

PIE Rule – Part 1

NMFS Items Unchanged From April 2011

NMFS has several items to be addressed through a future rulemaking (i.e., PIE rule(s)) for the Pacific Coast groundfish fishery. NMFS intends to implement many of these through a rulemaking with a target effective date of January 1, 2012. These items fall in to the following three categories:

- 1) Further revisions that are beyond simple corrections but are still within Council intent for Amendments 20 and 21.
- 2) Errors or old regulatory language that needs to be corrected or revised.
- 3) New areas the Council could address in response to implementation issues, including measures to make the fishery more flexible or efficient.

NMFS' report to the Council for the PIE rule is divided in to 2 parts. Part 1, the subject of this NMFS Report 1, includes the items previously presented by NMFS at the April Council meeting (Agenda Item I.7.b, Supplemental NMFS Report 2, April 2011) that remain unchanged and are repeated here. Part 2, Supplemental NMFS Report 2 for June 2011, includes additional information for some of the NMFS items reported in April and also includes new items. As noted below, the following items have been pulled from this report, Part 1, and will be included in Part 2 with additional information:

- 1) Consider revisions to requirement for observer coverage until offload complete.
- 2) Moving between limited entry and open access fisheries.
- 3) Clarify the open access language for non-groundfish trawl fisheries.
- 4) Review and, as necessary, revise catch accounting regulations.
- 7) Clarify first receiver has to complete and submit an electronic fish ticket before the fish leaves the offload site.
- 8) Mandatory requirement to fill out ex-vessel value on electronic fish ticket.
- 9) Review and, as appropriate, clarify what ownership changes must be reported to NMFS.

NEW Items may include:

- Revised definition of who is required to have a first receiver site license.
- Revised designation of quota share account and vessel account managers.

Items NMFS may address in a future rulemaking are listed below. These items are still in development and additional items may be added as the rulemaking progresses. Where preliminary regulatory language has been drafted, it is provided below.

Further Implementation of Council Intent

1) Consider revisions to requirement for observer coverage until offload complete.

➤ See Supplemental NMFS Report 2

2) Moving between limited entry and open access fisheries.

➤ See Supplemental NMFS Report 2

3) Clarify the open access language for non-groundfish trawl fisheries.

➤ See Supplemental NMFS Report 2

4) Review and, as necessary, revise catch accounting regulations.

➤ See Supplemental NMFS Report 2

5) Review and, if necessary, revise crossover provisions.

Council consideration: Further implementation of Council intent.

Background:

In the regulations, crossover provisions apply to two activities: 1) operating on different sides of a management line, or 2) moving between limited entry and open access fisheries during a 2-month cumulative limit period. The crossover provisions were structured for trip limit fisheries. In some places, the current regulations are no longer applicable or do not accurately reflect the new catch share program. For example, under the IFQ program, there are multiple management areas rather than just a north-south management area and vessels may not fish in more than one management area during a single trip. The crossover provisions need to be reviewed and revised appropriately.

Recommended change:

Regulations on crossover provisions for the groundfish fishery overall, as well as the limited entry trawl fishery and perhaps the limited entry fixed gear and open access fisheries, need to be reviewed and revised. The emergency rule (75 FR 82296, 12/30/2010) made some modifications to the crossover provisions and should be reviewed to determine what changes should be made more permanent through a full

rulemaking. In reviewing the crossover provisions, NMFS will consider any implications for dual-endorsed limited entry permits.

Regulatory sections affected: 660.12(a)(6)?, 660.60(h)(7), 660.120, 660.220, 660.320

Sectors affected: All commercial

6) Consider a process to allow end of the year resolution of accounts.

Council consideration: Policy decision

Background:

NMFS is developing the process for end of the year account resolution, especially with regard to the carrying over a surplus. This is a database and accounting issue. It is envisioned that any surplus carryover in a vessel account can be transferred to a different vessel account.

Recommended change:

The following are some potential options:

Option 1: Prohibit fishing from 12/15-12/31 to resolve accounts and calculate the carryover.

Option 2 (*NMFS preferred*): Do not prohibit fishing for end of the year account resolution. Populate accounts with the next year's available quota pounds on or near January 1 (including any deductions for using the carryover provision to cover a deficit in the previous year). NMFS could then calculate any surplus carryover from the previous year and add that amount later in the year once available (e.g., end of January). This option was brought forward by the GAP at the Council's March 2011 meeting (Agenda Item H.5.b, Supplemental GAP Report, March 2011, p.5).

Regulatory sections affected: 660.112 (maybe), 660.140(e)

Sectors affected: IFQ

7) Clarify first receiver has to complete and submit an electronic fish ticket before the fish leaves the offload site.

➤ See Supplemental NMFS Report 2

8) Mandatory requirement to fill out ex-vessel value on electronic fish ticket.

➤ See Supplemental NMFS Report 2

9) Review and, as appropriate, clarify what ownership changes must be reported to NMFS.

➤ See Supplemental NMFS Report 2

10) Add “first receiver” to list in conflict of interest regulations for catch monitors and catch monitor providers.

Council consideration: Implementation issue

Background:

In the conflict of interest regulations for catch monitors and catch monitor providers, add “first receiver” to the list of businesses. The current conflict of interest regulations apply to any interest in a business involving vessels and shorebased or floating stationary processor facility. These regulations should have also included “first receivers.” This was an inadvertent omission and NMFS will revise the regulations accordingly.

Recommended change:

The regulations for both catch monitors and catch monitor providers will be revised to read as follows:

(i) Any ownership, mortgage holder, or other secured interest in a vessel, first receiver, shorebased or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish,

(ii) Any business involved with selling supplies or services to any vessel, first receiver, shorebased or floating stationary processing facility; or

(iii) Any business involved with purchasing raw or processed products from any vessel, first receiver, shorebased or floating stationary processing facilities.

Regulatory sections affected: 660.18(c)(1) & (d)

Sectors affected: IFQ

Corrections/Consistency

11) Correct erroneous cross references.

CORRECTION RULE

Background:

Some redesignated sections from initial issuance final rule had the wrong cross references and need fixed.

Regulatory sections affected: 660.70-.79

Sectors affected: Commercial and recreational

- 12) Correct duplicate entry in regulation.

CORRECTION RULE

Background:

The electronic Code of Federal Regulations (eCFR) has 2 entries for a specific regulation. The one marked [Reserved] is a mistake.

Regulatory sections affected: 660.150(f)(2)

Sectors affected: Mothership

- 13) Delete use of term “bycatch limits” for whiting

CORRECTION RULE

Background:

The new trawl rationalization program regulations do not use the term “bycatch limits” for the whiting fisheries. The term should be removed from regulation and replaced with “non-whiting groundfish species with an allocation.”

Regulatory sections affected: 660.131(c)(4)

Sectors affected: Trawl

- 14) Update electronic fish ticket hardware and software requirements.

Background:

Update regulations with current hardware/software requirements for electronic fish ticket. If requiring higher standards, the Council may need to address this. NMFS will double check if any updates are needed for the following other software requirements: QS account (660.140(d)(2)), vessel account (660.140(e)(2)), or obs (660.140(h)(2)(iii), 660.150(j)(2)(iii), 660.160(g)(2)(iii)).

Regulatory sections affected: 660.15(d)

Sectors affected: IFQ

- 15) Review and, if necessary, revise sorting requirements and electronic fish ticket requirements.

Background:

For sorting requirements, review harvest specifications final rule to see if it updated the

sorting requirements to match the additional species levels for new OFLs, etc. Check if electronic fish ticket requirements need updated to require species reporting to the levels required under sorting requirements. Revise 660.130(d)(2)(i) for first receiver sorting to state, "must be sorted to the species groups specified in paragraph (d)(1) of this section."

Regulatory sections affected: 660.113(b)(4), 660.130(d)

Sectors affected: All commercial

16) Make it clear who is responsible for daily testing of at-sea scales.

Background:

There has been some confusion over who is responsible for the daily testing of at-sea scales. NMFS will review and revise the regulations to make this more clear.

Regulatory sections affected: 660.15(b)

Sectors affected: Mothership and catcher/processor

17) Clarify regulatory title.

Background:

Consider separating this paragraph in to two, one for "size limits" and one for "weight limits" or change the title to "Weight and size conversions."

Regulatory sections affected: 660.60(h)(5)

Sectors affected: Commercial and recreational

18) Streamline first receiver site license application process.

Background:

Fix the first receiver site license application process so that it doesn't require a separate written request for a site inspection. Could change form to add a line stating that the form serves as the written request to schedule a site inspection.

Regulatory sections affected: 660.140(f)(3)(iii)(B)

Sectors affected: IFQ

19) Move paragraph on training and certification to catch monitor responsibility rather than catch monitor provider responsibility.

Background:

The regulations at 660.17(e)(14) list items and responsibilities of the catch monitor, but

are listed under the catch monitor provider section of the regulations. This paragraph should be moved to the appropriate place, likely within paragraph (b).

Regulatory sections affected: 660.17(e)(14)

Sectors affected: IFQ

- 20) Repeat AMP allocation language in the IFQ allocation paragraphs so all IFQ allocation steps are in one place.

Background:

Add “10 percent of non-whiting QS will be reserved for the AMP during years one and two of the Shorebased IFQ Program, but the resulting AMP QP will be issued to all QS permit owners in proportion to their non-whiting QS during years one and two” to the IFQ fishery paragraphs on allocation. Language would be copied from 660.140(l) on the adaptive management program and duplicated in the allocation section to have all allocation steps in one place.

Regulatory sections affected: 660.140(d)(1)(ii)(A)

Sectors affected: IFQ

- 21) Further clarify that halibut under the size limit still count against IBQ.

Background:

Clarify that all halibut caught N of 40° 10’ count against IBQ regardless of the size (</> 32”). Right now interpret 660.140(d)(1)(ii)(C) to mean that but could be more clear.

Regulatory sections affected: 660.140(d)(1)(ii)(C)

Sectors affected: IFQ

- 22) Revise fishery declaration regulations to make consistent with the declaration worksheet.

Background:

Add the following declarations to regulations to match what is included on the declaration worksheet. In regulation, “open access net gear” would be replaced by (1) Open access CPS net gear; (2) Open access CA gillnet complex gear. Also consider adding “open access” before non-groundfish trawl entries in regulations and in the declaration worksheet to make it more clear what sector those fisheries are associated with.

Regulatory sections affected: 660.13(d)(5)(iv)(A)

Sectors affected: Open access

- 23) Consider revisions to make applicable RCAs more clear.

Background:

Rethink how RCA boundaries displayed for trawl fishery (Table 1 north and south).

While it is clear in the regulatory text that the RCAs apply for any fishing done in the Shorebased IFQ Program, there was some confusion based on language in the trip limit tables (Table 1 north and south). The trip limit table language is being revised through the final rule for the harvest specifications.

Regulatory sections affected: Table 1 (North and south) & 660.130(e)

Sectors affected: All trawl

- 24) Review use of “transfer” in relation to permits and change to “change in vessel registration.”

Background:

Review use of “transfer” in relation to permits and change to “change in vessel registration” where appropriate to be more specific.

Regulatory sections affected: 660.25

Sectors affected: All limited entry permits

- 25) Delete old effective date language from regulations.

Background:

Delete sentence under "General" paragraph that refers to beginning January 1, 2011. This sentence is no longer needed because the program is already implemented.

Regulatory sections affected: 660.140(a), 660.150(a), 660.160(a)

Sectors affected: IFQ, mothership, catcher/processor

- 26) Clarify regulations for sorting/weighing requirements for non-whiting IFQ species.

Background:

The regulations are inconsistent with regards to the sorting and weighing requirements for non-whiting IFQ species.

The prohibitions at 660.112(b)(2)(ii) state that it is unlawful to: *“(ii) Fail to sort fish received from a IFQ landing prior to first weighing after offloading as specified at §660.130(d)(2) for the Shorebased IFQ Program, except the vessels declared in to the limited entry midwater trawl, Pacific whiting shorebased IFQ at §660.13(d)(5)(iv)(A), subpart C may weigh catch on a bulk scale before sorting as described at §660.140(j)(2).”*

While the regulations at 660.140(j)(2)(viii) and (ix) on catch weighing requirements state:

(viii) Pacific whiting. ... (exemption mentioned above)

(ix) For all other IFQ landings the following weighing standards apply:

(A) A belt or automatic hopper scale may be used to weigh all of the catch prior to sorting. All but a predominant species must then be reweighed.

[paragraphs (B) and (C) are not inconsistent with the above prohibition at 660.112]

The prohibition at 660.112(b)(2)(ii) restricts what 660.140(j)(2)(ix)(A) allows for non-whiting groundfish. The activity listed in 660.140(j)(2) has occurred in the past in Washington and may still be occurring. The state laws on this have differed, so 660.140(j)(2) was to allow groundfish to be weighed in a hopper scale, then sorted by species, and each species (or group) weighed back and deducted from original total weight, IF it was allowed by state law. This activity has also been previously allowed under an EFP for both whiting and non-whiting groundfish.

Regulatory sections affected: 660.112

Sectors affected: IFQ

27) Revise to consistently use the term “deficit”

Background:

Change the word "overage" to "deficit" for consistency with rest of section.

Regulatory sections affected: 660.112(b)(1)(iv)

Sectors affected: IFQ

Potential Future Council Actions

28) Develop a process to certify new observer providers.

Background:

Develop regulations for observer provider certification for new providers. To start the trawl rationalization program, NMFS grandfathered observer providers who were permitted to provide observer services in the North Pacific. Now that the trawl rationalization program is underway, the Council and NMFS need to create a certification process specific to the Pacific Coast groundfish fishery to 'approve' observer providers in

future years. To the extent practicable, this program should be developed to parallel the catch monitor provider certification.

Regulatory sections affected: 660.140, 660.150, 660.160

Sectors affected: IFQ, mothership, catcher/processor

29) Consider increasing flexibility to allow change in vessel registration 2 times per year or to allow permit stacking.

Background:

Current regulations restrict the number of times a limited entry permit may be registered to a different vessel to one time per calendar year (except for MS permits, and limited entry trawl permits with an MS/CV or C/P endorsement which are restricted to two times per calendar year). This restricts the flexibility of the IFQ participants and limited entry fixed gear fisheries more than the at-sea whiting fisheries. It also complicates the regulations.

This restriction, in tandem with the regulatory restriction that limits the stacking of fixed gear and trawl endorsed LE permits on the same vessel, limits the participation of limited entry fixed gear and limited entry trawl permit owners from moving between the trawl and limited entry fixed gear fisheries (except dual-endorsed permits).

Example 1: A vessel may start the year registered to a limited entry trawl permit and fish in the IFQ fishery. It may then remove the trawl permit from the vessel and declare in to the open access non-groundfish trawl fishery for California halibut in late January. It may only want to fish for 2 weeks in the California halibut fishery. The limited entry trawl permit could again be registered to the vessel to fish in the IFQ fishery, but would not be effective until March 1. The vessel would have another opportunity to remove its limited entry trawl permit to fish in an open access fishery, but that permit could no longer be used to fish in the limited entry trawl fisheries for the remainder of the calendar year.

Example 2: A vessel may start the year registered to a limited entry trawl permit and fish in the IFQ fishery. It may then remove the trawl permit and register a limited entry fixed gear sablefish-endorsed permit to the vessel to fish its sablefish tier beginning in May. It may only take 2 weeks to fish the sablefish permit tier amount. That vessel may remove the sablefish permit and register with the trawl permit. The limited entry fixed gear permit would have used its limit on vessel registrations and could not be used to fish for the remainder of the calendar year.

Allowing 2 changes in vessel registration per year would increase flexibility for both limited entry trawl and limited entry fixed gear permits. However, increasing the

flexibility of vessels to move between limited entry and open access fisheries may also create more “double dipping” opportunities between a capacity controlled fishery and one that is not capacity controlled, potentially exacerbating management problems.

Another option the Council could explore is allowing limited entry trawl and limited entry fixed gear permits to be registered to a vessel at the same time (i.e. stacked). Either approach may require additional analysis.

Regulatory sections affected: 660.25(b)(4)(vi)

Sectors affected: IFQ and limited entry fixed gear

30) Consider revisions to weight conversion factors based on any new information.

Background:

Are any species missing that should have a conversion? Are there species landed dressed/head-on that need a conversion factor?

31) Clarify distinction between “cease fishing reports” for whiting vs. one for observer program

32) Develop the adaptive management program and a process for allocating quota pounds.