

## NATIONAL MARINE FISHERIES SERVICE REPORT ON OWNER-ON-BOARD EXEMPTIONS IN THE PRIMARY SABLEFISH FISHERY

In concluding the 2022 [Limited Entry Fixed Gear Permit Stacking Program Review](#), the Pacific Fishery Management Council (Council) recommended preparing a report clarifying the owner-on-board provision to determine if regulatory or data system changes are needed. The National Marine Fisheries Service (NMFS) West Coast Region (WCR) conferred with the Office of Law Enforcement (OLE) and provides this report in response.

### Summary and recommendation

After considering questions posed by the Council’s Enforcement Consultants (EC)<sup>1</sup>, current regulations, the sablefish-endorsed permit format, proposed and final rules implementing the permit stacking program, and information provided by OLE, the WCR concludes that:

- The owner-on-board provision was intended to be enforced after landing through documentation of permit numbers and non-exempt owner signatures on fish tickets.
- Current regulations and data systems provide the structure and information necessary to enable enforcement after landing.
- Suspected violations are relatively infrequent.
- If enforcement before landing is desired, a declaration system could be considered. This would create a new task for permit owners and NMFS, and agency costs would be incremental (recoverable) once a cost recovery program for this fishery is implemented.

Enforcement of the owner-on-board provision after landing appears possible and adequate to support the program’s intent of an owner-operator fishery with specified exemptions. **The WCR recommends no changes to regulations or data systems at this time.**

The remainder of this report provides supporting detail and responses to the EC’s questions.

### Background

Amendment 14 to the Pacific Coast Groundfish Fishery Management Plan established the primary sablefish permit stacking program (“tier program”) and included an owner-on-board provision to ensure that permits are owned by persons within the fishing community who will fish their permits, rather than leasing them out to others. It was designed to retain the character of the fishery as one in which owner/operators work their own vessels, rather than allowing absentee permit owners to control the fishery, and it works together with the three-permit stacking limit to distribute fishery

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<sup>1</sup>[Agenda Item G.2.a Supplemental EC Report 1 June 2021](#) and [Agenda Item E.4.a Supplemental EC Report 1 March 2022](#)

benefits. An exemption was provided for persons or entities that owned a permit before November 1, 2000<sup>2</sup>. Exemptions are specific to the permit owner (not the permit) and expire with changes in ownership or divestiture for a period of time.

The exempt or non-exempt status of each sablefish-endorsed permit owner is noted on the permit. A copy of each permit registered to a vessel must be on board the vessel at all times.

Sablefish are not counted toward a specific permit until landing. At that time, limited entry permit numbers to which sablefish in that landing are assigned must be recorded on the fish ticket and the permit owner(s), unless exempt, must sign the fish ticket<sup>3</sup>.

### **Discussion of the owner-on-board provision and enforcement at the time it was established**

The proposed and final rules implementing Amendment 14 describe a process for enforcing the owner-on-board provision after landing. Explaining the need for permit numbers on fish tickets, the proposed rule<sup>4</sup> states:

“Adding a permit number to the fish ticket is expected to aid enforcement by creating a record of which sablefish permit was being fished on a given fishing trip. Thus, if enforcement boarded a vessel at sea or as they were coming into port, enforcement could record which owners were on board. At a later time, they could then verify which permit the sablefish landings were credited to on the fish ticket and double check that the owner of that permit was on board if they were not exempt from the owner-on-board provisions.” (p. 59301)

The proposed rule also discussed which permit owners must be on board:

“If Washington and Oregon do not require that permit numbers be written on the fish tickets and entered into the PacFIN database, NMFS may require all permit owners who are subject to the owner-on-board requirement to be onboard the vessel when that vessel is fishing for groundfish until all sablefish tiers associated with that vessel during the primary season have been fished (e.g., even if landings are only being attributed to one permit at a time but all three permits are subject to the owner-on-board requirement, all three permit owners would be required to be onboard the vessel until that vessel has finished the primary season and completed their landings against all three permits).

Conversely, if Washington and Oregon require the permit number on the fish ticket, only those permit owners who are subject to the owner-on-board requirement need to be onboard the vessel when that vessel is fishing for sablefish against a specific sablefish permit (e.g., if landings are only being attributed to one permit at a time and that permit is subject to the owner-on board requirement, only that permit owner would be required to be onboard the vessel when that vessel is fishing against that permit).” (p. 59301)

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<sup>2</sup> [50 CFR 660.231\(b\)\(4\)](#)

<sup>3</sup> [50 CFR 660.213\(e\)\(2\)](#)

<sup>4</sup> [70 FR 59296 \(October 12, 2005\)](#)

The proposed rule contemplated a potential future declaration system if permit numbers on fish tickets was insufficient (no such requirement was ever implemented):

“NMFS is also considering implementing a phone-in declaration system to aid in enforcement of the owner-on-board requirement, if having the permit numbers on the fish tickets is not sufficient. The declaration system would require all sablefish endorsed permit owners, including those exempt from the owner-on-board requirement, to call into a phone-in system and declare which permit(s) they will be fishing. ... In addition to having permit numbers on state fish tickets, this would aid enforcement to determine, in a more timely manner, if the appropriate person was onboard.” (p. 59303)

The final rule<sup>5</sup> also referred to a possible future declaration system as well as the expected process for enforcing the owner-on-board provision with fish ticket data:

“In the future, NMFS expects to propose another rule to implement additional provisions of Amendment 14 as explained in the preamble to the proposed rule dated October 12, 2005 (70 FR 59296). Such provisions may include the following: (1) adding a declaration system for enforcement purposes that would require all sablefish endorsed permit owners, including those exempt from the owner-on-board requirement, to call into a phone-in system and declare which permit(s) they will be fishing...” (p. 10615), and

“Adding a Federal sablefish-endorsed permit number to the state fish ticket is expected to aid enforcement agents by creating a record of which sablefish permit was being fished on a given fishing trip. Thus, if enforcement agents boarded a vessel at sea, they could record which owners were on board the vessel. At a later time, they could then verify which permit the sablefish landings were credited to on the state fish ticket and double-check that the owner of that permit was on board if the owner was not exempt from the owner-on-board provisions.” (p. 10616)

### **Frequency of suspected owner-on-board violations in NMFS records**

OLE reports records of 8 owner-on-board related investigations between 2018 and 2021 ([Appendix B of LEFG Permit Stacking Program Review](#), June 2022). Of those, 4 were closed with No Violation Detected, and 4 were closed with Compliance Assistance Provided. There were no owner-on-board incidents in 2022.

### **Responses to the [EC’s March 2022 questions](#):**

*Q: What happens if an exempted owner leases their permit for use on a vessel owned/ operated by a non-exempt individual?*

A: That owner is not required to be on board. See the [Small Entity Compliance Guide Pacific Coast Groundfish Sablefish Permit Stacking Program](#).

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<sup>5</sup> [71 FR 10614 \(March 2, 2006\)](#)

*Q: Does the individual leasing the permit from the exempted owner need to be on board the vessel when it is fishing a permit... (since the lessee is not the owner of a permit)?*

A: No. (Unless the situation in the next question applies.)

*Q: If not, what if the lessee also has its own permits stacked on the vessel (permits to which an owner-on-board exemption does not apply)?*

A: They must be on board if sablefish will be landed against a permit they own.

*Q: It is not clear how to determine which of the stacked permits the vessel is fishing (the leased permit, or to which the owner exemption applies, or the other permits owned by the non-exempted owner) since the allocation of fish to a permit is not assigned until landing.*

A: Determining which permit sablefish will be assigned to is not possible until landing. An agent who contacts a vessel before then can document who was on board and later compare that with fish ticket records to see which permits had landings assigned to them and whether all non-exempt owners were on board and signed the fish ticket.

*Q: Determine if regulatory or data system changes are needed.*

A: Based on the information presented in this report, NMFS WCR concludes that the existing regulations and data system are sufficient to enable post-landing enforcement, which in turn is sufficient to achieve the intent of the owner-on-board provision with specified exemptions. The WCR recommends no changes to existing regulations or data systems regarding the owner-on-board provision.

However, if the Council believes that post-hoc enforcement with fish ticket/permit number data is insufficient, a declaration requirement could be considered. Such a requirement would create an additional administrative requirement for permit owners and NMFS, and agency costs would be incremental (recoverable) once a cost recovery program is implemented for this fishery.