Agenda Item E.2 Supplemental Attachment 2 June 2025

PROPOSED FISHERY MANAGEMENT PLAN REVISIONS FOR LIMITED ENTRY FIXED GEAR ACTIONS- FINAL ACTION

The following is a redline of Chapters 6 and 11 of the Groundfish Fishery Management Plan (FMP) based on the Pacific Fishery Management Council's (Council's) preliminary preferred alternative (PPA) recommendation in March 2025. Due to the number of proposed changes, the following is a summary to orient Council members, advisory bodies, and the public to the changes. Most edits are administrative or deal with nomenclature. Additionally, references that have not been updated and are relevant to the limited entry fixed gear (LEFG) or LE program were addressed. However, the most substantive edits relate to the changes from Amendment 6 (allocation policy between LE and open access, OA) as a part of this action.

Administrative/Nomenclature Edits

- Removed "daily" from "daily trip limit"
- Removed remaining references to Appendix F (Rebuilding Plans)
- Updated all broken section references

Specific Actions Related to PPA

- Changed all references from "limited entry fixed gear" or references to LEFG and pot/longline to "limited entry non trawl" or LENT (as proposed in PPA)
- Removed base permit language (as proposed in PPA, Section 11.2.3)

Updates to FMP

- Updated language to reflect the Council has implemented a permit stacking program and linked to appropriate regulations. (Chapter 11.2.6 and 11.2.10)
- Removed outdated information relative to groundfish interactions with protected species (Section 6.5)

Amendment 6 Related Edits

- Removed all language regarding "open access" gear and OA historical landings period of 1984-1988 (Amendment 6 basis for allocation, if needed)
- Removed Amendment 6 references as appropriate
- Replaced outdated Amendment 6 language referring to LE and OA allocations with more general statements on how the Council will consider opportunities for each sector.
- Removed initial issuance criteria for LE permits. Note that staff is proposing to move some or all of this information to Stock Assessment Fishery Evaluation, SAFE, or other document.
- Removed references to permit endorsements that are no longer applicable to the groundfish fishery ("B" endorsements, provisional "A" endorsements).

CHAPTER 6 MANAGEMENT MEASURES

6.1 Introduction

The FMP, as amended, establishes the fishery management program, the process, and procedures the Council will follow in making adjustments to that program. It also sets the limits of management authority of the Council and the Secretary when acting under the FMP. The preceding two chapters describe the procedures for determining appropriate harvest levels and establishing them on a periodic basis. This chapter describes the procedures and methods that may be used to directly control fishing activities so that total catch of a given species or species group does not exceed specified harvest limits. It is organized around five major themes:

- Section 6.2 describes the procedures for establishing and adjusting management measures, including three decision-making frameworks the Council (in conjunction with its advisory bodies) uses to decide whether management measures need adjustment. These framework procedures allow management decisions, as long as they are consistent with the provisions of this FMP (including the frameworks), to be implemented via Federal regulation without first amending the FMP. This section also describes the procedures for promulgating the regulations needed to implement the management measures authorized by this FMP.
- Section 6.3 describes the criteria the Council will consider when establishing management measures intended to directly allocate harvest opportunity.
- Sections 6.4 and 6.5 describe methods to account for all sources of fishing mortality and to reduce bycatch, especially bycatch mortality. Bycatch is defined in the Magnuson-Stevens Act as "fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards" (16 U.S.C. 1802(2)). Section 6.4 also describes those additional measures necessary to monitor and/or report on fishery catch and effort or to enforce regulations.
- Section 6.6 through 6.9 inventory the range of management measures available to the Council, as authorized by this FMP. Not all of these management measures will be implemented at any given time.
- Section 6.10 describes those requirements that support the enforcement of management measures.

These procedures, measures, and requirements must be consistent with the goals and objectives of the FMP, the Magnuson-Stevens Act, and other applicable law. All measures, unless otherwise specified, apply to all domestic vessels regardless of whether catch is landed and processed on shore or processed at sea. The procedures by which the Council develops recommendations on revising management measures, and by which NMFS implements those recommendations, are found in Section 6.2.

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.

[Amendment 18]

6.2 General Procedures for Establishing and Adjusting Management Measures

This FMP establishes three framework procedures through which the Council is able to recommend the establishment and adjustment of specific management measures for the Pacific Coast groundfish fishery. The *points of concern framework* allows the Council to develop management measures that respond to resource conservation issues; the *socioeconomic framework* allows the Council to develop management measures in response to social, economic, and ecological issues that affect fishing communities. The *habitat conservation framework* allows the Council to modify the number, extent, and location of areas closed to certain fishing gear or methods, in order to protect EFH. Criteria associated with each framework form the basis for Council recommendations, and Council recommendations will be consistent with them. The process for developing and implementing management measures normally will occur over the span of at least two Council meetings, with an exception that provides for more timely Council consideration under certain specific conditions.

The time required to take action under any framework will vary depending on the nature of the action, its impacts on the fishing industry, resource, and environment, and review of these impacts by interested parties. This depends on the range of biological, social, and economic impacts that may need to be considered at the time a particular change in regulations is proposed. Furthermore, other applicable law (e.g., the National Environmental Policy Act, Administrative Procedures Act, Regulatory Flexibility Act, relevant Executive Orders, etc.) may require additional analysis and public comment before measures may be implemented by the Secretary.

The Secretary will develop management measures recommended by the Council for review and public comment as publications in the *Federal Register*, either as notices or regulations. Generally, management measures of broad applicability and permanent effectiveness should be published as regulations. More narrowly applicable measures, which may only apply for short duration (one biennium or less) and may also require frequent adjustment, should be published as notices.

Management measures are normally imposed, adjusted, or removed at the beginning of the biennial fishing period, but may, if the Council determines it necessary, be imposed, adjusted, or removed at any time during

the period. Management measures may be imposed for habitat protection, resource conservation, or social or economic reasons consistent with the criteria, procedures, goals, and objectives set forth in the FMP.

The NMFS Regional Administrator will review the Council's recommendation, supporting rationale, public comments, and other relevant information and determine whether to approve, disapprove, or partially approve the Council's recommendation. If the recommendation is approved, NMFS will implement the recommendation through regulation or notice, as appropriate. NMFS will explain any disapproval or partial disapproval of the recommendation to the Council 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.

Four different categories of management actions are authorized by this FMP, each of which requires a slightly different process. Management measures may be established, adjusted, or removed using any of the four procedures. The four basic categories of management actions are described below.

A. Automatic Actions

The NMFS Regional Administrator may initiate automatic management actions without prior public notice, opportunity to comment, or a Council meeting. These actions are nondiscretionary, and the impacts must be reasonably accountable, based on previous application of the action or past analysis. Examples include fishery, season, or gear type closures when a quota has been projected to have been attained. The Secretary will publish a single notice in the *Federal Register* making the action effective.

B. Notice Actions requiring One Federal Register Notice: One Council meeting or NMFS actions that occur outside of a Council meeting

These include all management actions other than automatic actions. Notice actions may be nondiscretionary; they may be actions for which the scope of probable impacts has been previously analyzed.

These actions are intended to have temporary effect, and the expectation is that they will need frequent adjustment. They may be recommended either at a single Council meeting or by NMFS outside of a Council meeting for actions in California impacting canary rockfish, yelloweye rockfish, and black rockfish. The Council will provide as much advance information to the public as possible concerning the issues it will be considering at its decision meeting. The primary examples are those inseason management actions defined as routine according to the criteria in Section 6.2.1. These include, but are not limited to, trip landing and frequency limits and size limits for all commercial gear types and closed seasons for any groundfish species in cases where protection of an overfished or depleted stock is required and bag limits, size limits, time/area closures, boat limits, hook limits, and dressing requirements for all recreational fisheries. Previous analysis must have been specific as to species and gear type before a management measure can be defined as routine and acted on at a single Council meeting or by NMFS for actions in California impacting canary rockfish, yelloweye rockfish, and black rockfish. If the recommendations are approved, the Secretary may waive for good cause the requirement for prior notice and comment in the Federal Register and will publish a single notice in the Federal Register making the action effective. This category of actions presumes the Secretary will find that the need for swift implementation and the extensive notice and opportunity for comment on these types of measures, along with the Council already having analyzed the scope of their impacts, will serve as good cause to waive the need for additional prior notice and comment in the Federal Register.

For actions outside of a Council meeting, the Regional Administrator, NMFS West Coast Region, after consultation with the Chairman of the Pacific Fishery Management Council and the Fishery Director of the California Department of Fish and Wildlife, or their designees, is authorized to modify the following designated routine management measures for canary rockfish, yelloweye rockfish, and black rockfish in California: For commercial fisheries 1) trip landing and frequency limits; and 2) depth based management measures. For recreational fisheries 1) bag limits; 2) time/area closures; 3) depth based management. Any modifications may be made only after NMFS has determined that a federal harvest limit for canary rockfish, yelloweye rockfish, or black rockfish in California. However, given the mixed nature of the fishery, there may be impacts to other species, similar to all inseason management measure adjustments. Such actions must be consistent with Section 6.2.1. The Secretary may waive for good cause the requirement for prior notice and comment in the *Federal Register* and will publish a single notice in the *Federal Register* making the action effective.

C. Management Measures Rulemaking For Actions Developed Through the Three-Council-Meeting Biennial Specifications Process and Two *Federal Register* Rules

During the biennial specifications process the Council may propose: (1) management measures to be classified as routine the first time these measures are used; or (2) adjustments to measures previously classified as routine, such as trip limits that vary by gear type, closed seasons or areas, and in the recreational fishery, bag limits, size limits, time/area closures, boat limits, hook limits, and dressing requirements or (3) new management measures, which are those management measures where the impacts have not been previously analyzed and/or have not been previously implemented in regulations. Examples of new measures that may be proposed during the biennial process include: changes to or imposition of gear regulations; imposition of landings limits, frequency limits, or limits that differ by gear type; closed areas or seasons used for the first time on any species or species group or gear type.

As described in Section 5.4, the three-Council-meeting biennial specifications process refers to the following decision-making schedule:

- 1. The Council will develop proposed harvest specifications during the first meeting (usually November). They will finish drafting harvest specifications and develop the management measures during the second meeting (usually April).
- 2. The Council will develop and analyze the proposed management actions over the span of at least two Council meetings (usually April and June) and provide the public advance notice and opportunity to comment on both the proposals and the analysis prior to and at the second Council meeting.
- 3. Finally, at the third meeting, the Council will make final recommendations to the Secretary on the complete harvest specifications and management measures biennial management package (usually June). For the Council to have adequate information to identify proposed management measures for public comment at the first management measures meeting, the identification of issues and the development of proposals normally must begin at a prior Council meeting.

If a management measure is designated as routine under this procedure, specific adjustments of that measure can subsequently be announced in the *Federal Register* by notice, as described in the previous paragraphs. 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*.

D. Full Rulemaking For Actions Normally Requiring at Least Two Council Meetings and Two *Federal Register* Rules (Regulatory Amendment)

These include any proposed new management measures to be classified as routine, including those considered highly controversial, or any measure that directly allocates the resource. These-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.

6.2.1 Routine Management Measures Overview

Routine management measures are those that the Council determines are likely to be adjusted on an annual or more frequent basis. The Council will classify measures as routine through either the specifications and management measures or rulemaking processes (C or D, above). In order for a measure to be classified as routine, the Council will determine that the measure is appropriate to address the issue at hand and may require further adjustment to achieve its purpose with accuracy.

As in the case for all proposed management measures, prior to initial implementation as routine measures, the Council will analyze the need for the measures, their impacts, and the rationale for their use. Once a management measure has been classified as routine through one of the two rulemaking procedures outlined above, it may be modified thereafter through the single meeting notice procedure (B, above) only if (1) the modification is proposed for the same purpose as the original measure, and (2) the impacts of the modification are within the scope of the impacts analyzed when the measure was originally classified as routine. The analysis of impacts need not be repeated when the measure is subsequently modified, if the Council determines that they do not differ substantially from those contained in the original analysis. The Council may also recommend removing a routine classification.

Experience gained from management of the Pacific Coast groundfish fishery indicates that certain measures usually require modification on a frequent basis to ensure that they meet their stated purpose with accuracy.

For commercial fisheries, these measures are trip landing limits and trip frequency limits, including cumulative limits, and notification requirements. They have been applied to the commercial fishery either to lengthen the duration of the fishery, so as not to disturb traditional fishing and marketing patterns; to reduce discards and waste, or; to discourage targeted fishing while allowing small incidental catches when attainment of a HG or quota is imminent. In cases where protection of an overfished or depleted stock is required, the Council may impose limits that differ by gear type, or establish closed areas or seasons. These latter two measures were not historically imposed through the annual management cycle (now biennial) because of their allocative implications. However, this additional flexibility has become necessary to allow the harvest of healthy stocks as much as possible while protecting and rebuilding overfished and depleted

stocks, and equitably distributing the burdens of rebuilding among sectors. The first time a differential trip limit or closed season is to be imposed in a fishery, it must be imposed during the biennial management cycle (with the required analysis and opportunity for public comment) and subsequently may be modified inseason through the routine adjustment process.

For recreational fisheries, bag limits, size limits, time/area closures, boat limits, hook limits, and dressing requirements may be applied to particular species, species groups, sizes of fish, and gear types. For the recreational fishery, bag and size limits have been imposed to spread the available catch over a large number of anglers, in order to avoid waste, and to provide consistency with state regulations.

Routine management measures are also often necessary to meet the varied and interwoven mandates of the Magnuson-Stevens Act and FMP. These mandates include: preventing overfishing and rebuilding overfished species in a manner consistent with rebuilding plans, reducing bycatch, allowing the harvest of healthy stocks as much as possible while protecting and rebuilding overfished and depleted stocks, and equitably distributing the burdens of rebuilding among the sectors.

Any measure designated as routine for a particular species, species group, or gear type may not be treated as routine for a different species, species group, or gear type without first having been classified as routine. Each year, the SAFE document or the appropriate NEPA document analyzing management measures will list all measures that have been designated as routine.

The Council will conduct a continuing review of landings of those species for which HGs, quotas, OYs, or specific routine management measures have been implemented and will make projections of the landings at various times throughout the year. If in the course of this review it becomes apparent that the rate of landings is substantially different than anticipated, and that the current routine management measures will not achieve harvest management objectives, the Council may recommend inseason adjustments to those measures. Such adjustments may be implemented through the single-meeting notice procedure (B, above).

6.2.1.1 Routine Management Measures:

This section outlines those actions determined to be routine. Additional actions may be designated as routine through the biennial specifications process as outlined above and/or specified in regulations therefore they may not appear in this section. The current list of routine management measures is published in Federal regulations at 50 CFR 660.60(c).

All fisheries, all gear types:

Depth-based management measures, particularly the setting of closed areas known as GCAs may be imposed on any sector of the groundfish fleet using specific boundary lines that approximate depth contours with latitude/longitude coordinates. Depth-based management measures and the setting of closed areas may be used to: protect and rebuild overfished stocks; extend the fishing season; for the commercial fisheries, to minimize disruption of traditional fishing and marketing patterns; to reduce discards; for the recreational fisheries, to spread the available catch over a large number of anglers; to discourage target fishing while allowing small incidental catches to be landed; and to allow small fisheries to operate outside the normal season.

Routine management measures have been developed to deal with management uncertainty in the groundfish fishery. The process allows timely adjustment of measures inseason to respond to the most current scientific and management information. These routine management measures are AMs under the Magnuson-Stevens Act as amended.

Deductions of yield from ACLs made prior to fishery allocations to accommodate research fisheries, exempted fishing permits and groundfish bycatch in non-groundfish fishery sectors can be adjusted routinely in accordance with sector needs as determined by the Council. Any changes must be made in accordance with Section 6.2 paragraph B above.

Commercial limited entry and open access fisheries:

Trip landing and frequency limits, size limits, for all gear types may be imposed: to extend the fishing season; to minimize disruption of traditional fishing and marketing patterns; to reduce discards; to discourage target fishing while allowing small incidental catches to be landed; to protect overfished species; to allow small fisheries to operate outside the normal season; and to provide additional fishing opportunity for limited entry vessels in comparison to open access vessels.

Trip landing and frequency limits have been designated as routine for the following species or species groups: black rockfish, blue rockfish, bocaccio, canary rockfish, chilipepper rockfish, cowcod, darkblotched rockfish, Pacific ocean perch, shortbelly rockfish, splitnose rockfish, widow rockfish, yelloweye rockfish, yellowtail rockfish, minor nearshore rockfish or shallow and deeper minor nearshore rockfish, shelf or minor shelf rockfish, and minor slope rockfish; DTS complex, which is composed of Dover sole, sablefish, shortspine thornyheads, and longspine thornyheads, both as a complex and for the species within the complex; arrowtooth flounder, English sole, petrale sole, Pacific sanddabs, rex sole, and the Other Flatfish complex, which is composed of those species plus any other FMP flatfish species; Pacific whiting; lingcod; cabezon; Pacific cod; spiny dogfish; and Other Fish as a complex consisting of all groundfish species listed in the FMP and not otherwise listed as a distinct species or species group.

Size limits have been designated as routine for sablefish and lingcod.

Trip landing and frequency limits that differ by gear type and closed seasons may be imposed or adjusted on a biennial or more frequent basis for the purpose of rebuilding and protecting overfished or depleted stocks. To achieve the rebuilding of an overfished or depleted stock, a sector or sectors of the primary Pacific whiting may be closed if a total catch limit of an overfished species has been designated for the whiting fishery and that total catch limit is reached before the sector's whiting allocation is reached. Total catch limits in the primary Pacific whiting fishery may be established or adjusted as routine management measures. In the shorebased IFQ fishery, changes to the surplus carry-over percentages may be routinely adjusted (see Appendix E, Section E.2.1.3 and Table 1, A-2.2.2.b).

Recreational fisheries all gear types:

Routine management measures for all groundfish species, separately or in any combination, include: bag limits, size limits, time/area closures, boat limits, hook limits, and dressing requirements. All routine management measures on recreational fisheries are intended to keep landings within the harvest levels announced by NMFS, to rebuild and protect overfished or depleted species, and to maintain consistency with State regulations, and for the other purposes set forth in this section.

<u>Bag limits</u> may be imposed to spread the available catch over a large number of anglers; to protect and rebuild overfished species; to avoid waste.

<u>Size limits</u> may be imposed to protect juvenile fish; to protect and rebuild overfished species; to enhance the quality of the recreational fishing experience.

<u>Season duration restrictions</u> may be imposed to spread the available catch over a large number of anglers; to protect and rebuild overfished species; to avoid waste; to enhance the quality of the recreational fishing experience.

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 ACL, OY, HG, or quota is not specified.
- 2. Catch for the calendar year is projected to exceed the current ACL, 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**

The primary mechanism for providing habitat protections in Council-managed fisheries is via the EFH provisions in the MSA and detailed at <u>50 CFR 600.805 – 600.930</u>. The elements of EFH should be reviewed at least every five years and revised if warranted, based on new or newly-available information. Councils may establish closed areas to certain fishing gear or methods, to protect important habitats. In order to protect EFH from the adverse effects of fishing, the Council has identified areas that are closed to bottom trawling and/or other bottom contact gear (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. At the outset of a periodic review, the Council will establish a set of objectives and a scope for the review and revision process, consistent with Federal regulatory guidance on EFH. The Council would initiate a review of information, including any new and newly-available information relevant to EFH, and identify appropriate Council and NMFS staff to coordinate the review. If warranted, the Council could consider modifying groundfish EFH elements currently in place, including the areas currently closed to fishing activities that may adversely affect EFH, and could consider EFH elements that were not included previously. In making its determination, the Council 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, location, and condition of important habitat (as defined immediately above).
- 3. The presence and location of habitat that is vulnerable to the effects of fishing activities.
- 4. The presence and location of unique, rare, or threatened habitat.
- 5. New or increasing threats to EFH from non-fishing related activities.
- 6. The socioeconomic and management-related effects of closures, including changes in the location and intensity of bottom contact 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.

The Council should also consider the following habitat objectives:

- Protect a diversity of habitat types across latitude ranges, biogeographic and depth zones, and substrate types supporting all groundfish FMP species and life stages.
- Develop conservation areas with a diversity of habitat types incorporating the ecological principles of connectivity, size, distribution, and relative abundance.
- Prioritize pristine or previously protected areas, or areas with low levels of fishing or non-fishing impacts.
- Protect habitats sensitive to fishing gear and habitats of high complexity across habitat types.
- Distribute socioeconomic costs that would result from implementation of EFH amendments.
- Conduct scientific research to further our understanding of the effects of fishing gear on EFH.

The Council should also consider the following priority habitats:

- 1. Hard substrate, including rocky ridges and rocky slopes
- 2. Habitat-forming invertebrates
- 3. Submarine canyons and gullies
- 4. Seamounts

5. Areas where the probability of occurrence of an overfishes species was at least 80 percent of the maximum probability of occurrence as predicted by models

Upon considering Advisory Body, NMFS, staff reports, and public comment, 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.

[Amendment 19, 28]

6.2.5 Indian Treaty Rights

Treaties with a number of Pacific Northwest Indian tribes reserve to those tribes the right of taking fish at their usual and accustomed fishing grounds and stations (U & A) in common with other citizens of the United States. NMFS has determined that the tribes that have groundfish U & A in the area managed by this FMP are the Makah, Hoh, and Quileute Tribes, and the Quinault Indian Nation. Several tribal fisheries exist for species covered by the FMP. The Federal government has accommodated these fisheries through a regulatory process, found at 50 CFR 660.50. Until such time as tribal treaty rights are finally adjudicated or the regulatory process is modified or repealed, the Council will continue to operate under that regulatory process to provide recommendations to the Secretary on levels of tribal groundfish harvest.

[Amendment 18, 24]

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 ACL 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 ACL (or 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 LE fisheries, with the LE share divided between the trawl and non-trawl sectors. The proportions of each of these divisions are indicated in Figure 6-1. The LE non-trawl share is then generally divided 85 percent to the primary fishery for LE non-trawl vessels with sablefish endorsements and 15 percent for the 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 percent for the shoreside whiting sector, 24 percent for the at-sea mothership whiting sector, and 34 percent 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 and 29 Stocks and Stock Complexes

Formal allocations of stocks and stock complexes covered under Amendments 21 and 29 support Amendment 20 trawl rationalization measures. Annual OYs/ACLs are established for these stocks and stock complexes the same as for other groundfish stocks and stock complexes. The OYs/ACLs are then reduced by deducting the estimated total mortality of these stocks and stock complexes in research, tribal, and non-groundfish fisheries, and the estimated exempted fishing permits set-asides. 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 LE trawl fishery. The non-treaty, non-trawl percentage is for the LE non-trawl fishery, the open access fishery, and the recreational fishery. Allocations to the directed non-trawl sectors (i.e., LE nontrawl, 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/Non-trawl Allocations

Table 6-1. Allocation percentages for limited entry trawl and non-trawl sectors specified for FMP groundfish stocks and stock complexes under Amendments 21 and 29 (most percentages based on average 2003-2005 total catches by sector).

Stock or Complex	All Non-Treaty LE Trawl Sectors	All Non-Treaty Non- Trawl Sectors
Stocks		
Arrowtooth flounder	95%	5%
Chilipepper rockfish S of 40°10' N lat.	75%	25%
Darkblotched rockfish	95%	5%
Dover sole	95%	5%
English sole	95%	5%
Lingcod N of 40°10' N lat.	45%	55%
Longspine thornyhead N of 34°27' N lat.	95%	5%
Pacific cod	95%	5%
Pacific ocean perch	95%	5%
Sablefish S of 36° N lat.	42%	58%
Splitnose rockfish S of 40°10' N lat.	95%	5%
Starry flounder	50%	50%
Yellowtail rockfish N of 40°10' N lat.	88%	12%
Stock Complexes		
Other Flatfish	90%	10%
Slope Rockfish N of 40°10' N lat.	81%	19%

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 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 were 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. For the three trawl-dominant overfished species, at-sea set-asides and shoreside allocations were determined through formulas originally in the FMP, later removed by Amendment 21-4. 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.

Stock or Complex	1995-2005 Se Percen	1995-2005 Sector Catch Percentage		
	Non-whiting	Whiting		
Lingcod	99.7%	0.3%		
Pacific Cod	99.9%	0.1%		
Pacific Whiting	0.1%	99.9%		
Sablefish N. of 36° N latitude	98.2%	1.8%		
Sablefish S. of 36° N latitude	100.0%	0.0%		
Chilipepper S. of 40°10' N latitude	100.0%	0.0%		
Splitnose S. of 40°10' N latitude	100.0%	0.0%		
Shortspine N. of 34°27' N latitude	99.9%	0.1%		
Shortspine S. of 34°27' N latitude	100.0%	0.0%		
Longspine N. of 34°27' N latitude	100.0%	0.0%		
Minor Slope RF North of 40°10' N latitude	98.6%	1.4%		
Dover Sole	100.0%	0.0%		
English Sole	99.9%	0.1%		
Petrale Sole	100.0%	0.0%		
Arrowtooth Flounder	100.0%	0.0%		
Starry Flounder	100.0%	0.0%		
Other Flatfish	99.9%	0.1%		

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).

Set-Aside Amounts for At-sea Sectors

Under Amendment 20, the at-sea whiting sectors (i.e., catcher-processors and motherships) are managed in a system of sector-specific harvest cooperatives. For the at-sea sectors, groundfish species other than whiting are managed as set-asides, amounts for which are based on the best available information on bycatch by these sectors and other relevant factors, including, but not limited to, status of the set-aside stocks, expected utilization in other sectors of the fishery, and expected management conditions in any sector in upcoming fishing years, as determined in the biennial harvest specifications and management measures decision process. The set-aside amounts come from the trawl allocation, with the remainder (after deducting the set-asides) going to the shoreside sector 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 $40^{0}10^{\circ}$ N latitude is managed using a system of individual bycatch quotas (IBQs). Under Amendment 21, an allocation of Pacific halibut was decided as follows:

For 2012 through 2014, 15% of the Area 2A total constant exploitation yield (TCEY) for legal sized halibut¹ (net weight), not to exceed 130,000 lbs. will be subtracted from the TCEY to account for expected trawl bycatch mortality of legal sized halibut (net weight). Beginning in 2015, the amount to be subtracted will be capped at 100,000 lbs. The TCEY used for these calculations will be the best estimate of the TCEY available from the IPHC at the time of the calculation (most likely the preliminary TCEY).² The bycatch allocation percent can be adjusted downward or upward (above or below 15%) through the biennial specifications and management measures process but the upper bound on the maximum allocations can only be changed though an FMP amendment.

The shoreside trawl rationalization program keeps the trawl sector within expectations by requiring that trawlers account for their total mortality of all halibut in round weight (legal and sublegal sized). Therefore, to determine a trawl bycatch mortality limit the amount of halibut pounds available to the trawl fleet will be determined by expanding the expected legal sized halibut mortality (net weight) into a round weight legal+sublegal sized amount. To achieve this, the following conversions will be applied.

i. Net weight to round weight conversion: multiply by the IPHC net weight to round weight conversion factor in use at the time of the calculation (for 2011 the ratio was 1/0.75=1.33).

ii. Legal to legal+sublegal sized conversion factor: multiply by the IPHC legal+sublegal to legal ratio in use at the time of the calculation (for 2011 the ratio was 1/0.62=1.61).

After these conversions, 10 mt will be subtracted to cover bycatch mortality in the at-sea whiting fishery and trawl fishery south of 40°10' N latitude, and the remainder will be issued as IBQ, to be used to cover Pacific halibut mortality by vessels operating in the shoreside trawl IFQ program. The amount of Pacific halibut set aside to accommodate incidental catch in the trawl fishery south of 40°10' N latitude and in the at-sea whiting fishery can 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 formal 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 18, 21]

¹ "Legal sized" halibut refers to halibut with a total length of 32 inches and above, or O32, and "sublegal sized" halibut refers to halibut under 32 inches in total length, or U32.

² The TCEY provided by the IPHC is based upon legal sized (O32) halibut. If the IPHC changes the basis for its estimate of TCEY, NMFS will update the calculation of the trawl bycatch mortality limit accordingly through a regulatory amendment.

6.4 Standardized Total Catch Reporting and Compliance Monitoring Program

Fishery managers participating in the Council process need accurate estimates of total fishing mortality. Total fishing mortality data are needed to set accurate harvest specifications and management measures and to adjust management measures inseason so that ACLs/OYs may be achieved, but not exceeded. Various state, Federal, and tribal catch monitoring systems are used in west coast groundfish management. These are coordinated through the PSMFC. PacFIN (Pacific Fisheries Information Network) is the commercial catch monitoring database, and RecFIN (Recreational Fishery Information Network) is the database for recreational fishery catch monitoring.

Total catch has two major components: fish that are retained, landed, and sold or kept for personal use, and fish that are discarded, either at sea or on shore.³ This discarded component is what the Magnuson-Stevens Act defines as bycatch.⁴ Total catch and total fishing mortality may differ because some bycatch may survive capture and subsequent discard, or release. Bycatch mortality varies depending on the physiology of a particular species, the type of fishing gear used, and how fish are handled from the time of capture until they are released back into the water.

Commercial and recreational groundfish fisheries have been managed through a variety of measures intended to limit catch to the level established by an ACL/OY. These measures include cumulative landing limits for commercial fisheries and bag limits for recreational fisheries (see Section 6.7). When these measures are less restrictive, few constraints are imposed on fisheries and fish are primarily discarded for economic reasons. (In recreational fisheries, an economic discard would be a personal assessment of the desirability of a particular fish or fish species.) When one stock has a comparatively low landing or bag limit in a multispecies fishery, because it is depleted for example, a fisher may discard fish of that stock once the limit is reached in order to continue fishing for other species. Under these conditions, bycatch can be a large portion of total catch and total fishing mortality. With a standardized reporting methodology, managers are better able to track bycatch both inseason and cumulatively, information that is essential to developing management programs to reduce bycatch and bycatch mortality. Therefore, maintaining a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, in addition to being required by the Magnuson-Stevens Act (16 U.S.C. 1853(a) (11)), is an important management task. This FMP meets that requirement through a standardized reporting methodology not just for the amount and type of bycatch occurring in the fishery, but for total catch (landed catch plus bycatch mortality) in the fishery.

In order to better monitor and manage bycatch, the Council supports accounting for total catch by specified fishery sectors. Beginning with the 2003 fishing year, as part of its evaluation of proposed management measures, the Council has been projecting total catches by fishery sector. Actual landings and estimated bycatch have also been categorized by fishery sector. Methods to accurately estimate sector- and species-specific total catch are needed to support the Council's bycatch mitigation program (Section 6.5). The Council relies on a combination of state, tribal, and Federal reporting and monitoring programs to determine total catch. NMFS is responsible for evaluating the adequacy of Federal standardized reporting methodologies for assessing the amount and type of bycatch occurring in a fishery. In 2004, NMFS published *Evaluating Bycatch: A National Approach to Standardized Bycatch Monitoring Programs*, which describes Federal standardized bycatch reporting methodologies and evaluates the adequacies of these

³ The Magnuson-Stevens Act further defines the term fish to mean "finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds" 16 U.S.C. 1802(12).

⁴ Using the term bycatch has led to considerable confusion, because many people use the term synonymously with the concept of incidental catch, or that part of the catch which is not the target of the fishery. In single-species fisheries, incidental catch and discards may be largely coincident. But in multi-species fisheries there may be multiple targets, and species that might be considered incidental are commonly retained, depending on the market and regulatory environment. In this FMP, the Magnuson-Stevens Act definition of bycatch is used, as distinct from incidentally-caught species.

methodologies, including those used for the west coast groundfish fisheries. Federal reporting requirements in this fishery are described below.

6.4.1 Total Catch Reporting Methodology

6.4.1.1 Monitoring Total Catch At Sea – Observer and Electronic Monitoring Programs

The Magnuson-Stevens Act defines the term "observer" as "any person required or authorized to be carried on a vessel for conservation and management purposes by regulations or permits under this Act." The Magnuson-Stevens Act also sets out guidelines for vessels carrying observers, observer training requirements, and observer status as Federal employees.

All fishing vessels operating in this management unit, which includes catcher-processors, at-sea processors, and those vessels that directly or incidentally harvest groundfish in waters off Washington, Oregon, and California, may be required to accommodate an observer and/or video electronic-monitoring system for the purpose of collecting scientific data or verifying catch landings and discard used for scientific data collection. These vessels may also be required to accommodate an observer and/or electronic monitoring system for the purpose of estimating total catch inseason to implement a sector- or vessel-specific total catch limit program. Implementation of any observer program or electronic monitoring system will be in accordance with appropriate Federal procedures, including economic analysis and public comment. Any Federal program that requires the collection of information from fishery participants is also subject to the requirements of the Paperwork Reduction Act (PRA).

The Regional Administrator will implement an observer program through a Council-approved Federal regulatory framework. Details of how observer coverage will be distributed across the west coast groundfish fleet will be described in an observer coverage plan that is appropriate to the purpose of the particular observer program goals. An observer coverage plan designed for a scientific data collection program will likely be different from an observer coverage plan designed for a sector- or vessel-specific total catch monitoring program. NMFS will publish an announcement of the authorization of the observer program and description of the observer coverage plan in the *Federal Register*. Development and implementation of an observer program is done through the full rulemaking process at Section 6.2, D.

Electronic monitoring is an automated alternative to some human data collection systems. Electronic monitoring equipment may provide accurate, timely, and verifiable information on some elements of fishing operations at a lower cost than that provided by an at-sea observer. Electronic monitoring is an integrated assortment of electronic components combined with a software operating system. An electronic monitoring system typically includes one or more video cameras, a central processing unit with removable hard drive, and software that can integrate data from other components of a vessel's electronic equipment. The system autonomously logs video and vessel sensor data during the fishing trip without human intervention. When the vessel has completed its fishing operations and returned to port, the video and other data are transferred to a separate computer system for analysis. Video records are typically reviewed by human samplers on shore, but electronic techniques are being developed to automate some of this activity. Electronic monitoring has been tested in various Canadian fisheries and has successfully addressed specific fishery monitoring objectives. NOAA Fisheries began testing electronic monitoring equipment in the 2004 shorebased whiting fishery, in order to determine whether a full-retention program could be adequately monitored by an electronic monitoring system. This FMP authorizes the use of electronic monitoring programs for appropriate sectors of the fishery. Development and implementation of an electronic monitoring program would be done through the full rulemaking process at 6.2 D.

There may be a priority need for observers on at-sea processing vessels to collect data normally collected at shore-based processing plants. Certain information for management of the fishery may be obtained from

logbooks and other reporting requirements, but the collection of some types of data would be too onerous for some fishermen to collect. Processing vessels must be willing to accommodate onboard observers and may be required to provide observers prior to issuance of any necessary Federal permits.

6.4.1.2 Commercial Fisheries

The total catch accounting methodology for commercial groundfish fisheries has two main components: monitoring landed catch through reports by fish processors (fish receiving tickets) and at-sea observer programs to estimate bycatch. Observer coverage rates vary by fishery, with at-sea processors (whiting catcher-processors and motherships) being required to carry one or two observers depending on vessel length. Fishery observers for the remainder of the commercial groundfish fleet are required to carry observers in accordance with the NMFS observer coverage plan. Because non-whiting fishery observers are usually placed aboard only a fraction of the vessels in a given sector, their observations must be expanded using statistical methods in order to estimate total catch across a sector. For some fishery sectors, there may not be any direct observation or reporting of bycatch; in such cases, standard bycatch rates developed using the best scientific information may be used to estimate bycatch. Combining bycatch information with information on landed catch gives an estimate of total catch. The Council uses total catch information in inseason management to determine the relationship between catch at a given point in time and an ACL/ annual OY. Management measures within a given year may be adjusted based on total catch information in order to prevent total catch from exceeding ACL/OY levels. Fishery managers also use historic total catch data in stock assessments and to develop future harvest specifications and management measures.

The owner or operator of any vessel that retains fish harvested in the area managed by this FMP whose port of landing is outside the management area may be required to report those catches in a timely manner through a Federal reporting program. They also may be required to submit a completed fish landing ticket from Washington, Oregon, or California, or an equivalent document containing all of the information required by the state on that fish ticket.

Monitoring Total and Landed Catch

Federal regulations require fishers to sort all species with trip limits, HGs, or ACLs/OYs, including all overfished species. The states also require LE groundfish trawl fishermen to maintain logbooks to record the start and haul locations, time, and duration of trawl tows, as well as the total catch by species market category (i.e., those species and complexes with sorting requirements). Landings are recorded on fish receiving tickets. Fish tickets are designed by the individual states, but there is an effort to coordinate record-keeping requirements with state and Federal managers through PSMFC. Catch weight by sorted species category, area of catch, vessel identification number, and other data elements are required on fish tickets. Landings are also sampled in port by state personnel, who collect species composition data, otoliths for ageing, lengths, and other biological data. A suspension of at-sea sorting requirements coupled with full retention of catch is allowed in the shoreside whiting fishery under an EFP. Amendment 10 to the FMP authorized this suspension of at-sea reporting requirements through a rulemaking, rather than just through an EFP.

Landings, logbook data, and state port sampling data are reported inseason to the PacFIN database, which is managed by PSMFC. The GMT and PSMFC manage the Quota Species Monitoring (QSM) data set reported in PacFIN. All landings of groundfish stocks of concern (overfished stocks and stocks below B_{MSY}) and target stocks and stock complexes in west coast fisheries are tracked in QSM reports of landed catch. QSM reports also include bycatch (discard) estimates, allowing them to be used to track total catch. The GMT recommends prescribed landing limits and other inseason management measures to allow Council-managed fisheries to attain, but not exceed, total catch ACLs/OYs of QSM species. Stock and

complex landing limits are modified inseason to control total fishing-related mortality; QSM reports and landed catch forecasts are used to control the landed catch component.

Groundfish Observer Programs

Vessels participating in the at-sea Pacific whiting fishery have been carrying observers voluntarily since 1991. NMFS made observer coverage mandatory for at-sea processors in July 2004 (65 FR 31751). These provisions have not only given fishery managers the tools necessary to allow the at-sea Pacific whiting program to operate efficiently while meeting management goals, but have also provided scientists, through the observer coverage, an extensive amount of information on bycatch species in this fishery.

NMFS first implemented the West Coast Groundfish Observer Program in August 2001, placing observers aboard commercial groundfish vessels to monitor discards. By regulation (50 CFR § 660.16), all vessels that participate in commercial groundfish fisheries must carry an observer when notified to do so by NMFS or its designated agent. These observers monitor and record catch data, including species composition of retained and discarded catch. Observers also collect biological data, such as fish length, sex, and weight. The program currently deploys observers coastwide on the permitted trawl and fixed gear groundfish fleet, as well as on some vessels that are part of the open-access groundfish fleet. Observers monitor between 10 percent and 20 percent of the catch, as a proportion of total landings. Given the skewed distribution of bycatch in west coast groundfish fisheries, many observations in each sampling strata (gear type and area) are needed to estimate representative bycatch rates.

The FMP does not currently authorize foreign fisheries for groundfish. According to the Magnuson-Stevens Act, observers would be required on any foreign vessels operating in the Exclusive Economic Zone (EEZ).

6.4.1.3 Recreational Fisheries

Recreational catch is monitored by the states as it is landed in port. These data are compiled by the PSMFC in the Recreational Fishery Information Network (RecFIN)database. The types of data compiled in RecFIN include sampled biological data, estimates of landed catch plus discards, and economic data.

The Marine Recreational Fishery Statistics Survey (MRFSS) was an integral part of the RecFIN program until recently, and was the principle program used to estimate effort and catches in the recreational fisheries. The MRFSS used field-intercept surveys to estimate catch, and a random phone survey of coastal populations to estimate effort. The results of these two surveys were combined in the RecFIN database to estimate total fishing effort, fishing mortality, and other estimates useful for management. MRFSS was not designed to estimate catch and effort at the level of precision needed for inseason management or assessment. Thus, while MRFSS continues to be used as a nationwide statistical tool for assessing national recreational fisheries data, it is no longer relied upon to support inseason west coast groundfish management. In recent years, the three states, NMFS, and PSMFC have been revamping the way that west coast recreational fisheries data are collected, and estimates are generated so that the data system better supports inseason management. Each state has either improved upon existing sampling projects, such as Washington's Ocean Sampling Program, and Oregon's Ocean Recreational Boat Survey and Shore and Estuary Boat Survey, or developed new sampling programs, such California's Recreational Fisheries Survey. Data collected by these state-sponsored programs are submitted to RecFIN, and form the basis for estimating catch and effort. All three states have accelerated their reporting rates to RecFIN. Beginning in 2005, the states plan to provide recreational fisheries data within one month of the fishing activity; for example, fisheries data through the end of January would be available at the end of February.

The Washington Department of Fish and Wildlife's Ocean Sampling Program (OSP) generates catch and effort estimates for the recreational boat-based groundfish fishery, which are provided to PSMFC and

incorporated directly into RecFIN. The OSP provides catch in total numbers of fish, and also collects biological information on average fish size, which is provided to RecFIN to enable conversion of numbers of fish to total weight of catch. Boat egress from the Washington coast is essentially limited to four major ports (Neah Bay, La Push, Westport, and Ilwaco), which enables a sampling approach to strategically address fishing effort from these ports. Effort estimates are generated from exit-entrance counts of boats leaving coastal ports while catch per unit of effort is generated from angler intercepts at the conclusion of their fishing trip. The goal of the program is to provide information to RecFIN on a monthly basis with a one-month delay to allow for inseason estimates.

The ODFW's Ocean Recreational Boat Survey (ORBS) is responsible for collecting both effort and catch data for the ocean boat portion of the recreational fishery in Oregon. Samplers are stationed in 12 major ports: Astoria, Garibaldi, Pacific City, Depoe Bay, Newport, Florence, Winchester Bay, Charleston, Bandon, Port Orford, Gold Beach, and Brookings. Samplers collect effort information by either conducting exit/entrance counts in the larger ports, or conducting trailer/slip counts in the smaller ports. Upon a vessel's return to port, samplers examine landed catch, collect released information, and collect biological data used to calculate the average size of landed fish by species. The ORBS submits effort and catch estimates to PSMFC's RecFIN program. ODFW in cooperation with PSMFC has developed the Shore and Estuary Boat Survey (SEBS) in order to develop effort and catch estimates for the shore and estuary boat portions of Oregon's recreational fishery. Effort is determined using a license frame-based phone survey. In addition, SEBS is responsible for collecting discard information from the Oregon ocean charter fleet. Samplers act as observers on charter vessels, enumerating releases by species, and taking lengths before fish are released. This information is used to calculate an average size of fish discarded in the recreational fishery.

The CDFG, in cooperation with PSMFC, implemented the California Recreational Fisheries Survey (CRFS) in 2004. CRFS combines the prior MRFSS party and charter vessels (PC) sampling program (California's sampling methodology for private recreational vessels) with several new methodologies specifically designed for CRFS into a single, coordinated, statewide program. This program is designed to produce more timely and accurate catch and effort estimates than were available through the MRFSS program while continuing to provide the comprehensive coverage used in the MRFSS program for all recreational fisheries in both boat (private boats, rental boats, and party/charter boats) and shore (pier, jetty, beach and bank) modes of fishing. CRFS employs the following methodologies for sampling these different modes of recreational fishing:

- Private and rental boats (PR) are divided into primary and secondary sampling sites. Primary sites are sampled using a public launch ramp access point survey for effort and catch at high use sites during daylight hours. These sites are defined as those where 90 percent or more of the catch of important species are landed. Secondary sites are sampled using a roving access point survey for effort and catch. These sites are defined as those sites in a particular month where less than 10 percent of the total catch of important species is landed.
- Man-made (MM) sites, composed of piers, jetties and breakwaters, are sampled using a roving access point survey for catch and effort.
- Beach and Bank sites are sampled using two surveys: a roving access point survey at publicly accessible beaches and banks during daylight hours for catch rates and an angler license database telephone survey for all effort.
- PC vessels are sampled using two surveys: a weekly telephone survey of all PC vessels for effort and onboard sampling for catch.
- Estimates of private access and night fishing effort and catch for PR, MM, and Beach and Bank sites by trip type are derived using the angler license database telephone survey for effort and catch rates from access point surveys for catch.

For all modes of fishing, samplers examine landed catch, collect release information and fishing location, and collect biological data used to calculate the average size of landed fish by species. In addition, samplers act as observers on charter vessels, enumerating releases by species, and taking lengths before fish are released. The data, along with effort information for all modes, are entered by PSMFC into the RecFIN database. Estimates of catch and effort are then generated by PSMFC staff and posted on the RecFIN website. These estimates are greatly improved over those from MRFSS, not only because of the improvements in sampling methodologies, but because of changes in sampling rates, reporting intervals, geographical resolution, and expansion processes. CRFS, which employs a sampling rate in excess of three times that from MRFSS, provides monthly estimates for six geographical regions in California that are expanded from species catch rates based upon trip types and stated target species.

6.4.2 Vessel Compliance Monitoring and Reporting Requirements

In addition to authorizing Federal and state programs to collect total catch data, this FMP authorizes the collection of fisheries data needed for compliance monitoring. The following types of data may be collected through a regulatory program intended to ensure vessel compliance with fishery management measures:

- 1. Vessel name.
- 2. Radio call sign.
- 3. Documentation number or Federal permit number.
- 4. Company representative and telephone, fax, and/or telex number.
- 5. Vessel location including daily positions.
- 6. Check-in and check-out reports giving the time, date, and location of the beginning or ending of any fishing activity.
- 7. Gear type.
- 8. Reporting area and period.
- 9. Duration of operation.
- 10. Estimated catch by species and area, species disposition (including discards, product type, and weights).
- 11. Product recovery ratios and products sold (in weight and value by species and product type, and if applicable, size or grade).
- 12. Any other information deemed necessary for management of the fishery.

Vessels also may be required to maintain and submit logbooks, accurately recording the following information in addition to the information listed above, and for a specified time period: daily and cumulative catch by species, effort, processing, and transfer information; crew size; time, position, duration, sea depth, and catch by species of each haul or set; gear information; identification of catcher vessel, if applicable; information on other parties receiving fish or fish products; and any other information deemed necessary.

Vessels may be required to inform a NMFS enforcement or U.S. Coast Guard office prior to landing or offloading any seafood product. Such vessels may also be required to report prior to departing the Washington, Oregon, and California management area with fish or fish products on board.

This FMP authorizes the use of vessel monitoring system (VMS) programs in order to improve compliance with area and/or season closures. VMS is a tool that is commonly used to monitor vessel activity in relationship to geographical defined management areas where fishing activity is restricted. VMS transceivers installed aboard vessels automatically determine the vessel's location and transmit that position to a processing center via a communication satellite. At the processing center, the information is validated and analyzed before being disseminated for fisheries management, surveillance, and enforcement purposes.

VMS transceivers document the vessel's position using Global Positioning System (GPS) satellites. Depending on the defined need, position transmissions can be made on a predetermined schedule or upon request from the processing center. VMS transceivers are designed to be tamper-resistant. The vessel operator is unable to alter the signal or the time of transmission, and in most cases the vessel operator is unaware of exactly when the unit is transmitting the vessel's position. VMS programs used to improve compliance in several fisheries with differing area and/or season closures may require the use of a declaration system. A declaration system in association with VMS requires fishery participants declare their intended fishing activity, allowing enforcement personnel to differentiate between vessels subject to differing area and/or season closures.

New regulatory requirements for the collection of fishery-related data would need to be implemented through the full rulemaking process detailed at Section 6.2 D. Any Federal program that requires the collection of information from fishery participants is also subject to the requirements of the PRA.

[Amendment 18]

6.5 Bycatch Mitigation Program

Unquantified bycatch increases management risk because harvest limits may be inadvertently exceeded. Regulatory-induced discards are inefficient because society does not benefit from fish with economic value that are discarded to meet regulatory requirements. Bycatch can also include protected species and organisms comprising ecologically important biogenic habitat. Thus, more generally, bycatch may have broader environmental effects. The Magnuson-Stevens Act requires FMPs to include conservation and management measures that, to the extent practicable, minimize bycatch and the mortality of unavoidable bycatch (16 U.S.C. 1853(a)(11)). FMPs may also be subject to bycatch reduction requirements under the ESA, the Marine Mammal Protection Act (MMPA), the Migratory Bird Treaty Act (MBTA), and other Federal laws. Federal guidance on assessing the practicability of a potential management program is found at $50 \text{ CFR } \S 600.350$.

Working with NMFS, the states, and the tribes, the Council uses a three-part strategy to meet the Magnuson-Stevens Act's bycatch-related mandates: (1) gather data through a standardized total catch reporting methodology; (2) use Federal/state/tribal agency partners to assess these data through bycatch models that estimate when, where, and with which gear types bycatch of varying species occurs; and (3) develop management measures that minimize bycatch and bycatch mortality to the extent practicable. The FMP's total catch reporting methodology is described in Section 6.4.1. Bycatch models that assess observer and other data to estimate bycatch amounts occurring in the different sectors of the fishery are routinely reviewed through the Council's SSC and GMT as part of the Council's harvest specifications and management measures rulemaking process. These models are intended to continuously improve the Council's use of the best available scientific information on species-to-species catch ratios. This section describes the Council's bycatch mitigation program and the management measures intended to minimize bycatch and bycatch and bycatch motality.

6.5.1 **Bycatch of Groundfish Species in Groundfish Fisheries**

Groundfish bycatch in the groundfish fisheries includes both groundfish that are discarded for regulatory reasons, such as a vessel having achieved a trip limit for one species within an assemblage, and groundfish that are discarded for economic reasons, such as a vessel having taken more fish than can be stored in its hold, or having taken more of a particular species than is desired by a processor. The Council may initiate new and practicable management measures to reduce groundfish bycatch in the groundfish fisheries under either the harvest specifications and management measures rulemaking process (Section 6.2 D) It is usually through the harvest specifications development process

that the Council is made aware of new data and analyses on groundfish bycatch and bycatch mortality rates. The Council manages its groundfish fisheries to allow targeting on more abundant stocks while constraining the total mortality of overfished and precautionary zone stocks. For overfished stocks, measures to constrain total mortality are primarily intended to reduce bycatch of those stocks. The FMP defines stock status of overfished, precautionary zone, and more abundant stocks at Section 4.5. At Section 4.7, the FMP requires that landed catch ACLs/OYs be reduced from total catch ACLs/OYs to account for bycatch mortality.

The Council has all of the management measures detailed in Sections 6.5–6.10 at its disposal to manage directed catch and reduce bycatch of groundfish species in the groundfish fisheries. Because of the interaction among the various species and the regular incorporation of new information into the management system, the details of the specific measures will change over the years, or within years, based on the best available science. Management measures will be designed taking into account the co-occurrence ratios of target stocks with overfished stocks. To protect overfished species and minimize bycatch through reducing incidental catch of those species, the Council will particularly use, but is not limited to: catch restrictions detailed in Section 6.7 to constrain the catch of more abundant stocks that commingle with overfished species, in times and areas where higher abundance of overfished species are expected to occur; the appropriate time/area closures detailed in Section 6.8 and designed to prevent vessels from operating during times when or in areas where overfished species are most vulnerable to a particular gear type or fishery; and gear restrictions described in Section 6.6, where that gear restriction has been shown to be practicable in reducing overfished species incidental catch rates.

6.5.2 **Bycatch and Incidental Take of Non-Groundfish Species in Groundfish Fisheries**

Certain non-groundfish species may be taken incidentally in fisheries targeting groundfish. This FMP authorizes management measures to minimize, to the extent practicable, the bycatch of non-groundfish species or the incidental take of species not defined as fish under the Magnuson-Stevens Act. Non-groundfish species subject to bycatch or incidental take minimization measures may be marine fish species managed under another Council FMP, or marine animals or plants not managed with an FMP, yet subject to the protections of the ESA, the MMPA, the MBTA, or other Federal laws. Marine mammals and birds are specifically excluded from the Magnuson-Stevens Act definition of fish and are therefore not defined as bycatch under the Magnuson-Stevens Act. Notwithstanding, the Council may manage fisheries to minimize the incidental take of these species.

Generally, the Council will initiate the process of establishing or adjusting management measures when a resource problem with a non-groundfish species is identified and it has been determined that groundfish fishing regulations would reduce the total impact on that species or stock. This would usually occur when a state or Federal resource management agency (such as the U.S. Department of the Interior, NMFS, or state fishery agency) or the Council's Salmon Technical Team (STT) presents the Council with information substantiating its concern for a particular species. The Council will review the information and refer it to the SSC, GMT, STT, or other appropriate technical advisory group for evaluation. If the Council determines, based on this review, that management measures may be necessary to prevent harm to a non-groundfish species facing conservation problems or to address requirements of the ESA, MMPA, other relevant Federal natural resource law or policy, or international agreement, it may implement appropriate management measures may be to share conservation burdens while minimizing disruption of the groundfish fishery, but under no circumstances may the intention be simply to provide more fish to a different user group or to achieve other allocation objectives.

6.5.2.1 Endangered Species Act Species

Marine species protected under the ESA that are not otherwise protected under either the MMPA or the MBTA (see below) include various salmon and sea turtle species. Threatened and endangered Pacific salmon runs are protected by a series of complex regulations affecting marine and terrestrial activities. In the west coast groundfish fisheries, management measures to reduce incidental salmon take have focused on the Pacific whiting fisheries, which have historically encountered more salmon than the non-whiting groundfish fisheries. Salmon bycatch reduction measures include marine protected areas (MPA) where Pacific whiting fishing is prohibited (See Section 6.8.8), and an at-sea observer program intended to track whiting and incidental species take inseason (See Section 6.4.1.1). Sea turtles are rare in areas where groundfish fisheries are prosecuted. Eulachon sometimes occurs as incidental catch in the groundfish bottom trawl and at-sea whiting fisheries, and mortalities result from encounters with fishing gear. However, eulachon bycatch mortality is low (or non-existent) in most years, and is monitored through the at-sea observer program.

6.5.2.2 Marine Mammal Protection Act Species

Incidental take of marine mammals is addressed under the MMPA and its implementing regulations. Section 118 of the MMPA requires that NMFS place all commercial fisheries into one of three categories based on the level of incidental serious injury and mortality of marine mammals that occur in each fishery. To implement this requirement, NMFS publishes a list of U.S. commercial fisheries and categorizes their effects on marine mammals.

6.5.2.3 Migratory Bird Treaty Act Species

Incidental take of seabirds is addressed under the MBTA and its implementing regulations. The MBTA implements various treaties and conventions between the U.S., Canada, Mexico, Japan, and the former Soviet Union for the protection of migratory birds. Under the Act, taking, killing, or possessing migratory birds is unlawful. The U.S. Fish and Wildlife Service (USFWS) is the Federal agency responsible for management and protection of migratory birds, including seabirds. NMFS is required to consult with the USFWS if FMP actions may affect seabird species listed as endangered or threatened. In February 2001, NMFS adopted the *National Plan of Action for Reducing the Incidental Catch of Seabirds in Longline Fisheries*. This National Plan of Action contains guidelines that are applicable to the groundfish fisheries and would require seabird incidental catch mitigation if a significant problem is found to exist.

6.5.2.4 Shared Ecosystem Component Species

Shared EC Species, identified in Table 3-3, could continue to be taken incidentally without violating Federal regulations, unless regulated or restricted for other purposes, such as with bycatch minimization regulations. The targeting of Shared EC Species is prohibited.

6.5.3 Measures to Reduce Bycatch and Bycatch Mortality

Over the life of the FMP, the Council has used a suite of measures to reduce bycatch and bycatch mortality in the groundfish fisheries. Early bycatch reduction measures concentrated on trawl net modifications intended to reduce the bycatch of juvenile groundfish (Section 6.6.1.2). In 1993, the Council addressed concerns over potential bycatch of endangered or threatened salmon in the whiting fishery by imposing the Columbia River and Klamath River Conservation Zones (Section 0). Since 2000, the Council has concentrated its bycatch reduction efforts on constraining total catch of overfished species through gear restrictions (Section 6.6), catch restrictions (Section 6.7), time/area closures (Section 6.8), and effort restrictions (Section 6.9). The Council and NMFS have also used permit restrictions and effort reduction

programs to reduce total and incidental catch in the groundfish fisheries including the sablefish endorsement and tier program for the LE fixed gear fleet and the vessel/permit buyback program for the LE trawl fleet.

An important element of the Council's bycatch mitigation program occurs every two years when the Council develops its biennial specifications and management measures. During the development of the biennial specifications and management measures, and throughout the year when measures are adjusted, the Council will take into account the co-occurrence rates of target stocks and overfished stocks, and will select measures that will minimize, to the extent practicable, bycatch. The Council may select appropriate measures listed in the FMP and any others that may be developed in the future.

Any of the measures specified in Sections 6.5 through 6.10 may, where practicable, be used to reduce groundfish or non-groundfish bycatch in the groundfish fisheries. The Council will develop measures to reduce bycatch and bycatch mortality in accordance with the points of concern or the socioeconomic framework provisions of the FMP (Section 6.2.3). The process for implementing and adjusting such measures may be initiated at any time. New bycatch reduction management measures would need to be developed through either the harvest specifications and management measures rulemaking process (Section 6.2, C) or the full rulemaking process (Section 6.2 D). In addition, some measures may be designated as routine, which would allow adjustment at a single meeting based on the factors provided for in Section 6.2.1. Beyond the directed catch and bycatch management measures provided in Sections 6.6 through 6.10, this Section 6.5.3 provides additional bycatch and bycatch mortality reduction programs available for Council use.

6.5.3.1 Full Retention Programs

A full retention program is a regulatory regime that requires participants in a particular sector of the fishery to retain either all of the fish that they catch or all of some species or species group that they catch. Requiring full retention of all or a portion of a vessel's catch allows more careful enumeration of total catch under appropriate monitoring conditions. Full retention requirements also encourage affected fishery participants to tailor their fishing activities so that they are less likely to encounter non-target species. The Council may develop full retention programs for the groundfish fisheries, when such programs are accompanied by an appropriate monitoring mechanism (Section 6.4) and where such programs are sufficiently enforceable (Section 6.10) such that they are not expected to increase total mortality of overfished species. The development of any full retention will be accompanied by an analysis of the practicability of requiring retention of any full retention will be accompanied by an analysis of the

6.5.3.2 Sector-specific and Vessel-specific Total Catch Limit Programs

Total catch limits are defined in Section 2.2.

The Council may specify total catch limits that are transferable or nontransferable among sectors and tradable or non-tradable between vessels.

The Council may develop sector- and/or vessel-specific total catch limit programs for the groundfish fisheries when such programs are accompanied by an appropriate monitoring mechanism (Section 6.4) and where such programs are sufficiently enforceable (Section 6.10) such that they are not expected to increase vessel detection-avoidance activities.

Sector-specific Total Catch Limit Program

A sector-specific total catch limit program is one in which a fishery sector would have access to a predetermined (probably through the harvest specifications and management measure process, Section 6.2, C) amount of a groundfish FMU species, stock, or stock complex that would be allowed to be caught by vessels in that sector. Once a total catch limit is attained, all vessels in the sector would have to cease fishing until the end of the limit period, unless the total catch limit is increased by the transfer of an additional limit amount. A sector-specific total catch limit program could be based on either: 1) monitoring of landed catch and inseason modeling of total catch based on past landed catch and bycatch rates, or 2) monitoring of total catch and real-time delivery of total catch data. If a sector-specific total catch limit, program is based on inseason monitoring of landed catch, a sector would close when inseason total catch modeling estimated that the sector had achieved an FMU species, stock, or stock complex total catch limit. If a sector-specific total catch limit program is based on inseason monitoring of total catch, a sector would close when inseason total catch monitoring estimated that the sector had achieved an FMU species, stock, or stock complex total catch limit. If inseason monitoring of total catch is possible, sector participants in a sector-specific total catch limit program could either fish in an open competition with each other for total catch limits or could cooperate with each other to keep their total catch below total catch limits.

In developing a sector-specific total catch program, the Council will initially consider the following ten groundfish fishery sectors for assignment of total catch limits:

- 1. Non-whiting LE trawl vessels.
- 2. At-sea Pacific whiting catcher-processors.
- 3. LE trawl vessels delivering to at-sea Pacific whiting motherships.
- 4. LE trawl vessels delivering Pacific whiting to shore-based processing plants.
- 5. LE non-trawl vessels.
- 6. Directed open access vessels. These are vessels without a groundfish LE permit that on a per-trip or per-landing basis demonstrate a fishing strategy targeting groundfish.
- 7. Incidental open access vessels. These are vessels that on a per-trip or per-landing basis are not fishing under a groundfish LE permit and not targeting groundfish, but may catch some amount of groundfish incidentally.
- 8. Tribal vessels targeting groundfish (see Section 6.2.5)
- 9. Recreational fishers (fishing from a vessel, from shore, or by another means), including charter (for hire) vessels.

As necessary, the Council will establish criteria for deducting total catch by a particular vessel from a particular sector's total catch limit. For example, the same LE trawl vessel may make landings attributable to the shore-based whiting sector or the non-whiting LE trawl sector, and assignment of a particular landing (and associated bycatch) to one or the other sector would be necessary. Similarly, an open access vessel may target groundfish on a particular trip or time of year, falling into the directed open access sector, while at other times targeting non-groundfish species but catching groundfish incidentally and falling into the incidental open access sector. In general, the composition of a particular vessel's landing and bycatch associated bycatch may be directly monitored or estimated). However, other criteria may be used if appropriate.

Sector-specific total catch limits may be applied to one or more of the ten sectors enumerated above, and separate limits may apply to one or more FMU species, stocks, or stock complexes. Two or more of these sectors may be grouped and assigned an overall total catch limit for a given FMU species, stock, or stock complex; similarly, any of the ten sectors may be further subdivided to create additional sectors for the purpose of assigning a total catch limit for a given FMU species, stock, or stock complex. In considering

which sectors should be assigned a total catch limit for a given FMU species, stock, or stock complex, the Council will consider current and/or projected total catch of the FMU species, stock, or stock complex by vessels in that sector and the capacity of current monitoring programs to provide sufficiently accurate and timely data to manage to a total catch limit, or the feasibility of establishing such a monitoring program for the sector in question.

Vessel-specific Total Catch Limit Program

Vessel-specific total catch limits are similar to individual vessel quotas (see Section 6.9.3) as applied to groundfish FMU species, stocks, or stock complexes, and require more intense monitoring than a sector-specific total catch limit program. Vessel-specific total catch limits may be established for vessels participating in a sector for which sector-specific total catch limits have already been established. Under a vessel-specific total catch limit program, the participating vessels would be monitored inseason and each vessel would be prohibited from fishing once it had achieved its total catch limit for a given FMU species, stock, or stock complex. The Council will establish the criteria necessary to determine what portion of a sector-specific total catch limit will be assigned to any vessel qualifying for a vessel-specific total catch limit. The Council also may attach incentives, such as increased cumulative landing limits, or requirements, such as carrying observers, when assigning total catch limit amounts to a vessel.

Inseason Adjustment of Sector Total Catch Limits

The Council may increase or decrease a sector limit during the limit period (for example, the fishing year or biennial management period), but should only do so in exigent circumstances and based on the criteria described below. If increasing sector limits inseason were to become a common management response, this could erode their effectiveness as incentives to fishery participants to adopt bycatch-reducing techniques and practices. Furthermore, adjusting a sector total catch limit could make the application of vessel-specific total catch limits in that sector difficult. A change in the sector limit would require a corresponding adjustment to each vessel limit, which would have to be accounted for in any monitoring program.

Inseason (during the limit period) the Council should only increase a sector's total catch limit for a constraining species (a species whose ACL/OY or total catch limit prevents attainment of target species' ACLs/OYs) if all of the following conditions are met:

- 1. Total catch monitoring indicates a constraining species' sector total catch limit will be exceeded well before the end of the limit period and the estimated target species' total catch for that sector (for the limit period) is well below the total catch previously predicted for the limit period.
- 2. Monitored and projected total catch in other sectors (with or without sector total catch limits) indicates that the ACLs/OYs for the constraining species in question (established on an annual or other basis) will not be exceeded if the sector total catch limit is increased.

An increase in a sector total catch limit could be done through a transfer from another sector's total catch limit for the same species.

The Council may need to reduce a sector's total catch limit because of an overage in one or more sectors. An overage means total catch that exceeds or is projected to exceed a sector's total catch limit for a particular species or species group. The term overage also applies to sectors not operating under total catch limits if total catch of the species in question (actual or projected) is above previous projections made for those sectors prior to the start of any given period (bimonthly period, fishing year, etc.). The Council could also reduce a sector's total catch limit in the form of a sector-to-sector transfer, as described above. The following principals should apply when considering an inseason downward adjustment in a total catch limit:

- 1. In order to avoid an overage, fishing may be prohibited after the date when a sector's total catch limit is projected to be reached, rather than waiting to close the fishery based on retrospective total catch estimates (available, for example, in the QSM report). This strategy is relevant to sectors without real-time reporting.
- 2. A downward adjustment should only be considered as a last resort when it is being considered for use as a compensation for projected overages in other sectors. Measures to rapidly reduce projected total catch in sectors where the overages are projected to occur, or in sectors without total catch limits, (or for non-catch-limited species) should be considered first. These measures could be, for example, changes to landing limits or changes in the size, configuration, and duration of time/area closures.
- 3. If a sector has an overage that needs to be compensated for by a change in total catch limits for other sectors, any downward adjustment in those sector's total catch limits should reflect an equitable reduction across all sectors, either through a proportional reduction in equivalent total catch limits or through the application of other management measures intended to reduce total catch of the species in question.
- 4. In the case of a reduction that is part of an intra-sector transfer, the criteria described above for an increase shall apply. In no case shall a reduction consequent of a transfer disadvantage the vessels in a sector in comparison to other sectors and with respect to fishing opportunity.

6.5.3.3 Catch Allocation to, or Gear Flexibility For, Gear Types with Lower Bycatch Rates

Catch allocations (Section 6.3), catch limits (Section 6.7), and fishing areas (Section 6.8) may be set so that users of gear types with lower bycatch rates have greater fishing opportunities than users of gear with higher bycatch rates. Increased fishing opportunities for users of gear types with lower bycatch rates could come in the form of increased overall amounts of fish available for directed or incidental harvest, increased landings limits, or increased allowable fishing areas. Increased fishing opportunities made available under this provision may not be provided in such a way that the number of fishing vessels participating in the groundfish fisheries is expected to increase.

6.5.3.4 Recreational Catch and Release Management

The Council may develop recreational catch-and-release programs for any groundfish stock through either the harvest specifications and management measures rulemaking (Section 6.2 C.) or the full rulemaking (Section 6.2 D) processes. The Council will assess the type and amount of groundfish caught and released alive during fishing under such a program and the mortality of such fish. Management measures for such a program will, to the extent practicable, minimize mortality and ensure extended survival of such groundfish.

[Amendment 18, 25]

6.6 Gear Definitions and Restrictions

The Council uses gear definitions and restrictions to protect juvenile fish (trawl mesh size), to disable lost gear so that it no longer catches fish (biodegradable escape panels for pots), to slow the rates of catch in particular sectors (recreational fisheries hook limits), to reduce bycatch of non-target species (trawl configuration requirements), and to protect marine habitat (trawl roller gear size restrictions). Gear types permitted for use in the West Coast groundfish fisheries in Federal waters are listed in Federal regulations at 50 CFR § 660.11 and in a nationwide list of fisheries at 50 CFR § 600.725. No vessel may fish for groundfish in Federal waters using any gear other than those authorized in Federal regulations. Gear definitions and restrictions for both the commercial and recreational fisheries may be revised using either

the specifications-and-management-measures rulemaking process (Section 6.2 C.) or the full rulemaking process (Section 6.2 D.). When developing revisions to gear definitions and restrictions, the Council shall consider the expense of such revisions to fishery participants and the time required for participants to work with gear manufacturers to meet new requirements.

6.6.1 **Commercial Fisheries**

This FMP authorizes the use of trawls, pots (traps), longlines, hook-and-line (mobile or fixed) and setnets (gillnets and trammel nets) as legal gear for the commercial harvest of groundfish.

6.6.1.1 Prohibitions

The use of setnets is prohibited in all waters north of 38° N. latitude.

Bottom trawl gear with footropes larger than eight inches in diameter is prohibited shoreward of a line approximating the 100 fm depth contour, as an EFH protection measure. This boundary line is defined in Federal regulations by precise latitude-longitude coordinates (see $50 \text{ CFR } \S 660$, Subpart C).

Bottom trawl gear with a footrope diameter larger than 19 inches is prohibited in the fishery management area.

The use of dredge gear is prohibited in the fishery management area.

The use of beam trawl gear is prohibited in the fishery management area.

States may implement parallel measures within their state waters (0-3 nm).

Groundfish fishing (often based on gear type) may be subject to depth, area, or seasonal restrictions as described in Federal regulations at $50 \text{ CFR } \S 660$.

6.6.1.2 Trawl Gear

Trawl gear is a cone or funnel-shaped net, which is towed or drawn through the water by one or two vessels. Trawls are used both on the ocean bottom and off bottom. They may be fished with or without trawl doors. They may employ warps or cables to herd fish. Trawl gear includes roller, bottom, and pelagic (mid-water) trawls, and as appropriate, trawls used to catch non-groundfish species but which incidentally intercept groundfish. Trawl gear is complex, usually constructed from several panels of mesh and engineered with varying ropes, chains, and trawl doors to target particular sizes, shapes, or species of fish. The Council has historically worked with the trawl industry and the states, usually through the issuance of EFPs, to develop new trawl gear restrictions or modifications intended to accomplish one or more FMP goals, usually the reduction of bycatch. The following discussion of the Council's efforts to modify trawl gear provides examples of the types of trawl gear modifications that may be made to meet FMP goals, but does not limit the range of future trawl gear restrictions.

In the early-mid 1990s, the Council engaged the trawl industry in a series of discussions on modifying trawl nets to minimize juvenile fish bycatch. Since 1995, bottom trawl nets have been required to be constructed with a minimum mesh size of 4.5 inches, and pelagic trawl nets with a minimum mesh size of three inches. Minimum net mesh sizes are intended to allow immature fish to pass through trawl nets. To ensure the success of minimum mesh size restrictions in allowing juvenile fish to escape trawl nets, the Council also developed restrictions preventing trawlers from using a double-walled codend. Further restrictions related

to this objective include prohibitions on encircling the whole of a bottom trawl net with chafing gear and restrictions on the minimum mesh size of pelagic trawl chafing gear (16 inches).

In 2000, the Council began to distinguish between large and small footrope trawl gear. Large footrope gear is bottom trawl gear with a footrope diameter larger than eight inches, including any material (rollers, bobbins, etc.) encircling the footrope. Small footrope gear is bottom trawl gear with a footrope diameter of eight inches or smaller. Pelagic trawl gear is required to have unprotected footrope gear and is not permitted to be encircled with chains, rollers, bobbins, or other material. Initially, the Council used the distinction between large and small footrope gear to prohibit large footrope use for less abundant, nearshore, and continental shelf species. Large footrope gear allows trawlers to access rockier areas by bouncing the bottom of the trawl net over larger obstructions without tearing. Allowing only small footrope gear in nearshore and shelf areas was intended to reduce trawl access to newly-designated overfished species and their rockier habitats.

In 2002 the Council introduced Rockfish Conservation Areas (RCAs, Section 6.8.2), initially through emergency rulemaking and later through permanent regulations, as a catch control mechanism, primarily for overfished species. Large footrope trawl gear had been prohibited inshore of the trawl RCA (typically the line approximating 100 fm). In 2018 the Council took action to remove the trawl RCA offshore of Oregon and California because the trawl catch shares program (Amendment 20) effectively reduced rockfish bycatch and the trawl RCA was no longer needed as a year-round catch control tool, but the trawl RCA remains in place offshore of Washington. However, large footrope gear (larger than 8") will still be prohibited shoreward of the 100 fm contour, coastwide.

In 2005, the Council introduced new trawl gear requirements for small footrope trawl gear north of 40°10' N. latitude. Trawlers operating inshore of the Trawl RCA are required to use selective flatfish trawl gear, which is configured to reduce bycatch of rockfish while allowing the nets to retain flatfish. Selective flatfish trawl nets have an ovoid trawl mouth opening that is wider than it is tall and the headropes on these nets are recessed from the trawl mouth. This combination of a flattened oval shape and a recessed headrope herds flatfish into the trawl net while allowing rockfish to slip up and over the headrope, without entering the net. Groundfish trawlers worked with the State of Oregon to develop these nets in order to have greater access to healthy flatfish stocks. The Council is working with the State of California to determine whether the selective flatfish trawl net is also effective at reducing the bycatch of southern overfished species in fisheries targeting more abundant southern stocks.

As part of a suite of measures intended to mitigate the adverse effects of fishing in groundfish EFH, the eight inch footrope restriction described here is made permanent, as listed in Section 6.6.1.1. A 100 fm management line, the shoreward boundary of the trawl RCA when the permanent measure was implemented, is identified as the seaward extent of the prohibition.

6.6.1.3 Non-trawl Gear

Non-trawl gear includes all legal commercial gear other than trawl gear. Fixed gear (anchored non-trawl gear) includes longline, pot, set net, and stationary hook-and-line gear. Fixed gear must be marked, individually or at each terminal end as appropriate, with a pole, flag, light, and radar reflector attached to each end of the set, and a buoy clearly identifying the owner. In addition, fixed gear shall not be left unattended for more than seven days. Reporting of fixed gear locations is not required, but fixed gear fishermen are encouraged to do so with the U.S. Coast Guard. Reporting of fixed gear will facilitate compensation claims by fishermen who have lost fixed gear.

Since 1982, groundfish traps have been required to be constructed with biodegradable escape panels in such a manner that an opening of at least eight inches in diameter results when the escape panel deteriorates.

These biodegradable panels ensure that if a trap is lost or not attended for extended periods of time, it will not continue to fish. Gear that has been lost and continues to capture fish while it is unattended is often referred to as ghost fishing gear.

Mesh size in fish pots (traps) also affects the size of fish retained in the trap. By increasing the minimum mesh size in all or part of the trap, small fish may be allowed to escape. There are no minimum mesh size requirements for groundfish pot vessels. However, sablefish is the primary trap gear target species and fishermen are usually paid more per pound for larger-sized sablefish. Thus, there are few incentives for trap fishermen to use smaller mesh sizes.

6.6.2 *Recreational Fisheries*

Recreational fishing is fishing with authorized gear for personal use only, and not for sale or barter. The only types of fishing gear authorized for recreational fishing are hook-and-line and spear. The definition of hook-and-line gear for recreational fishing is the same as for commercial fishing. Hook limits, restrictions on the number of hooks that may be used per fishing line, or on the size or configuration of hooks used in a recreational fishery, have been established as routine management measures under Section 6.2.1. Hook limits are used in the recreational fishery to either constrain recreational fishery effort by limiting the number of hooks per fishing line, or to select for certain species by limiting the size of hooks used.

6.6.3 Bottom-contact Gear

In order to mitigate the adverse impacts of fishing on groundfish EFH, the Council may impose restrictions on a range of gear types collectively termed bottom-contact gear. These are gear types that are designed or modified to make contact with the sea floor during normal use. This includes, but is not limited to, beam trawl, bottom trawl, dredge, fixed gear, set net, demersal seine, dinglebar gear, and other gear (including experimental gear) designed or modified to make contact with the bottom. Gear used to harvest bottomdwelling organisms (e.g., by hand, rakes, or knives) are also considered bottom-contact gear for the purpose of regulation. Other gear, midwater trawl gear for example, although it may occasionally make contact with the sea floor during deployment, is not considered a bottom contact gear because the gear is not designed for bottom contact, is not normally deployed so that it makes such contact, nor is such contact normally more than intermittent. Similarly, vertical hook-and-line gear that during normal deployment is not permanently in contact with the bottom would not be considered bottom-contact gear. For the purpose of regulation, specified legal gear types may be designated bottom contact or non-bottom-contact.

6.7 Catch Restrictions

The FMP authorizes the commercial and recreational harvest of species listed in Chapter 3 of this plan, and provides for limiting the harvest of these species in Chapters 5 and 6. The Council uses a variety of management measures to constrain rates of total catch, including direct limits on amounts that may be taken and landed in commercial and recreational fisheries. Trip limits constrain landed catch in the commercial fisheries; bag limits constrain landed catch in the recreational fisheries. Total catch limits constrain incidental catch amounts permitted in a particular fishery or sector and may refer to either amounts of incidentally caught non-target species that are not discarded (not considered bycatch under the Magnuson-Stevens Act), to amounts of non-target species that are discarded, or to both. Designating certain species as prohibited ensures that the FMP complies with international, Federal, and state regulations and management requirements for non-groundfish species.

Groundfish species harvested directly or incidentally in the territorial sea (0-3 nautical miles) will be counted toward any catch limitations established under the authority of this FMP. These catch restrictions

apply to domestic fisheries off Washington, Oregon, and California. Procedures for designating and adopting catch restrictions are found in Section 6.2.

6.7.1 All Fisheries

Quotas, size limits, and total catch limits may be applied to either commercial (groundfish or non-groundfish) or recreational fisheries.

<u>Quotas</u>. Quotas may be used for certain species. Quotas are specified harvest limits, the attainment of which causes closure of the fishery for that species, gear type, or individual participant. Quotas may be established for intentional allocation purposes or to terminate harvest at a specified point. They may be specified for a particular area, gear type, time period, species or species group, and/or vessel or permit holder. Quotas may apply to either target species or bycatch species.

<u>Size limits</u>. Size limits are used to prevent the harvest of immature fish or fish that have not reached their full reproductive capacity. In some cases, size limits are used in reverse to harvest younger recruit or prerecruits and to protect older, larger spawning stock. Slot limits, which prohibit the retention of fish that are either smaller than a lower size limit or larger than a higher size limit, are used to protect both immature fish and more fecund older fish. Size limits may be applied to all fisheries, but are generally used where fish are handled individually or in small groups such as trap-caught sablefish and recreational-caught fish. Size limits lose their utility in cases where the survival of the fish returned to the sea is low (e.g., rockfish).

<u>Total catch limits</u>. The Council has historically managed total catch of groundfish species by monitoring direct and incidental catch inseason, and then making inseason adjustments to catch and other restrictions to ensure that annual total catch does not exceed allowable harvest amounts. Expected bycatch amounts of overfished species are set aside as anticipated incidental take in various fisheries. Total catch limits, by contrast, are sector-specific or vessel-specific limits on total catch (landed and discarded catch) of groundfish FMU species. A cumulative trip limit is the maximum amount of groundfish species or species group that may be taken and retained, possessed, or landed per vessel in a specified period of time without a limit on the number of landings or trips, unless otherwise specified. In setting the biennial specifications and management measures, the Council will review the total harvestable surplus of individual FMU species or species groups and determine whether there are fishery sectors that may be managed with total catch limits. If a sector or vessel achieves a total catch limit inseason, all vessels in the sector, in the case of sector limits, or the individual vessel, in the case of vessel limits, would have to cease fishing at that time, unless the total catch limit is increased by means of a transfer or trade to the sector or vessel in question. Fisheries managed with total catch limits also must be subject to monitoring and requirements that provide real-time or projected total catch reporting (see Section 6.4).

6.7.2 Commercial Fisheries

<u>Prohibited Species.</u> It is unlawful for any person to retain any species of salmonid or Pacific halibut caught by means of fishing gear authorized under this FMP, unless authorized by <u>50 CFR Part 300, Subparts E</u> or <u>F</u>; or <u>Part 600, Subpart H</u>. State regulations prohibit the landing of crab incidentally caught in trawl gear off Washington and Oregon. However, trawl fishermen may land Dungeness crab in the State of California north of Point Reyes in compliance with the state landing law. Specifically, salmonids are prohibited species for trawl, longline, and pot gear. Halibut may be retained and landed by troll and longline gear only during times and under conditions set by International Pacific Halibut Commission and/or other Federal regulations. Salmon taken by troll gear may be retained and landed only as specified in troll salmon regulations. Groundfish species or species groups under this FMP for which the quota has been reached shall be treated in the same manner as prohibited species. Species identified as prohibited must be returned to the sea as soon as practicable with a minimum of injury when caught and brought aboard, after allowing for sampling by an observer, if any, unless other disposition procedures are specified by regulation. Exceptions may be made for the recovery of tagged fish.

The FMP authorizes the designation of other prohibited species in the future or the removal of a species from this classification, consistent with other applicable law for that species. The designation of other prohibited species or the removal of species from this classification must be made through either the biennial or annual specifications-and-management-measures rulemaking process (Section 6.2 C) or through the full rulemaking process (Section 6.2 D).

<u>Trip limits</u>. A trip limit is the amount of groundfish that may be taken and retained, possessed, or landed from a single fishing trip. Trip limits, trip frequency limits, and trip limits that vary by gear type or fishery may be applied to either groundfish or non-groundfish fisheries. Trip landing limits and trip frequency limits are used to control landings to delay achievement of a quota or HG and thus avoid premature closure of a fishery if it is desirable to extend the fishery over a longer time. Trip landing limits also may be used to minimize targeting on a species or species group while allowing landings of some level of incidental catch. Trip landing limits are most effective in fisheries where the fisherman can control what is caught. In a multispecies fishery, trip limits can discourage targeting while, at the same time, providing for the landing of an incidental catch species that requires a greater degree of protection than the other species in the multispecies catch. Conversely, a trip limit may be necessary to restrict the overall multispecies complex catch in order to provide adequate protection to a single component of that catch.

<u>Trip limits for non-groundfish fisheries.</u> For each non-groundfish fishery considered, a reasonable limit on the incidental groundfish catch may be established that is based on the best available information (from EFPs, logbooks, observer data, or other scientifically acceptable sources). These limits will remain unchanged unless substantial changes are observed in the condition of the groundfish resource or in the effort or catch rate in the groundfish or non-groundfish fishery. Incidental limits or species categories may be imposed or adjusted in accordance with the appropriate procedures described in Section 6.2. The Secretary may accept or reject but not substantially modify the Council's recommendations. The objectives of this framework are to:

- Minimize discards in the non-groundfish fishery by allowing retention and sale, thereby increasing fishing income;
- Discourage targeting on groundfish by the non-groundfish fleet; and
- Reduce the administrative burden of reviewing and issuing EFPs for the sole purpose of enabling non-groundfish fisheries to retain groundfish.

6.7.3 **Recreational Fisheries**

<u>Bag limits</u>. A bag limit is a restriction on the number of fish that may be taken and retained by an individual angler operating in a recreational fishery, usually within a period of a single day. Bag limits have long been used in the recreational fishery and are perhaps the oldest method used to control recreational fishing. The intended effect of bag limits is to spread the available catch over a large number of anglers and to avoid waste.

<u>Boat limits</u>. A boat limit is a cumulative restriction on the total number of fish that may be taken and retained by all of the persons operating from a recreational fishery vessel. Boat limits restrict the overall per-vessel catch in a recreational fishery. A boat limit may prevent an angler from taking what would otherwise be allowed within an individual bag limit, depending on the number of fish already taken on that boat.

<u>Dressing requirements</u>. Anglers may be subject to requirements that they retain the skin on their filleted catch in order to allow port biologists and enforcement officers to better identify recreational catch by species.

[Amendment 18, 19]

6.8 Time/Area Closures

The Council uses a variety of time/area closures to control the directed rate of catch of targeted species, to reduce the incidental catch of non-target, protected (including overfished) species; and to prevent fishing in specified areas in order to mitigate the adverse effects of such activities on groundfish habitat. Time/area closures vary by type both in their permanency and in the size of area closed. When the Council sets fishing seasons (Section 6.8.1) it generally uses a combination of latitude lines and depth zones to close sections of the EEZ for part or all of a fishing year to one or more fishing sectors. RCAs (Section 6.8.2), by contrast, are coastwide fishing area closures bounded on the east and west by lines connecting a series of coordinates approximating a particular depth contour. RCAs are gear-specific and their eastern and western boundaries may vary during the year. RCAs also may be polygons that are closed to fishing for a brief period (less than one year) in order to provide short-term protection for the more migratory overfished or other protected species. As part of Amendment 28, RCAs were removed off the coasts of Oregon and California. Groundfish fishing areas (GFAs) (Section 6.8.4) are enclosed areas of high abundance of a particular species or species group and may be used to allow targeting of a more abundant stock within that enclosed area. Long-term bycatch mitigation closed areas (Section 6.8.4) have boundaries that do not vary by season and are not usually modified annually or biennially. Ecologically important habitat closed areas and the bottom trawl footprint closure (Section 6.8.7) are established in order to mitigate the adverse effects of fishing on EFH. MPAs (Section 6.8.8) are longer-term, discrete closed areas with unchanging boundary lines that may apply to one or more fishing sectors. Because the RCAs, the Yelloweye Rockfish Conservation Area, and the Cowcod Conservation Areas have all been implemented to protect overfished groundfish species, they are collectively referred to in Federal regulations as GCAs.

The coordinates defining the boundaries of time/area closures are published in Federal regulations. In order to ensure consistency between the areas named in this FMP (see below) and corresponding areas defined in Federal regulations, the Council may publish in the groundfish SAFE or other publication detailed specifications for these time/area closures, by means of maps, lists of coordinates, or other descriptors.

6.8.1 Seasons

Fishing seasons are closures of all or a portion of the West Coast EEZ for a particular period and time of year. Seasons may be used to constrain the rate of fishing on a targeted species, to encourage targeting of a more abundant stock during periods of higher aggregation, or to limit catch of a protected species during its spawning season. Seasons may be for the entire fleet, for particular sectors within the fleet, for regions of the coast, or for individual vessels. Designation and adoption of seasons must be made through either a specifications-and-management-measures rulemaking (Section 6.2 C) or a full rulemaking (Section 6.2 D).

Seasons have been used to manage the commercial Pacific whiting trawl and LE non-trawl fisheries. The non-tribal whiting fishery is divided into three sectors: catcher boats that deliver to shorebased processing plants, catcher vessels that deliver to MS at-sea, and at-sea catcher-processors. Each of these sectors is managed with its own season. The shorebased sector also includes an early season for waters off California, to allow vessels in that area to access whiting when it is migrating through waters off California. Both the whiting trawl and the LE non-trawl sablefish fishery are managed with a season that starts in spring and may run to the end of the year, if quota is available. Both the whiting trawl and non-trawl sablefish seasons are specified in regulation and factors affecting the season duration include, but are not limited to, concerns

about incidental catch of other species. Outside the primary seasons for both whiting trawl and non-trawl sablefish, incidental catch allowances (e.g., trip limits) are provided.

In addition to the whiting and sablefish seasons, intended to constrain the directed catch of the target stocks within a particular period, commercial fisheries may be constrained by season to protect overfished species.

Recreational fisheries also may be managed with fishing seasons, either to constrain the directed catch of target species or to reduce the incidental catch of protected species. Fishing seasons with one or more closed periods during the fishing year are intended to reduce catch rates of both more abundant and protected stocks. Seasonal closures are used off all three states—in combination with bag limits, RCAs, and other measures—to prevent recreational fisheries from exceeding allowable harvest levels.

[Amended: 30]

6.8.2 Rockfish Conservation Areas

In September 2002, NMFS implemented an emergency rule at the Council's request to implement a Darkblotched Rockfish Conservation Area to close continental shelf/slope waters north of 40°10' N. latitude. Since January 2003, the Council has used coastwide RCAs, which vary by gear type, to reduce the incidental catch of overfished species in waters where they are more abundant. RCAs may also be used to control catch of groundfish species.

Different gear types have greater or lesser effects on different overfished species. Thus, RCAs are designed to be gear-specific to better target protection for the species most affected by each gear group. For example, darkblotched rockfish and Pacific ocean perch are continental slope species that are most frequently taken with trawl gear, which means that the Trawl RCA must extend out to greater depths in order to protect these species. Under Amendment 28, the Council took action to remove the groundfish trawl RCA off Oregon and California because the trawl catch shares program (Amendment 20) effectively reduced rockfish bycatch and the trawl RCA was no longer needed as a year-round catch control tool. The trawl RCA is a management measure that remains in place off Washington. Yelloweye rockfish, in contrast, is more frequently taken with hook-and-line gear, which means that both the commercial and recreational hook-and-line fisheries require yelloweye rockfish protection measures as part of that species' rebuilding plan. The Non-Trawl RCA is concentrated over the continental shelf. Recreational fisheries can use RCAs as a means to control catch of groundfish species and could use them in conjunction with other recreational management measures such as season closures and bag limits.

RCAs are typically bounded on the east and west by lines drawn between a series of latitude/longitude coordinates approximating certain depth contours. An RCA may also be a polygon, designated by lines drawn between a series of latitude/longitude coordinates, which is closed to fishing for some period less than a year in duration. RCA boundary lines are described in Federal regulations at 50 CFR § 660.71-74. The size and shape of the RCAs may be adjusted inseason via the routine management measures processs (Section 6.2.1) by using previously adopted potential RCA boundary lines. Designation and adoption of new potential RCA boundary lines must be made through either a specifications-and-management-measures rulemaking (Section 6.2 C) or a full rulemaking (Section 6.2 D). [Amended: 30]

6.8.3 Block Area Closures

Block Area Closures (BACs) are a groundfish specific management tool introduced as part of Amendment 28. BAC boundary lines are latitudes and depth contour approximations described in Federal regulations at <u>50 CFR §660.11</u> and §§71-74. BACs (one or more) may be closed or reopened inseason via the routine

management measures process (Section 6.2.1) using latitude and longitude boundary lines defined in regulation. One or more of those polygons, as necessary may be closed to vessels using groundfish bottom trawl gear, midwater trawl gear, or non-trawl gear to control harvest of groundfish species or to reduce the catch of protected or prohibited species. BACs are available in the EEZ off Washington, Oregon, and California and are intended as a catch control mechanism, not for habitat protection.

[Amended: 30]

6.8.4 Groundfish Fishing Areas

GFAs are areas of known higher abundance of a particular species or species group, enclosed by straight lines connecting a series of coordinates. A GFA designated for a more abundant species may be used to constrain fishing for that species within that particular GFA. For example, fishing for schooling species, such as petrale sole or chilipepper rockfish, could be allowed within GFAs for those species, but not permitted outside of the GFAs, where fisheries for those species might have higher incidental catches of overfished species.

Designation and adoption of GFAs must be made through either a specifications-and-managementmeasures rulemaking (Section 6.2 C) or a full rulemaking (Section 6.2 D)

6.8.5 Long-term Bycatch Mitigation Closed Areas

The Council uses a variety of time/area closures to reduce incidental catch of protected species in fisheries targeting groundfish. The extent and configuration of these areas do not vary seasonally and they are not usually modified through inseason or biennial management actions. The location and extent of these areas are described by coordinates published in permanent regulations. Modification of such permanent regulations would require full notice-and-comment rulemaking as described at Section 6.2 D. As of January 1, 2024, there are five such closures:

- Klamath River Conservation Zone (KRCZ): Established in Federal regulations in 1993 to reduce the bycatch of threatened and endangered salmon stocks taken incidentally in the Pacific whiting fisheries. The KRCZ is closed to trawling for whiting. Its boundaries are defined as the ocean area surrounding the Klamath River mouth, bounded on the north by 41°38.80 N. latitude, on the west by 124°23.00' W. longitude, and on the south by 41°26.63' N. latitude.
- 2. Columbia River Conservation Zone (CRCZ): Established in Federal regulations in 1993 to reduce the bycatch of threatened and endangered salmon stocks taken incidentally in the Pacific whiting fisheries. The CRCA is closed to trawling for whiting. Its boundaries are defined as the ocean area surrounding the Columbia River mouth, bounded by a line extending for six nautical miles due west from North Head along 46°18.00' N. latitude to 124°13.30' W. longitude, then southerly along a line of 167 true to 46°11.10' N. latitude by 124°11.00' W. longitude, then northeast along Red Buoy Line to the tip of the south jetty.
- 3. Western Cowcod Conservation Area (CCA): First established via *Federal Register* notice in 2001 as an overfished species rebuilding measure. Incorporated into the FMP (Section 4.5.4.6) via Amendment 16-3 and established in Federal regulation in 2005 to reduce the bycatch of cowcod taken incidentally in all commercial and recreational fisheries for groundfish. The Western CCA is an area south of Point Conception defined by a series of coordinates describing straight lines enclosing a polygon. In 2024, the Western CCA was removed for non-trawl fisheries under Amendment 32 and remains in place for trawl gear.
- 4. Eastern Cowcod Conservation Area: First established via *Federal Register* notice in 2001 as an overfished species rebuilding measure. Incorporated into the FMP (Section 4.5.4.6) via

Amendment 16-3 and established in Federal regulation in 2005 to reduce the bycatch of cowcod taken incidentally in all commercial and recreational fisheries for groundfish. The Eastern CCA is an area west of San Diego defined by a series of coordinates describing straight lines enclosing a polygon. In 2024, the Eastern CCA was removed for non-trawl fisheries under Amendment 32 and remains in place for trawl gear.

5. Yelloweye Rockfish Conservation Areas (YRCA): First established via *Federal Register* notice 2003 as an overfished species rebuilding measure. Established in Federal regulation in 2005 to reduce the bycatch of yelloweye rockfish in the recreational fisheries for groundfish and halibut. Specific YRCAs and their coordinates are defined at 50 CFR 660.70 with closures defined in Subparts C-G.

6.8.6 Essential Fish Habitat Conservation Areas

The Council has identified discrete areas that are closed to fishing with specified gear types, or are only open to fishing with specified gear types. These essential fish habitat conservation areas (EFHCAs) are applicable to all fisheries unless specified, and are intended to mitigate the adverse effects of fishing on groundfish EFH. They may be categorized as bottom trawl EFHCAs (BT EFHCAs) and bottom contact EFCHAs (BC EFHCAs). For the purpose of regulation each type of closed area should be treated differently. For the purposes of BT EFHCAs, the definition of bottom trawl gear in Federal regulations applies (see also Section 6.6.1.2) except in waters off of California, where Scottish seine (or fly dragging) gear is not considered bottom trawl gear. The Scottish seine method deploys a weighted rope on the sea bottom in a large polygonal shape, attached to a codend net. The rope is pulled across the bottom, herding the fish towards the codend, which is then hauled back to the vessel. For the purposes of BC EFHCAs, the areas identified include specific bottom contact gear restrictions.

The extent and configuration of these areas do not vary seasonally and they are not usually modified through inseason or biennial management actions. The location and extent of these areas are described by a series of latitude-longitude coordinates enclosing a polygon published in permanent Federal regulations. For areas closed to bottom trawl gear, the habitat conservation framework may be used to eliminate such closed areas or modify their location or extent. Modification of permanent regulations describing these closed areas would require full notice-and-comment rulemaking as described at Section 6.2 D. As of June 30, 2006, under Amendment 19, there were 50 such closures. With the implementation of Amendment 28, there were several additional closures and spatial modifications to several existing closures. As part of Amendment 32, the Council took action to add a subset of BC EFHCAs which apply only to non-trawl groundfish and non-tribal commercial directed Pacific halibut.

Bottom Trawl EFHCAs

Off of Washington:

- 1. Olympic 2
- 2. Biogenic 1
- 3. Biogenic 2
- 4. Quinault Canyon[†]
- 5. Grays Canyon*
- 6. Biogenic 3
- 7. Willapa Canyonhead†
- 8. Willapa Deep†

Off of Oregon:

1. Astoria Canyon

- 2. Astoria Deep†
- 3. Nehalem Bank/Shale Pile*
- 4. Garibaldi Reef N[†]
- 5. Garibaldi Reef S†
- 6. Siletz Deepwater
- 7. Daisy Bank/Nelson Island*
- 8. Newport Rockpile/Stonewall Bank*
- 9. Hydrate Ridge†
- 10. Heceta Bank*
- 11. Deepwater off Coos Bay
- 12. Arago Reef†
- 13. Bandon High Spot*
- 14. Rogue Canyon
- 15. Rogue River Reef†

Off of California:

- 1. Brush Patch[†]
- 2. Trinidad Canyon[†]
- 3. Mad River Rough Patch[†]
- 4. Samoa Deepwater†
- 5. Eel River Canyon*
- 6. Blunts Reef*
- 7. Mendocino Ridge*
- 8. Delgada Canyon*
- 9. Tolo Bank
- 10. Navarro Canyon[†]
- 11. Point Arena North
- 12. Point Arena South Biogenic Area*
- 13. The Football[†]
- 14. Gobblers Knob[†]
- 15. Point Reyes Reef†
- 16. Cordell Bank/Biogenic Area*
- 17. Rittenburg Bank†
- 18. Farallon Islands/Fanny Shoal/Cochrane Bank*
- 19. Farallon Escarpment⁺
- 20. Half Moon Bay
- 21. Pescadaro Reef†
- 22. Pigeon Point Reef†
- 23. Ascension Canyonhead†
- 24. South of Davenport[†]
- 25. Monterey Bay/Canyon*
- 26. West of Sobranes Point†
- 27. Point Sur Deep*
- 28. Big Sur Coast/Port San Luis*
- 29. La Cruz Canyon†
- 30. West of Piedras Blancas State Marine Conservation Area†
- 31. East San Lucia Bank
- 32. Point Conception
- 33. Hidden Reef/Kidney Bank
- 34. Catalina Island
- 35. Potato Bank*

- 36. Cherry Bank
- 37. Cowcod Conservation Area East
- 38. Southern California Bight[†]

*These areas were modified as part of Amendment 28. †These areas were added as part of Amendment 28.

Bottom Contact EFHCAs

Off of Oregon:

- 1. Thompson Seamount
- 2. President Jackson Seamount

Off of California:

- 1. Cordell Bank (within 50 fm isobath)
- 2. Harris Point
- 3. Richardson Rock
- 4. Scorpion
- 5. Painted Cove
- 6. Davidson Seamount (fishing below 500 fm prohibited, see below)
- 7. Anacapa Island
- 8. Carrington Point
- 9. Judith Rock
- 10. Skunk Point
- 11. Footprint
- 12. Gull Island
- 13. South Point
- 14. Santa Barbara

All of the BC EFHCAs off of California occur within the Cordell Bank, Monterey, or Channel Islands National Marine Sanctuaries. Mitigation measures implemented under Magnuson-Stevens Act authority are also intended to support the goals and objectives of these sanctuaries. In the case of Davidson Seamount, it is unlawful for any person to fish with bottom contact gear, or any other gear that is deployed deeper than 500 fm, within the area defined in Federal regulations. Closing the water column below 500 fm to fishing in addition to prohibiting fishing that contacts the bottom addresses Sanctuary goals and objectives while practicably mitigating the adverse effects of fishing on groundfish EFH.

As a part of Amendment 32, the Council developed EFHCAs to prohibit non-trawl bottom contact groundfish and non-tribal commercial directed halibut fishing activity. These EFHCAs generally overlap with BT EFHCAs. All of these EFHCAs are off of Oregon:

- 1. Nehalem Bank East
- 2. Bandon High Spot East
- 3. Arago Reef West
- 4. Garibaldi Reef North*
- 5. Garibaldi Reef South*
- * These areas are the same as the BT EFHCAs.

These closures and coordinates defining their boundaries are published in Federal regulations.

6.8.7 Bottom Trawl Footprint Closure

As a precautionary measure, to mitigate the adverse effects of fishing on groundfish EFH, the West Coast EEZ seaward of a line approximating the 700 fm isobath is closed to bottom trawling to the outer extent of groundfish EFH (3,500 m, see Section 7.2, or the seaward boundary of the EEZ). This is called the footprint closure because the 700 fm isobath is an approximation of the historic extent of bottom trawling in the management area. This closure is therefore intended to prevent the expansion of bottom trawling into areas where groundfish EFH has not historically been adversely affected by bottom trawling. Because this closure applies to an area where bottom trawling effort has been limited or nonexistent, the socioeconomic impacts of this closure are modest. Under Amendment 28, the boundary line that approximates the 700 fm isobath off the north California coast and off Monterey Bay, CA was modified slightly, resulting in relatively small reopenings and closures that affect less than 20 mi².

6.8.8 Marine Protected Areas

Executive Order (EO) 13158 on MPAs was signed on May 26, 2000. This EO defines MPAs as "any area of the marine environment that has been reserved by Federal, state, territorial, tribal, or local laws or regulations to provide lasting protection to part or all of the natural or cultural resources therein." Under this FMP, MPAs include all marine areas closed to fishing for any or all gear group(s), by the FMP or implementing Federal regulations for conservation purposes, and which have stable boundaries over time (thereby providing lasting protection). In 2005, the Marine Protected Areas Federal Advisory Committee on Establishing and Managing a National System of Marine Protected Areas made several recommendations on specifying this definition of MPA. They define lasting protection as enduring long enough to enhance the conservation, protection, or sustainability of natural or cultural marine resources. The minimum duration of "lasting" protection ranges from ten years to indefinite, depending on the type and purpose of MPA. The use of the term "indefinite" indicates permanent protection while recognizing that an MPA designation and level of protection may change for various reasons, including changes in the resources so protected and in how society values those resources. Although all of the time/area closures described in Sections 6.8.2-6.8.6 may be modified through full notice-and-comment rulemaking, most either are practically permanent (portions of the GCAs) or are intended to be permanent (habitat closed areas and the trawl footprint closure). These time/area closures offer lasting protection and may be considered MPAs. New MPAs may be established or these MPAs may be revised through either a specifications-and-management-measures rulemaking (Section 6.2 C) or a full rulemaking (Section 6.2 D). [Amendment 18, 19]

6.8.9 **Deep Water Bottom Contact Gear Closure**

Amendment 28 to the Groundfish FMP established a deep water bottom contact gear closure in the EEZ in waters deeper than 3500m (the deepest extent of EFH). Although still inside the EEZ, waters deeper than 3500m are not identified as groundfish EFH. Amendment 28 closed these waters to all bottom contact fishing gear, to protect deep water habitats including deep sea corals. Because these waters are outside of Groundfish EFH, the closure will be implemented via MSA discretionary authorities in Sections 303(b)(2).

Exceptions could be made to this closure, but only if a permittee or vessel owner were to apply for and receive approval from the Council to do so via an EFP issued by NMFS, through established procedures described in Chapter 8.

[Amendment 28]

6.8.10 Groundfish Exclusion Areas

Groundfish Exclusion Areas (GEAs) are intended to mitigate impacts to sensitive environments from certain groundfish fishing activity. GEAs may be established or revised through either a specifications-and-management-measures rulemaking (Section 6.2 C) or a full rulemaking (Section 6.2 D). Coordinates for GEAs can be found in the Federal Regulations.

[Amendment 32, Amendment 34]

6.9 Measures to Control Fishing Capacity, Including Permits and Licenses

Permits and licenses are used to enumerate participants in an industry and, if eligibility requirements are established or the number of permits is limited, to restrict participation. Participation in the Washington, Oregon, and California groundfish fishery was partially limited beginning in 1994 when the Federal vessel license limitation program was implemented (Amendment 6). Subsequently, Amendment 9 further limited participation in the fixed-gear sablefish fishery by establishing a sablefish endorsement. (Chapter 11 describes the groundfish LE program in detail.) In December 2003, NMFS reduced participation in the LE trawl fleet by buying the fishing rights to 91 LE trawl vessels and the Federal and state permits associated with those vessels. There is currently no Federal permit requirement for other commercial participants (fishers or processors) or recreational participants (private recreational or charter). The Council may determine that effective management of the fishery requires accurate enumeration of the number of participants in these sectors and may establish a permit requirement to accomplish this. In addition, some form of limitation on participation may be necessary in order to protect the resource or to achieve the objectives of the FMP.

Other forms of effort control commonly used include vessel length endorsements, restrictions on the number of units of gear, or restrictions on the size of trawls, or length of longlines, or the number of hooks or pots. Effort restrictions related to gear may also be useful in reducing bycatch.

Permit applications for the domestic groundfish fishery, including but not limited to exempted fishing permits, are authorized by this FMP. Such applications may include vessel name, length, type, documentation number or state registration number, radio call sign, home port, and capacity; owner and/or operator's name, mailing address, telephone number, and relationship of the applicant to the owner; type of fishing gear to be used, if any; signature of the applicant, and any other information found necessary for identification and registration of the vessel.

6.9.1 General Provisions For Permits

Federal permits may be required for individuals or vessels that harvest groundfish and for individuals or facilities (including vessels) that process groundfish or take delivery of live groundfish. In determining whether to require a harvesting or processing permit, and in establishing the terms and conditions for issuing a permit, the Council may consider any relevant factors, including whether a permit:

- 1. Will enhance the collection of biological, economic, or social data.
- 2. Will provide better enforcement of laws and regulations, including those designed to ensure conservation and management and those designed to protect consumer health and safety.
- 3. Will help achieve the goals and objectives of the FMP.
- 4. Will help prevent or reduce overcapacity in the fishery.
- 5. May be transferred, and under what conditions.

Separate permits or endorsements may be required for harvesting and processing or for vessels or facilities based on size, type of fishing gear used, species harvested or processed, or such other factors that may be appropriate. The permits and endorsements are also subject to sanctions, including revocation, as provided by Section 308 of the Magnuson-Stevens Act.

In establishing a permit requirement, the Council will follow the full-rulemaking procedures in Section 6.2 D.

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 LE 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. 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 6.9.3.1) mothership processors in the Pacific whiting fishery must possess a mothership (MS) permit. Like groundfish LE 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 LE non-trawl sablefish fishery. 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 LE permits or to those in the open access or recreational fisheries, is a license limitation program.

6.9.3 **Fishery Rationalization**

6.9.3.1 The Trawl Rationalization Programs

The trawl rationalization program applies to vessels holding trawl-endorsed groundfish LE 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 non-whiting shoreside LE 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.

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 was 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 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).

6.9.4 Facilitating Public-Private Partnerships that Mitigate EFH Impacts and May Reduce Capacity

If consistent with the goals and objectives of this FMP, the Council may facilitate and encourage private purchases of groundfish LE permits and corresponding vessels in order to mitigate EFH impacts by reducing fleet capacity. Private purchases intended solely to reduce fishing capacity would permanently foreclose the future use of subject permits and vessels in west coast groundfish fisheries, if like the federally-sponsored west coast groundfish trawl buyout program. Aside from any socioeconomic benefits, reducing fleet fishing capacity can mitigate adverse impacts of fishing on groundfish EFH to the degree that fishing activity with adverse consequences is reduced. In such cases where multiple objectives are being addressed, arrangements other than the immediate or permanent retirement of the permit and/or vessel may be a feature of the agreement. Contracts for the purchase of groundfish LE permits and/or vessels may contain conditions specifying that the execution of the contract is contingent on the implementation of other measures to mitigate the adverse impacts of fishing on groundfish EFH. At the same time, the Council will take into account impacts on the segment of the fishing industry and fishing communities that are not a party to such contracts, and also take into account related FMP objectives 12, 14, 15, and 16 (Section 2.1). Mitigation measures may be contingent on Council action or recommendations, and the Council will strive to conduct its decision-making in such a way as to facilitate the private negotiation of such contract conditions. If contingent mitigation measures include establishing new areas closed to bottom trawl, or the modification of the location and extent of existing areas, the habitat conservation framework described in Section 6.2.4 may be used to implement such areas by regulatory amendment, using the procedures described under Section 6.2 D.

6.9.5 Capacity Reduction Data Collection

The current condition of the groundfish fisheries of the Washington, Oregon, and California region is such that further reduction of the LE fleet may be required in the near future. Research and monitoring programs may need to be developed and implemented for the fishery so that information required in a capacity reduction program is available. Such data should indicate the character and level of participation in the fishery, including (1) investment in vessel and gear; (2) the number and type of units of gear; (3) the distribution of catch; (4) the value of catch; (5) the economic returns to the participants; (6) mobility between fisheries; and (7) various social and community considerations. [Amendment 18, 19, 20]

6.10 Fishery Enforcement and Vessel Safety

The enforceability of fishery management measures affects the health of marine resources and the safety of human life at sea. When considering new management measures or reviewing the current management regime, the Council will consider the fishery and its characteristics, assess whether the measures are sufficiently enforceable to accomplish the objective of those management measures, and describe measures to be taken to reduce risks to the measures' enforceability. For example, the Council introduced depth-based management (See RCAs at Section 6.8.2) in 2003 to protect overfished groundfish species with areas closed to fishing. The Council's subsequent recommendation to implement VMS requirements improved the enforceability of the closed areas so that the closed areas could accomplish the Council's management objective of reducing overfished species catch by preventing vessels from fishing in areas where overfished species are more abundant.

If new management measures are under development, the Council will determine whether requirements are needed to facilitate the enforcement of new management measures.

During the development of new management measures, the Council will consider what measures are also needed to facilitate enforcement. When assessing if the measures are sufficiently enforceable, information should be obtained from:

- Fish tickets inspections and audits;
- Enforcement reports;
- Discussions with State and Federal fisheries agents and officers;
- USCG input;
- Observer program reports;
- Stakeholder input; and
- Other relevant information suggested by the Enforcement Consultants and the public.

When assessing if the measures are sufficiently enforceable, consideration should be given to enforcement risks from:

- <u>Regulations that are complex and difficult to understand</u>: Regulations that are clear in meaning and devoid of exemptions allow little interpretation of their meaning, making it clear to fishers what they can or cannot do.
- <u>Catch limit evasion</u>: This describes the potential for operators to either not declare, under-declare or report catch as other species or species groups on fish tickets; the potential for fishing vessels to offload to unauthorized processing or tending vessels at sea.
- <u>Obscure chain of possession</u>: Required documentation and labeling requirements make the fish distribution system more transparent. The ability to track a product back from the distributor to the

harvester gives enforcement officers a powerful tool. It also promotes voluntary compliance by distributors and harvesters alike.

- <u>Unaccounted-for bycatch</u>: This describes the potential for vessels to high grade their catch (discard undesirable sizes or species of fish in order to retain desirable sizes or species) in a manner that increases bycatch mortality.
- <u>Unauthorized fishing</u>: This describes the potential for operators to fish undetected in closed areas, in restricted areas with unauthorized gear, or during closed seasons.

6.10.1 Managing Enforcement Risks

The objective of enforcement is to ensure in a cost-effective way that all fishing is conducted in accordance with fishery regulations. During the development of new management measures, the Council will consider what measures are also needed to facilitate enforcement. When managing the enforcement risks, consideration should be given to:

- <u>Complexity</u>: Complexity in a management regime can reduce enforceability by making the regime confusing to both fishery participants and enforcement agents. When the Council is developing new management measures, it shall evaluate those measures for their complexity to determine whether management complexity is necessary and whether there are ways to reduce the complexity of new management recommendations.
- <u>Availability and adequacy of surveillance, monitoring, and inspections</u>: What fishery surveillance, monitoring, and inspection methods are available from Federal and State agencies? Are these methods adequate to enforce the measure or measures under Council consideration?
- <u>Compliance behavior</u>: Are the proposed measures adequately enforceable such that they will change fisher behavior in a way that achieves intended results? Are the proposed measures adequately enforceable such that fishers who attempt to evade detection of illegal behavior are not reducing fishing opportunities for those fishers who comply with management measures?
- <u>Unintended consequences</u>: The Council should evaluate the range of behaviors and possible effects that could result if regulations were not adequately enforceable, including: collusion between processors and harvesters, high-value catch recorded as low-value catch, direct sales to retailers without fish tickets being recorded, offloading at-sea to unauthorized vessels, etc.
- <u>Educational programs for public</u>: How does the Council plan to educate the public on new management measures and requirements? Do Council public education efforts, in combination with Federal, State, and Tribal efforts allow adequate time for fishery participants to be made aware of changes to regulations?
- <u>Officer training</u>: Have Federal and State enforcement agents and officers been adequately trained in new fishery management regulations? Do the Enforcement Consultants or the Council have training recommendations to ensure that new regulations are clearly understood by those enforcing the regulations?
- <u>Consistent regulations</u>: To the extent possible, similar management measures across the Pacific Council's FMPs, and between State and Federal jurisdictions, should be implemented through a consistent and common regulatory structure.

6.10.2 Vessel Safety

The Council will take safety issues into account in developing management recommendations, although some safety issues may not be under Council control. For example, the Council may set a fishing season such that participants are able to choose when they participate, but the Council cannot assure that weather conditions will be favorable to all participants throughout that season. The Council will review any new regulatory or management measures recommendations it makes to determine whether such recommendations:

- Improve the safety of fishing conditions for fishery participants.
- Offer new safety risks for fishery participants that could be remedied with revisions to the proposed requirements that would not otherwise weaken the effects of those requirements.

On safety issues, the Council shall consult with its EC and the public, and particularly with the U.S. Coast Guard on any search-and-rescue issues that might arise through proposed regulatory requirements.

6.10.3 Vessel and Gear Identification

The FMP authorizes vessel and gear identification requirements, which may be modified as necessary to facilitate enforcement and vessel recognition. Vessel marking requirements are described in Federal regulations at <u>50 CFR §660.20</u> and generally require that each vessel be clearly marked with its vessel number, such that it may be identified from the air or from approaching rescue/enforcement vessels at sea. Vessels may also be identified via transmissions of their position locations under a VMS program. Federal requirements implementing the Council's VMS program are found in regulation at <u>50 CFR §660.14</u>. Gear identification requirements are described in Federal regulations at 50 CFR §660.20 and generally require that fixed gear be marked with the associated vessel's number so that the gear's owner may be identified.

6.10.4 *Prohibitions and Penalties*

Fishery participants are subject both to Federal prohibitions that apply nationwide and to those that apply just to participants in the west coast groundfish fisheries. Federal regulations on nationwide fishery prohibitions are found at <u>50 CFR §600.725</u>. Federal regulations on fishery prohibitions specific to the west coast groundfish fisheries are found at <u>50 CFR §660.12</u>. Participants in the west coast groundfish fisheries are also subject to vessel operation and safety requirements of the U.S. Coast Guard (see Federal regulations at Titles 33 and 46).

Federal regulations at <u>50 CFR §600.735</u> state "Any person committing, or fishing vessel used in the commission of a violation of the Magnuson-Stevens Act or any other statute administered by NOAA and/or any regulation issued under the Magnuson-Stevens Act, is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Magnuson-Stevens Act, to this section, to 15 CFR part 904 (Civil Procedures), and to other applicable law."

[Amendment 18]

CHAPTER 11 GROUNDFISH LIMITED ENTRY

Groundfish LE permits and endorsements confer a right to participate in the west coast groundfish fishery with LE gear in accordance with the LE system established under the groundfish FMP as modified by this chapter of the FMP (created under Amendment 6) or any future amendment which may modify or even abolish the LE system. The permits and endorsements are also subject to sanctions, including revocation, as provided by the Magnuson Fishery Conservation and Management Act, 16 USC at 1858(g) and <u>15 CFR</u> Part 904, Subpart D.¹

11.1.1 Fisheries Within the Scope of the Limited Entry Program

The provisions of this chapter apply only to the commercial groundfish fisheries. Regulations and allocations for the treaty Indian and recreational fisheries are not affected by the provisions of this chapter unless specifically mentioned. All harvest guidelines, quotas and catches referenced are those specific to the non-treaty commercial fisheries.

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 Councilmanaged groundfish species with under the limited access fishery regulations.

Vessels using gear without a permit endorsed for one of those gears may continue to catch groundfish under an open access system unless otherwise permitted. 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).

11.2.2 Allocations Between the Limited Entry and Open Access Fisheries and Management of the Open Access Fishery

1. If the Council determines that an allocation between LE and open access participants is necessary (such as to prevent harvest in excess of annual catch limits), then allocations to each sector will be established as needed through the biennial specifications process.

2.

- a. 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 rulemaking under the appropriate framework in Chapter 6 of this plan.
- b. 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 5.4 of this plan.

¹ It is intended that a statement of the nature of the interest created be included on the groundfish LE permit.

- 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 groundfish catch by a vessel registered to an LE permit will be counted against the LE allocation for the limited entry gear(s) that the permit is endorsed for when the fishery for the limited entry gear is allowed, except when the vessel is fishing in a fishery for which the catch has already been accounted for in the preseason set-asides deducted from the ACLs. 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 or otherwise prohibited. Once the limited entry fishery for the gear for which the permit is endorsed has closed, any groundfish landings by the vessel with open access gear will count toward the allocation covering the open access fishery. The catch of vessels fishing without LE permits will count toward the allocation covering the open access fishery regardless of what open access gear is used, except when the vessel is participating in a fishery for which the catch has already been accounted for in the preseason set-asides deducted from the ACLs.
- 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.
 - 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. However, the Council will consider providing higher trip limits to LE vessels compared to open access vessels due to investments in the fishery history to qualify for an LE permit when first issued or in the subsequent acquisition or lease of the LE permit.

11.2.3 **Ownership Restriction and Changes in Ownership**

- 1. Only entities (human beings, corporations, etc.) qualified to own a U.S. fishing vessel may be issued or may hold (by ownership or otherwise) an LE permit. (Foreign ownership of LE permits should be limited to the maximum degree possible given what is allowed under the law.)
- 2. Ownership of a permit will be considered to change when there is an ownership change on U.S. Coast Guard documents; however, an owner can submit documents to demonstrate that the controlling interest has not changed and therefore the change in documentation is not a change in ownership.
- 3. An entity qualified to hold an LE permit may hold more than one LE permit. For the sablefish permit stacking program, additional requirements can be found in Subpart E of the Federal Groundfish regulations.
- 4. For the purpose of provisions specifically identified by the Council, NMFS may promulgate regulations which define a change in ownership of a permit as a change in the identity or ownership interest of a corporation or partnership owning a permit.

11.2.4 Gear Endorsements

1. An LE permit confers no rights without a valid gear endorsement attached.

- 2. As of Amendment 13 to the FMP, there is only one functioning type of endorsement, the "A" endorsement. With Amendment 13, the provisional "A" endorsement, the "B" endorsement, and the designated species "B" endorsements were removed as expired or defunct.
- 3. Gear endorsements will be affixed to the LE permit and specify the type of gear(s) which may be used to catch Council-managed groundfish.
- 4. A gear endorsement for a particular gear authorizes the catch of all Council-managed groundfish species with that gear(s), except in the case of fishing for which a non-trawl sablefish endorsement is required (see Section 11.2.6.1). LE vessels using non-trawl gear to catch sablefish against the LE quota north of 36° N latitude are required to hold non-trawl sablefish endorsements during periods specified in the regulations, in addition to the required gear endorsement.
- 5. More than one gear endorsement may be affixed to a single LE permit.
- 6. Gear endorsements are required for LE-permitted vessels to catch groundfish under the regulations governing the LE fishery.
 - a. Non-Trawl Gear Usage for Vessels with a Permit Endorsed for the Gear. If a vessel has nontrawl gear on board, and the vessel is registered to an LE permit that is endorsed for non-trawl gear, 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 catch share program using non-trawl gear for which it holds an endorsement, then the catch share portion of the LE fishery regulations will apply to the vessel for that period.
 - b.
- 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 non-trawl gear without a LE endorsement for those gears must cover their landings with trawl IFQ and comply with the provisions of the trawl IFQ program. Open access sector cumulative landing limits (also known as trip limits) 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.
- 7. Depending on the type of gear endorsement (see Section 11.3 on the specific type of gear endorsements):
 - a. the period for which the gear endorsement is valid may be limited, and
 - b. the gear endorsement may or may not remain valid when the LE permit is transferred.²
- 8. Gear endorsements are not separable from the LE permit and therefore may not be transferred separately from the LE permit.³
- 9. Limitations which apply to a given gear endorsement shall not restrict the use of any other gear endorsement on the same LE permit.
- 10. Rules on the issuance of gear endorsements and other characteristics of the gear endorsements are specified under sections on each type of gear endorsement (see Section 11.3).

² Unless otherwise noted:

a. Transferable means separable from the vessel owner and vessel.

b. LE permit transferability, with respect to an owner, means the LE permit may be transferred, inherited, sold, bartered, traded, given or otherwise alienated from the LE permit owner.

c. LE permit transferability, with respect to a vessel, means the LE permit may be registered for use with a different vessel.

³ The intent of this provision is to not allow the fishing capacity to expand by separate transfer of endorsements which might otherwise go unused.

11.2.5 Sector Endorsements

11.2.5.1 Non-Trawl Sablefish Endorsements

- 1. A non-trawl sablefish endorsement for LE permits is required for LE non-trawl vessels to take sablefish against the LE non-trawl allocation and as part of the primary fishery, the major LE non-trawl sablefish harvest opportunities north of 36° N latitude. Such endorsements are not required to harvest under non-trawl LE trip-limit or other regulations intended to allow low level or incidental harvest.
- 2. The non-trawl sablefish endorsement will be affixed to the permit.
- 3. The non-trawl sablefish endorsement will remain valid when the permit is transferred.
- 4. Non-trawl sablefish endorsements are not separable from the LE permit and therefore may not be transferred separately from the LE permit.
- 5. Limitations which apply to the non-trawl sablefish endorsement and fishing there under 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 non-trawl sablefish endorsements and other characteristics of the endorsements are specified in Section 11.2.

11.2.5.2 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.

11.2.5.3 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.

11.2.6 Size Endorsement Will Specify the Vessel Length

The length for which the LE permit is endorsed will be changed only when LE permits are combined, as per Section 11.2.11.⁴ 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.⁵

Under the sablefish permit stacking program, only one permit must meet the length overall of the vessel holding the permits.

⁴ 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.

⁵ 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.

11.2.7 An LE Permit and Necessary Gear Endorsements Will Be Held by the Owner of Record of the Vessel

- 1. The vessel owner is responsible for acquiring and holding an LE permit with the necessary gear endorsement(s) for each vessel that is required to have an LE permit to catch Council-managed groundfish under the LE system (vessels fishing under the limited access quota and regulations).
- 2. The vessel owner is responsible for acquiring and holding an LE permit with the non-trawl endorsement and non-trawl sablefish endorsement(s), for each vessel participating in the sablefish tier fishery.
- 3. The vessel owner is responsible for maintaining NMFS-required documentation of the LE permit on board the vessel.
- 4. The LE permit will be used with one vessel only. That vessel must be declared and registered with the NMFS issuing authority. Registration is incomplete until acknowledged in writing by NMFS. (Transfer of an LE permit to a different vessel is allowed as per Section 11.2.9.)
- 5. A vessel owner may not use a vessel, or allow a vessel to be used, to catch any Council-managed groundfish under the limited access quota and regulations unless the vessel owner holds an LE permit with gear endorsement(s) which explicitly allows such catch, and the LE permit has been registered with NMFS for use with that vessel.
- 6. A vessel owner may not use a vessel, or allow a vessel to be used, to catch any Council-managed sablefish with non-trawl gear against the LE non-trawl sablefish allocation as part of the primary sablefish fishery specified in the regulations and north of 36° N latitude, unless the vessel owner holds an LE permit with a non-trawl gear endorsement and a sablefish endorsement, and the LE permit has been registered with NMFS for use with that vessel. Sablefish endorsements are not required to harvest under non-trawl LE trip-limit or other regulations intended to allow low level or incidental harvest.

11.2.8 Transfer of an LE Permit to Different Owners or Vessels of the Same Owner

- 1. LE permits may be transferred to other owners for use with other vessels or used with other vessels under the same ownership, but will continue to be restricted by size and gear endorsements as specified in Federal regulations.
- 2. Whenever an owner wishes to transfer an LE permit to a different owner or use an LE permit with a different vessel under the same ownership, the NMFS issuing authority must be notified of the change. Notification is not complete until acknowledged in writing by NMFS.
- 3. LE permits may be used with vessels greater in length than the endorsed length provided the increase does not exceed five feet of the endorsed length. Original size endorsements will change only when LE permits are combined as per Section 11.2.11, or when an LE permit with a trawl endorsement is transferred to a vessel five feet less in length than the endorsed length. In the latter case, the LE permit will be reissued with a size endorsement for the length of the smaller vessel. Under the sablefish permit stacking program, only one permit must meet the length overall of the vessel holding the permits.
- 4. The transfer of LE permits between vessels or owners may not be used to circumvent vessel landing limits.

11.2.9 Loss of a Vessel

11.2.9.1 Loss of a Vessel Prior to Permit Issuance

1.

2. For a vessel that would qualify an owner for an "A" endorsement, in the case of a vessel's sinking or total loss, all rights to a permit from the fishing history of the vessel prior to the sinking or total loss remain with the owner at the time of sinking or total loss unless specifically transferred. The vessel must be replaced within two years of the loss, unless otherwise determined by the NMFS regional director, and the requirements of the third paragraph of Section 11.2.8 apply.

11.2.10 Combining LE Permits

- Two or more LE permits with "A" gear endorsements for the same type of LE gear (either trawl or non-trawl) may be combined (based on specific criteria) to create a permit with a larger size endorsement. Harvest capacity ratings for vessel length (LOA) is found in Table 3 of Subpart C of 50 CFR 660 with regulations for calculating capacity at 50 CFR 660.25(b)(3)(iii)(B)(2). The capacity represented by the appropriate length 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 create 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.

- 4. Survival of Non-trawl Sector Endorsements. Non-Trawl sablefish endorsements will remain valid only if all the non-trawl endorsed permits being combined have 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.

11.2.11 Permit Renewal

- 1. Permits must be renewed each year between October 1 and November 30 in order to remain valid for the following calendar year.
- 2. Notice of upcoming renewal periods will be sent by September 15 each year to the most recent address as provided to the permit issuing authority by the permit holder. It shall be the permit holder's responsibility to provide the permit issuing authority with address changes in a timely manner.
- 3. An annual fee will be charged which reflects the administrative costs of maintaining the permit system.
- 4. Failure to renew during this period will result in expiration of the permit at the end of the calendar year.
- 5. Once a permit has expired because of failure to renew during the renewal period, it may not subsequently be renewed or reissued, except through an appeals process.
- 6. If a permit expires because of failure to renew, the permit holder may appeal for reissuance, provided the appeal is received by the issuance review authority by March 31 of the following year. Conditions for reissuance of a permit are listed in Section 11.3.5.

11.2.12 **Owner-on-board Requirements**

In order to preserve the social and historic characteristics and practices in the fishery or to encourage the flow of fishery benefits to fishing communities, on the Council's recommendation, as it deems appropriate

and consistent with the goals of the groundfish FMP and National Standards, NMFS may require permit owners to be on-board a vessel during fishing operations.

[Amended: 9, 13, 14, 15, 20, 21]

11.3 Multilevel Gear Endorsement System

This section contains a description of the characteristics specific to each type of gear endorsement. Gear endorsements may not be transferred separate from the LE permit to which they are affixed. An LE permit confers no rights without a valid gear endorsement attached. These and other general characteristics of all gear endorsements are described in Section 11.2.5.

11.3.1 "A" Gear Endorsement

11.3.1.1 Overview of the "A" Endorsement

The "A" endorsement is intended for participants who were significantly active in the groundfish fishery with LE gear(s) during the qualifying window period (July 11, 1984 through August 1, 1988). The "A" endorsement allows the catch of all Council-managed groundfish species with the specified gear, remains valid when the LE permit is transferred, and is valid for an unlimited period of time (subject to Section 11.1.4) except as noted.

11.3.1.2 Description, Use and Transferability of the "A" Endorsement

- 1. Each "A" endorsement affixed to an LE permit will specify the type of gear with which the LE permit may be used (e.g., "A-Trawl").
- 2. The vessel for which the LE permit is registered will be allowed to catch all Council-managed groundfish with the gear specified in the "A" endorsement, except for fixed gear sablefish as specified in Section 11.2.6.1.
- 3. The "A" endorsement will remain valid when the LE permit is transferred to a different owner or vessel.

11.3.1.3 "A" Endorsement Initial Issuance Criteria

- 1. An "A" endorsement will be affixed to a vessel's LE permit for each gear the vessel qualifies with under these "A" endorsement initial issuance criteria.
- 2. Vessels must qualify separately for each gear that an "A" gear endorsement is requested.
- 3. A current owner of a vessel⁶ that meets the minimum landing requirements (MLRs) (as per the following paragraph) within the window period (July 11, 1984 and August 1, 1988) may receive an "A" endorsement.⁷
- 4. MLRs are gear-specific amounts of landings or deliveries (joint-venture or domestic) of west coast groundfish. The MLRs for the LE gears which must be met during the window period would be as follows:

⁶ Only the **current** owner of a qualifying vessel at the time the permit is initially issued will be issued an LE permit (except in the case of vessel loss as per Section 11.2.10.1 paragraph 2). Without this provision, a single vessel could qualify several owners for LE permits. If private contractual arrangements have been made between a vessel buyer and seller to reserve to the seller the right to the LE permit issued for the vessel, the LE permit may ultimately be issued to the vessel seller in place of the current owner.

⁷ Notice of this qualification period was published in the *Federal Register* on August 4, 1998 (53 FR 29337).

- <u>Trawl</u>: At least 9 days in which over 500 pounds of any groundfish species except Pacific whiting are landed or delivered, or 450 mt of landings or deliveries of any groundfish species except Pacific whiting, or 17 days in which over 500 pounds of Pacific whiting are landed or delivered, or 3,750 mt of landings or deliveries of Pacific whiting.
- Longline: At least 6 days in which over 500 pounds of any groundfish species are landed or delivered, or 37.5 mt of landings or deliveries of any groundfish species.
- <u>Fishpot</u>: At least 5 days in which over 500 pounds of any groundfish species are landed or delivered, or 150 mt of landings or deliveries of any groundfish species.
- 5. Landings coded as groundfish trawl, longline or fishpot gear may be credited toward meeting the MLRs for the gear except any landing with:
 - a. salmon in it will not be counted toward meeting MLRs with longline gear;
 - b. shrimp in it will not be counted toward meeting MLRs with trawl gear;⁸
 - c. abnormal catches for the indicated gear may result in an issuing authority review of the validity of all tickets presented as evidence of meeting MLRs and a request by the issuing authority that additional evidence be presented that the gear was actually used.
- 6. In addition to the specifications of the above paragraph, the NMFS issuing authority will have broad authority to examine information other than codes on landing tickets in determining whether MLRs are or are not met by a particular vessel and gear.
- 7. Prior to permit issuance, all rights of a vessel owner to an "A" endorsement will be considered transferred with the sale of the qualifying vessel unless otherwise stipulated in a contract.⁹
- 8. Vessel owners who acquire a provisional "A" endorsement will receive an "A" endorsement after meeting the upgrade criteria (Section 11.3.2.4), provided all other requirements of the LE program are met.
- 9. Members of local LE programs which have been Council certified and incorporated by the issuing authority (as per Section 11.3.1.4) may be issued "A" endorsements subject to the following constraint. The "A" endorsements issued on the basis of a vessel's membership in a certified LE program will be valid only when the vessel for which it is registered is operating under and in conformance with the certified program.
- 10. The NMFS review authority will have discretionary powers to grant exceptions to the qualification criteria on specified grounds. The basis on which the NMFS review authority may grant exceptions are described in Section 11.3.5.

11.3.1.4 Incorporation of Small Limited Entry Fleets

- 1. Small LE programs which are operated by local governments, in existence as of July 11, 1991 and have negligible impacts on the resource may be certified as consistent with the goals and objectives of this LE program and incorporated into the Federal LE program.
- 2. The purpose of this provision is to recognize and provide for small fisheries with unique cultural and social importance that are dependent on the groundfish resource but have negligible impacts on the resource, as long as the size and number of vessels in the fishery are sufficiently controlled through a LE program under local jurisdiction.
- 3. A representative of a small LE fleet may apply to NMFS to be certified as consistent with the goals and objectives of this LE program and incorporated into the LE program. NMFS will refer the application to the permit issuance review board. The board will provide its recommendations to

⁸ The Council notes that in Washington when shrimp and groundfish are landed together, tickets are sometimes filled out for the groundfish and shrimp separately. The issuing authority will have to be aware of such circumstances in evaluating whether a vessel meets MLRs with trawl gear.

⁹ If by contractual agreement permit rights are transferred separate from the vessel, the LE permit size and gear endorsements will continue to be restricted to those which would have been issued to the originally qualifying vessel as per *Federal Register* notice 55 FR 29337.

the Council, which in turn will provide its recommendation, together with the reasons therefore, to NMFS. If NMFS determines that a fleet meets the goals and objectives of this LE program and the standards of this section, it shall certify the fleet and incorporate it into the LE program.

- 4. If a fleet is certified and incorporated into the LE program, vessels in the fleet at the time of incorporation will be issued LE permits with "A" endorsements as provided in Section 11.3.1.3.
- 5. A permit issued to a vessel in a certified fleet under this section is only valid when the vessel for which it is registered is operating under and in conformance with the certified program. Such a permit and endorsement may be transferred to another vessel that will operate in the same certified fleet as long as the total number of vessels in the fleet does not increase.
- 6. If more vessels are added to a fleet in a certified LE program, these additional vessels will not receive "A" endorsements unless the program is recertified for the greater number of vessels, and the larger fleet is incorporated into the LE program.
- 7. For each certified fleet, there may be an upper limit placed on the amount of groundfish that vessels operating in the certified fleet may land.

11.3.1.5 Expiration of the "A" Endorsement

The "A" endorsement is valid for an unlimited period of time, except as noted in Section 11.1.4 and Section 11.2.11.

11.3.2 **Exceptions to the Issuance Criteria and Grounds for Appeal**

- 1. Exceptions may be granted for the time limit on replacing lost vessels, and requirements for timeliness with respect to applications for permits and permit renewal, for good cause. With respect to permit renewal, only illness, injury or death of one of the vessel owners will be considered good cause. Additionally, in the following hardship situations, where appropriate, the NMFS issuing authority may grant exceptions to permit issuance and upgrade criteria, the time limit on replacing lost vessels, and requirements for timeliness with respect to applications for permit renewal.¹⁰
 - a. Insufficient documented landings with legal groundfish gear in the qualifying period due to disputes over records of landings (evidence other than landing records may be considered).
 - b. Construction or conversion criteria are not met due to documentation disputes or delays in construction or conversion.
 - c. A qualified vessel was totally lost before permits were issued (the vessel should be replaced within two years of the loss and the requirements of the third paragraph of Section 11.2.8 apply).
 - d. Illness or injury.
 - e. Litigation involving the vessel preventing the vessel owner from making sufficient landings in the qualifying period.
 - f. Death of a vessel owner preventing the surviving vessel owner(s) from making sufficient landings in the qualifying period because the vessel could not be fished.
 - g. Death of a vessel owner preventing fulfillment of upgrade criteria for converting a provisional "B" endorsement to an "A" endorsement.
- 2. Implementation of the license limitation program will require exercise of judgment in the application of particular provisions. Any dispute over how the issuing authority has applied provisions of the program may be appealed.

¹⁰ Economic hardship, loss or inactivity of a vessel due to a violation (involving the vessel) of domestic laws which prevent the use of the vessel during the window period will not entitle the owner to a LE permit or endorsement granted through the review process.

[Amendment: 9, 13]

11.4 LE Permit Issuance Review Board

11.4.1 *Functions*

A permit issuance review board will be created by the Council with three functions:

- 1. Review appeals related to issuance of permits and gear endorsements.
- 2. Make recommendations to the Council on whether a non-federal/non-state LE system in place as of July 12, 1991 should be certified as being consistent with the goals and objectives of this LE program, as described in Section 11.1.2.
- 3. Make reports to the Council on the progress of the program and need for adjustments.

11.4.2 **Expenses**

The intent of the Council is that the issuance review board be an integral part of the permit issuance process. As such:

- 1. the board expenses will be included in determining permit fees; and
- 2. the board members will be reimbursed for expenses.

11.4.3 Advisory Role of Group

Issuance, administration of permits and review of appeals will be through the issuing and reviewing authorities (NMFS regional offices). The issuance review board shall function in an advisory capacity only.

11.4.4 *Nominations*

Nominations for the board may be made by anyone. Selection will be made by the Council or its designee.

11.4.5 *Membership*

The board should consist of:

- 1. "Knowledgeable" fishing industry members.
- 2. 7 to 10 voting members.¹¹
- 3. Two-thirds of the members must be present for a quorum.

11.4.6 *Majority Vote*

A simple majority of those present and voting shall be necessary to take action on a review.

11.4.7 **Terms of Members**

The term for a board member shall be three years. Terms will be staggered.

¹¹ The Council should look at the composition of the fishery in each state and determine the appropriate representation from each gear group so that a broad range of expertise is available to the Council.

11.4.8 **Review of Sablefish Endorsement Appeals**

The Council and Council's LE permit review board will not take part in the review of appeals of denied sablefish endorsements.

[Amendment 9]

11.5 Implementation, Application and Appeals Process

- 1. When NMFS announces it is ready to receive applications, individuals must make application to the issuing entity for LE permits and "A," provisional "A," and "B" endorsements within six months, except as follows: (1) Owners of vessels qualifying for provisional "A" endorsements under the prohibited gear provisions must make application within six months of the prohibition date, or six months of the NMFS announcement that it is ready to receive applications, whichever comes last, and (2) owners of vessels applying for a "B" endorsement after the vessel has failed to meet the provisional "A" endorsement upgrade criteria, must make application within six months of failure to meet upgrade criteria or six months of the NMFS announcement that it is ready to receive application within six months of failure to meet upgrade criteria or six months of the NMFS announcement that it is ready to receive applications for permits, whichever comes last.
- 2. Vessel owners are responsible for submitting evidence that qualification requirements have been met.
- 3. Applications to the issuing authority involving the hardship situations and other special circumstances described in paragraphs 4 and 5 of Section 11.2.3, shall be submitted within six months of the NMFS announcement that it is ready to receive applications, or six months of the event which would potentially qualify the applicant for a hardship exemption or under a special circumstance, whichever comes last.
- 4. Untimely applications will be rejected and no permit will be issued thereon. To be timely, an application must provide all of the information required in the NMFS application announcement or in the application form, by the deadline specified in paragraph 1 of this section. If the application is complete and valid, NMFS may request any supplementary information it needs to act on the permit application.
- 5. If an application is denied, the applicant may appeal to the NMFS regional director. In making such an appeal, the applicant may request that in deciding the issue, the NMFS regional director consult with the Council and its review board. Such a consultation would require the applicant to waive any rights to confidentiality of information.
- 6. At the time of implementation, NMFS, in consultation with the Council, will set and publish in the *Federal Register* a date after which all vessels using LE gear to catch Council-managed groundfish under the LE quota and management regulations will be required to have an LE permit with endorsements allowing such activity.
- 7. NMFS will establish a reasonable application period for the fixed gear sablefish endorsement. Untimely applications will be rejected and no sablefish endorsement will be issued thereon. If an application is denied, the applicant may appeal to the NMFS regional director. NMFS will set and publish in the *Federal Register* a date after which requirements for fixed gear sablefish endorsements will be in effect.

[Amendment 9]

11.6 Council Review and Monitoring

On an annual basis, either the NMFS issuing authority or the issuance review board will review the economic status of the fishery and the fishing fleet, and issue a status report to the Council evaluating achievement of the goals and objectives established for the LE system.

[Amendment 6 added chapter]

PFMC 05/30/25