

NATIONAL MARINE FISHERIES SERVICE REPORT ON LIMITED ENTRY FIXED GEAR FOLLOW ON ACTIONS AND FIXED GEAR MARKING – SCOPING

The National Marine Fisheries Service (NMFS) West Coast Region offers the following input for consideration by the Pacific Fishery Management Council (Council) regarding scoping of limited entry fixed gear (LEFG) follow on actions and fixed gear marking. The LEFG follow-on actions previously prioritized as a package by the Council are described in the staff scoping paper under this agenda item (H.4 Attachment 1). At this meeting, we anticipate that the Council will determine whether it wishes to pursue action on each of these items; identify relative priorities among those selected to continue; consider whether to combine any of them for analysis and rulemaking; discuss a plan and schedule for the highest priority items; and potentially provide guidance to staff on the development of alternatives, where possible.

In addition to the comments offered below, NMFS provides a potential draft cost recovery program structure for the sablefish tier fishery in H.4.a NMFS Report 2.

NMFS Priorities

NMFS views fixed gear marking and entanglement risk reduction measures as our top priorities among the suite of fixed gear items considered under H.4, because they are expected to aid in understanding and potentially reducing the risk of protected species entanglement in groundfish pot and longline gear.

Fixed Gear Marking

In March 2023, NMFS presented the Council with a [report on a public workshop on pot gear marking](#) convened by Oregon Sea Grant in fall 2022, and a [feasibility report](#) that assessed the practicality of several pot gear marking methods. At its June 2023 meeting, the Council will conduct preliminary scoping of groundfish fixed gear marking measures. NMFS recommends that the Council review the workshop and feasibility reports as well as any additional concepts brought forth, and if possible, identify measures that should be developed as alternatives for adoption at a future meeting.

NMFS supports the recommendation in H.4 Attachment 1 to use and build on the experience of the west coast states and stakeholders in their extensive efforts to develop line and gear marking requirements for state-managed fisheries. This should help ensure that the process of developing gear marking requirements for federal groundfish fisheries is efficient, and that the result is coordinated with requirements that have already been established or are under development.

To assist the Council in scoping a fixed gear marking action, NMFS suggests the following as a draft problem statement/purpose and need:

NMFS currently identifies the origin of entanglements in about 50 percent of the entanglements reported, to at least some known category of gear/fishery. Without additional marking requirements, this situation is unlikely to improve, and the high level of uncertainty surrounding the origins of entanglements that continue to occur will remain. The purpose of this action is to expand fixed gear marking requirements in the Pacific Coast groundfish fishery. This action is needed to increase NMFS' ability to positively attribute protected species entanglements to specific fisheries and ultimately aid in understanding and potentially reducing the risk of protected species entanglement in groundfish pot and longline gear.

In our March 2023 feasibility report, NMFS identified ideas for line marking and additional markings on buoys/surface gear that merit further consideration. NMFS recommends the Council consider the following concepts for inclusion and development into alternatives for consideration at a future meeting:

- Line marking
 - Marking at least the upper portion of the buoy line with either a particular gear/fishery-specific line color scheme or some other marker
 - The March 2023 proposal from the Fishing Vessel Owners Association to mark the top 50 fathoms could be a reasonable concept for evaluation
- Surface gear/buoy marking
 - Gear/fishery-specific buoy markings that have strong potential to help increase identifiability could include:
 - gear/fishery-specific large patch/shape/letter on polyform buoys
 - cattle ear tags for buoys (attached at molded eye)
 - Buoys should be marked high, often (i.e., from multiple perspectives), and preferably in a pattern that is readily distinguishable from other marks. All surface buoys should be marked similarly.

In developing fixed gear marking measures, the Council should consider prohibiting marks required by other fisheries (e.g., Dungeness crab). The Council should also consider the timeline for implementation and if a phased approach may be effective. For example, the Council could consider whether a temporary period of less permanent line marks (e.g., spray paint or tape) that transitions to a more permanent manufactured line color scheme could be more cost effective.

Potential factors that could be explored in analysis and public comment include cost, operational feasibility, waste, enforceability, and potential to increase the possibility of positive fishery identification.

NMFS encourages the Council to continue to seek fishermen input in this process. Overall, we would like to see a gear marking scheme that is as simple as possible and takes into account the

practical operational needs of how the gear is fished/maintained. NMFS is committed to supporting this action through the Council process. We also plan to explore potential funding sources to help fishermen transition to a new marking scheme.

Entanglement Risk Reduction Measures

Based on the gear marking workshop and feasibility report, NMFS also identified ideas to reduce entanglement risk in the pot fishery. One regulatory change received broad industry support at the gear marking workshop. Therefore, NMFS recommends scoping an option to use surface gear on either one or both ends of the groundline rather than the current requirement for surface gear on each end of the groundline (see §§ 660.219(a)(1) and 660.319(a)(1)). We see the potential for this option to reduce entanglement risk by reducing the number of vertical lines in the water. We suggest the development of this measure evaluate the potential for increased gear loss and gear conflict as these concerns were raised at the workshop. We encourage the Council to consider other regulatory measures to reduce entanglement risk should they be brought forward through the scoping process.

Allow Longline-Endorsed Vessels to Use Slinky Pots

The Council is scoping a request for longline endorsed LEP holders (who do not also have a pot gear endorsement) to use slinky pots to harvest their limited entry trip limits or tier limits. NMFS has previously supported consideration of this item in order to explore its potential to avoid or minimize marine mammal depredation concerns related to bottom longline gear ([Agenda Item F.8.a NMFS Report 1 March 2023](#)). We reiterate that shifting some sablefish effort from longlines to pots (slinky pots) would need to be evaluated relative to applicable Endangered Species Act and Marine Mammal Protection Act authorizations. We provide comments on other aspects of this proposal below.

Cumulative effect of exceptions to gear endorsements

Limited entry permits (LEPs) and their associated gear endorsements provide access to higher catch limits (trip limits or tier limits) compared to open access fisheries. When the Council developed the LEP system through [Amendment 6](#) (1992), its intent was to improve stability and economic viability in the groundfish fishery by limiting or reducing harvest capacity. Permanent endorsements for pot, longline, or trawl gear were a key means of limiting capacity.

Over the last 30 years the Council provided exceptions to LEP gear endorsement requirements (without modifying the endorsements themselves), such as:

- Including explicit gear switching provisions in the 2011 trawl rationalization program that allow any trawl vessel to use any legal groundfish gear to harvest its IFQ, and
- In March 2023 recommending that a vessel with a longline- or pot-endorsed LEP be allowed to fish inside the non-trawl Rockfish Conservation Area using any legal open-

access hook and line gear¹ and harvest up to the limited entry limits that would apply if it were using those gears. This is an exception to the rule that a vessel can only access limited entry limits when using the gear endorsed on the LEP registered to that vessel.

The Council envisioned that these exceptions would benefit fisheries by enabling vessels to adapt to changing stock availability, market conditions, bycatch concerns, spatial constraints, etc. by using different gears to access their limited entry IFQ, trip limits, or tier limits. NMFS has supported these actions and recognizes the intended benefits. At the same time, we note that multiple exceptions or changes to the gear endorsements likely undermine their effectiveness in reducing capacity and effort. In addition, exceptions create compliance and enforcement challenges.

Additional flexibility

Flexibility (here, meaning options for different gear use) and stability (i.e., limited and predictable capacity/effort by gear type) are both important to the fishing industry's adaptability and resilience. Today, while management changes may have increased stability in the groundfish fisheries compared to when Amendment 6 was developed, adaptability is an important and growing need.

The need underlying the slinky pot request has been described as protecting fishing opportunity from potential future constraint if orca depredation becomes an issue for longline gear use off the West Coast. However, other issues could arise that might affect pot gear. It may be useful to take a holistic look at anticipated conditions, constraints, and opportunities in the groundfish fixed gear fisheries over the near to mid-term, and consider whether additional flexibility could benefit the fishery, protected resources, and fishing communities. If the Council decides it would like to explore additional flexibility, it could include options such as:

- Changing the longline and pot gear endorsements to a single endorsement that allows both gear types
- Changing the longline and pot gear endorsements to one that allows any legal non-trawl gear (i.e., pot, longline, hook and line). This would build on what was recommended by the Council in March (Agenda Item F.4 March 2023) to allow LEFG vessels to use non-bottom-contact directed open access gears on any trips that included fishing within the non-trawl RCA, and harvest up to their limited entry quotas.

NMFS also notes that while current regulations at [50 CFR 660.25\(b\)\(3\)\(ii\)](#) state that "Gear endorsement(s) assigned to the permit at the time of issuance will be permanent and shall not be modified", modifications can be made if there is a strong and compelling need and rationale.

Workload and pathway

As the GMT pointed out in their March 2023 statement ([Agenda Item F.8.a. REVISED GMT Report 1](#)), this agenda item is likely to be a high workload, for Council staff and NMFS. If possible,

¹ Noting only specific hook and line gears are allowed to be fished in the non-trawl RCA

the analysis should address the cumulative effect of multiple changes to gear endorsements, which could reduce the endorsements' effectiveness in limiting capacity and effort in the LEFG sector overall; this could have social, economic, or environmental impacts. Evaluation relative to ESA and MMPA authorizations will be necessary, to determine whether and how the action might change the amount, timing, location, or other characteristics of fishing with each gear type that could create effects beyond which have been analyzed in our various biological opinions.

The required analyses will likely require greater effort and time if the Council expands the current slinky pot request to include other options such as the additional flexibility ideas described above. However, because workload is expected to be substantial either way, if the Council sees merit in larger changes, it may be more efficient to consider those changes now, rather than in an ad hoc or sequential manner.

Regarding combining this item with gear marking and entanglement reduction measures for analysis and rulemaking, NMFS recommends that if the scope of the slinky pot request is expanded, it should proceed on its own separate track. If the Council continues with the narrower request to allow slinky pot use with longline-endorsed permits, then combining it with gear marking/entanglement reduction may be efficient. We will provide an updated recommendation on a separate vs. combined pathway at the June Council meeting after considering reports, public testimony, Council discussion, and any other relevant information.

Fourth Sablefish Permit Stacking

This item would allow stacking a fourth sablefish tier permit on a vessel as long as its owner is subject to the owner-on-board requirement. This request has been described in public testimony (on Agenda Item E.4 March 2022 and Agenda Item F.8 March 2023) as a way to help new entrants get a foothold in the fishery. Based on the Council staff report (Agenda Item H.4, Attachment 1), only approximately one quarter of sablefish primary fishery vessels have recently had three sablefish permits stacked on them in a given year between 2014 and 2020. It could therefore be inferred that a fourth permit allowance may only benefit a small number of existing or new participants. NMFS is hopeful that a variety of industry members, including existing participants and potential new entrants, will provide testimony regarding the need for this action and how they see it helping new entrants. In addition, advisory body and public input that addresses topics such as potential consolidation of permits on vessels, overall effort and/or attainment, and other possible concerns would be valuable.

NMFS recommends that if the Council wishes to pursue this item, it clearly describe the need and the proposed action, including intersection with the owner-on-board provision would apply. In addition, we assume that this proposal would not include any changes to the 3-permit ownership limit in the primary sablefish fishery, which is intended to prevent excessive consolidation of shares, and recommend the Council confirm or clarify this.

Cumulative Non-Sablefish Trip Limits in the Primary Sablefish Fishery

Agenda Item H.4 Attachment 1 provides price information for shortspine thornyheads and lingcod in this fishery that raise the question of whether increasing the trip limits would lead to greater overall effort. Advisory body input and public testimony that addresses this question would be helpful.

Sablefish Permit Price Reporting

NMFS supports proceeding with this item, and recommends the Council consider whether requiring permit price reporting for all limited entry fixed gear permits, rather than just sablefish-endorsed permits, would be valuable.

Minor Additions – Tier Season Start/End Times and Pot Escape Panel Position

Two items related to fixed gear fisheries (Table 1) came to NMFS' attention outside the Council process, and we propose that the Council consider adding them to the list of follow-on actions. These items are intended to facilitate accurate accounting of catch toward tier or trip limits and the clarity and effectiveness of biodegradable escape panel regulations. We do not expect them to be controversial or require extensive analysis, and would welcome advisory body and public testimony on any potential concerns.

If the Council would like to proceed with developing and evaluating these items, NMFS anticipates that working on them along with one or more of the other fixed gear items would be efficient.

Table 1. A brief description of two items NMFS has become aware of that could fit into the scope of this action and which we expect would have little additional workload.

Item	Rationale	Expected Analysis Needed
Change the start and end times of the sablefish primary season dates in groundfish regulations from noon to midnight (12:01 am open, 11:59 pm close).	The noon start time was necessary to facilitate monitoring and enforcement of pre- and post-season closure periods that existed when the season was very short (prior to 2001). It is not necessary today, and a midnight open/close time may simplify and improve the accuracy of attributing landings toward tier limits or limited entry DTL limits.	Little to none, as this is largely an administrative action.
The position of escape panels (required component of pot/trap gear) should not be on the	Biodegradable escape panels are required for all groundfish pot/trap gears so that lost pot gear will eventually no longer	Consider the example of biodegradable panel regulations for fisheries off Alaska at 50 CFR 679.2 “Authorized fishing

bottom of the pot such that they rest on the seafloor when the pot is deployed.	entrap fish. A biodegradable escape panel that consistently comes to rest on the seafloor is ineffective at reducing bycatch by derelict gear, as intended by the Council.	<u>gear” (15)(i)</u> . Confirm feasibility and enforceability with West Coast industry and enforcement representatives.
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References

PFMC. Amendment 6 (Limited Entry) to the Fishery Management Plan for Pacific Coast Groundfish, Including Supplemental Environmental Impact Statement and Regulatory Impact Review. January 1992. <https://www.pcouncil.org/documents/1992/01/groundfish-amendment-6-1992-establishes-a-limited-entry-permit-system-for-the-trawl-and-fixed-gear-sectors.pdf/>