

NATIONAL MARINE FISHERIES SERVICE (NMFS) REPORT ON DEEP-SET BUOY GEAR PERMIT CLARIFICATIONS

NMFS is providing this report to support the Council's discussion to reconsider the final action to authorize deep-set buoy gear and approve proposed Fishery Management Plan (FMP) Amendment language. The Permits and Monitoring Branch identified a number of questions and concerns regarding implementation of the [draft FMP Amendment](#) language and the [Council's Final Preferred Alternative](#) (FPA) from the September 2019 meeting. To resolve these issues, in this report we ask questions of the Council and in some cases recommend changes to the FMP Amendment language and FPA to ensure effective implementation of the Limited Entry (LE) Deep-Set Buoy Gear Permit program.

Draft FMP Amendment

1. Limitation on ownership and transfers

The draft FMP Amendment states “a person may only hold one DSBG LE permit.” The Amendment uses the definition of a “person” from 50 CFR 660.702:

“Person, as it applies to fishing conducted under this subpart, means any individual, corporation, partnership, association or other entity (whether or not organized or existing under the laws of any state), and any Federal, state, or local government, or any entity of any such government that is eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a).”

Under this definition of a “person,” an individual, corporation, partnership, or other entity, may hold a DSBG LE permit and only one permit. If the “person” listed on the permit is an “individual,” the one-permit limit is easily enforced. However, a corporation or partnership could contain an individual or multiple individuals without NMFS’s knowledge of those individual’s identities, making it difficult for NMFS to enforce the one DSBG LE permit limitation. For example, John Doe owns a DSBG LE permit as John Doe. John Doe and Fred Smith are in partnership and own a separate DSBG LE permit together under the name Pacific Fish LLC. In this way, John Doe has an ownership interest in two permits, but NMFS is not aware of it because in the permit records John Doe and Pacific Fish LLC are different “persons.” A similar issue arises if John Doe is the sole owner of a corporation that owns a separate DSBG LE permit. Corporate ownership raises another issue, which is that it may be used to circumvent the prohibition on permit transfers, because an individual could simply transfer ownership of the corporation to another individual without changing the owner listed on the permit with NMFS.

The Council has implemented individual and collective ownership limits for LE permits and quota holdings in the limited entry sablefish fishery and the rationalized groundfish trawl fishery. In both groundfish programs, ownership limits are applied to permits or quota held by an

individual under their own name, plus those owned by other entities in which the individual has a direct or indirect ownership interest. NMFS enforces the individual and collective ownership limits by collecting ownership interest information of corporations and other entities through the permit application and renewal process. **If the Council intends the DSBG ownership and transfer restrictions to apply to individually and collectively-held permits, as in the example in the previous paragraph, NMFS recommends that the Council require ownership interest data collection for DSBG LE permit applications and renewals.**

For collectively-held permits, NMFS also requests that the Council clarify whether partial ownership of the permit would be considered full ownership for purposes of applying the one-permit limit. For example, if John Doe and Fred Smith each have 50% ownership of Pacific Fishing LLC, are they each still considered to own one permit? Or would they each be eligible for a second permit at 50% ownership?

NMFS also requests that the Council clarify the following additional aspects of DSBG LE permits. NMFS has encountered all of these situations in the groundfish limited entry fisheries and had to develop provisions for dealing with them in the regulations.

- **What happens to a permit when the permit holder dies?** LE permits, like other assets, typically go into an estate or probate when the permit holder dies. An heir may present estate documents or a court order to demonstrate their ownership of the permit. However, does the Council consider bequests to be a type of permit transfer and therefore prohibited? Is it the Council's intention that the permit instead be automatically revoked and reissued to a new qualifier?
- **What happens to a permit if the permit holder becomes divorced?** LE permits, like other assets, can be transferred through divorce proceedings. Does the Council consider this to be a type of permit transfer and therefore prohibited?
- **What happens to a permit if a member of a partnership leaves or dies?** If one member of a partnership dies, are the remaining partner(s) able to retain the permit or is this considered a permit transfer that would be prohibited?
- **What happens if two people that jointly hold a permit wish to no longer hold it jointly?** would they be able to transfer the permit into one of their names? Would both of them have a right to a permit? If no, how should we determine who receives the permit?
- **In partnerships or corporations, can partners be added/removed or would that be considered a permit transfer?**
- **What happens to a permit if the permit holder goes through bankruptcy?** Would a bank taking over the permit be considered a permit transfer? And would the bank be able to transfer the permit to someone else?
- **What if the entity changes entity type but the ownership stays the same (e.g., LLP to LLC, LLC to Inc)?** Would a name change be considered a transfer and be prohibited?

2. Permit qualification process for Tiers 1-7

The draft FMP Amendment language appears to contemplate that permit qualifications will occur on a rolling, annual basis. However, it would be difficult for NMFS to complete all the steps required for a limited entry qualification on an annual basis, including providing an

opportunity for applicants to review and correct the data being used for the qualifications and resolution of any appeals of NMFS's final permit decisions. It is important to have all appeals resolved before issuing any permits, because there are a limited number of permits that may be issued each year and one applicant's rank affects the rank of all applicants after them.

Therefore, NMFS recommends instead conducting a single initial qualification period for Tiers 1-7. The qualification process for Tier 8 requires additional clarification from the Council and is discussed in the next section.

Given that the eligibility criteria in Tiers 1-7 is static, meaning an individual's eligibility would not change over time, it is not necessary to conduct qualifications on a rolling basis. An individual's eligibility under Tiers 1-7 would not be expected to change whether NMFS completed their qualification in year 1 or year 10. Therefore, NMFS may complete qualifications for Tiers 1-7 at the start of the program without adversely affecting any eligible applicants.

In the one-time qualification process, NMFS would make a decision on Tier 1-7 qualifications in year 1 and assign each approved applicant a rank and tentative date when they can expect to receive a permit. The expected date of issuance would be tentative, because an individual's rank is partly determined by the status of all the permit holders that are ranked ahead of them. Applicants to Tiers 1-7 would only be able to apply during the initial qualification period in year 1. Any applications submitted for Tiers 1-7 after the initial qualification period would not be considered by NMFS. This is necessary because one applicant's status affects the qualification of other permit holders as well.

3. Tier 8 and Non-tier Applications

Unlike Tiers 1-7, the Tier 8 criteria is open-ended, so an applicant's eligibility under this tier could change and the pool of eligible applicants could increase over time. For example, an individual could acquire swordfish landings between year 1 and year 4, so they could qualify under Tier 8 in year 4 when they would not have been eligible in year 1. Therefore, NMFS recommends a one-time application period for Tier 8 qualifications once Tiers 1-7 have been exhausted. This would allow NMFS to still complete all Tier 8 qualifications at once, while providing additional time for applicants to acquire swordfish landings history before applying. It is still important that the Tier 8 qualifications be done at once, and not on an annual, rolling basis, because NMFS cannot begin accepting applications under the non-tier criteria until Tier 8 qualifications have been determined.

The Permits Branch has additional recommendations regarding interpretation and implementation of Tier 8 covered in Agenda Item H.4 Supplemental NMFS Report 2.

With respect to non-tier applications, NMFS could accept these on an annual basis as desired by the Council.