, HG or quota.
3. Any change in the biological characteristics of the species or species complex is discovered, such as changes in age composition, size composition, and age at maturity.
4. Exploitable biomass or spawning biomass is below a level expected to produce MSY for the species/species complex under consideration.
5. Recruitment is substantially below replacement level.
6. Estimated bycatch of a species or species group increases substantially above previous estimates, or there is information that abundance of a bycatch species has declined substantially.
7. Impacts of fishing gear on EFH are discovered and modification to gear or fishing regulations could reduce those impacts.

Once a point of concern is identified, the GMT will evaluate current data to determine if a resource conservation issue exists and will provide its findings in writing at the next scheduled Council meeting. If the GMT determines a resource conservation issue exists, it will provide its recommendation, rationale, and analysis for the appropriate management measures that will address the issue.

In developing its recommendation for management action, the Council will choose an action from one or more of the categories listed below, although they may also identify other necessary measures. These categories cover the types of management measures most commonly used to address resource conservation issues:

- HGs
- Quotas
- Cessation of directed fishing on the identified species or species group with appropriate allowances for incidental harvest of that species or species group
- Size limits
- Landing limits
- Trip frequency limits
- Area or subarea closures
- Time closures
- Seasons
- Gear limitations, which include, but are not limited to, definitions of legal gear, mesh size specifications, codend specifications, marking requirements, and other gear specifications as necessary.
- Observer or other monitoring coverage
- Reporting requirements
- Permits

Council recommendations to directly allocate the resource will be developed according to the criteria and process described in Section 6.2.3, the socioeconomic framework.

After receiving the GMT's report, and comments from its advisory bodies, the Council will take public testimony and, if appropriate, will recommend management measures to the NMFS Regional Administrator, accompanied by supporting rationale and analysis of impacts. The Council's analysis will include a description of (a) how the action will address the resource conservation issue, consistent with the objectives of the FMP; (b) likely impacts on other management measures, other fisheries, and bycatch; (c) economic impacts, particularly the cost to the commercial and recreational segments of the fishing industry; and (d) impacts on fishing communities.

The NMFS Regional Administrator will review the Council's recommendation and supporting information and will follow the appropriate implementation process described in Section 6.2, D depending on the amount of public notice and comment provided by the Council and the intended permanence of the management action. If the Council anticipates that the recommended measures will be adjusted frequently, it may classify them as routine through the appropriate process described in Section 6.2.1.

If the NMFS Regional Administrator does not concur with the Council's recommendation, the Council will be notified in writing of the reasons for the rejection.

Nothing in this section is meant to detract from the authority of the Secretary to take emergency action under Section 305(c) of the Magnuson-Stevens Act.

### **6.2.3 Non-biological Issues—The Socioeconomic Framework**

From time to time, non-biological issues may arise that require the Council to recommend management actions to address certain social or economic issues in the fishery. Resource allocation, seasons, or landing limits based on market quality and timing, safety measures, and prevention of gear conflicts make up only a few examples of possible management issues with a social or economic basis. In general, there may be any number of situations where the Council determines that management measures are necessary to achieve the stated social and/or economic objectives of the FMP.

Either on its own initiative or by request, the Council may evaluate current information and issues to determine if social or economic factors warrant imposition of management measures to achieve the Council's established management objectives. Actions that are permitted under this framework include all of the categories of actions authorized under the points of concern framework with the addition of direct resource allocation.

If the Council concludes that a management action is necessary to address a social or economic issue, it will prepare a report containing the rationale in support of its conclusion. The report will include the proposed management measure, a description of other viable alternatives considered, and an analysis that addresses the following criteria: (a) how the action is expected to promote achievement of the goals and objectives of the FMP; (b) likely impacts on other management measures, other fisheries, and bycatch; (c) biological impacts; (d) economic impacts, particularly the cost to the fishing industry; (e) impacts on fishing communities; and (f) how the action is expected to accomplish at least one of the following, or any other measurable benefit to the fishery:

1. Enable a quota, HG, or allocation to be achieved.
2. Avoid exceeding a quota, HG, or allocation.
3. Extend domestic fishing and marketing opportunities as long as practicable during the fishing year, for those sectors for which the Council has established this policy.
4. Maintain stability in the fishery by continuing management measures for species that previously were managed under the points of concern mechanism.
5. Maintain or improve product volume and flow to the consumer.
6. Increase economic yield.
7. Improve product quality.
8. Reduce anticipated bycatch and bycatch mortality.
9. Reduce gear conflicts, or conflicts between competing user groups.
10. Develop fisheries for underutilized species with minimal impacts on existing domestic fisheries.

11. Increase sustainable landings.
12. Reduce fishing capacity.
13. Maintain data collection and means for verification.
14. Maintain or improve the recreational fishery.

The Council, following review of the report, supporting data, public comment, and other relevant information, may recommend management measures to the NMFS Regional Administrator accompanied by relevant background data, information, and public comment. The recommendation will explain the urgency in implementing the measure(s), if any, and reasons therefore.

The NMFS Regional Administrator will review the Council's recommendation, supporting rationale, public comments, and other relevant information, and, if it is approved, will undertake the appropriate method of implementation. Rejection of the recommendation will be explained in writing.

The procedures specified in this chapter do not affect the authority of the Secretary to take emergency regulatory action as provided for in Section 305(c) of the Magnuson-Stevens Act if an emergency exists involving any groundfish resource, or to take such other regulatory action as may be necessary to discharge the Secretary's responsibilities under Section 305(d) of the Magnuson-Stevens Act.

If conditions warrant, the Council may designate a management measure developed and recommended to address social and economic issues as a routine management measure, provided that the criteria and procedures in Section 6.2.1 are followed.

Quotas, including allocations, implemented through this framework will be set for one-year periods and may be modified inseason only to reflect technical corrections to an ABC. (In contrast, quotas may be imposed at any time of year for resource conservation reasons under the points of concern mechanism.)

#### **6.2.4 The Habitat Conservation Framework**

In order to protect EFH from the adverse effects of fishing, the Council has identified areas that are closed to bottom trawling (see sections 6.8 and 7.4). These areas are described in Federal regulations and may be modified through the full rulemaking process as described under Section 6.2 D. The Council shall establish an EFH Oversight Committee (OC). At the request of the Council, the EFH OC would review the areas currently closed to bottom trawling and recommend to the Council the elimination of existing areas or the addition of new areas, or modification of the extent and location of existing areas. In making its recommendation to the Council, the committee should consider, but is not limited to considering, the best available scientific information about:

1. The importance of habitat types to any groundfish FMU species for their spawning, breeding, feeding, or growth to maturity.
2. The presence and location of important habitat (as defined immediately above).
3. The presence and location of habitat that is vulnerable to the effects of bottom trawl fishing.
4. The presence and location of unique, rare, or threatened habitat.
5. The socioeconomic and management-related effects of closures, including changes in the location and intensity of bottom trawl fishing effort, the displacement or loss of revenue from fishing, and social and economic effects to fishing communities attributable to the location and extent of

closed areas.

When making its recommendation to the Council, the committee may also include in its recommendations proposed changes in the designation of habitat areas of particular concern (HAPCs) consistent with the proposed modification of the location and extent of areas closed to bottom trawling. For example, if a current closed area, which is also identified as a HAPC, is recommended for elimination, the committee may recommend whether or not to retain the HAPC designation. Any such recommendation with respect to a HAPC would trigger the process for the modification of HAPCs (by FMP amendment) described in Section 7.3.2. Upon receipt of a recommendation from the committee, the Council will decide whether to begin the rulemaking process described in Section 6.2 D for establishing, adjusting, or removing discretionary management measures intended to have a permanent effect.

## POTENTIAL TRAILING ACTIONS ON TRAWL RATIONALIZATION

Depending on the nature of a trailing action either a fishery management plan (FMP) amendment or a regulatory amendment would be required. The potential trailing actions which have been identified so far would be regulatory amendments. This is because most of the catch share program provisions are contained in Appendix E of the FMP. In accordance with procedures adopted by the Council, Appendix E may be updated based on changes in the regulations, i.e. changing Appendix E does not require an FMP amendment. The following section provides a list of the trailing actions identified so far and the remainder of this document provides a brief summary of the issues and potential workload related to each of these potential actions.

### Trailing Regulatory Amendments

#### Substantial Effort Likely Required

1. Cost Recovery (*trailing action obligated under Amendment 20*)
2. Adaptive Management Quota Shares (*trailing action obligated under Amendment 20*)
3. Quota Share/Quota Pound (QS/QP) Control Rules – Safe Harbors
  - Community Fishing Associations
  - Risk Pools
  - Financial Institutions
4. Reducing Observers Costs (educational requirement for observers, less than 100% coverage, alternative technologies)
5. Yelloweye QS Allocation
6. Widow Rockfish Quota Share Reallocation – (*Amendment 20 states the Council may consider reallocating overfished species QS upon rebuilding*).

#### Possibly Requiring a Moderate Effort

7. Halibut Trawl Allocation Adjustment (needed only if a change is to be considered for 2012)

#### Relatively Minor Effort Required

8. QP Deficits Lasting More Than 30 Days – Changing the Opt Out Requirement  
Requirement that a vessel carrying a deficit for more than 30 days opt out for the entire year to avoid penalty for overage (applies only if the deficit is less than or equal to the carry over allowance).
9. Revise Calculation of Mothership Processing Ownership Limits (application of individual and collective rule)
10. Allow Permit Stacking (putting both a fixed gear and trawl permit on the same vessel)
11. Eliminate Double Filing of Co-op Reports (November and March)
12. Severability of catch history from the mothership catcher vessel permit

### Trailing Plan Amendments

None identified.

## **Trailing Regulatory Amendments**

### **1. Cost Recovery**

The Council needs to further develop the methodology for identifying costs to be recovered through fees and specify a program of fees. The Section 303A(e) of the MSA states that

In establishing a limited access privilege program a Council shall -- (1) develop a methodology and the means to identify and assess the management, data collection and analysis, and enforcement programs that are directly related to and in support of the program; and (2) provide, under section 304(d)(2), for a program of fees paid by limited access privilege holders that will cover the costs of management, data collection and analysis, and enforcement activities.

The program adopted in Amendment 20 is now Appendix E of the groundfish FMP. Section A-2.3.3 of Appendix E states

Program costs

- a. Cost recovery. Fees up to three percent of exvessel value, consistent with MSA 303A(e) may be assessed. Cost recover shall be for costs of management, data collection, analysis, and enforcement activities.
- b. Fee structure. To be determined. The TIQC recommended a fee structure that reflects usage. A fee structure that allows for equitable sharing of observer costs for smaller vessels may be developed.

### **Workload Assessment -- Cost Recovery**

#### **Policy Development**

Main Tasks

- developing a set of rules for assessing costs,
- developing a fee structure

The primary task would be to develop a policy specification for what will and will not be counted as program costs. Some of the issues which might be addressed include treatment of cost savings that result from the program, including existing funds that are reprogrammed to other uses as a result of the catch share program (e.g. if under the catch share program the West Coast Groundfish Observer Program reprograms Federal observers to increase sampling rates in other fisheries, how is this taken into account in determining catch share program costs).

The fee structure would likely be relatively simple and based on landings. The biggest uncertainty at this point is whether and how to take into account the situation of smaller vessels with respect to equitable sharing of costs (A-2.3.3.b).

#### **Analysis**

Main Tasks

- developing an example assessment of costs based on the rules,
- providing a quantitative assessment of the impacts of the fees using data from the 2009 or 2010 fishery and the initial QS distributions.

Given potential controversy it would be best to provide a fairly rigorous analysis.

### **Workload Products and Process**

This issue would likely require a moderately sized document (e.g. 20-30 pages) with a moderate amount of quantitative analysis.

To develop options, the Council would likely need to provide some general policy guidance on issues like treatment of reprogrammed expenditures and fees for small vessels and rely substantially on NMFS personnel in developing methodology options for its review. The analysis would likely fall to NMFS and Council staff. A contractor might be used for the quantitative elements.

The issue may receive quite a bit of public comment and may get wrapped together with concern and discussion about the level and duration of Federal support.



## 2. Adaptive Management Quota Shares

In the spring of 2009, the Council and its advisors developed a number of reports on the issue of how the quota set aside for adaptive management might be used. At that time, the Council decided it would be best to framework the provision into the catch shares program and develop the specifics during the first two years of the program. During the first two years of the program, QP that would otherwise be used for adaptive management are being distributed to all QS holders, pro rata based on their QS holdings. The Council needs to develop a regulatory amendment to utilize the QS set aside for adaptive management.

Council policy on this issue, from Section A-3 of Appendix E to the groundfish FMP, is as follows:

Ten percent of the nonwhiting QS will be reserved to facilitate adaptive management in the shoreside nonwhiting sector. Therefore, each year 10 percent of the shoreside trawl sector nonwhiting quota pounds will be available for use in adaptive management (adaptive management QP). The set aside will be used to address the following objectives.

- Community stability
- Processor stability
- Conservation
- Unintended/Unforeseen consequences of IFQ management.
- Facilitating new entrants.

**Years One and Two.** During the first two years in which the IFQ program is in place, the method to be used in distributing QP in years three through five will be determined, including.

- The decision making and organization structure to be used in distributing the QP set aside<sup>1</sup>
- The formula for determining community and processor eligibility, as well as methods for allocation, consistent with additional goals.
- The division of QP among the states.
- Whether to allow the multi-year commitment of QP to a particular project.

**Years Three through Five.** QP will be distributed through the organizational structure, decision process, formulas and criteria developed in years one and two and implemented through subsequent Council recommendation and NMFS rule making processes. Consideration will be given to the multiyear commitment of QP to particular projects (three year commitments).

**Review and Duration.** The set aside of QP for the identified objectives will be reviewed as part of the year five comprehensive review and a range of sunset dates will be considered, including 10, 15, 20 year and no sunset date options.

### Workload Assessment – Adaptive Management

#### Policy Development

While considerable thought has already gone into this issue, difficult decisions still remain, which is part of the reason it was thought best to wait until the catch share program is implemented before more fully developing the provisions for use of the adaptive management quota it. The main issues to be addressed in policy development are

1. the decision making process,
2. the criteria for quota distribution,
3. geographic distribution of the quota among the states and
4. whether or not to make multiyear commitments of the quota.

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<sup>1</sup> The following are three options for the sequences of agency involvement in decision making for the distribution of adaptive management QP after year 2..

1. NMFS
2. State → Council → NMFS
3. Council → NMFS

The decision making process and criteria for distribution are strongly interdependent. For example, if the criteria include evaluation of proposals a more intense decision process may be required. On the other hand, the criteria could be formulaic, for example based on the percent of deliveries made to the same port as in a previous year. The quota might also be designated for each state area and different criteria used depending on the needs within each state. Because adaptive management quota could potentially be allocated to Community Fishing Associations (CFAs) there may be some interaction between this issue and other Council deliberations involving CFAs (safe harbors for control rules).

### **Analysis**

Analysis of this issue would likely be primarily qualitative in nature. The analytical tasks may vary greatly depending on the nature of the options developed. Because of the variety of ways the program could be implemented, substantial effort may be required to organize and portray the options in a manner that makes it easy for the Council and public to understand the tradeoffs.

Given potential controversy it would be best to provide a fairly rigorous analysis.

### **Work Products and Process**

This issue would likely require a document of moderate size, depending on the number and complexity of the options. At this time, minimal quantitative analysis would be expected.

Option development may be time consuming process because of the many possible ways in which the program could be implemented. Because the program may be demanding on Federal and state agency resources, early input from these agencies about policy constraints would be important. For these reasons, and because there are many policy choices which are of particular interest to Federal and state agencies, the process would likely proceed most efficiently if there is significant agency involvement in option development. This may be an issue which would be most effectively handled by a special agency workgroup with input from the public.

There would likely be substantial public comment, including comment by those who would like to see the adaptive management quota continue to pass through indefinitely into the future. Additionally, potential interactions with the CFA issues and the variety of possible uses for this quota (including encouragement of gear switching) are likely to attract comment.

### 3. QS/QP Control Rules – Safe Harbors

The Council has attempted to establish very strict rules for the application of limits on QS/QP control. At the same time, the Council has been concerned that these limits not prevent certain types of activities which it considers beneficial to the fishery. These activities might include the formation of community fishing associations (CFAs), risk pools, and the financing of QS/QP purchases by financial institutions. It has been suggested that the Council establish very specific safe harbor exceptions to allow these types of beneficial activities.

**CFAs:** Prior to its final action on Amendment 20, the Council scoped possible provisions for CFAs. Entities are able to form community associations for a variety of purposes without Council action. For the Council the main issues are (1) should any special privileges be provided to such entities, and, if so, (2) what are the criteria such an entity would have to meet in order to qualify as one deserving of such privileges? Based on the Council's previous deliberations, it appears that the only special considerations that a CFA might need is an exception (safe harbor) with respect to the QS/QP control rule. If additional exceptions are identified, it might be appropriate to break the CFA issue out and provide a scoping category independent of the control rule issue.

**Risk Pools.** During the development of the program there has been much concern about how industry might organize itself to make best use of the limited amounts of overfished species QS/QP that may be available. One concept that received much attention was the possibility that fishermen might organize themselves into risk pools, with each member of the pool contributing toward the total amount of overfished species QS/QP in the pool. In a footnote to section A-2.2.3.e of Appendix E, the Council stated

It is the Council intent that control limits should not constrain the formation of risk pools to help the fishermen deal with overfished species constraints, so long as the pools do not undermine the effectiveness of the accumulation limits. A risk pool is one in which two or more people enter into an agreement whereby if one person does not have the QP the others would agree to provide the QP, if they have them. Whether these kinds of agreements are informal or formal, as other considerations and conditions are added to the agreements they may begin to constitute control. It is the Council intent to allow for these pooling agreements, so long as they do not become control.

Nevertheless, there is concern that QS/QP control rules could inhibit the formation of such pools either because of a clear conflict with the control rules or precaution due to uncertainty as to how the control rules might apply to risk pools. It has been proposed that provisions be added to create a clearly delineated safe harbor for those who may desire to form risk pools.

**Financial Institutions.** Concern was expressed that the control rules could inhibit financial institutions that might have an interest in QS/QP as loan collateral. This issue was also one addressed in public comment provided to NMFS on the proposed allocation rule. Modifications to the final allocation rule should be reviewed to determine the degree to which this issue might still warrant attention in the trailing amendment process.

## **Workload Assessment – QS/QP Control Rules – Safe Harbors**

### **Policy Development**

**Safe Harbor for CFAs.** There appear to be two main issues that would need to be addressed in policy development: (1) the appropriate level of the accumulation limits for CFAs, and (2) the criteria a CFA would have to meet in order to qualify for the safe harbor exception. With respect to the latter of these two issues, the greatest concern would likely be specifying criteria that cannot be exploited as a loop-hole by entities seeking to control more QS/QP than allowed under the control rules which apply outside the safe harbor.

**Risk Pools and Financial Institutions.** The challenges in developing safe harbor rules for risk pools and financial institutions would likely be similar to those identified for CFAs.

### **Analysis**

Most of the analytical work would be associated with the challenges identified for policy development. Beyond policy development, the analysis would most likely be qualitative in nature and based on speculation as to the number and types of organizations that might utilize the safe harbor exceptions, the amount of QS that might be controlled under such exceptions, and the benefits to the industry and communities that might result from the exceptions.

### **Work Products and Process**

This issue would likely require a document of moderate size, depending on the number and complexity of the options. At this time, the quantitative analysis would be expected to be relatively limited.

Some careful attention would be required during option development to ensure that options proposed achieved the desired ends without creating loop-holes which might be used by types of entities which are not intended to benefit from the safe harbor provisions. For this reason, the assistance of legal counsel and NMFS policy experts would be important. The most efficient forum for developing this policy might be the GAC with substantial assistance from agency experts or a special policy development workgroup with representation by agency experts and input from the public.

There might be a moderate amount of public comment by those who would benefit from the exceptions and those concerned about potential abuse of the safe harbors.

#### **4. Reducing Observer Program Costs**

It has been suggested that there may be opportunities to modify the observer program in a manner that would reduce costs. These suggestions have included

- a. Reduction of observer educational requirements
- b. Use of alternative technologies (e.g. cameras)
- c. Requiring less than 100% observer coverage

The observer educational requirements are at least partially influenced by national policy, which would have to be taken into account in developing alternatives for the west coast trawl catch share observer system. The Council may wish to set separate priorities for each of these potential uses of alternative technologies.

The issue of using alternative technologies should be evaluated separately for vessels fishing in the IFQ program with bottom trawl gear, those in the IFQ and co-op program fishing for whiting using midwater gear, and those fishing in the IFQ program using nontrawl gear (e.g. longline).

Developing a policy that requires less than 100% observer coverage would have to address assumed bycatch rates, assumed bycatch amounts for unobserved trips, and how catch on unobserved trips would be counted against the trawl allocation. The bycatch rate issue would be most critical for overfished species, which are expected to constrain harvest. There is some anecdotal information that indicates vessel fishing patterns with observers vary from those without observers and this might also need to be taken into account in establishing the assumed bycatch rates. The Council would have to make a determination as to whether additional precaution might be needed to account for uncertainty about bycatch on unobserved trips (e.g. assuming a higher than average bycatch rate or reducing allocations). Bycatch on the unobserved trips would either have to be deducted from the overall distribution of QP to all QS holders or, more likely, by deducting from the QP account of the vessel making the trip based on assumed bycatch rates, the amount of target species taken, and fishing area.

#### **Workload Assessment – Reducing Observer Program Costs**

##### **Policy Development**

The easiest issue to develop policy options for would be reduction of the observer minimum educational requirement. The other issues would require more extensive effort to develop viable options for Council consideration (with the possible exception of monitoring of trawl catch in the whiting fishery, for which cameras have already been used in the past, albeit under a different regulatory environment). For some applications of alternative monitoring technologies the process might end up being multistep and involve experimental studies. The most complex options would likely be those which would allow less than 100% observer coverage. It seems possible that multiple options might be developed with varying levels of observer coverage and varying methods for accounting for bycatch on unobserved trips.

##### **Analysis**

Reduction of observer educational requirements would require working with NMFS to understand policy constraints but the impact analysis would otherwise be qualitative and relatively simple.

The use of alternative technologies would require an evaluation of existing studies of effectiveness and risk/cost tradeoffs. Relative to an allocational analysis, for example, the alternative technology analysis would be fairly straight forward.

Use of less than 100% observer coverage would likely be the most complex of the analyses under this topic. The analysis would likely focus on cost reduction, increased uncertainty of mortality on unobserved trips, the impact of reduced observer coverage on vessel incentives, and precautionary decisions the Council might make to account for the uncertainty.

### **Work Products and Process**

The observer educational requirement might be handled in a relatively small document (e.g. 5-10 pages). The other issues are more difficult to evaluate. The alternative technologies issue could be handled in a small to moderately sized document depending on the scope of alternative technologies and applications considered. Similarly the observer coverage issue document size might range broadly depending on the number and complexity of the options.

The options to be developed would likely require important contributions from those with knowledge from a variety of areas including Federal policy constraints, observer program costs and methodologies, observer data summary methodologies, performance and costs of alternative technologies, enforcement, and fishing industry operations. It seems most likely that a special workgroup might be needed to develop policy options. This workgroup would likely include agency personnel with the expertise listed above as well as individuals who represent the Council's policy interests in exploring new monitoring approaches.

There may be a large amount of public comment because of the financial interest of those within the trawl sector and interests of those outside the trawl sector who may have concerns about accurate catch accounting in the trawl sector.

## **5. Yelloweye QS Allocation**

After the Council took final action on Amendment 20 in June of 2009, a number of concerns were raised by members of industry about the small amounts of some overfished species that would be allocated to some permits. The Council addressed the concern for canary by reverting to an earlier allocation option which provided all permits with an equal allocation based on the catch history of the permits purchased through the buyback program. However, concern over the yelloweye QS allocation was not raised until later in the process. Fishermen from the Fort Bragg area in particular expressed concerns about their yelloweye QS allocations which, in some cases, would convert to a few ounces of QP.<sup>2</sup> At its June meeting, the public made strong requests for the Council to look at this issue as something that might be addressed in a trailing amendment.

### **Workload Assessment – Yellow Rockfish QS Reallocation**

#### **Policy Development**

On the one hand, if the Council chooses to consider yelloweye reallocation, development of new allocation options might be a challenging task requiring the guidance of some form of working group. On the other hand, if the Council limits options to those previously considered, e.g. equal allocation of an amount of QS determined based on buyback permits, or straight equal allocation<sup>3</sup> not much additional effort would be required for option development.

#### **Analysis**

- Substantial quantitative assessments would likely be required with multiple comparisons between existing QS distributions and proposed distributions across a number of variables including total QS allocated to permits and geographic areas. If only previously considered options are considered, much of this analysis may already be done.
- A qualitative analysis would be included but the main emphasis would likely be quantitative.

#### **Work Products and Process**

The issue would likely require a moderately sized document and much of the analysis would be quantitative. The size of the document and workload would likely vary substantially based on the options developed.

Because the options are likely to be strongly reallocative nature, it seems most likely that a policy group such as the GAC or full Council would be most effective in developing options (as opposed to an advisory group composed of constituents). At the same time, industry input during option development process would be important. The GMT or Council staff might develop the analysis with quantitative elements developed by a contractor.

There would likely be a large amount of public comment because of the reallocative nature of the action.

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<sup>2</sup> In response to this situation, for the first two years, (during the QS trading moratorium) NMFS specified in regulation that any allocation of QP that came to less than one pound would be rounded up to a pound. However, this did not and was not intended to address the Fort Bragg fishermen's overall concern that their yelloweye allocation was too low.

<sup>3</sup> A straight equal allocation helps bracket a range of possible outcomes. Such an allocation would give each permit owner approximately 7 pounds a year for 2011-2012. An average yelloweye rockfish might weigh between about 5 and 6 pounds.

## **6. Widow Rockfish Quota Share Reallocation**

Appendix E to the FMP states in Section A-2.1.6:

**Reallocation With Change in Overfished Status:** When an overfished species is rebuilt or a species becomes overfished there may be a change in the QS allocation within a sector (allocation between sectors is addressed in the intersector allocation process). When a stock becomes rebuilt, the reallocation will be to facilitate the re-establishment of historic target fishing opportunities. When a stock becomes overfished, QS may be reallocated to maintain target fisheries to the degree possible. That change may be based on a person's holding of QS for target species associated with the rebuilt species or other approaches deemed appropriate by the Council.

It is anticipated that widow rockfish will be rebuilt as of the start of the next biennial management cycle (2013). Reallocation on rebuilding is not required and the Council should decide whether or not it will consider a regulatory amendment to achieve such reallocation. If reallocation is to occur, it would be advantageous to have the reallocation in place by the end of 2012 because the two-year moratorium on QS trading will end starting in 2013.

### **Workload Assessment -- Widow Rockfish Quota Share Reallocation**

#### **Policy Development**

Unless the Council simply chooses to reallocate widow rockfish QS based on the same formula it used to allocate nonoverfished species, then development of new allocation options might be a challenging task requiring the guidance of some form of working group.

#### **Analysis**

- Substantial quantitative assessments would likely be required with multiple comparisons between existing QS distributions and proposed distributions across a number of variables including total QS allocated to permits and geographic areas.
- A qualitative analysis would be included but the main emphasis would likely be quantitative.

#### **Work Products and Process**

The issue would likely require a moderately sized document and much of the analysis would be quantitative. The size of the document and workload would likely vary substantially based on the options developed.

Because the options are likely to be strongly reallocative nature, it seems most likely that a policy group such as the GAC or full Council would be most effective in developing options (as opposed to an advisory group composed of constituents). At the same time, industry input during option development process would be important. The GMT or Council staff might develop the analysis with quantitative elements developed by a contractor.

There would likely be a large amount of public comment because of the reallocative nature of the action.



## **7. Halibut Trawl Allocation Adjustment**

The concern that has been expressed so far is whether the amount of halibut allocated to the trawl fleet is sufficient for their needs. The Council action on halibut allocation allows the trawl sector's allocation to be increased or decreased during the biennial specifications process. Any change before that time will require separate regulatory action and need to be in place before the start of 2012 in order for the appropriate amount of individual bycatch quota QP to be distributed at the start of 2012.

### **Workload Assessment -- Halibut Reallocation**

#### **Policy Development**

Main tasks – Identification of alternative allocation splits. Some quantitative analysis might be needed to support development of options.

#### **Analysis**

Similar to the Amendment 21 analysis on the trawl halibut allocation.

- Some quantitative analysis using the 2009 or 2010 fishery and the initial QS allocations and comparisons to historic harvests.
- Qualitative analysis based on incentives and opportunities for bycatch reduction and experiences in other fisheries.

#### **Work Products and Process**

The issue would likely require a relatively small document with some quantitative analysis but less than for many issues. If in the first part of 2011 it becomes apparent that halibut IBQ is a major constraint, the rigor and length of the analysis may increase.

The Council would likely need to be in the lead in providing specific allocation amounts or targets around which options would be developed. The GMT or Council staff might develop the analysis using internal resources or a contractor for the quantitative elements.

The issue would likely be important to the northern fleet and may receive more comment than it did during Amendment 21 development because there would be fewer issues for the public to focus their attention on and less concern about delaying Amendment 20 implementation. Actual experience in the 2011 fishery may dramatically increase or decrease the amount of comment.

## **8. QP Deficits Lasting More Than 30 Days – Changing the Opt Out Requirement**

Under Amendment 20, if a vessel has a deficit in its QP account it must stop fishing until the deficit is covered. If it has not covered the deficit at the end of 30 days it is subject to a violation, unless the overage is within the carryover provision. Under such circumstances, the vessel will not be considered in violation of the program so long as it does not resume fishing. The following is from Appendix E to the FMP.

### **A-2.2.1. Permit/IFQ Holding Requirement**

1. Only vessels with LE trawl permits are allowed to fish in the trawl IFQ fishery.
2. For a vessel to use QP, the QP must be in the vessel's QP account.
3. All catch a vessel takes on a trip must be covered with QP within 30 days of the time that data or documentation from the trip shows there is an overage unless the overage is within the limits of the carryover provision (Section A-2.2.2.b), in which case the vessel has 30 days or a reasonable time (to be determined) after the QP for the following year are issued, whichever is greater.<sup>4</sup>
4. For any vessel with an overage (catch not covered by QP), fishing that is within the scope of the IFQ program (Section A-1.1) will be prohibited until the overage is covered, regardless of the amount of the overage. Vessels which have not adequately covered their overage within the time limits specified in paragraph 3, must still cover the overage before resuming fishing, using QP from the following year(s), if necessary. If a vessel covers its overage, but coverage occurs outside the specified time limit (paragraph 3), the vessel may still be cited for a program violation.
5. For vessels with an overage, the LE permit may not be sold or transferred until the deficit is cleared.

NMFS included in the implementing regulations, after consulting with the Council at its April 2010 meeting, a provision that specifies that a vessel carrying a deficit for more than 30 days must declare itself out of the fishery for the remainder of the year, if it is to avoid a program violation (assuming the deficit is within the carry over allowance). At the June Regulatory Deeming Workgroup meeting, several industry members voiced concern that declaring out of the fishery for the remainder of the year was unnecessarily restrictive. For example, while a vessel with an overage is unable to find reasonably priced QP to cover its overage within 30 days, later in the year the market might loosen up allowing the vessel to acquire the needed QP. The purpose served by not allowing the vessel to resume fishing once the deficit is covered was unclear to some members of the group. In its preamble to the proposed components rule, NMFS noted that the opt-out provision is needed to encourage vessels to resolve their overages within 30 days.

## **Workload Assessment – Fishing Prohibition for Vessels with a QP Deficit**

### **Policy Development**

The option(s) that are needed appear reasonably straight forward to develop.

### **Analysis**

The analysis would be qualitative and relatively straightforward. One of the main issues would be evaluation of implications for program tracking, monitoring, and enforceability.

### **Work Products and Process**

This issue would likely require a relatively small document. Option development might be on the Council floor, with advice from the GAP. A substantial amount of public comment would not be expected.

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<sup>4</sup> QP from a subsequent year may not be accessed until such QP have been issued by NMFS.

## **9. Mothership Processing Ownership Limits (application of individual and collective rule)**

In the components rule, the individual and collective rule is applied to the mothership processing ownership limits based on Council guidance to NMFS provided at the June 2010 Council meeting. The Council used the individual and collective rule for the IFQ program control limits but applying the individual and collective rule to an ownership limit (and not a control limit) results in an important difference in the outcomes as compared to applying the rule to control. It may be determined that this topic can be handled through Council comment on Agenda Item I.5, but if not, the Council may want to address it here.

The Council set a mothership processing ownership limit of 45% with the intent of ensuring there would be at least three buyers available to catcher vessels while still allowing substantial consolidation in the processing sector. Applying the individual and collective rule to that ownership limit frustrates the Council's original intent. In the worst case, a single entity could own 51% of two entities which each receive 44% of all deliveries. Applying the individual and collective rule, that single entity would control 88% of the market ( $2 \times 44\%$ ) and be still be within the 45% ownership cap ( $2 \times 44\% \times 51\% = 44.9\%$ ). A single buyer could then service the remaining 12% of the deliveries, frustrating the Council intent to ensure vessels have at least three buyers to sell to. When the individual and collective rule is applied where control limits exist, then that control limit cannot be violated regardless of the outcome of the calculation from application of the individual and collective rule, i.e. in the above example the entity would be considered to control 88% of the market and therefore in violation of a 45% control cap.

### **Workload Assessment – Mothership Processing Ownership Limits**

#### **Policy Development**

The options that are needed appear reasonably easy to develop. Option development could become more complex if alternative formulations are considered and developed through a reiterative process. For example, in previous Council discussion the idea of a 10% rule has been raised. Under a 10% rule, if a person owns 10% of an entity all of the allocation controlled by that entity counts toward that person's limit.

#### **Analysis**

If the Council only revisits whether or not to apply the individual and collective rule to the processing ownership cap, the analysis would be relatively straight forward and brief. If the Council instead considers whether the ownership limit should instead be a control limit, the complexity of the analysis may be somewhat increased.

#### **Work Products and Process**

This issue would likely require a relatively small document with some quantitative analysis.

Option development would likely be straight forward and occur on the Council floor, with advice from the GAP. Analysis would likely be conducted by Council staff.

There would likely be a relatively small amount of public comment which could become more extensive depending on the nature of the options developed.

## **10. Permit stacking**

There is currently a prohibition on placing (stacking) a fixed gear and trawl permit on the same vessel at the same time. The issue here is whether to eliminate that prohibition. Such stacking was allowed until the fixed gear sablefish 3-tier stacking program went into place. At that time, as part of the implementing regulations, NMFS prohibited the stacking of a fixed gear permit on the same vessel with a trawl permit. The prohibition was not directly called for in the Council recommendations. When the prohibition was implemented, there may have been some utility in the restriction with respect to tracking and monitoring. However, with enhanced declaration procedures that regulation may no longer be necessary. Further, when the shoreside IFQ program was developed it was anticipated that vessels would have the flexibility to move between the limited entry fixed gear and trawl fishery relatively easily. The prohibition on stacking does not prevent such movement but requires that permits be transferred on and off vessels so that the trawl and fixed gear permits are never on the vessel at the same time. The need to transfer permits and a limit on the number of transfers per year restricts the flexibility that might otherwise be provided. Allowing the stacking of limited entry fixed gear and trawl permits would increase flexibility and not directly change the provisions of the IFQ program, i.e. in order to fish on trawl IFQ, a vessel would still need to have a trawl permit, declare into the IFQ fishery, carry an observer, etc.

### **Workload Assessment -- Permit Stacking**

#### **Policy Development**

The issue seems to require only one relatively simple alternative to status quo. There may need to be some consultation with enforcement representatives to determine whether allowing stacking would create any problems that would require additional regulations.

#### **Analysis**

The analysis would likely be relatively simple, straight forward, and qualitative.

#### **Work Products and Process**

The issue would likely require a relatively small document with primarily qualitative analysis.

The option(s) would likely be developed on the Council floor based on advisory body reports. The Council staff would likely develop the analysis using internal resources.

Public comment on this issue would likely be relatively light though some moderate interest could be generated because of the implications for gear switching.

## **11. Double Filing of Co-op Reports (November and March)**

During the deeming process, there was a question raised as to the utility of the requirement that the co-ops provide the NMFS and the Council a draft report for the November Council meeting and a final report in March. Changes to this procedure should take into account the decisions which would likely occur on a November agenda or need to be noticed for the March meeting, based on the preliminary co-op reports.

### **Workload Assessment -- Double Filing of Co-op Reports**

#### **Policy Development**

Option development would likely be straight forward and simple.

#### **Analysis**

Analysis would be relatively simple and qualitative.

#### **Work Products and Process**

Overall, this would likely require a relatively small document, option development on the Council floor with advisory body input, and analysis by Council staff. Public comment would likely be limited.

## **12. Severability Of Catch History From The Mothership Catcher Vessel (MSCU) Permit**

At the end of the Amendment 20 process, some members of industry stated that it had been their intent that the MSCV catch history be separable from the limited entry permit to which it is attached. One of their concerns is there are some MSCV permits with very small allocations. The amount of work required by the co-ops and the permit owners to maintain the permits as co-op members may be substantial relative to the benefits. If a permit owner chooses not to go through that process, some fish may end up unharvested.<sup>5</sup> It would be more efficient for those concerned if the MSCV catch history could be severed from the permits and acquired by vessels more active in the co-op.

### **Workload Assessment – Severability of Catch History**

#### **Policy Development**

The options that are needed appear reasonably easy to develop. However, if catch history severability is to be allowed, the increased flexibility would increase the likelihood of aggregation of ownership. The Council may want to have some discussion as to whether or not severability creates a need for stacking or accumulation limits, in addition to those already adopted for the program (a 20% ownership limit and 30% vessel use limit).

#### **Analysis**

The nature of the analysis would depend on whether the issue of control and usage limits would be reopened. If these issues are not opened the analysis would primarily be qualitative with a few tables describing the distribution of the initial allocations.

#### **Work Products and Process**

This issue would likely require a relatively small document, with size depending on whether the issue of accumulation limits would be revisited.

Option development might be on the Council floor, with advice from the GAP. Council staff would develop the analysis and might work with a contractor if the accumulation limit issue is revisited.

Public comment would likely be limited but somewhat more extensive if the accumulation limit issue is revisited.

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<sup>5</sup> If a permit does not go into the co-op, its allocation would go to the non-co-op fishery and could go unharvested if no active vessels choose to fish in the non-co-op fishery. Alternatively, if there are a number of permits for which the small size of their allocation makes it not worthwhile to pursue co-op membership, the aggregate amount that ends up in the non-co-op fishery could provide an incentive for at least some vessels to opt out of the co-op system.

Table. Initial list of potential trailing actions and possible calendar for each assuming that not all issues are addressed at the same time (if a substantial number of issues are addressed at the same time, the calendars would need to be adjusted to avoid bottlenecks). Shaded months indicate periods of Council activity.

Topic	2010	2011					2012						2013	Possible Lead Entity(ies)	Possible Analytical Support
	Nov	Mar	Apr	Jun	Sep	Nov	Jan 1	Mar	Apr	Jun	Sep	Nov	Jan 1		
1 Cost Recovery			PPA	FPA			Impl							NMFS	NMFS & Cncl Staff w/Contractor
2 Adaptive Management Program (AMP) Quota Shares (QS)				PPA	FPA					Impl *				Agency Workgroup (NMFS & States)	Council Staff
3 QS/Quota Pound (QP) Control Rules, Including Community Fishing Associations, Risk Pools, & Financing				PPA	FPA					Impl				GAC or Policy Workgroup w/Legal Assistance	Council Staff w/Contractor
4 Reducing Observer Costs (Education, Alternative Technologies, & % Coverage)				PPA	FPA								Impl	Workgroup (NWR,NWSC, Enf,Cncl)	Council Staff w/NWR/NWSC
5 Yelloweye QS Allocation			PPA	FPA						Impl				GAC or Council/GAP	GMT &/or Council Staff w/Contractor
6 Widow QS Reallocation			PPA	FPA						Impl				GAC or Council/GAP	GMT &/or Council Staff w/Contractor
7 Halibut Trawl Allocation Adjustment		PPA		FPA			Impl **							Council/GAP	GMT &/or Council Staff w/Contractor
8 QP Deficits Lasting More Than 30-days		PPA		FPA					Impl					Council/GAP	Council Staff
9 Mothership Processing Ownership Limits		PPA		FPA					Impl					Council/GAP	Council Staff
10 Permit stacking		PPA		FPA					Impl					Council/GAP	Council Staff
11 Double Filing of Co-op Reports		PPA		FPA					Impl					Council/GAP	Council Staff
12 Severability of Catch History From Mothership/Catcher Vessel Endorsement		PPA		FPA					Impl					Council/GAP	Council Staff w/Contractor

**PPA** = Council selects preliminary preferred alternative. **FPA** = Council selects final preferred alternative. **Impl** = Target implementation date.

\* Implementation assuming proposals for use of AMP quota must be evaluated for 2013-14 specs. If a formulaic approach is used, implementation may come later in the year.

\*\* If implementation is to be later than the start of 2012, any reallocation can be handled through the biannual specifications process.

## GROUND FISH ADVISORY SUBPANEL REPORT ON POTENTIAL TRAILING ACTIONS TO AMENDMENT 20 TRAWL RATIONALIZATION

The Groundfish Advisory Subpanel (GAP) received an overview of trailing amendment process and timeline from Mr. Jim Seger. The GAP understands that only two or three of the major trailing amendments can realistically be handled given other staff priorities and time constraints. In discussing trailing amendments, the GAP focused on those issues with the potential to cause severe, widespread, and immediate economic hardship to the fleet coastwide or on a broad regional scale, and asks the Council to approve trailing amendments which will help to address those problems. With that in mind, the GAP suggests the Council pursue the following trailing amendments as quickly as possible:

- Halibut allocation
- Overfished species allocations
- Risk pools

Halibut allocation – A low fleetwide allocation of halibut in relation to historic discard has the potential to shut down the entire fleet north of 40°10'. The GAP believes that the amount of halibut allotted to the trawl fishery will unnecessarily constrain landings of target species leading to severe economic impacts for individual fishermen, as well as processors and communities. The GAP asks the Council to support an adjustment to the halibut allocation as quickly as possible to provide the trawl rationalization program the best chance to succeed.

Overfished species allocations – Like halibut, overfished species allocations are likely to have severe economic impacts on individual fishermen and may lead to disastrous consequences for certain ports and communities. The GAP suggests that not only yelloweye, but other overfished species as well (such as cowcod, where several permits also received no allocation), may lead to those negative outcomes, and for that reason suggests broadening this trailing amendment to include all overfished species.

Risk pools – The GAP feels that risk pools are critical to the program due to the low allocations of overfished species and halibut and the potential for a “lightning strike” even if fishermen adopt avoidance practices such as short tows and avoiding hotspots. In the absence of risk pools, individual fishermen are likely to be shut down for the entire year, even for relatively small catches of overfished species, and if that is pervasive, processors and communities will also suffer. The GAP understands that long-term risk pools have the potential to implicate the control cap and specifically seeks an exception to the control caps to authorize this critical tool.

In addition to the above items which need immediate attention, the GAP also recommends the Council pursue the following trailing amendments, which are not as time-sensitive and do not have the potential shut the fishery down:

- Severability
- Permit stacking



- Amendment 6 fix
- 30 day overage

Severability – Approximately 22 more permits were allotted mothership/catcher vessel history than currently participate. In general, the allocations to those permits are very small. Without the ability to sever that quota from the permit, a current participant will have to buy the permit in order to have permanent access to the catch history. The cost of buying the permit will be disproportionate to the value of the catch history. Severability will also allow those who wish to participate the ability to retain their permit to harvest non-mothership (MS) individual fishing quota to sell their catch history rather than choosing to join a co-op, fish in the non-co-op fishery or just strand their fish. Severability is supported by the MS sector and is consistent with the goals of Amendment 20.

Permit stacking – At present only one permit transfer is allowed per year. This restriction will constrain fishermen holding both trawl and fixed gear permits in their ability to switch back and forth, thereby potentially limiting the ability to time markets for maximum value. Allowing fishermen to stack LE trawl and fixed gear permits would alleviate this problem.

Amendment 6 fix – The GAP feels that Amendment 21 was meant to supersede Amendment 6. National Marine Fisheries Service’s (NMFS) rejection of that portion of the rationalization package will cause hardship for fixed gear fishermen at the expense of open access fishermen. The GAP asks the Council to remedy this problem. In addition, NMFS’ interpretation effectively traps EFP fish within the set asides, preventing other fisheries from accessing that fish in the event an EFP is not enacted. The GAP requests the Council to remedy this issue.

30 day overage – The GAP believes that the current 30 day overage provision is unduly restrictive, onerous, and fails to take into account that time spent out of the fishery is already a significant penalty. The GAP asked the Council under Agenda Item I.5.c to comment on the proposed rule to authorize fishermen within the 10 percent overage the option of declaring back into the fishery at any time during the year. In the event that change is not made to the final rule, the GAP asks the Council to add this to the list for trailing amendments.

The GAP engaged in significant discussion on other trailing amendments including adaptive management and community fishing associations, but came to the conclusion that they did not rise to same level of priority as the issues mentioned above. Using the criteria of potential to cause severe and immediate economic hardship, the GAP decided that the following trailing amendments should not be undertaken at this time. However, the GAP suggests that these amendments may be worthy of additional consideration at the appropriate time.

#### Widow rockfish reallocation

The GAP believes widow rockfish reallocation is not an immediate priority because it will require another assessment before it is technically rebuilt. While reallocating widow will offer an additional target fishery and the GAP strongly supports this, it does not rise to the level of priority as the items mentioned above.

### Community Fishing Associations (CFAs)

The GAP does not recommend CFAs as a short-term priority. Some members of the GAP see CFAs as a valuable tool for communities and fishermen, but feel that more time is needed to work out the details. In contrast, many members of the GAP were concerned about providing exceptions to the control caps for CFAs. The entire GAP agrees that CFA use and make-up should not be mandatory, and that trawl licenses should be required to harvest trawl quota.

The GAP also feels that no additional committees should be formed to work on these trailing amendments. The GAP believes that the current advisory bodies have the expertise and the time to provide any needed input.

PFMC

09/14/10

**WEST COAST SEAFOOD PROCESSORS ASSOCIATION**

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August 20, 2010*

Mr. Mark Cedergreen, Chair  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Ste. 101  
Portland, OR 97220

Dear Mr. Chairman:

The following comments are submitted on behalf of the West Coast Seafood Processors Association with regard to potential trailing actions to Amendment 20 of the Pacific Groundfish Fishery Management Plan that we believe the Council should consider moving forward. They are provided in order of priority.

1. **Halibut IBQs** – As noted during Council discussion at the June, 2010, meeting there is a need to re-evaluate allowable incidental catch levels of halibut by the trawl fishery. With petrale sole being designated as overfished, additional restrictions on fishing shoreward of the Rockfish Conservation Area (RCA) are likely to be implemented, which will force increased effort seaward of the RCA. Based on observer data presented to the Council in 2009 by the NW Fisheries Science Center, both the weight and mortality rate of halibut bycatch increase seaward of the RCA. We believe these data need to be analyzed and appropriate halibut bycatch rates set. It is our understanding that the halibut IBQ allocations can be changed through a regulatory amendment process, which will be simpler and quicker than a full plan amendment process.

2. **Control Rules / Safe Harbors** – We continue to be concerned about how the proposed implementation rules will affect QS / QP holders, including employees of companies that hold QS / QP, banks that are asked to consider QS as collateral, cooperatives, and risk pools formed by QS / QP holders to reduce the cost of observation and monitoring. We believe the Council needs to carefully reconsider how to balance avoiding excessive ownership with the practical operational needs of the fishery. Please note that we do not believe that community fishing associations, community fisheries, or regional fishery associations should be considered in this context but should be considered on their own merits. We provide further suggestions on this issue below.

3. **Cost Recovery** – Absent federal subsidies, which may or may not be provided by Congress in FY 2011 and beyond, there is a requirement under the Magnuson-Stevens Act for cost recovery for individual quota programs. As noted by NMFS at the June meeting, cost recovery rules must be developed by the Council. This effort needs to commence quickly so that the trawl rationalization program can continue to function.

4. **Dual use of observers and monitors** – We understand that some concerns have been raised about using a vessel observer in a dual role as an on-shore plant monitor to reduce costs and allow catch to be

followed from ocean to final processing. While we believe that the Council did not intend to preclude such an arrangement, it may be necessary to clarify that intent.

**5. Use of adaptive management pounds** – The Council currently has decided to let adaptive management pounds (AMP) “flow through” to permit holders for the first two years of the trawl rationalization program. However, if AMP are to be used as intended beginning in the third year of full program implementation, the Council needs to develop guidelines for the purposes for which they will be used and set up a process for distributing them.

**6. Reconsideration of overfished species allocations** – The Council has already modified its initial decision on allocating canary rockfish, but testimony from the public has indicated there may be other allocation issues. While these problems, if they exist, may be more identifiable after program implementation, the Council should be prepared to deal with them.

**7. Community fishing associations / community fisheries / regional fishing associations** – At the March, 2009, Council meeting, a series of motions was considered regarding guidance on defining community fishing associations. The decision of the Council at that time (see attached excerpt from March, 2009, Council Minutes) was to use as guidance both public comment provided at the meeting by the Nature Conservancy and the criteria from the NOAA technical memorandum on design and use of limited access privilege programs. While we believe that defining and enabling associations of this type is the lowest priority on our list of needed trailing actions, we strongly suggest that the Council use the decision in Motion 19 (as amended and passed) from March, 2009, as the basis for proceeding with this action whenever it occurs.

Thanks you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Susan Chambers', with a long horizontal flourish extending to the right.

Susan Chambers  
Deputy Director

Mr. Moore moved and Dr. Hanson seconded a motion (Motion 18) to instruct Council staff to present at the April meeting options for defining what a CFA is for the purpose of soliciting comments from advisory bodies and public on that definition, with possible final action in June. Motion 18 was not voted on.

Ms. Vojkovich moved (Motion 19) to substitute that the Council staff define CFAs and the guidelines under which that CFA would operate, and use the proposal that is in public comment from The Nature Conservancy (TNC) as a baseline approach to start with, and the intent that the definitions and guidelines are completed by the time the whole trawl rationalization program is adopted in the final rule. Mr. Wolford seconded Motion 19.

To speak to her motion, Ms. Vojkovich said one of the elements we have been fighting is sending people off to develop things and then being concerned about the time and resources involved in that approach. There have already been suggestions made and well-developed approaches suggested to the Council through public comment as to what and who could be in a CFA. We should start with that, instead of starting from the beginning.

Mr. Williams asked for a clarification. Earlier this morning there was a suggestion that we had not seen any definition to help us with CFAs. And now you have a motion to narrow the options? Ms. Vojkovich said the motion is to start with that document that already has some definitions of CFAs and what it might look like. Council suggestions are already in that document.

Mr. Lockhart asked if the substitute motion does not preclude other options at all? That's true said Ms. Vojkovich.

Mr. Moore understands the motion and is not opposed to some of the ideas from TNC. But he has to oppose the motion because there is broader guidance on CFA criteria from the NOAA technical memorandum on Design and Use of LAPPs, and he would rather see formal guidance from NOAA used than suggestions from one particular constituent group.

Ms. Fosmark said the TNC Public Comment is G.4.c. We are under a short timeframe here and have some good ideas coming from TNC. She thinks no one has worked on it yet except TNC, and their ideas would give us a place to start.

Mr. Wolford concurred with Ms. Vojkovich's motion that it provides a starting point only and we can expand to include other definitions.

Mr. Lockhart said the motion would result in more than likely staff going forward with both the TNC and NOAA memorandum. Mr. Lockhart asked if both of those would be included. He moved to amend Motion 19 to include the guidance contained in the NOAA technical memorandum as well as TNC public comment letter. Mr. Myer seconded the amendment to Motion 19.

Ms. Culver asked Mr. Lockhart about his amendment, it did not speak at all to the process and timing. When would we get the options back? April or June? Mr. Lockhart said he is amending Ms. Vojkovich's motion, so it would follow her process. Ms. Vojkovich said the intent was that the definitions would be completed at the same time as the trawl rationalization program is implemented; did not have a month or meeting when it would come before the Council.

Amendment to Motion 19 passed unanimously.

Main Motion 19 (Ms. Vojkovich's substitute motion) passed unanimously.

Shoreside Trawl Individual Fishing Quota Program  
Accumulation Limit Control Rule "Safe Harbors"

Trailing Amendment Justification Analysis

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## 1. Executive Summary

Without specific exceptions to the trawl IFQ program accumulation limits, the ability for fishermen to manage the risk of overfished species catch events may be compromised. In addition, without an exception which allows for Community Fishing Associations to hold quota share in excess of current accumulation limits, Pacific coast fishing communities may not obtain the full benefit of the rationalization program, and some of them may actually be disadvantaged by the program. Finally, it appears that fishermen will have difficulty securing financing needed to capitalize their fishing operations as necessary to respond to the challenges and opportunities presented by the trawl IFQ program without an exception to the control limit that allows lenders to hold quota share in excess of the accumulation limits as collateral for loans.

To minimize potentially adverse impacts and optimize fishery performance, these program amendments are necessary within the first two years of the program. Without these amendments, experience shows that successful prosecution of the Pacific coast groundfish fishery will be compromised, adverse community impacts will occur that could be difficult to reverse, and the ability of fishermen to finance change to their fishing operations will be highly constrained.

### *What we are requesting*

We request that the Council establish "safe harbors" to the accumulation limits for the shoreside portion of the trawl IQ program. These safe harbors include:

- Allow vessel owners and quota share holders to form contractually binding, multi-year agreements for the sole purpose of managing bycatch (risk pools). These agreements may stipulate rewards and penalties for performance, harvesting restrictions (such as area closures, gear modifications, and tie up provisions), or otherwise exert control (in limited fashion) over vessel activities and quota usage. Such arrangements do not actually hold quota share, but merely dictate terms for risk management. We suggest that no accumulation limit should apply to such arrangements, so long as they meet strict criteria intended to prevent abuse.
- Allow community-based associations to hold quota share in excess of accumulation limits (either 1.5 or 2 times the control limit with exceptions for certain species). Such associations do not prosecute fishing activity themselves, but contract with a set of harvesters under specific terms. Communities are eligible to form an association which holds quota share in excess of accumulation limits for purposes of stabilizing or enhancing their fishery economies through measures that improve the sustained production of the fishery, promote healthy harvesting and processing sectors within their communities, and/or facilitate new entry into the shoreside trawl IQ fishery after rationalization.
- Allow lenders to use quota share as collateral in making loans to fishermen. Financial institutions which use quota share as collateral are not held to an ownership or control limit. However, such agreements cannot specify delivery terms or exvessel prices as part of that financial agreement.

### *Why this is necessary*

The PFMC designed the IFQ program with stringent accumulation limits and a stringent definition of “control”. This approach maintains the integrity of the accumulation limits, but has the consequence of A) limiting the ability of fishermen to prosecute fishing activity given the risk associated with overfished species catch events, B) impairing the ability of interested communities to manage their interest in the fishery, and C) minimizing the ability of fishermen to use quota share to finance changes to their fishing businesses. Without these exceptions to the accumulation limits, the outcome of the trawl rationalization program appears to be less beneficial than would otherwise be the case.

## **2. Introduction**

The Pacific coast Trawl IFQ program will bring substantial change to management, fishing communities, and the manner in which fishermen prosecute fishing activity. The program presents both significant opportunities, but also significant challenges to those engaged in, or dependent upon, the Pacific coast trawl fishery. Such challenges include the ability of fishermen to successfully prosecute fishing activity with the low amounts of quota for several overfished

species and the ability of fishing dependent communities to maintain their interest in the fishery, among others. In this document we identify three trailing amendments which, if approved by the Council, appear to enhance the probability of success for individual fishermen and fishing communities. We describe these requested amendments as “safe harbors” to the control rule and accumulation limits. These safe harbors include: the ability for fishermen to form risk pooling arrangements which set conditions upon members which may span multiple years; the ability for communities to form Community Fishing Associations or Community Quota Banks which hold quota share in excess of the control limit for the benefit of that community; and the ability for lenders to take a security interest in quota share as collateral and take possession of and sell or cause that quota to be sold in the event of loan default.

#### *Bycatch Cooperatives (risk pools)*

One of the most challenging aspects of the IFQ program appears to be the ability for fishermen to effectively prosecute the fishery with the small amounts of overfished species quota they individually hold. Collectively, trawlers will hold quota that is on par with catches which occur under status quo, meaning the fishery is technically capable of being prosecuted with the small volumes of quota available. However, the implementation of individual accountability for catch imposes a degree of risk that does not exist under current conditions due to catch uncertainty and the likely inability to regularly find overfished species quota on a market at a reasonable cost.

In order to address the overfished species problem, it appears that a series of collective associations formed among quota holders and vessel owners may be necessary in order to adequately manage risk, to prevent quota hoarding, to facilitate effective and efficient communication that will assist with successful overfished species avoidance, and to impose terms on members which may restrict their fishing operations in some fashion over several years.

To date, many have referred to overfished species risk management associations as “risk pools”, but little context has been given to this term. We suggest that a “risk pool” will function best if the following conditions are met, in addition to others:

- That the “risk pool” be a formal agreement with bylaws and contractual arrangements which can be civilly enforced among risk pool members.
- That the “risk pool” be able to create a long term, multi-year structure that rewards and penalizes bycatch performance among participating vessels on a multi-year basis, and may impose restrictions on the prosecution of quota by members over a multi-year basis. This may include re-distributing quota pounds and dictating terms under which members can prosecute fishing activity.



The existing language defining the “control limit” in the trawl IFQ program appears to prevent the formation of a risk pool with the above criteria. A multi-year reward and penalty structure that influences how quota pounds are used and distributed among risk pool members, or which limits the ability of members to prosecute fishing activity over several years, effectively translates into control over quota share. If such a risk pool is large enough, that pooling arrangement would be in violation of the accumulation limits and subject to an enforcement action.

The nature of the fishery and the small amount of quota available for several overfished species necessitates the formation of large risk pool arrangements. Indeed, a single, coastwide risk pool covering all fishery participants may be the most ideal situation for many species as adding members and quota spreads risk and increases information flow. However, this degree of scale poses challenges in forming arrangements among diverse stakeholders such as those in the Pacific trawl groundfish industry.

In her Nobel Prize winning work, Elinor Ostrom refers to the concept of “nested enterprises” which underpin the formation of larger forms of common pool resource institutions.<sup>1</sup> This concept is directly applicable to the formation of large risk pooling arrangements. Rather than asking 169 trawl permit holders to agree to terms over a large risk pool, it is much more likely that smaller groups of individuals will form agreements, those groups will form agreements with each other to form sub-regional associations, and the sub-regional associations may establish further agreements with one another, thus achieving a large scale risk pooling arrangement. In other words, the risk pool is formed through building blocks of smaller, nested, fishery associations which are connected to one another via an umbrella risk pool agreement. Notably, this nested structure is consistent with the institutional arrangements under which the Bering Sea pollock catcher vessel fleet manages Chinook salmon bycatch, which poses a comparable risk in that fishery.

It appears that the formation of risk pools will be critical in ensuring the success of the Pacific IFQ program. As experience and available literature indicates that the formation of large, overarching arrangements is inherently a bottom-up process, it appears critical that the smaller nested cooperatives which make up the foundation and building blocks of a risk pooling structure be given incentives to form, and assistance in forming if necessary. Conceptually, large risk pools could simply be comprised of smaller, more local, risk pools. However, the smaller risk pools which provide the foundation of the broader risk pool agreement can be shored up through additional, formalized measures, thus solidifying the foundation of a larger bycatch cooperative agreement.

As more fully explained below, Community Fishing Associations can facilitate risk pool formation if designed with the correct standards and requirements. In other

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<sup>1</sup> Governing the Commons (Cambridge, 1990) page 91.

words, CFAs can serve as one of the nested institutions out of which a large scale risk pool could be constructed. It is for this reason that we view Community Fishing Associations and risk pools as complimentary systems, rather than mutually exclusive systems.

### *Community Fishing Associations*

As indicated in the trawl rationalization EIS, different communities have different relative advantages under the rationalization program. The fluid nature of IFQ, combined with fleet consolidation, individual accountability for patchily distributed overfished species, and other variables are expected to redistribute fishery-related economic activity across the Pacific coast when the rationalization program goes into effect. While quota share transfers are prohibited in the first two years of the program, this does not appear to limit fleet consolidation or quota pound transfers to a different region or community during the first two years of the program, nor does it prevent QS holders from entering into prospective agreements to transfer QS when the moratorium on transfer expires. These developments could largely condition the distribution of IFQ and related revenues among communities of the Pacific coast early in the IQ program's implementation phase, absent action by the Council to provide disadvantaged communities with the means to protect their fisheries economies. Ironically, as indicated in the trawl rationalization EIS, some of those communities which may rely upon fishery-related economic activity the most appear to be at the greatest disadvantage under the pending IQ program.

Implementing an IFQ program for the Pacific coast groundfish fishery provides the means for addressing problems associated with competition for harvest share and is expected to contribute to recovery of overfished stocks, improve efficiency, and provide opportunities to increase the amount and value of products from the fishery. These effects can be complimented with a system which helps to distribute those benefits across a wide array of communities and across future generations. While a quota-based system can create challenges for new entrants and disadvantaged communities desiring entry or participation in the fishery, Community Fishing Associations can be structured in a fashion that counters this market-based tendency. It is possible, for instance, that CFAs can provide a pool of QS that is readily accessible to new entrants, that promotes active participation, promotes responsible stewardship, and provides a source of income that can be leveraged to purchase QS. By serving as a point of entrance to successive generations of new fishery participants, CFA QS could promote the sustained economic and social health of fishing communities through the transition to quota based management.

We view CFAs/CQB as entities that hold quota share with the purposes of meeting economic, social, and conservation objectives. This differs from a risk pooling arrangement which does not hold quota share, but governs activities of its members. These differences inherently require different exceptions to the

control language and accumulation limits. We do not propose that CFAs prosecute fisheries themselves, but rather that they contract with a clearly identified group of trawl permitted harvesters to prosecute fishing activity in a manner that achieves those objectives. In this type of a structure, the PFMC would provide the overarching constitutional requirements under which the CFA could form, the CFA would establish the manner in which the fishing activities could be prosecuted to meet the goals and objectives established by the PFMC, and a group of harvesters would contract with the CFA to engage in harvesting and management activities consistent with the CFA regulations. In this model we envision the CFA as being the quota share holder for some, or all, species which the contracted set of trawl licensed vessels harvest.

While there is nothing prohibiting the formation of such an association under the IFQ program, such an association would be restricted by the accumulation limits. Using the principles outlined in the GMT/PFMC staff analysis on accumulation limits from the spring of 2009, the accumulation limits would allow an entity to control only enough quota share to effectively operate two full time trawl vessels. This does not seem adequate to support the economic and social needs of many communities, nor does it seem adequate to allow for the formation of community-linked fishermen's cooperatives at a scale appropriate for the formation of local risk pools. It is for this reason that we feel an exception to the control rule for CFAs is necessary.

CFAs appear to provide an additional mechanism that argues for timely development and implementation, and that is the potential role they play in administering the Adaptive Management Program ("AMP"). The Council voted to establish a quota set aside titled the Adaptive Management Program (AMP) to address several goals, including potential adverse economic and social effects as a result of the trawl IQ program. One notable goal was to assist communities that are potentially adversely impacted by the rationalization program. Several models have been discussed for distributing the AMP quota to communities, including dispersal through processors and/or harvesters. While dispersing quota to processors or harvesters within a community may be more advantageous to that community than receiving no AMP quota at all, such entities inherently take on a perspective that differs from the perspective of their community as a whole. A community's fishery interests include its fishery support business, its tax revenues, its port infrastructure and utilities, and its fishery culture. Harvesters and processors within a community may acknowledge the importance of these interests, but those interests will be subsidiary to generating profits for their individual business. For communities to receive the full benefit of AMP distributions that are intended to protect or promote their interests, it will be important that the AMP distributions be made through entities that consider those interests to be their highest priority. If the AMP is to be used effectively in year three of the rationalization program, communities need clear communication of CFA standards as soon as possible, and will need the time to organize in a manner that comports with those

standards. Experience with fisheries in the North Pacific indicates that such collective associations can take months to form and years to become fully functional.

At present, the manner in which the Adaptive Management Quota set aside would be administered is not clear. Existing options appear to be A) administratively burdensome, or B) administratively simple, but with apparent difficulties in guaranteeing the achievement of specified goals and objectives. CFAs, if developed with an appropriate set of goals and objectives, are capable of being a channel for AMP quota and serving as a limited administrator of that quota to the appropriate parties in order to meet the goals and objectives of the AMP. In order to ensure that the program is implemented as currently envisioned, we recommend that CFAs be structured to not only assist in the facilitation of risk pool formation, but also to serve as one of several possible conduits for AMP quota. If CFAs are explicitly identified as a conduit for the AMP, the formation of CFAs is “incentivized” through the receipt of AMP quota, which in turn may facilitate and reinforce the formation of risk pool building blocks.

Finally, experience with other quota programs, such as the Alaska halibut IFQ program, illustrates the need for development of a CFA amendment within the first two years of the trawl rationalization program. Following implementation of the Alaska halibut IFQ program, a substantial amount of halibut landings Kodiak had been receiving prior to the program migrated to other communities with infrastructure advantages (Seward and Homer) within the first two years. While the Pacific trawl fleet does not operate under the same harvest dynamics under status quo (a derby existed in the halibut fishery), there are similar disparities in fishery infrastructure which place communities at different relative advantages. Such changes in landing patterns have immediate consequences, especially for communities and processors which operate at the margin. The loss of a relatively small fraction of current landings could result in loss of community infrastructure or processing capacity which would be difficult to regain later. The existing trawl IQ program contemplates mitigating these potential effects through incentives such as the AMP, and possibly CFAs. Incentives are generally more flexible and adaptive than prescriptive measures, but can be difficult to develop and implement. If such incentives are expected to work successfully to achieve social outcomes, these programs will need to be developed early in the implementation process to allow time for the development of the related institutions, and to allow time for them to take effect. On a relatively aggressive Council schedule, a two year development process will likely be necessary (initial Council consideration to implementation). On this schedule, implementation of such amendments occurs at the same time the QS transfer moratorium expires, an event which will likely be important in determining relatively permanent shifts in fishery activity.

*Quota Share as Collateral in Financing*

QS holders and CFAs may need additional capital to pursue opportunities and address the challenges presented by the trawl IQ program. It is important that QS holders be able to use QS asset value to secure private or public sources of funding (loans) for those purposes. However, the shoreside component of the trawl IQ program includes a rigorous control rule, which is necessary and appropriate to insure that QS accumulation limits are not circumvented through contractual arrangements, including financing arrangements. The control rule does not distinguish between financing arrangements where the lender has the ability to take QS as collateral – and to take possession of it and sell it or cause it to be sold in the event of a loan default – versus financing arrangements under which the lender could dictate delivery terms for a period of years, and which could treat a failure to comply with those delivery terms as an event of default.

Financing exceptions also appear necessary as an option for communities to secure participation in fisheries, through CFAs or otherwise. Communities have the ability to issue public financing (such as bonds) for purposes of fishery-related investment. A community may wish to include quota share purchases as part of its economic development activity and should be able to use that quota share as collateral for its related financing.

To make new sources of capital available to QS holders while preserving the integrity of the shoreside IQ control rule, we propose that a safe harbor for financing arrangements which do not dictate QP delivery terms be adopted.

### **3. Amendment Development and Prioritization**

Amendments to rationalization programs are a common occurrence and the Pacific groundfish trawl rationalization program will likely be no exception. The Council is presented with the difficult challenge of prioritizing a series of requested amendments to the rationalization process. Prioritization is key to ensuring that such amendments are done in a timely manner and to ensure the overarching success of the rationalization program. When considering the prioritization of amendments, it seems appropriate to refer to several basic principles as well as to refer to the initial goals, objectives, and guiding principles the Council outlined for the trawl rationalization program in early 2007. We suggested the following considerations for prioritizing amendments:

- Will basic fishery functionality be hindered without the implementation of the amendment?
- Will the PFMCs goals and objectives for the trawl rationalization program be enhanced by the amendment?
- Does the requested amendment benefit a discrete subset of fishery participants, or does it have wider ranging implications concerning effective prosecution of fisheries, community impacts, or similar?

In reviewing the expected impacts of the rationalization program along with an expanding base of literature outlining the implications of rationalization programs, we believe that there is a high priority need to begin an amendment process which provides specific exceptions (safe harbors) to the IFQ program accumulation limits. The need is both structural (that the alternatives help improve the functionality of the trawl IFQ program), as well as timely (addressing these issues at this early juncture will enable effective fishery prosecution and help prevent irreversible social impacts).

Each of the “Safe Harbor” alternatives will likely require different types of adjustments to the accumulation limits. In later sections of this analysis we identify the appropriate type and scale of adjustments to the accumulation limits to meet program goals and prevent program abuse.

#### **4. Purpose and Need**

In the broadest sense, the *purpose* for pursuing the three types of accumulation limit exceptions is to better achieve a viable, effective, and profitable groundfish fishery and to better achieve the PFMCS goals and objectives for the rationalization program. The *need* for pursuing the three accumulation limit exceptions is that the existing program impairs activities necessary for enhancing program performance. Specific, limited adjustments to the accumulation limits are necessary in order for those activities to take place at a scale that optimizes program performance.

##### *Bycatch cooperatives (risk pools)*

The purpose of allowing risk pooling arrangements to form – and to exert limited forms of control over its members – is to assist in the overfished species risk management which harvesters face when prosecuting fishery activities. The exception which allows those arrangements to exert limited forms of control over members is to manage and reduce the collective risk that exists in the form of disaster tows and increase the probability of successful fishery prosecution. The need for an exception exists because the existing control language has the effect of prohibiting, or severely limiting, the ability for harvesters to form arrangements which apply standards and policies to members which may span multiple years. Research done in the North Pacific has outlined the importance of multi-year standards, restrictions, and terms in managing bycatch events similar to those which are present in the Pacific groundfish fishery.

##### *Community Fishing Associations/Community Quota Banks*

The purpose of allowing CFAs and/or CQB to form is to provide a vehicle for communities to maintain fishery activity in their community and to establish terms for use of quota which benefits a broad community membership, rather than benefiting a single (or a handful of) for-profit entities. The exception to the

control rule is needed because existing control limits do not provide a CFA entity the ability to acquire quota sufficient for maintaining a viable fishing economy within that community. Timely development of a CFA amendment is needed in order for communities that wish to form such arrangements sufficient time develop the community association prior to significant quota transfers, vessel movement/consolidation, and irreversible loss of fishery related business and infrastructure.

#### *Quota Share as Collateral in Financing*

The purpose of providing an exception for financing arrangements which do not dictate delivery terms is to insure that fishermen have the ability to finance change to their fishing operations – an activity that will be necessary to adapt to the trawl IQ program. The purpose of limiting the exception to financial arrangements which do not stipulate delivery terms is to maintain the integrity of the Council's accumulation limits.

Financing institutions routinely prefer to use quota share as collateral in making loans. In order to use quota share as collateral, lenders must be able to take possession of and sell or cause that quota to be sold in event of loan default, thus exerting a form of control over the quota share. As lenders which make loans to fishery enterprises are limited in number, an exception to the control rule for these lenders is necessary in order to avoid circumstances where fishermen cannot secure much-needed financing because the available lenders have reached the control limit.

### **5. Description of Amendment Alternatives**

The alternatives envisioned for trailing amendments to the rationalization program are all described, generically, as “safe harbors” to the IFQ program accumulation limits. These safe harbors are intended to help facilitate the attainment of PFMC goals and objectives for the rationalization program, to assist in basic fishery prosecution capabilities by trawl licensed vessels, and to ensure that fishermen can finance the change to their business operations that will be necessary to adapt to the new program. In order to help achieve these outcomes, we describe the alternatives in the following manner.

<b>Suggested Amendment</b>	<b>Description</b>
1. Bycatch Cooperatives (risk pools)	A contractual arrangement among trawl licensed vessels and quota share holders which stipulate terms over risk pooling and risk management, but no more. The risk pool is not an “entity” itself, but is an agreement meant to benefit its members. An exception to accumulation limits is necessary if these arrangements govern terms which span multiple years as such arrangements appear to effectively control quota share.
2. Community Fishing Associations	A non-profit entity governed by a Board of Directors composed of fishermen, processors, and community representatives which holds quota share. This entity adopts QP use performance standards that are consistent with the Council’s and the community’s economic, social and conservation goals. The entity contracts with a Fishermen’s Collective Marketing Act (FCMA) cooperative whose members are persons operating trawl licensed vessels to harvest QP, using methods and means that satisfy the community entity’s performance standards. CFAs may also be a conduit for Adaptive Management Program quota. An adjustment to accumulation limits is necessary if these institutions need to hold more QS than an individual fishing operation in order to stabilize or improve the community’s fishery economy.
3. Quota as collateral in financing arrangements	Lenders make loans to QS holders who pledge QS as collateral to secure the loans. Because there may be a limited number of lenders who have the expertise and resources necessary to make loans secured by QS, to insure adequate capital is available to QS holders, it may be necessary for those lenders to hold an aggregate amount of QS as collateral that exceeds the relevant accumulation limit. An amendment to the shorebased IQ program control rule is necessary to allow a lender to do so. However, to insure the intent and purpose of the control rule is not violated by these financing arrangements, this exception only extends to financing arrangements under which the lender does not impose any delivery terms or delivery restrictions.

### **5.1. Bycatch Cooperatives (risk pools)**

Bycatch cooperatives are generally described as a governing agreement meant to benefit the members entering into that agreement, and may include the formation of an entity that monitors compliance and enforces the terms of that agreement. The purposes of the bycatch cooperative agreement are to reduce the risk that encountering overfished species will result in members having to cease fishing, and to provide members of the cooperative with appropriate incentives to adopt fishing practices that reduce the risk of “disaster tows” which may create a collective management problem.



A bycatch cooperative, or risk pool, is not an entity that holds quota share. Rather, a risk pool is a contract which stipulates terms outlining rewards and penalties that are applied to the QS holders and vessel owners who are members of the risk pooling collective to incentivize good behavior on rational terms. These pools may also stipulate fishery management actions which are intended to reduce the risk of non-target overfished species catch events, such as implementing area closures, tie up provisions, seasonal restrictions, or gear restrictions. Risk pools also are intended to address collective problems which may arise due to bycatch events. In the event of a “disaster tow”, the risk pool may have terms outlining a response by members of the pool to handle that event in a collective fashion.

Rewards and penalties applied to members of a bycatch cooperative may be financial, may dictate the use and transfer of quota pounds from offending vessels to “clean” vessels, or may include other mechanisms that encourage good behavior, reduce individual risk, and reduce collective risk. These terms may include limited forms of “control” over risk pool members, or their use of quota poundage. These measures may span multiple years, thus necessitating an exemption from the control limit. However, in order to ensure the integrity of the accumulation limits, these arrangements may only include measures intended to reduce the probability of bycatch events, to respond to inadvertent bycatch events, and to manage the risk individuals face when prosecuting fishery activity.

Bycatch cooperatives that obtain the benefit of the related control rule exemption will not have authority to dictate delivery terms (rather than harvesting terms) or negotiations over ex-vessel prices. However, FCMA cooperatives may both participate in “umbrella” bycatch cooperatives and independently conduct delivery term negotiations on behalf of their members.

The bycatch cooperative structure described here is built around the basic concept of insurance. Insurance arrangements tend to improve as they grow in size. As such, bycatch cooperative arrangements are not held to an accumulation limit on overfished species if they adhere to specified terms.

<b>Exception, Element, or Criteria</b>	<b>Description</b>
Accumulation Limits	<ul style="list-style-type: none"> <li>• Risk pool agreements which govern use of quota by members are not held to an accumulation limit.</li> <li>• Each of the individuals making up the risk pool structure, or operating under the risk pool structure, are held to accumulation limits individually</li> </ul>
Eligible members	<ul style="list-style-type: none"> <li>• Risk pools are composed of limited entry trawl licensed vessel owners and quota share owners, or their representatives (such</li> </ul>

	<p>as an association). Risk pool members may include (but are not limited to) independent harvesters, processors which own vessels, or quota share holders which neither process nor harvest.</p> <ul style="list-style-type: none"> <li>• Entities which do not own trawl permitted vessels or quota share may not participate in risk pool activities, including negotiations over governance structures, unless they are acting on behalf of a vessel owner(s) or quota share holder(s).</li> </ul>
Agents	<ul style="list-style-type: none"> <li>• Risk pools may hire agents to enact and enforce the provisions of the risk pooling arrangement. These arrangements may include: monitoring vessel performance and enforcing the terms of any agreed-upon reward/penalty structure, or dictating harvesting activity with the intention of reducing bycatch.</li> <li>• Risk pools may also form an entity which self-monitors and self-enforces the agreement rather than using a third party.</li> </ul>
Duration of arrangement	<ul style="list-style-type: none"> <li>• Risk pools may forge agreements dictating the use and transferability requirement of quota pounds held by members which extend beyond a single year. The duration of those arrangements is not limited by regulation, but is the subject of private negotiation.</li> <li>• If vessel owners wish to leave the risk pooling arrangement, they must give other members at least: <ul style="list-style-type: none"> <li>A) 12 months notice, or</li> <li>B) 24 months notice</li> </ul> <p>Departure from the risk pool may be conditioned on satisfying all obligations to the pool that have been incurred as of the date of the withdrawal notice and may not be formally recognized until the start of the calendar year following the date on which such obligations are satisfied.</p> </li> </ul>
Enforcement and Monitoring	<ul style="list-style-type: none"> <li>• Risk pools are able to form and function without direct acceptance of their formation agreement by NMFS and without a requirement that they submit performance reports to an oversight body such as the PFMC or NMFS. However, risk pool contracts must be made available to NMFS or state agencies upon request. Contractual terms which violate standards subject all participants in the risk pool to the possibility of an enforcement action due to joint and several liability which applies to any such agreement.</li> </ul>
Limited Scope of Agreement	<ul style="list-style-type: none"> <li>• Risk pools which exceed specified accumulation limits may only be set up to manage risk of overfished species catch events. This includes active and reactive risk management terms such as: OFS quota pound sharing rules, harvest activity management (which may include provisions such as tie up provisions, area closures, or gear restrictions), and financial rewards and penalties over bycatch performance.</li> </ul>

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Risk pools may not include provisions which dictate delivery terms for harvested groundfish.

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Any risk pool contract must include standards and requirements consistent with the elements, exceptions, and criteria above. Such agreements must be signed by risk pool members and those members (names of any person or corporation) must be clearly identifiable next to the signature. All members of the risk pool must hold signed copies (original or copied) of the governance agreement.

## **5.2. Community Fishing Associations/Community Quota Banks**

CFAs/CQB's are non-profit entities which hold quota share. These entities operate for the benefit of a community<sup>2</sup>. They are expected to meet the organizational and operational tests associated with qualifying for tax exempt status as 501(c)(4) social welfare organizations.

The entity's Board of Directors will be appointed by the municipal governing body of the CFA community or the municipal governing bodies of communities in the CFA region. Representatives holding seats on the CFA's Board of Directors must include harvesters or harvester representatives, processors or processor representatives, representatives of the municipal governing body, and may include representatives of other community, conservation and/or academic interests.

The CFA Board of Directors adopts a "community development plan" ("CDP"). The CDP describes how the CFA's QS and QP will be used to promote the long term sustainability of the community's or region's fishery economy, taking into account the interests of harvesters (including skippers and crew), processors, fishing support businesses and utilities. The CDP establishes harvesting performance standards for using the CFA QP that enhance fishery stock sustainability and value, such as requiring area-based management measures to promote stock sustainability, requiring gear modifications, restricting the use of certain gears, and means to be used to reduce incidental catch of overfished and non-target species. The CDP also establishes performance standards that promote the health of the local fishery economy, such as requiring that stocks harvested under CFA QP be landed and processed within the CFA community or region to the extent practicable, requiring use of responsible fishing, processing and distribution practices that promote product value, requiring that harvesters who benefit from the use of CFA QP maintain some degree of active participation

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<sup>2</sup> For the purposes of this section an eligible community is defined as "a physical location within one of the three west coastal states where commercial fishing vessels dock and commercially harvested species are unloaded." The geographic scope of this definition is generally limited to an incorporated city surrounding a harbor, or other similar structure. In cases where an incorporated city has more than one physical harbor which meets the criteria of an "eligible fishing community", that incorporated city may have only a single CFA/CQB. This issue is addressed by requiring the CFA to obtain resolutions of support from the municipal governing body.

in the fishery, and that CFA QP be used to provide an opportunity for new entry into the fishery.

CFA/CQB's do not engage in fish harvesting activities themselves (though some members of the entity's Board of Directors may also engage in harvesting or processing). The entity contracts with an FCMA cooperative whose members are trawl limited entry license holders. The limited entry licenses and the vessels to which they are assigned are each owned/controlled by separate entities, meaning a single entity may not control more than one vessel contracted by the CFA/CQB. Each vessel is held to the same quota pound accumulation limits which apply to all vessels participating in the trawl IFQ program.

A CFA is similar to a mothership harvest cooperative, but with different standards, elements, and restrictions which are specified by the PFMC. Like a harvest cooperative, the CFA must apply to NMFS for formation, must submit the CFA's CDP and corporate documents, must identify the fishermen's cooperative to which its QP will be assigned, and must identify the trawl limited entry license holders and participating vessels. Further, each CFA will be expected to submit an annual report to the PFMC outlining the CFA's performance relative to its CDP, and relevant events impacting the CFA.

NMFS is expected to review each CFA application to insure that the required documents are submitted, but is not expected to conduct a substantive evaluation of the CFA's organizational structure, its performance standards or the methods proposed for attaining them. Rather, the CFA is expected to demonstrate that its formation and operations are consistent with Council intent through its annual reports to the Council. If the Council determines that one or more CFAs are not conducting their activities in a manner that is consistent with Council intent, the Council could initiate an amendment to the CFA element of the trawl IQ program that addresses that inconsistency. Under this approach, the CFA Board of Directors retains a significant degree of authority to determine how to shape the CFA and its performance standards to address the specific needs of its CFA community or region, and retains the ability to easily and rapidly modify the CDP to adapt to changing circumstances in the fishery, the community or the market into which CFA products are sold. On the other hand, the Council retains the ultimate authority to structure the CFA program consistent with the Council's goals for the Pacific coast groundfish fishery.

The CFA's Board of Directors must be composed of at least 5 members. Harvester representatives and processor representatives shall not have more than 20% direct or indirect control over the non-profit entity, respectively. All other members shall not have more than 20% control over the non-profit entity. The balance of direct or indirect control over the entity could be held by representatives of the municipal governing body or port district for the community, and representatives from the conservation community, academia or other parties with an interest in the fisheries economy of the community.

To insure that there are not conflicting claims from CFA entities, only one non-profit entity may serve as the CFA for a community or region seeking CFA approval. This entity's authority to represent a community or region in receiving CFA authorization would be evidenced by authorizations of support from the municipal governing entity or entities for the community or region.

<b>Exception and Criteria</b>	<b>Description</b>
Accumulation Limits	<p>CFAs/CQB's may hold quota share that is:</p> <ol style="list-style-type: none"> <li>1. 1.5 times the control limit, or</li> <li>2. 2 times the control limit</li> </ol> <ul style="list-style-type: none"> <li>• With the following exceptions               <ul style="list-style-type: none"> <li>○ Pacific whiting: No increase allowed</li> <li>○ Sablefish S of 36 degrees: 60% of the trawl allocation</li> <li>○ Shortspine S of 34 27: 60% of the trawl allocation</li> </ul> </li> </ul>
Eligible/ Required directors (including community support)	<p>A CFA/CQB must have at least 5 directors, who have authority for CFA management. Required directors include:</p> <ul style="list-style-type: none"> <li>• A letter of support from the local municipal government</li> <li>• A non-harvester and non-processor member of a community</li> <li>• Harvester representative(s). Controlling interest cannot exceed 20% cumulatively</li> <li>• Processor representative(s). Controlling interest cannot exceed 20% cumulatively</li> </ul>
Standards	<p>CFAs must adopt and enforce performance standards concerning use of the CFA's QP that address one or more of the following management goals:</p> <ul style="list-style-type: none"> <li>• Community economic stability, by implementing:               <ul style="list-style-type: none"> <li>○ A plan to facilitate entry into the local fishery by persons who hold no QS or small amounts of QS;</li> <li>○ A plan to stabilize business plans of local processors/buyers, harvesters, and other fishery dependent businesses, by requiring that some minimum percentage of harvests under the CFA QP be landed in the CFA community or region, and/or processed within the community or region, as the CFA deems appropriate; and/or</li> <li>○ Enhance the value of local groundfish stocks by adopting appropriate fishing and delivery methods and means</li> </ul> </li> <li>• A harvest sustainability plan outlining methods to:               <ul style="list-style-type: none"> <li>○ Minimize bycatch;</li> <li>○ Minimize fishing gear impacts on habitat; and/or</li> <li>○ Enhance productivity of local groundfish stocks</li> </ul> </li> </ul>

	through measures such as area management, measures to protect age structure, or other measures intended to enhance productivity and sustainability
Harvesting Agents	<p>CFAs do not harvest themselves, but instead contract with a set of harvesters.</p> <ul style="list-style-type: none"> <li>• These harvesters must be members of a Fishermen's Collective Marketing Act cooperative.</li> <li>• Each vessel must adhere to vessel accumulation limits which apply to all vessels participating in the trawl IFQ program</li> <li>• Only one entity may own, operate, or otherwise control more than a single vessel operating for the CFA</li> <li>• The FCMA cooperative must submit reports to the CFA documenting the harvesting activities which the CFA is required to supply in a report to the PFMC</li> </ul>
Duration of arrangement	<p>CFA arrangements which are approved by NMFS last:</p> <ol style="list-style-type: none"> <li>1. Two years, or</li> <li>2. Five years (intended to coincide with program review)</li> </ol> <p>Until agreements must be re-submitted. Agreements must be resubmitted if the agreement is modified or a change to the board's membership occurs</p>
Enforcement and Monitoring	<p>CFAs must submit a biennial report intended to coincide with the "off year" of the harvest specifications process. The report shall outline:</p> <ul style="list-style-type: none"> <li>• Total amount of quota share and quota poundage, by species, held or harvested on behalf of the CFA by year</li> <li>• Economic impacts of CFA activities on the community including exvessel revenue, location of processing, and distribution of economic activity generated as a result of CFA regulations and harvester/processor activities</li> <li>• Social impacts on the community, such as documentation of new entry, creation of local fishermen's cooperatives, or other non-market social effects attributed or related to CFA existence</li> <li>• Harvest volume including bycatch and discard quantities by year and month</li> <li>• Spatial footprint of fishing effort, including documentation of particular habitat areas that are of interest and measures taken in response to the identification of those areas</li> <li>• Other measures taken to enhance sustainability or modify the activities of the harvesting cooperative</li> </ul>
Items which must be included as	<ul style="list-style-type: none"> <li>• Corporate documents (i.e., Articles of Incorporation and Bylaws) for the CFA and for the FCMA cooperative to which the CFA will assign its QP;</li> </ul>

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part of application	<ul style="list-style-type: none"> <li>• The agreement under which the CFA assigns QP to the FCMA cooperative, which identifies the performance standards to be met by the FCMA cooperative;</li> <li>• Resolution(s) of support from the municipal governing body of the CFA community or communities in the CFA region</li> </ul>
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### **5.3. Quota Share as Collateral in Financial Transactions**

In order to adapt to the trawl rationalization program, fishermen will need to make many changes. Some of those changes will include vessel and equipment upgrades, modifications, equipment purchases, and quota share purchases. In many cases, certain types of financing will be necessary to fund such adaptations. Fishermen operating in quota managed fisheries in the North Pacific routinely use quota share as collateral in securing financing from institutions. Several institutions prefer to use quota share (rather than vessels or equipment) as such collateral.

The Council's control language appears to restrict the ability of lenders to take a security interest in quota share as collateral in making loans. While this tight control rule will help to maintain the integrity of the accumulation limits, a specific exception for financing arrangements appears necessary to allow fishermen to finance change to their fishing operations. This is because the use of quota share as collateral implies that a lender be able take possession of and sell or cause that quota to be sold (exerting a controlling influence over the quota share) and this appears to violate the control language specified as part of the trawl IFQ program.

We propose that such an exception be developed to simply restrict the terms over which those financing arrangements can be specified. The appropriate exception would not restrict types of financing institutions, merely the terms over financing. The exception is specified in the following bullet:

- Financing exception: that financing arrangements can be developed which use quota share as collateral. No accumulation limit applies to such an arrangement so long as that arrangement does not exert control over the harvesting and delivery activity of the quota share holder requesting or applying for the loan. This includes, but is not necessarily limited to, restricting delivery location and specifying exvessel prices.
- Lenders may take possession of and sell or cause quota share to be sold as permitted under State law in connection with a loan default. If a lender takes possession of QS in connection with an event of default, the lender shall not receive the related QP unless the lender is otherwise eligible to do so under trawl IQ program regulations.

## 6. Rationale and Analysis

### 6.1. Broad Level Effects of Risk Pooling

The risk that harvesters face when prosecuting fishery activities under the IFQ program appears to provide an incentive to form arrangements which reduces the risk to individuals. The incentive to minimize one's individual risk through a collective arrangement can lead to a reduction in collective risk stemming from the possibility of a "disaster tow" through collective action made possible by that collective agreement. While such incentives appear to exist, the control limit appears to restrict the application and development of any such arrangement to a single year. Research and analysis done on bycatch management in the Bering Sea Pollock fishery<sup>3</sup> has indicated that bycatch reduction and risk sharing arrangements can be dramatically enhanced if those arrangements are able to span multiple years and this may include: dictating multi-year harvesting terms for individual vessels based on past multi-year performance, dictating the amount of overfished species quota each vessel has at the start of each season based on past multi-year performance, specifying financial rewards and penalties for current year performance, and stipulating tie up provisions, gear restrictions, or area restrictions for individual vessels, among others. Dictating the use of quota over several years and the terms under which a vessel can prosecute fishery activities for more than a single year appears to violate the control limit, even though such an agreement may be strictly voluntary and agreed upon by members of the risk pool.

Without the ability to form risk sharing arrangements which dictate certain harvest conditions on members for several years – and which examine bycatch performance over a several year time horizon – it appears that risk pools will be less effective than could otherwise be the case. If risk pools are only able to act in a manner that takes a single year snapshot of events and rewards/penalizes vessels based on that single year, it is possible that some of the "cleanest" fishermen will be penalized heavily, thus eroding the reasons and incentives for risk pool formation in the first place. In other words, bycatch events occur sporadically and our experience with the west coast fishery indicates that most vessels in the fishery face the possibility of a "disaster tow" event at almost any point in time. Generically speaking, the cleanest fisherman in the fleet may have one disaster tow every ten years for example, while less successful fishermen may have one every year. If risk pools are able to take a multi-year perspective and dictate terms on members based on that perspective, a vessel with a single event every ten years may be excused or treated differently than a vessel which incurs an event every year. If risk pools can only be developed with a single year perspective, and single year reward/penalty structure, the bycatch event from the "clean" fisherman will almost certainly be treated the same as a bycatch event from a higher bycatch fisherman. This equal treatment will erode the

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<sup>3</sup> Sugihara and Ye. 2009. Reducing Chinook Salmon Bycatch with Market-Based Incentives: Individual Tradable Encounter Credits



benefits and incentives of risk pool formation, thereby eroding the collective good created by collective action.

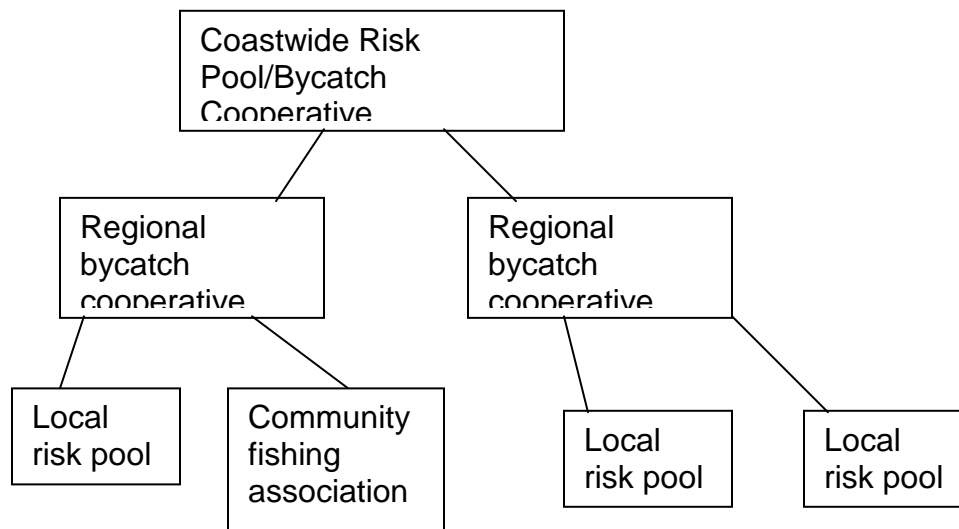
In order for a risk pool to effectively impose different rewards/penalties on vessels in this instance, such an agreement would need to be able to forge binding terms among members which apply for multiple years. These terms may very well include dictating the use of quota over a multi-year horizon, gear restrictions, and area restrictions over a multi-year horizon. These agreements also must be able to impose terms which require a vessel to stay with the risk pool for a minimum duration of time which exceeds one year (so that he/she cannot simply leave the pool if facing a penalty). Many of these elements appear to violate the control rule in its present form.

If a safe harbor is allowed for risk pooling agreements as specified above, the development of those arrangements is likely to occur through a “bottom-up” process where a broad risk pool agreement is made up through building blocks of smaller, “nested cooperatives”. This bottom up process is important for at least two reasons:

1. Fishermen will need the latitude to form arrangements with other harvesters with which they hold significant degrees of similar goals, objectives, and characteristics. Forcing fishermen to construct detailed arrangements with large numbers of other fishermen with whom they have little in common and do not have a trust relationship will make association formation challenging.
2. Relatively small associations (which are built around a small geographic area) will be more responsive to and knowledgeable of the characteristics of the local waters, including bycatch hotspots, oceanographic conditions, etc. These smaller associations will need to develop terms among their members which respond and acknowledge such local conditions and local knowledge. That knowledge of the local fishery condition, and detailed terms among association members which respond to those local conditions, helps to ensure the success of the broader risk pool umbrella.

The bottom up process may tend to result in an overarching risk pool structure which is comprised of several, smaller risk pools along with several “Community Fishing Associations” or “Community Quota Banks” if such entities are allowed to form and receive a safe harbor from the accumulation limit. The organizational structure (if viewed from a top-down perspective) is likely to result in a large risk pool structure which defines relatively broad, general terms over bycatch avoidance measures, penalty/reward structures, and other aspects of risk pooling which are fairly “high level”. As the organizational structure moves down the “pyramid” and becomes more localized, the specificity and complexity of the arrangements within those smaller, more local, associations will (necessarily) tend to increase. Such specificity and complexity in the organization would tend to provide detailed information on issues such as bycatch hot spots, the degree

of joint versus several liability, the degree of risk sharing for bycatch events, and other terms. All of these terms are private arrangements developed outside the Council process by association members, but are consistent with policies established by the Council.



## **6.2. Rationale and Analysis of Risk Pool Exceptions, Elements, and Criteria**

This section attempts to provide a point by point discussion of the rationale and effects of each of the required elements/exceptions/etc for a risk pooling governance agreement. Where applicable and able, interconnectivities between these exceptions and criteria are identified and discussed

### *Accumulation Limits*

Risk pools are not held to an accumulation limit because they are built around the basic notion of insurance. As the size of an insurance arrangement increases, that arrangement begins to become more effective in terms of risk reduction and establishing/incentivizing behavior which is beneficial to all members of that arrangement. It is for this reason that accumulation limits do not

apply to any risk pooling structure *so long as they adhere to specific criteria*. Since risk pooling arrangements may specify terms which exert control over members' use of overfished species quota, dictate harvesting restrictions upon members, or other activities, such arrangements must be strictly limited to managing the risk of overfished/non-target species bycatch events. Dictating delivery terms or exvessel prices, for instance, would fall outside this definition. Individuals which are partners in such an agreement are still held to limits individually, including limits on control of quota share and vessel accumulation limits.

### *Eligible Members*

Members allowed to forge such agreements are limited to holders of quota share and owners of limited entry trawl licensed vessels. Since the purpose of any such agreement is to manage the risk associated with *harvesting* activity, other interests would tend to complicate matters and introduce goals and objectives which are not related to, or conducive to, risk pool formation and agreements.

Quota share holders are specifically allowed as part of any risk pooling arrangement because their interest as a quota share holder is effectively that of a harvester, even if those quota share holders do not actually fish themselves. Quota share holders which do not own or operate trawl licensed vessels will enter into agreements with licensed trawl vessel owners to harvest their quota. In order to accommodate the interest of quota share holders, they are given the opportunity to become members of the risk pooling structure and assist in the development of terms which increase the likelihood of successful prosecution of fishing activity and reduce risk to members of that agreement.

Trawl licensed vessel owners are specifically allowed as part of any risk pooling arrangement because it is their activities which are managed and affected by the risk pool agreement. Each of the above groups (quota share holders and licensed trawl vessel owners) may dedicate representatives in governance structure negotiations.

### *Agents*

A risk pool may form an entity that operates with the purpose of managing and enforcing the terms of a risk pool agreement. A risk pool may also secure a third party agent to manage and enforce the terms of the risk pooling agreement. In either case, the rationale for having such an entity or agent is to carry out the agreement to which risk pool members have agreed to. The lack of such an authority may compromise the ability of the risk pool to effectively and efficiently carry out the agreement, thus reducing the capability of that risk pool to achieve its objectives.

### *Duration of Arrangement*

Allowing risk pooling arrangements to dictate terms which extend beyond one year is the foundational piece which requires an exemption to the control rule. In order to ensure that multi-year terms can be effective, such agreements must be binding and not enable a member to simply leave the risk pool agreement if facing a restriction or penalty. In an attempt at ensuring that such agreements are binding and have the desired effect, those agreements must stipulate that members cannot leave the risk pool unless they give at least A) 12 months notice, or B) 24 months notice. In either case, those departures are not recognized until the start of the following year. These measures may also stipulate that members cannot leave a risk pool until all obligations to that risk pool have been met. These requirements are necessary in order to ensure that members do not simply leave the risk pool structure if they are facing a penalty or restriction.

### *Enforcement and Monitoring*

During the development of the trawl rationalization program, the Council indicated that it was their intent to allow risk pools to form. However, the existing control rule appears to restrict the development of highly effective risk pooling arrangements. It is for this reason that an exception is needed, but the question arises regarding oversight or auditing of any such arrangement.

During the Council's deliberation of the trawl rationalization program, discussion of risk pools as voluntary arrangements occurred regularly. The majority of those discussions did not involve having any oversight or auditing function by the PFMC or NMFS as part of those arrangements. The required enforcement and monitoring provisions described above are consistent with those discussions. At the same time, the risk pool exception to the control rule is intended to retain the integrity of the control rule and accumulation limits. Therefore, any risk pooling arrangement governing agreements must be accessible to NMFS or the state agencies upon request. While an official auditing or application function does not exist, this accessibility requirement provides a mechanism for easily ensuring compliance with the control rule exception.

### *Limited Scope of Agreement*

Risk pooling arrangements are limited in their degree of application, or capacity. In short, their sole purpose is to manage the risk of overfished, non-target, species bycatch events. In order to limit the application of any such agreements to this purpose, such arrangements may not stipulate delivery terms upon members, specify exvessel prices, or engage in other arrangements which are not related to *managing and incentivizing harvesting activity*.

It is envisioned that such arrangements may develop measures which include, but are not limited to, a reward and penalty structure upon members based upon

their bycatch performance, may impose and enforce area closures upon members, may impose tie up provisions upon members, and other activities solely related to harvesting and managing bycatch.

### **6.3. Broad Level Effects of Community Fishing Associations**

The trawl IQ program contains numerous components to promote recovery of Pacific Coast fish stocks and to improve the economic health and stability of the Pacific coast groundfish trawl fleet. If the program performs as expected, the related benefits will accrue to the participating fishermen, and indirectly to the communities in which they live.

However, as noted above, implementing an IFQ program also creates opportunities for port communities with infrastructure advantages to capture additional landings from the fishery, as fishermen cease competing for harvest share and are freed to spend time seeking additional value for their catches. Allocating IFQ also provides the initial QS recipients with an asset they can leverage to acquire additional QS or QP, which creates an opportunity for those fishermen (and the communities in which they are based) to increase their share of the fishery.

The potential concentration of landings and QS ownership in some Pacific coast communities can only come at the expense of others. Communities with infrastructure disadvantages or whose fishermen receive allocations of QS that are not sufficient to support their community's fishing economy are at risk of losing their fishing income and fishing culture as a result.

Without a CFA component, the trawl IQ program leaves disadvantaged Pacific coast communities with a limited set of tools to protect them from the market forces associated with the transition from limited access management to quota-based management. Under the current program rules, a community that wishes to purchase QS to stabilize its fishery economy is limited to holding an amount of QS that can be held by a single model fishing business. This does not provide a disadvantaged community with sufficient quota leverage to compete for landings on a meaningful basis with communities that have well developed port infrastructure, high volume processing capacity and fishing fleets with substantial QS allocations. Adjusting the accumulation limit to allow CFAs to hold QS in excess of the amount that can be held by a model fishing business provides disadvantaged communities with some limited capability to offset the effect of the IQ program's market forces on their local economy, and to preserve their fishing culture.

Implementing an IFQ program tends to reshape the financial and economic landscape in many ways. One example affecting inter-generational entry into the fishery concerns the ability of initial QS recipients to leverage their allocations by using them as collateral and increasing their holdings of QS in the fishery. This

effect can inhibit the ability for new entrants to enter the fishery unless those new entrants have significant collateral of another sort, or significant cash on hand. Absent a mechanism that addresses these effects, the ability of new entrants to accumulate the capital to acquire QS or build a fishery operation can be impaired.

In other IFQ programs, these effects have been addressed through “blocking” small allocations of quota to keep them from being consolidated (the North Pacific halibut and sablefish IFQ program), through direct allocations of IFQ to skippers (the North Pacific crab rationalization program), and through subsidized loans to skippers and crew members (halibut and sablefish and crab rationalization IFQ programs). These initiatives provide entry level opportunities and “stair-steps” that promote progressively greater involvement and investment by new entrants.

The trawl IQ program includes an AMP component which could be developed and implemented to provide comparable opportunities for entry into and progressively greater involvement in the Pacific Coast groundfish fishery. However, implementing that program on a coast-wide basis poses some of the same challenges inherent in developing a coast-wide risk pool. Absent nested local institutions that tailor QP allocations to the circumstances and needs of the different communities and regions comprehended by the program, the AMP is likely to impose a significant administrative burden on NMFS, or be implemented on a less than optimal basis, or both. This is not to suggest that CFAs should be the only channel for allocating AMP quota. However, they could certainly be a channel that both provides an early opportunity for AMP quota distribution, and could provide very useful information concerning the institutional design for effective, efficient AMP quota distribution.

Until the AMP is fully implemented, CFA QS could be used to address the new entry problem, by adding an appropriate suite of usage standards that require FCMA cooperatives using CFA QP to promote new entry and advancement in the fishery. Because the new entry problem is faced by every Pacific coast community affected by the trawl IQ program, not just disadvantaged communities, this function could be the basis for making the CFA option available to all fishing communities within the trawl IQ program region.

#### **6.4. Rationale and Analysis of Community Fishing Association Exceptions, Elements, and Criteria**

##### *Accumulation Limits*

CFAs would not be exempted from accumulation limits. Rather, they would receive a higher accumulation limit, which is commensurate with their purpose and function. We propose either 1.5 times the existing limits or 2 times the

existing limits, with some specific adjustments, for initial analysis. This range is proposed based on the notion that 1.5 times and 2 times the control limit appears to provide an entity with enough quota share to effectively operate 3 to 4 full time trawl vessels. This level is similar to the participation level of several smaller communities that seek to use CFAs to preserve their fishery participation.

The rationale for the species-specific exceptions are as follows:

- Pacific whiting: while Pacific whiting is important for several west coast communities, the economic and social dynamics we discuss in this document appear more relevant to the non-whiting portion of the fishery. As a result, we do not propose CFA exceptions for Pacific whiting because we do not find sufficient need to do so
- Sablefish South of 36 degrees: We propose 60% of the southern trawl allocation because this level is generally consistent with the quantity of sablefish allocated to the CFA EFP that has been operating out of Morro Bay for the past several years. That EFP serves as a model for a future CFA. Adjusting the amount of sablefish available to fishermen in the EFP out of Morro Bay would likely prove to be more disruptive than it would be beneficial
- Shortspine South of 34 degrees 27 minutes: We propose 60% of the southern shortspine allocation due to the limited geographic range of this ACL, and the likelihood of a small number of CFAs being set up in the area (necessitating a large accumulation limit exception for those CFAs).

#### *Eligible/Required Directors*

CFAs are governed by a Board of Directors composed of representatives of the local community's harvesting sector and processing sector, and representatives with an interest in the fishery drawn from the larger fishery economy of the community, the conservation community or academia. The local municipal governing body or bodies with jurisdiction over the community or region for which the CFA is formed select the Board of Directors, or develop a process by which it is constituted. The reason for this diversity in required membership is to help insure that the directors of the CFA share the perspective of the broader community, rather than the perspective of a single for-profit entity. The CFA is also required to have a letter of support from a municipal governing body (or similar) for several reasons, including:

- Eliminating the possibility of multiple organizations attempting to set up CFAs in a single community and forcing NMFS to accept them on a "first come first serve" basis,
- Insuring that the CFA answers to a community governing body and reflects the interest of the broader community.

To prevent CFAs from being “captured” and used to promote the interests of one sector or interest group over another, the amount of control that the harvesting sector and processing sector can directly or indirectly exercise on the Board of Directors is limited to 20%. This level is recommended due to the requirement that the Board have at least 5 members (thereby giving processor and harvester interests equal voting power with other Directors) while striking a balance between significant voting authority by industry and maintaining the broader interest of the community (combined industry membership approaches, but does not exceed, 50 percent).

### *Performance Standards*

The CFA is expected to develop a “community development plan” (CDP) that describes the CFA’s goals and objectives, and describes the methods and means the CFA will use to achieve those goals and purposes. The CDP reflects the CFA Board’s judgment concerning the needs of the community or region that are appropriately addressed by the CFA, and establishes general performance standards concerning CFA QP use that in the Board’s judgment will address those needs. The CDP for a disadvantaged community could be focused on maintaining or enhancing the overall health of the community’s or regions fishery economy, while the CFA for a community that is not disadvantaged could be focused on facilitating new entry into the shoreside IQ fishery.

This requirement exists for the purposes of transparency with NMFS and the PFMC in order to ensure that the actions being carried out by the CFA are consistent with the intentions of the PFMC in allowing for CFAs to form. This requirement also helps in understanding the effects of the rationalization program and the effects of CFAs in particular.

### *Duration and Administration of Agreement*

The CFA’s CDP and related agreements are required to be submitted to NMFS and the Council periodically. This insures that the CFA revisits and updates them, and that NMFS has a current suite of documents on file. As noted above, NMFS will not conduct a substantive review of the contents of the CDP and related documents. Rather, NMFS will insure that the required documents have been completed, and will require that the CFA Board certify that their provisions are consistent with the CFA program standards adopted by the Council. The Council will periodically review the CFA CDPs and related documents and the CFA reports, and determine if the CFAs are indeed operating in a manner consistent with Council intent. However, the Council will not specifically approve or disapprove any specific CFA or CDP; Rather, the Council will revise the CFA program standards if the Council believes one or more CFAs are operating in a manner inconsistent with Council intent.



The purpose of this agreement duration and submittal process is to insure that CFAs adhere to PFMC and NMFS policies regarding the formation and administration of these associations. Periodic submittal of agreements helps to insure effective oversight.

### *Harvesting Agents*

The CFA is required to contract with a fishermen's association rather than individual fishermen because CFAs are expected to facilitate risk pool formation, because an intermediate entity is necessary to monitor and manage QP harvesting and delivery for performance standard compliance, and because a high degree of coordination and integration of QP harvesting and delivery activity will be necessary to achieve performance standard compliance.

The CFA fishermen's association is required to be a qualifying "Fishermen's Collective Marketing Act" or "FCMA" cooperative<sup>4</sup>, to ensure that the association is composed of fishermen, and to facilitate ex-vessel price and delivery term negotiations to maintain an economic balance between the interests of harvesters and processors within a given community<sup>5</sup>.

### *Enforcement and Monitoring*

CFAs will require the FCMA cooperative harvesting CFA QP to provide periodic reports regarding its use that demonstrate compliance with the CDP performance standards. CFAs will establish their own monitoring, auditing and enforcement requirements related to use of their CFA QP by the local FCMA cooperative. CFAs will have the ability to take appropriate action in response to failure to comply with performance standards per the CFA contract with the FCMA cooperative, which could include contract damages or withdrawal of some or all CFA QP until the failure to comply is cured.

CFAs will prepare a report for the Council that documents the CFA's compliance with its CDP, which could include an independent audit of CFA performance.

These reporting requirements are required in the interest of maintaining transparency over the CFA program and to allow the PFMC, NMFS, and

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<sup>4</sup> See 15 USC 521 and related case law.

<sup>5</sup> Requiring that vessels deliver catch to a specified location (which is a requirement of a CFA/CQB) effectively reduces the scope of markets for the harvesters and ensures a quantity of catch to processors located in that area. Due to the importance of both healthy processors and healthy harvesters in determining the health of a community, this change in economic dynamics caused by CFA/CQB formation is complimented with the requirement that harvesters be members of an FCMA cooperative as an attempt to balance economic negotiations between the two groups. In cases where a processor has a significant degree of market power in the ex-vessel delivery market within a CFA's community or region, additional measures to preserve a competitive market for ex-vessel deliveries may be necessary. The Council may wish to relegate responsibility for these additional measures to CFAs.

interested members of the public to adequately understand and assess the implication of the PFMC's policies. The time line for submitting such reports is suggested to be either 2 or 5 years because drafting such reports can be labor intensive, burdensome exercises, and CFA organizations are likely to be relatively small with correspondingly little resources.


#### **6.5. Relationship Between CFAs, Risk Pools, and the Adaptive Management Program**

The risk pool and CFA alternatives described above appear to create a “tri-fecta” between Risk Pools, Community Fishing Associations, and the Adaptive Management Program. If CFAs are used as the conduit for AMP quota, the formation of those CFAs is incentivized by the receipt of that quota, allowing CFAs to boot-strap their way into existence and overcome the hurdles of new entry. Since the requirements of a CFA include bycatch minimization measures, and other measures conducive to minimizing bycatch risk, the CFA acts as a foundational building block to the formation of broader risk pooling arrangements. Through the risk management measures developed by the risk pooling arrangement, collective risk is reduced across a wide geographic area which is defined by the scope of the risk pool. This reduction in collective risk protects the CFAs from one another, helping those CFAs to meet their overall goals and objectives. Assuming those CFAs are the recipient of the AMP quota, then the successful operation of the CFA helps the AMP meet the purpose specified for that program as well. In other words, each of the three programs (Risk Pools, CFAs, and AMP) appear to provide support, and are supported by, one another.

# Safe Harbors in the Pacific IFQ Program

Risk Pools  
Community Fishing Associations  
Quota Share as Collateral in Financing



- Bycatch cooperatives (risk pools)
    - Request that control limits not apply in specific circumstances
  - Quota share as collateral in financing
    - Request that control limits not apply in specific circumstances
  - Community fishing associations
    - Request that higher accumulation limits apply for associations formed under specific criteria
- 

# Bycatch cooperatives (risk pools)

- Overfished species catch variability and uncertainty = large financial risk to individual fishermen under the IFQ program, and
- “Disaster tows” pose a collective risk to the entire fishery
- Risk management is often handled through collective, insurance-like mechanisms
  - Risk pools fall under this category

# Risk pools (cont)

Why is an exception to the control definition necessary?

- Literature and examples in other fisheries indicate highly successful arrangements exert control over members which may span multiple years
- These actions are necessary to reduce individual risk
- Necessary to reduce collective risk to the entire fleet and to respond to events which pose a collective problem



# Possible activities of a risk pool

- Implementing time/area closures on members
  - May apply differently to vessels depending upon bycatch performance, quota pounds brought by each members, or other
- Implementing tie up provisions based on members performance
- Imposing financial rewards and penalties based upon bycatch performance
- Specifying that vessels cannot leave the pool until they've satisfied obligations
- Requiring that quota pounds be transferred from vessel to vessel (prevent quota hoarding)
- Others

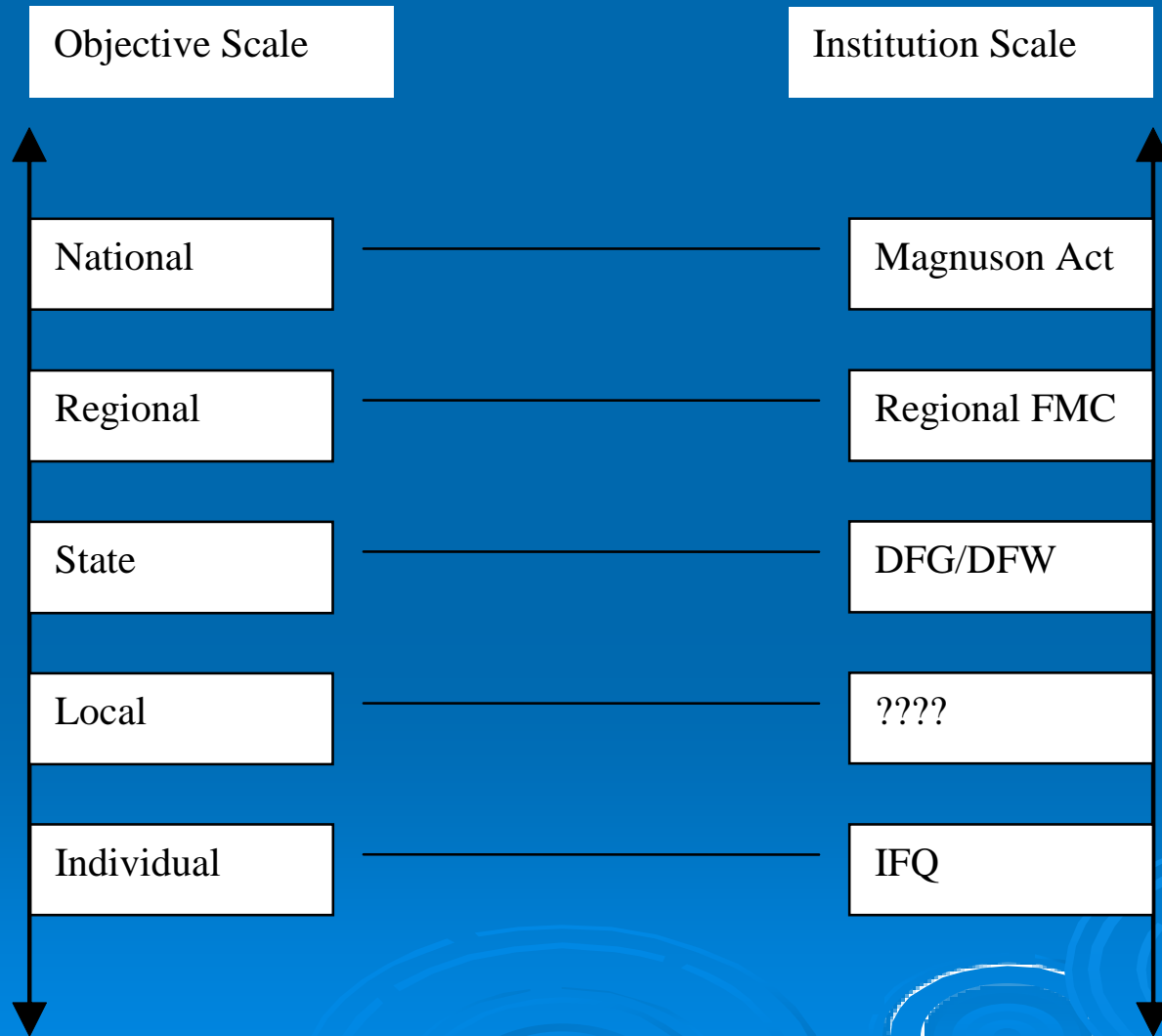


# Community Fishing Associations

- A community-scale entity can take into account the needs of community-level interests
- This entity can manage fishery activity to respond to the needs of:
  - Individual fishermen
  - Processors
  - Community support business
  - Support fishery/marine infrastructure
  - Facilitate new entry (subject to limited entry license requirement)
  - Preserve local community culture and identity
- These interests are inherently different from:
  - A private, for profit corporation
  - A national or regional level initiative



# Creating another institution in fishery management



# Justifying a higher accumulation limit for a local-scale institution

- What elements and activities are representative of a “healthy fishing community”?
  - “Sufficient” landings of seafood
  - Processing and/or value added activity
  - Vessels which homeport in the marina and use local services
  - Trans-generational participation
  - Cultural values and community identity
  - Others
  
- A community is defined by more than just landings!

# Justifying a higher accumulation limit for a local-scale institution (cont)

- Factors that promote fishing community health
  - Landings sufficient to support several vessels
  - Relative certainty over future harvest volume
  - Residency of fishermen, processors, and support business in the local community
- Sufficient quota share held by entities within the community can facilitate “healthy” community activity
  - “...entities within the community...”
  - “...sufficient quota...”

# Justifying a higher accumulation limit (cont)

- Existing accumulation limits do not appear to allow an entity to control enough quota share to meet the envisioned needs of a community (such as those specified previously)
  - Existing limits will allow an entity to control enough QS to effectively operate 2 full time trawl vessels
- Moderately higher limits for specific institutions operating under specific standards can both:
  - Allow for enough control over fishery activity to acknowledge the needs of communities, and
  - Prevent abuse from entities which may seek to use the exception to their own benefit

# Association specification to prevent abuse to accumulation limits

A CFA must do the following:

- Identify how it intends to meet the goals for CFAs which are identified by the PFMC
- Receive support from the local municipal government
- File associated paperwork and performance reports with NMFS and PFMC
- Contract out to a group of harvesters which are members of an FCMA cooperative
- No owner may have more than one vessel using CFA QP.

PFMC Goals and  
Objectives

Local Governing  
Body

CFA Board  
at least 5 members

FCMA Coop  
Vessels  
  
one vessel per  
owner

← CFA answers to  
both the PFMC/NMFS  
and the local  
government

← Board is comprised  
of representatives  
from the community

← FCMA harvesters  
are contracted by CFA  
to balance  
harvester/processor  
negotiations

← One vessel per  
owner limit to prevent  
domination by one  
large harvester



# Interaction between CFA and AMP

1. Council is obligated to develop an AMP program based on T-rat decision
2. Proposed rule indicates that social factors which exist in MSA will be addressed via AMP and CFAs
3. At present time there does not appear to be a clear, efficient pathway toward AMP development
  - Formulaic process presents difficulties in meeting objectives due to nuances in community and other needs
  - NMFS-based process requires NMFS to undertake significant administration
  - PFMC-based process may look like an EFP process, requiring significant time in Council
4. CFAs could administer some portion of AMP, if AMP purpose is consistent with CFA function
  - This does not preclude other avenues for AMP

# Hypothetical process for AMP and CFA development

- PFMC begins amendment process to allow formation of CFAs in fall 2010
  - CFAs required to have standards which are complimentary to AMP
- Regulations drafted in 2011, allowing formation of CFAs in 2012
- PFMC begins amendment process for AMP in late 2011/early 2012
  - Process outlines entities which are eligible to receive AMP quota, and standards they must meet in order to do so
- PFMC role is largely left to a periodic allocation decision
  - PFMC can also modify AMP and CFA standards



# Quota share as collateral in financing

- Many lenders that finance fishing businesses desire QS as collateral
- Using QS as collateral implies that a lender must be able to either take possession of QS or cause QS to be sold in the event of default
  - This is a form of QS control
- To facilitate financing, an exception to the control rule for permissible lending practices appears necessary

# Proposed Financing Exception

- Specific practices would be exempted
  - Any entity can engage in lending practices, so long as they adhere to permitted practices
- Exception would extend to lending activities only if loan agreements do not dictate delivery terms
  - No delivery time or location requirement
  - No ex-vessel price or price formula

## San Francisco Community Fishing Association

*Direct from the boat. Fairtrade fish and crabs. Est. 2009*

Larry J. Collins • President   Joe Garafolo • General Manager



September 6, 2010

Agenda Item I.6

Mr. Mark Cedergreen, Chairman  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 101  
Portland, Oregon 97220-1384

Re: Potential Trailing Actions to Amendment 20 on Trawl Rationalization

Chairman Cedergreen and Council members,

The San Francisco Community Fishing Association made comment at the March 2010 PFMC meeting which provided information about our budding organization. We informed you then that our plans are to be a marketplace for both the public and businesses to purchase locally caught seafood direct from the source: local independent fishermen who subscribe to sustainable fishing standards. We want to keep you updated on our progress.

We have filed our Articles of Incorporation and are now in the process of writing our by-laws. As we move forward with our decisions for ourselves, we will need the Council to develop a standardized Community Sustainability Document. We expect to see CFAs on the March agenda. To that end we encourage the Council to expedite issues related to Community Fishing Associations. It is our understanding that the council has received funding to help with this process.

Without a salmon fishery our community is in grave danger of social and economic collapse. We ask the Council to be open to input from our community and others in similar dire straits when it comes to developing criteria for initial allocation and accumulation limits.

Thank you,

A handwritten signature in black ink, appearing to read "Larry Collins".

Larry Collins  
President



## Trailing Amendments

The Coos Bay Trawler Association would like the Council to consider the following topics as trailing amendments whenever they may fit into the staff's workload:

### INDUSTRIES HIGHEST PRIORITY

We believe the Council needs to establish an alternate solution to the dilemma of over fished species because the ACLs are so low that they will restrict the entire fleet and may close the fishery prematurely in the year. The only solution may be some sort of common risk pool where cowcod, canary, halibut and yelloweye quotas are placed to cover the risk every individual will be facing. While we appreciate the effort of the Council to reallocate these species, especially canary, a few months ago, it is obvious to the industry that this has to be the highest priority to the fleet. While some of the public that are not connected to the trawl industry believe CFAs are a high priority, there would be no need for a CFA if the fleet cannot prosecute the fishery.

### OBSERVER COSTS

The possible CFA that might be established in the Port of Coos Bay request the Council to consider a broad based funding scheme to finance the observer portion of the trawl catch share program. The TIQ committee worked hard to assure that accumulation caps and control limits were at a level that would preserve the characteristics of the west coast trawl fleet and without a broad-based plan, many small trawl boats will be eliminated simply because they cannot afford the cost of observers.

To help foster that goal of fleet preservation, it will be a necessity to assure that all vessels, regardless of size, be able to afford the costs of having an observer on their boat for every fishing trip they make. If public funding through the budget process fails to provide funding for the observer program for the west coast catch share program, we suggest that a coast wide system be established to help fund this program component.

If the Council, NMFS, NOAA and the federal government fail to provide funding for this component we suggest that a percentage of each delivery of all participants of the catch share program be deducted from their payment from the buyer (just like the buy-back payments) and placed in a common pool that all observer costs for every participant will be taken from. This method will assure that the small boats will have an equal chance to remain in the fishery and won't be forced out because they cannot cover the observer costs.

We are incapable of establishing what percentage would be appropriate but we're sure the government has the resources to establish the correct amount.

### GEAR MODIFICATION AND DEVELOPMENT

The Coos Bay Trawlers request the Council to consider an express system to allow and approve gear modification for the catch share program.

As trawlers begin to fish within the guidelines of the trawl catch share program, methods of avoiding certain species may become obvious to some participants and the desire to try out their ideas might become paramount not only for their own operations but also for the benefit of the entire industry. We understand that modifying legal gear can be done without consent of the Council (increasing mesh size), but gear development that is currently not legal gear could take several months to over a year to accomplish. The catch share program may inspire many trawlers to try to develop gear that has not ever been addressed before but increases avoidance and becomes more selective than gear currently used. The Council, to help foster these experiments, could adjust the cycle the Council has in place to expedite the process to get the gear to the experiment stage quicker than would otherwise happen.

It is not known what type of gear modification might be envisioned by the fleet but it may include smart excluders and devices, camera observed panels and sensors or gates and side shoots. Timely development may help to keep the fleet fishing as they get more efficient and have a desire to change their behavior.

We also ask the Council to consider the use of mid-water gear once again by the shore-based non-whiting trawl sector. Widow and yellowtail rockfish were traditionally harvested with mid-water gear and when widows are rebuilt we need to use the best gear to access these species. We believe these species when fished with mid-water gear is a clean fishing experience. We would also need access to the RCA in order to prosecute this fishery.

The use of the selective flatfish trawl gear shoreward of the RCA should be modified to maximize the benefit to the fishery. We are not advocating eliminating the pineapple net but rather asking to be allowed to use a small footrope net without the wings to fish shoreward of the RCA. Fishermen will be accountable for their catch because of the observer coverage and some fishermen who have not used the selective flatfish gear would be able to fish shoreward of the RCA without the added expense of buying new gear.

## COMMUNITY FISHING ASSOCIATIONS

The potential Port of Coos Bay CFA requests the Council to not implement greater accumulation limits or increase the control limits for CFAs or any other entity at any time, especially during the moratorium period. CFAs should be held to the same limits as anyone else who can buy and hold quota. We believe the creations of exceptions to the limits will open the door to a reallocation process not envisioned when these strict limits were set. These limits were set low to preserve the characteristics of the fleet and creating a mechanism to trump this philosophy right from the start will only jeopardize the program.

We agree, however, with Burden and Sullivan paper about lenders who may provide financial assistance to quota share holders in that they do not control deliveries or prices and we encourage the Council to view lending institutions who have taken quota shares as collateral in the same manner as mortgages and car loans. The lending institutions upon repossession of the quota would sell the quota as they would a house or a car to any qualified buyer. The NMFS would have to make sure their buyer is qualified to own the quota and the buyer would have to be advised on the laws and rules that govern the use of the quota program.

While the risk pool is being developed (and it will be developed even if the Council does not agree with industry's view of priority), the Port of Coos Bay CFA will operate as a risk pool. Members would not deposit their quota shares or pounds into a common pool but would use discussions with the members to transfer needed pounds to another member. If the risk pool does not take possession of the quota shares or pounds, the risk pool does not exceed the control or accumulation limits. A risk pool could operate in a manner where members never deposit their quota into the pool but open trading within the risk pool group to keep the entire pool fishing would occur. Any member needing additional quota pounds would have to justify his fishing behavior to the group to gain those additional pounds. These discussions would also include methods to use to avoid another encounter that caused the need to transfer pounds and help the member change his behavior and methodology. Of course the NMFS quota transfer service would track the transfers of the CFA as they would for any transfer. The CFA may own its own quota shares which would also enhance its ability to keep the members fishing and supporting the community through measures that improve the sustained production and promote harvesting and processing in the community. However, members of the CFA would not be allowed to contribute funds to purchase the CFA's quota shares or pounds. Those funds would have to come from the community.

Coos Bay CFA would address its member's need for quota pound transfers and would be done possibly without charge the first time and members' trades would be treated as a private transaction. Members with larger boats that do not fish the beach species would rely on the members with small boats to harvest their Sanddabs, Rex and English soles and the members with small boats would rely on the members with large boats to harvest their deep water complex through a simple transfer transaction. Through constant dialogue within the group, hot spots to avoid will be shared, hot spots to fish will be announced and other information beneficial to the CFA will be known by the members. We do not believe coast wide rules and regulations is the answer to localized fishing concerns that could possibly be a conduit for reallocations.

The CFA would also act as an observer pool manager to make the best use of the observers assigned to the port area. This would help in reducing costs to the program. The Port of Coos Bay CFA could also act as the first receiver for small processors and buyers so that the plant monitor would be in a centralized location where off loading would take place and would reduce the time and effort the plant monitor would need to coordinate off loading. This would also reduce the costs to the program because duplication of hardware to report catch data would be eliminated.

The Adaptive Management Program should be restricted to conservation, unforeseen and unintended consequences and facilitating new entrants. There are few, if any, communities or processors that meet the MSA requirements to receive AMP quota. The concept of AMP originated in Alaska where entire communities' only financial source was fishing. Those communities were totally reliant on fishing and they needed federal assistance to assure they would be able to survive their IQ program. It is a stretch to see how, for example, San Francisco would disappear if trawl caught fish was no longer landed in that community. We see the use of AMP quota for stability of communities or processing as another way to reallocate trawl quota to a specific area and will only water-down the program. We ask the Council to avoid measures that create loopholes for reallocation under any program title and to set the accumulation and control limits in stone to avoid these loopholes.

Not all communities will be able to preserve their link to the fishing industry just like not all fishermen will be able to survive this program and not all jobs related to the fishing industry will survive. Fishermen and processors do not have a handle on this program yet and how will it function and how they will function in it, never mind adding the complexities these attempts to make loophole and exceptions to the program will create. It seems unfair to be adding more onto the program before we even know how it will function.

### Halibut By-Catch

Halibut by-catch is an extremely important issue that needs to be addressed in a trailing amendment as soon as possible. The low limits along with the methodology used to determine the conditions of these discards will restrict the trawl sector and the fact that the data used to make these determinations is extremely old makes this issue one that needs to be expedited.

Several factors need to be examined which include that the data used in these determinations were establish in the 70's; the pot data was gathered from the Alaskan and Canadian fleet where king crab pots are used, are much larger than the pots used off of the west coast so the data is questionable; the trawl gear used in Alaska is towed behind much larger boats for longer periods of time with bigger nets then what is used on the west coast; some of the data used indicated "ripped jaws" which is not data from the trawl fleet. We don't believe the Council's intent is to restrict the trawl industry using old, misinformed data taken from another region that has no comparison with the characteristics of our trawl fleet.

We encourage the Council to re-examine the current data and attempt to update the findings using data from the area where our fishery is prosecuted. If the trawlers were allowed to land their dead halibut but were not allowed to profit from the landings, funds generated by those fish could be used to finance a study of the trawl observer information and present the reports finding to the Halibut Commission.



## CONSIDERATION OF INSEASON ADJUSTMENTS – PART II, IF NECESSARY

This agenda item considers inseason adjustments to 2010 groundfish fisheries. Inseason adjustments are also considered under Agenda Item I.2. Should the Council adopt preliminary recommendations under Agenda Item I.2, then final action will be taken under this agenda item. However, should the Council make final recommendations under Agenda Item I.2, then this agenda item will be cancelled.

### **Council Action:**

- 1. Adopt final inseason adjustments to 2010 groundfish fisheries, as necessary.**

### **Reference Materials:**

1. None.

### **Agenda Order:**

- a. Agenda Item Overview
  - b. Reports and Comments of Advisory Bodies and Management Entities
  - c. Public Comment
  - d. **Council Action:** Adopt Final Recommendations for Adjustments to 2010 Groundfish Fisheries
- Kelly Ames**

PFMC  
08/18/10

**Projected mortality impacts (mt) of overfished groundfish species for 2010 updated based inseason action at the September meeting.**

[illegible]