

PROGRAM REVIEW PLANNING: LIMITED ENTRY FIXED GEAR PERMIT STACKING

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## **Introduction**

This document provides a summary of the key guidance contained in the National Marine Fisheries Service (NMFS) “Guidance for Conducting Review of Catch Share Programs” [NMFSP1 01-121-01](#) with the context of planning for the upcoming review of the limited entry fixed gear permit (LEFG) stacking program—[Amendment 14](#) (A-14) to the West Coast groundfish fishery management plan (FMP). The purpose of a catch share review is to determine whether a program is meeting its goals and objectives and the goals of the MSA ([NMFSP1 01-121-01](#), p. 10). Headers in this document correspond to headers in the NMFS guidance (headers not relevant to the current exercise are omitted).

One or more of the following steps might be considered to initiate the review.

- Announce public scoping.
- Identify a review team and authorize work.
- Determine whether allocation and accumulation limit reviews should occur outside of and in advance of the Amendment 14 review (see bold italics in sections on allocation and accumulation limits on pages 6 and 7, respectively).
- Set review calendar—including review scoping session.

The following list shows a set of next steps the Council could consider if it moves forward with the review process. Additionally, as part of, or subsequent to, these steps, a review plan should be developed to guide the process.

- Initiate the review by identifying a review team and authorizing work.
- Determine whether allocation and accumulation limit reviews should occur outside of and in advance of the Amendment 14 review (see corresponding sections below).
- Set review calendar—including review scoping session.

Based on the start date for the previous limited entry fixed gear permit stacking review, the next review should be initiated no later than the November 2020 Council meeting

### ***Periodicity of Reviews:***

The Magnuson Stevens Act (MS) requires that catch share programs

include provisions for the regular monitoring and review by the Council and the Secretary of the operations of the program, including determining progress in meeting the goals of the program and this Act, and any necessary modification of the program to meet those goals, with a formal and detailed review 5 years after the implementation of the program and thereafter to coincide with scheduled Council review of the relevant fishery management plan (but no less frequently than once every 7 years) MSA (303A(c)(1)(G))

NMFS guidance on the timing of reviews for programs implemented prior to the MSA review requirements (established by the 2007 MSA re-authorization) specifies that reviews “should be initiated no later than 7 years after the CS [Catch Share] Policy went into effect in 2010” ([NMFSP1 01-121-01](#), p. 2). The first review of the Amendment 14 LEFG permit stacking program was authorized by the Council in September 2013, initiated with a scoping session in November 2013, and completed in June of 2014. Guidance does not specify the exact timing for the second review of a program implemented prior to 2007 but the guidance with respect to second reviews of programs implemented after 2007 indicates that they “should be initiated before the end of the program’s 12th year, regardless of when the initial review was actually completed.”

This might be interpreted as indicating that the between review interval should be based on the dates on which reviews are initiated. Given that the MSA specifies a maximum interval of 7 years, the date by which the next LEFG permit stacking program review should be initiated might be interpreted as November 2020. Alternatively, because the guidance is silent on second reviews of programs in place prior to 2007, the deadline for initiating the review might be considered as June of 2021.

## ***Process and Procedures***

### **Review Plan**

Ideally, review plans should be part of the development of catch share programs ([NMFSP1 01-121-01](#), p. 3). This guidance was not in place when the LEFG CS program was developed, nor for the review conducted in 2014. As part of the next review, the Council may want to consider whether there are data collections or studies it would like to be conducted to support future reviews of this program. If a review plan is developed, the NMFS guidance specifies that it should be “periodically refined, revised, and updated as additional information becomes available and issues are identified.” The draft plan should be converted to a final plan before initiating the review (p.4). Review plans should provide:

- An overview of how the review will be conducted
- The time period for conducting the review
- What elements will and will not be analyzed as part of the review.

The Council, with concurrence from NMFS, should approve the review plan.

### **Review Team**

NMFS guidance suggests that the Council should determine the appropriate members for a review team. Among others, representatives from the Council, NMFS Regional Office, Science Center and Office of Law Enforcement should be considered for membership, as well as external contractor support, if needed. The distribution and nature of responsibilities for the review should be identified and the Council should determine the leads or co-leads for the review team.

### **External Inputs**

Mechanisms should be provided for constituent comment on drafts of the review document, as well as Council advisory bodies.

### **Finalizing Reviews**

The reviews are considered Council documents that, after approval by the Council, will be submitted to NMFS for concurrence that the review meets relevant requirements and is consistent with the guidance for conducting reviews ([NMFSP1 01-121-01](#)).

## ***General Approach, Scope of Review and Use of Standardized Approaches***

### **General Approach**

While the initial review compares and analyzes the fishery before and after the program’s implementation, NMFS guidance indicates that subsequent reviews should focus on changes occurring after program implementation. The guidance suggests a baseline period of at least three years be used for comparison but also that the focus be more on trends than performance in a specific year. The review should include the following eight elements.

- 1) purpose and need of the review (discuss legal/policy requirements),
- 2) goals and objectives of the program, the FMP, and the MSA,
- 3) history of management, ...<sup>1</sup>,
- 4) a description of ...environments<sup>2</sup> before and since the program's implementation,
- 5) an analysis of the program's... effects,
- 6) an evaluation of those effects with respect to meeting the goals and objectives (i.e., program performance), including a summary of the conclusions arising from the evaluation,
- 7) a summary of any unexpected effects (positive or negative) which do not fall under the program's goals and objectives, and
- 8) identification of issues associated with the program's structure or function and the potential need for additional data collection and/or research. ([NMFSPi 01-121-01](#), p. 6)

The evaluation of effects should include an assessment of net benefits in line with NMFS guidance for cost-benefit analyses, except that the comparison used for assessing net benefits should be the baseline period rather than what would have been likely to occur in the absence of the program. If particular information has not changed since the last program review or there are detailed analyses of the program conducted elsewhere, that information can be summarized and incorporated by reference.

### **Scope of Review**

The scope of the review should take into account spillover impacts, including impacts between related fisheries and impacts to species that are outside the scope of the catch share program. Analyses should take into account the entirety of the operations of businesses affected, not just activities within the scope of the program. The NMFS guidance also notes: "In instances where two or more CSPs [catch share programs] are found to have significant interdependencies, joint program reviews would lead to a more holistic approach and thus more accurate analysis . . ." ([NMFSPi 01-121-01](#), p. 8).

### **Use of Standardized Approaches**

"The review should make use of standardized performance indicators or metrics developed at the national level, to the extent practicable" ([NMFSPi 01-121-01](#), p. 8) as well as indicators that may have been developed and vetted at the regional level. Examples the guidance provides include stock assessments, observer program reports, and SAFE reports. With respect to economic and social conditions the guidance recommends use of NMFS Office of Science and Technology economic and social indicators. NMFS has developed a standard set of indicators that it regularly summarizes and reports for catch share programs.

#### Catch and Landings

- Quota allocated to the program (for A-14, sablefish allocation to the primary fishery and perhaps the limited entry fixed gear allocations)
- Total weight of landings under the program
- Whether or not the ACL or allocation was exceeded

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<sup>1</sup> "including a description of management prior to the program's implementation, a description of the program at the time of implementation (including enforcement, data collection, and monitoring), and any changes made since the program's implementation or the previous review (including an explanation of why those changes were made)"

<sup>2</sup> "biological, ecological/environmental, economic, social, and administrative"

#### Effort

- Total number of entities receiving quota at the beginning of the year
- Number of active vessels (landing one or more pounds under the program)
- Total trips under the program
- Days at sea while fishing under the program

#### Revenues

- Aggregate revenue from the species covered by the program
- Aggregate revenue from species not covered by the program but landed on program trips
- Aggregate revenue from by participating vessels on non-program trips
- Gini Coefficient – applied to vessel revenue as an indicator of the degree of aggregation of fishery benefits among fishing vessels

#### Share Accumulation

- Whether or not an ownership share or allocation cap is in place (as required by MSA)

#### Cost Recovery

- Amount collected for cost recovery

NMFS has also developed a number of social indicators for fishing communities:

1. Social Vulnerability
  - a. Labor Force
  - b. Housing Characteristics
  - c. Poverty
  - d. Population Composition
  - e. Personal Disruption
2. Fishing Engagement and Reliance
  - a. Commercial Engagement
  - b. Commercial Reliance
  - c. Recreational Engagement
  - d. Recreational Reliance

Safety at sea and distributional changes should also be included, using data from the US Coast Guard and National Institute for Occupational Safety and Health. Assessment of distributional changes should determine whether small entities have been disproportionately affected.

### ***Describing and Analyzing Program Performance***

The following sections identify the components that should be included in the review. If it is determined that a component is not applicable to the A-14 program, an explanation of that finding should be provided. Also, if a component is subject to a current management action, “a summary containing a description of, rationale for and current status of the management action is sufficient” ([NMFSP1 01-121-01](#), p. 10).

### **Goals and Objectives**

The primary goal of a review is to assess progress in meeting goals and objectives of the program and MSA. The NMFS policy states that the goals and objectives to be covered in the review include those of the program (A-14), the groundfish FMP, the Catch Share Policy, and the MSA, but the primary focus should be on those identified in the implementing FMP amendment (A-14).

Many of these goals and objectives from these different sources are overlapping. The LEFG permit stacking program was expected to help the Council address objectives related to National Standards 4 (fair and equitable allocation), 5 (consider efficiency), 6 (take into account variations and contingencies), 8 (take communities into account), 9 (minimize bycatch and bycatch mortality), and 10 (promote safety). With respect to the FMP, it was expected to affect achievement of Groundfish FMP Goals 2 (maximize the value of the resource as a whole) and 3 (achieve maximum biological yield) through impacts related to Objectives 6 (achieve greatest net benefit), 9 (reduce wastage), 11 (minimize bycatch), 12 (equitable sharing of the conservation burden), 13 (minimize gear conflicts), and 14 (accomplish changes with minimum disruption). Key objectives of A-14 and the permit stacking program and their relation to the MSA and FMP goals and objectives were further defined as provided in the following table (reproduced from the previous A-14 review).

**Table 1. Key objectives of the permit stacking program and consistency with management objectives.**

Key Objective	Consistency with Management Objectives of the FMP and MSA
1. Rationalize the fleet and promote efficiency	Capacity reduction is one of the key elements of the Council’s strategic plan. The strategic plan generally approaches capacity reduction by reducing the number of fishing vessels. This reduction does not of itself imply the rationalization of the fleet or increased efficiency. It is possible that the most efficient fixed gear sablefish harvest could involve a greater number of vessels taking sablefish as bycatch in other fisheries. However, given the high degree of overcapitalization in the fishery, it is believed that a reduction in capacity will generally move the fishery toward greater efficiency, addressing National Standard (NS) 5 and FMP Objective 6 on net national benefits.
2. Maintain or direct benefits toward fishing communities	This objective relates to NS 8 on fishing communities and FMP Objective 16 on fishing communities.
3. Prevent excessive concentration of harvest privileges	This objective relates to NS 4 on allocation, NS 8 on fishing communities, and FMP Objective 15 on avoiding adverse impacts to small entities.
4. Mitigate the reallocational effects of recent policies (3-tier system and equal limits)	This objective relates to NS 4 on allocation and FMP Objectives 12 on equitable allocation and 14 on minimizing disruption.
5. Promote equity	This objective relates to NS 4 on allocation and FMP Objective 12 on equitable sharing.
6. Resolve or prevent new allocation issues from arising	This objective relates to NS 4 on allocation and FMP Objectives 12 on equitable sharing and 14 on minimizing disruption.
7. Promote safety	This objective relates to NS 10 and FMP Objective 17 on safety.
8. Improve product quality and value	This objective relates to NS 5 on efficiency and FMP Objective 6 on net national benefits.

Key Objective	Consistency with Management Objectives of the FMP and MSA
9. Take action without creating substantial new disruptive effects.	This objective relates to FMP Objective 14 on minimizing disruption.
10. Create a program that will readily transition to a multi-month IQ program.	This objective relates to capacity reduction recommendations in the strategic plan. Where individual quotas are transferable and divisible, they address NS 6 by providing the fleet with substantial flexibility to respond to changing conditions in the fishery and NS 5 by taking efficiency into account. FMP Objective 6 is also addressed.

The NMFS catch share policy ([NMFS 01-121](#)) goal is not covered in this list but appears to be process oriented.

to help reduce administrative or organizational impediments to the consideration and adoption of catch shares in appropriate fisheries; to inform and educate stakeholders of the different options and capabilities of catch share programs; and to help organize collaborative efforts with interested Councils, states, communities, fishermen and other fishery stakeholders on the design and implementation of catch share programs. (p. 3)

However, the policy is intended encourage consideration of catch shares in order “To achieve long-term ecological and economic sustainability” (p. 3).

Not included in the above list are FMP Goal 1 and National Standards 1, 2, 3 and 7. For that reason, the A-14 review might touch on those topics only briefly.

The review guidance states that the program goals and objectives themselves “should be evaluated with respect to whether they are measurable (at least qualitatively), achievable (i.e. are two or more objectives mutually exclusive?), and still appropriate under the current circumstances.” ([NMFSP1,01- 01-121-01](#), p. 10). If deficiencies in goals and objectives are found, these should be noted in the review. If numerous serious deficiencies in program performance are found with respect to the goals and objectives, NMFS recommends the Council evaluate the potential for program modification or elimination to address these shortcomings.

### Allocations

NMFS [Fisheries Allocation Review \(01-119, 01-119-01\) policies](#) provide a mechanism for ensuring periodic allocation reviews and requires triggers for reviews of sector allocations. The triggers were implemented by this Council in [COP 27](#). Amendment 14 is reliant on the trawl/fixed gear northern sablefish allocation originally established in the early 1990s. COP 27 specifies that the trigger for a review of that allocation is the review of the trawl catch share program, next scheduled for 2022. Therefore, a full analysis of that allocation is not required as part of the A-14 review.

However, the NMFS catch share review guidance ([NMFSP1 01-121-01](#)) states that the allocations to be reviewed are not just those between sectors but also between entities and subgroups within the program. The trawl catch share program would not be a very natural fit for a review of the LEFG within-program allocations. The LEFG program includes allocations between individuals (assignment of tiers to permits) as well as the allocation to groups (amount allocated for Tier 1, Tier 2, and Tier 3 permits). There might also be consideration of the amounts allocated for the LEFG sablefish daily trip limit fishery (15 percent of

the LEFG allocation) as compared to the LEFG primary fishery (85 percent). Further, the NMFS guidance states that review of catch share allocations should explicitly consider the effect of existing accumulation limits (for the LEFG program that would be the three-permit stacking limit). Because the within LEFG sector allocations would not fit well with the trawl catch share review, the Council may want to include some of those allocations as part of the LEFG review.

The NMFS catch share review guidance also indicates that due to the time and resources required for an allocation review, Councils might want to consider those reviews separately and then incorporate them by summary and reference.

### **Eligibility**

Reviews should evaluate who is allowed to hold quota and the effects of those eligibility criteria. If the needed resources and information is available, this evaluation might also include effects on those who have left the fishery.

### **Transferability**

The review should assess whether transferability limitations are conducive to achieving the program objectives.

### **Catch and Sustainability**

The review should assess whether the program has kept harvest within applicable limits such as ACLs, evaluate achievement of full utilization, analyze impacts on the minimization of bycatch and bycatch mortality, and discuss changes in the status of the stocks covered by the program.

### **Accumulation Limits/Caps**

“Reviews should analyze and evaluate the equity/distributional impacts of existing caps and the impacts those caps have had on the creation of market power by affected entities . . . [and] analyze whether and to what extent QP caps or limits have generated technical inefficiency for firms operating in a CSP” ([NMFSP101-121-01](#), p. 14). *As with allocation reviews, because the types of analysis described here can be time and resource intensive, it might be appropriate for separate analysis and with a summarization in the review document.*

Other considerations for this section of the analysis are whether existing data collection and monitoring programs are adequate to determine ownership and evaluate compliance with the caps and whether the caps are being applied at levels that ensure they are serving their intended purpose. Capacity control might also be covered in this section and, if so, “should be conducted in a manner consistent with the terminology and methods outlined in [NMFS’ National Plan of Action for the Management of Fishing Capacity.](#)” ([NMFSP101-121-01](#), p. 15).

### **Cost Recovery**

The review should identify whether cost recovery is in place and if costs and fees are being appropriately assessed. It should also evaluate the economic effects of the fees on program participants along with any compliance or enforcement issues. For programs without cost recovery, such as the LEFG permit stacking program, the program should explain the situation as well as “plans to develop such a program in the future, where applicable” ([NMFSP101-121-01](#), p. 16).

## **Data Collection/Reporting, Monitoring, And Enforcement**

“The review should contain a description and assessment of the existing data collection, monitoring, and enforcement programs (e.g., observers, logbooks, economic data reporting, etc.), including a discussion of any changes since the CSP’s implementation or the previous review” ([NMFSPi 01-121-01](#), p. 16). The assessment should indicate whether the information available is adequate to support the review, the reporting burden imposed by data collections, and opportunities for improvements along with related costs and opportunity for cost savings.

“With respect to enforcement, particular attention should be paid to assessing whether the current enforcement provisions and activities, including resources for conducting the latter, are sufficient to ensure a high rate of compliance with program requirements” ([NMFSPi 01-121-01](#), p. 17).

Additionally, “...a description and overall assessment of the CSP’s administrative costs should be provided to determine whether total administrative costs are being minimized to the extent practicable, which is consistent with National Standard 7” ([NMFSPi 01-121-01](#), p. 17).

### **Duration**

The review should indicate the life span of the catch privileges (a maximum of 10 years but with the possibility of automatic renewal if not revoked, limited, or modified) and discuss the pros and cons of the current specification of the catch privilege duration.

### **New Entrants**

Additionally, the review should assess opportunities for new entrants including cost of entry and whether those costs have increased to the point where market power is being exercised, resulting in economic inefficiencies. Equity and distributional effects, including intergenerational effects, should be considered.

### **Auctions and Royalties**

For catch share programs implemented after January 12, 2007, MSA requires consideration of auctions or royalties for the initial or any subsequent distribution of limited access privileges. This consideration does not apply to the LEFG catch share program.

## ***Assessment of Adequacy of Previous Amendment-14 Review Compared to the New Guidance***

Relative to NMFS review guidance, the main elements missing from the initial A-14 review are a description of the biological, ecological/environmental, economic, social, and administrative environment and a discussion of effects related to the 11 key design components specified in section 303A of the MSA and identified as topics to address in the NMFS guidelines (Table 2). Some of these topics are covered because they relate to goals and objectives of A-14 but those discussions are not necessarily explicitly identified as related to the key 303A components. The scope of the analysis of program effects is targeted on those effects that relate to the objectives.

**Table 2. Required elements of the analysis.**

Elements of the Analysis	Covered In Previous Review	
	Yes/No	Sections
1) purpose and need of the review (discuss legal/policy requirements),	Yes	1.1
2) goals and objectives of the program, the FMP, and the MSA,	Yes	2.2
3) history of management, ... <sup>3</sup> ,	Yes	2.0
4) a description of <sup>4</sup> ...environments before and since the program's implementation,	No	
5) an analysis of the program's <sup>2</sup> ... effects,	Partial	3.0
6) an evaluation of those effects with respect to meeting the goals and objectives (i.e., program performance), including a summary of the conclusions arising from the evaluation,	Partial (A-14 covered, 303A not covered, adequacy of A-14 objectives was not evaluated)	3.0
7) a summary of any unexpected effects (positive or negative) which do not fall under the program's goals and objectives, and	No	
8) identification of issues associated with the program's structure or function and the potential need for additional data collection and/or research.	Yes	4.0-6.0

All A-14 specific goals and objectives are covered in the last review and consequently FMP goals and objectives and national standards that related to the A-14 objectives, as identified in Table 1. For convenience, the A-14 objectives are again listed in Table 3. Additionally, Table 3 lists all FMP goals and objectives, National standards, and 303A key elements and, where there is a relationship, cross references them to the A-14 objectives.

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<sup>3</sup> “including a description of management prior to the program’s implementation, a description of the program at the time of implementation (including enforcement, data collection, and monitoring), and any changes made since the program’s implementation or the previous review (including an explanation of why those changes were made)”

<sup>4</sup> “biological, ecological/environmental, economic, social, and administrative”

**Table 3. Goals and objectives: Amendment 14, the groundfish FMP and National Standards.**

<b>Goal/Objective/Standard/Key Design Component</b>	<b>Covered in Previous Review/ Related Amendment 14 Objective</b>
<b>Amendment 14 Objectives:</b>	<b>A-14 Objectives were Covered in Section 3.0 of the Previous Review</b>
Obj 1. Rationalize the fleet and promote efficiency	
Obj 2. Maintain or direct benefits toward fishing communities	
Obj 3. Prevent excessive concentration of harvest privileges	
Obj 4. Mitigate the reallocational effects of recent policies (3-tier system and equal limits)	
Obj 5. Promote equity	
Obj 6. Resolve or prevent new allocation issues from arising	
Obj 7. Promote safety	
Obj 8. Improve product quality and value	
Obj 9. Take action without creating substantial new disruptive effects.	
Obj 10. Create a program that will readily transition to a multi-month IQ program.	
<b>FMP Goals and Objectives</b>	<b>Related A-14 Obj</b>
Goal 1 – Conservation – appropriate harvest levels and habitat impacts	
Goal 2 – Economics – maximize value	1,8,10
Goal 3 – Utilization – maximum overall yield and year-round availability of quality product.	8
Obj 1 – information flow needed for conservation	
Obj 2 – harvest specifications in line with management and appropriate fishery capacity	
Obj 3 – develop plans to rebuild overfished stocks	
Obj 4 – implement appropriate management measures to address conservation problems	
Obj 5 – describe EFH and appropriately limit impacts	
Obj 6 – within conservation constraints achieve maximum net economic benefits	1,8,10
Obj 7 – identify sectors which will benefit from year round marketing and establish appropriate policies.	
Obj 8 – use gear restrictions to limit the necessity of other management measures and encourage EFPs to develop gears that reduce discards	
Obj 9 – develop management measures and policies to encourage full utilization	
Obj 10 – manage by species and gear or groups of interrelated species.	
Obj 11 – develop programs to reduce bycatch and discard mortality and improve estimates of total mortality.	
Obj 12 – affect users equitably	4,5,6
Obj 13 – minimize gear conflicts	

<b>Goal/Objective/Standard/Key Design Component</b>	<b>Covered in Previous Review/ Related Amendment 14 Objective</b>
Obj 14 – resolve issues with least disruption	4,6,9
Obj 15 – avoid unnecessary impacts on small entities	3
Obj 16 – provide for sustained participation and minimize adverse economic impacts on communities	2
Obj 17 – promote safety	7
<b>Magnuson-Stevens Act (MSA): National Standards</b>	<b>Related A-14 Obj</b>
1. Achieve OY and prevent overfishing.	
2. Use best available scientific information.	
3. Manage stocks as a unit.	
4. Ensure that allocations are fair and equitable, promote conservation, and prevent excessive shares.	3,4,5,6
5. Consider efficiency in utilization; do not have economic allocation as sole purpose.	1,8,10
6. Allow for variations and contingencies.	10
7. Minimize costs; avoid duplication.	
8. Consider fishing communities to provide for their sustained participation and to minimize adverse economic impacts.	2,3
9. Minimize bycatch, and bycatch mortality.	
10. Promote safety of human life at-sea.	7
<b>Catch Share Review Policy: Key design components included in MSA 303A</b>	
1. Progress toward goals and objectives of the program and MSA	1-10
2. Allocations	4, 5, 6
3. Eligibility	
4. Transferability	
5. Annual catch limits (ACLs) and accountability measures	
6. Accumulation limits/caps	3
7. Cost recovery	
8. Data collection/reporting, monitoring, and enforcement	
9. Duration	
10. New entrants	
11. Auctions and royalties	

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