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15 CFR Part 902

50 CFR Part 660

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Amendments 20 and 21; Trawl Rationalization Program; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

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50 CFR Part 660

[Docket No. 100212086–0210–01]

RIN 0648–AY68

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Amendments 20 and 21; Trawl Rationalization Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes measures to initiate implementation of Amendments 20 and 21 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 20 would establish a trawl rationalization program for the Pacific Coast groundfish fishery. Amendment 20's trawl rationalization program would consist of: An individual fishing quota (IFQ) program for the shore-based trawl fleet (including whiting and non-whiting sectors); and cooperative (coop) programs for the at-sea (whiting only) mothership (MS) and catcher/processor (C/P) trawl fleets. The trawl rationalization program is intended to increase net economic benefits, create individual economic stability, provide full utilization of the trawl sector allocation, consider environmental impacts, and achieve individual accountability of catch and bycatch. Amendment 21 would establish fixed allocations for limited entry (LE) trawl participants. These allocations are intended to improve management under the rationalization program by streamlining its administration, providing stability to the fishery, and addressing halibut bycatch.

NMFS is reviewing Amendments 20 and 21 in their entirety. However, due to the complexity of the proposed fishery management measures, this rule proposes only certain key components that would be necessary to have permits and endorsements issued in time for use in the 2011 fishery and in order to have the 2011 specifications reflect the new allocation scheme. Specifically, this rule would establish the allocations set forth under Amendment 21 and establish procedures for initial issuance of permits, endorsements, quota shares, and catch history assignments under the IFQ and coop programs. In addition, the proposed rule would restructure the entire Pacific Coast groundfish regulations to more closely track the organization of the proposed management measures and to make the total groundfish regulations more clear. NMFS plans to propose additional program details in a future proposed rule. Such additional details would include: Program components applicable to IFQ gear switching, observer programs, retention requirements, equipment requirements, catch monitors, catch weighing requirements, coop permits/agreements, first receiver site licenses, quota share accounts, vessel quota pound accounts, further tracking and monitoring components, and economic data collection requirements. In order to encourage more informed public comment, this proposed rule includes a general description of these additional program requirements. NMFS is also planning a future "Cost-Recovery" rule based on a recommended methodology yet to be developed by the Pacific Fishery Management Council (the Council).

DATES: Comments on this proposed rule must be received no later than 5 p.m., local time on July 12, 2010.

ADDRESSES: You may submit comments, identified by 0648–AY68, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal, at *http://www.regulations.gov.*
- *Fax:* 206–526–6736; Attn: Jamie Goen.
- *Mail:* Barry Thom, Acting Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; *Attn:* Jamie Goen.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (if submitting comments via the Federal e-Rulemaking portal, enter "N/A" in the relevant required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS, Northwest Region, e-mailed to *David_Rostker@omb.eop.gov;* or faxed to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Jamie Goen, 206–526–4656; (fax) 206–526–6736; *Jamie.Goen@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This proposed rule is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.gpoaccess.gov/fr/index.html.* Background information and documents, including the Draft Environmental Impacts Statements for Amendment 20 and Amendment 21, are available at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/.*

Although this proposed rule would implement only certain portions of Amendments 20 and 21, NMFS is reviewing both Amendments 20 and 21 in their entirety. On May 12, 2010, NMFS published a notice of availability of Amendments 20 and 21, and—consistent with requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA)—must make a decision to approve, disapprove, or partially approve the amendments by September 8, 2010. Comments on the approvability of the amendments must be submitted to NMFS by August 9, 2010. This preamble provides information about the full contents of each amendment for the purposes of promoting informed public comment. Detailed provisions regarding features of the proposed rule are provided where applicable. In addition, section IV of this preamble highlights what the main regulatory changes would be.

I. Background: Current Management Approach and Need for Change

The Pacific Coast Groundfish FMP covers a diverse mixture of species occurring in close association and proximity in the Pacific off the states of Washington, Oregon, and California. The trawl rationalization program would consist of: (1) An individual fishing quota (IFQ) program for the shore-based trawl fleet and (2) cooperative (coop) programs for the at-sea trawl fleet. The shore-based trawl fleet would include IFQ participants who land groundfish to shore-based processors or first receivers. The at-sea trawl fleet would include fishery participants harvesting whiting with

midwater trawl gear (i.e., whiting catcher/processor vessels, whiting motherships, and whiting catcher vessels associated with motherships). The co-op programs for the at-sea trawl fleet are further divided as follows: (1) A single whiting catcher/processor co-op; and (2) one or more whiting mothership co-ops may form, or vessels may choose to fish in a non-coop fishery which would be unaffiliated with a coop. For the coop and non-coop fishery, vessel owners pool their harvest together.

The IFQ program for the shore-based fleet would require NMFS to make an initial allocation of harvest quota share (QS) (expressed as a percentage of the total sector amount) through a new QS permit to current owners of limited entry trawl permits and shore-based whiting first receivers who meet the qualifying criteria. Depending on a person's limited entry trawl permit history in qualifying years, the permit owner will receive an initial allocation for various target species/species groups (~20 species), some with area designations. In addition, NMFS would allocate QS for overfished species based on a proxy of the amount of target species allocated to the quota share holder. Shore-based whiting first receivers will receive an initial allocation of whiting only, based on their history of being the first receiver reported on state fish tickets (with an opportunity to reassign their history). Each year, based on the optimum yield amounts for each species and the amount of QS a holder has for a particular species/area, NMFS would allocate quota pounds to the QS account. The QS owner in turn, must allocate quota pounds to vessel accounts. Vessels are required to have IFQ or quota pounds in an account to cover all IFQ landings and discards incurred while fishing under this program. In order to comply with the MSA, NMFS would track ownership interest in QS to determine if individuals are within set accumulation limits, both at the initial allocation stage and during the operation of the program. In Amendment 20, the Council has adopted limits (by species group and area) on the amount of QS an individual can control (i.e. control limits) and limits on the amount of quota pounds that may be registered to a vessel for use in a given year.

For the at-sea whiting component of the trawl rationalization program, the Council has adopted a program that provides for a C/P coop and MS coops that differ from how the coops have operated in the past. The C/P coop will not require an initial allocation of catch shares to individual vessels, provided that a coop is established. However, whiting catch shares for the MS fleet (called catch history assignments) would initially be allocated to qualifying limited entry trawl permits that were registered to catcher vessels in qualifying years and which were used in the mothership whiting fishery. Holders of qualifying permits that are allocated a whiting catch history assignment may choose to participate in the MS coop or non-coop fishery. Similar to the shore-based IFQ program, NMFS would be required to track permit ownership interests in the MS sector to determine if individuals are in compliance with accumulation limits.

The FMP features different management strategies for different species, locales, vessels and processing arrangements. These different management regimes are often referred to as "sectors." Current management divisions pertain to tribal vs. non-tribal, trawl vs. non-trawl (fixed gear); limited entry vs. open access; commercial vs. recreational; whiting vs. non-whiting; shore-based whiting vs. at-sea whiting; and at-sea whiting MS operations vs. at-sea whiting C/Ps.

A. Sector Management and Allocations

Currently, the Pacific Coast groundfish fishery consists of several different sectors, defined by fishing gear, species targeted, and regulatory context. Under current management, the annual optimum yield (OY) is first reduced to a commercial harvest guideline (commercial HG) by subtracting from the OY amounts of fish necessary for tribal fisheries, bycatch for exempted fishing permits (EFPs), and estimates of research catch, recreational catch, and bycatch in non-groundfish fisheries. Subtracting these amounts produces the commercial HG, which NMFS then divides between two main sectors: Limited entry (LE) and open access (OA). The LE sector is further subdivided into the fixed gear and trawl subsectors. Within the LE trawl subsector, there is an additional division between whiting and non-whiting trawl fisheries. The non-whiting trawl fishery consists primarily of a shore-based multi-species fishery generally conducted with bottom trawl gear. The whiting trawl fishery consists of three different fleets: Shore-based, MS, and C/P (all of which fish only with midwater trawl gear).

Within the whiting trawl fishery, whiting available to the commercial fisheries is already allocated among the shore-based, MS, and C/P sectors as follows: 42 percent, 24 percent, and 34 percent, respectively. (See existing regulations at 50 CFR 660.323.) This allocation would not change.

Trawl Target Species (Including Pacific Whiting Fisheries)

The list of current trawl target species includes flatfish, roundfish, thornyheads, and a few species of rockfish. Primary flatfish target species include Petrale sole and Dover sole. Roundfish target species include Pacific whiting, Pacific cod, and sablefish. However, seven rockfish species, which co-occur with the target stocks and can be caught with trawl gear, are currently declared overfished pursuant to the MSA. The need to rebuild these stocks to a healthy size has led to a variety of harvest constraints on groundfish fisheries, and rockfish are generally no longer a target of these fisheries.

Limited Entry Trawl, Limited Entry Fixed Gear vs. Open Access

The groundfish trawl fishery is subject to a Federal license limitation program (referred to as limited entry), implemented in 1994; currently there are 178 groundfish LE trawl permits. Groundfish fixed gear fisheries—using longline and pot gear—are also managed under the limited entry program. Some groundfish are caught and landed by vessels without an LE permit; these vessels comprise the "open access" sector, which has directed and incidental components.

Limited Entry Trawl Whiting vs. Non-Whiting

The LE trawl fishery is divided into two broad sectors: A multi-species trawl fishery, which most often uses bottom trawl gear (hereafter called the non-whiting sector), and the whiting fishery, which uses midwater trawl gear. The non-whiting trawl fishery is principally managed through two month cumulative trip limit periods along with closed areas to limit overfished species bycatch. Non-whiting trawlers target the range of species described above with the exception of Pacific whiting.

LE Trawl Whiting Components

In most years, less than 2 percent of the catch in the Pacific whiting fishery are species other than Pacific whiting, although overfished species that co-occur with Pacific whiting are also caught. The whiting fishery is further subdivided into three sectors. The shore-based fishery delivers their catch to processing facilities on land, and the vessels are similar in size and configuration (with the exception of the type of net used) to the non-whiting trawl fishery vessels. In the MS sector, catcher vessels deliver to at-sea

processors called "motherships". Most of the MS-sector catcher vessels also participate in the shore-based whiting fishery. The C/P sector comprises vessels that catch Pacific whiting and process it on board.

B. Need for Amendment 20

In its June 2004, scoping document, the Council described the problem that, despite the recent Federal buyback program that retired several trawl permits (70 FR 45695, August 8, 2005), management of the groundfish trawl fishery was still facing serious biological, social, and economic concerns. The trawl fishery is currently viewed by the Council as economically unsustainable.

Bycatch, especially bycatch of overfished species, was identified as a major problem. All direct harvest of overfished species had been prohibited and numerous closed areas were implemented; however, due to the multispecies nature of the fishery, it is generally not possible to avoid catching the overfished species. As a result, harvests of healthy species were being constrained in order to protect the overfished species. As noted in the scoping document, management relies on average estimated discard (bycatch) rates to predict bycatch. The harvest is then constrained by these bycatch predictions. The discard rate estimates are fixed for a season and change over time only as new information becomes available from the observer program. This creates a situation where there may be little incentive for fishermen to avoid bycatch on an individual vessel level.

The average estimated bycatch rate has been controversial. Also, different fishing interests have expressed different opinions about the pace of the fishery. Some prefer a year-round groundfish fishery, while others prefer a more seasonal fishery. The current system is not flexible enough to accommodate both interests or to respond to changes in markets, weather, or harvest conditions. The ability to react to changing conditions is important if the goal is an efficient fishery that is safe for participants. Accordingly, the following problems were initially identified with the current management regime:

- The bycatch rate is uncertain.
- There are limited incentives for fishermen to reduce bycatch.
- Opportunities to harvest target species are lost.
- The system cannot accommodate the variety of harvest patterns desired by fishermen.
- The system cannot respond quickly to changes in markets, weather, etc.
- Communities are challenged by uncertainty in the industry.

Through an iterative public process, the Council refined these issues into this goal for Amendment 20:

> Create and implement a capacity rationalization plan that increases net economic benefits, creates individual economic stability, provides for full utilization of the trawl sector allocation, considers environmental impacts, and achieves individual accountability of catch and bycatch.

The Council further identified eight specific objectives to support achievement of the goal:

1. Provide a mechanism for total catch accounting.
2. Provide for a viable, profitable, and efficient groundfish fishery.
3. Promote practices that reduce bycatch and discard mortality, and minimize ecological impacts.
4. Increase operational flexibility.
5. Minimize adverse effects from an IFQ program on fishing communities and other fisheries to the extent practical.
6. Promote measurable economic and employment benefits through the seafood catching, processing, distribution elements, and support sectors of the industry.
7. Provide quality product for the consumer.
8. Increase safety in the fishery.

Because OY on healthy stocks is constrained by rebuilding needs of co-occurring overfished stocks, Amendment 20 is intended to implement an approach that will support attainment of OY while improving bycatch avoidance and supporting rebuilding.

C. Purposes of Amendment 21

The purposes of Amendment 21 are to: Simplify or streamline future decisions by establishing allocations of specified groundfish stocks and stock complexes within the Pacific Coast Groundfish FMP; support rationalization of the LE trawl fishery (Amendment 20) by providing more certainty to the affected sectors and reducing the risk that these sectors would be closed because of other non-trawl sectors exceeding their allocation; facilitate individuals' ability to make long-range planning decisions based on the allocation of harvest privileges; support overall total catch accounting of groundfish species by the group within the trawl sector; and limit the bycatch of Pacific halibut in future LE trawl fisheries.

Under the IFQ and harvest cooperative systems proposed under the Amendment 20 trawl rationalization program, it would be critical to reduce the risk that sectors would be closed because of other sectors exceeding their allocation. Reducing this risk is important in order to prevent a race for fish that could occur if QP holders or coop fishermen thought other sectors would close them down because of overages.

To the extent that Amendment 21 supports implementation of Amendment 20, it would also contribute to the anticipated benefits of individual accountability for catch and bycatch, and improved overall total catch accounting of groundfish species by the group with the largest amounts of groundfish catch, the trawl sector. By limiting the bycatch of Pacific halibut in the LE trawl fisheries, Amendment 21 would control bycatch and could provide increased benefits to Washington, Oregon, and California fishermen targeting Pacific halibut.

Uncertainty existed regarding whether the allocations in Amendment 21 superseded the allocations to the open access fishery established when the limited entry fishery began. The Council has clarified that these allocation are to supersede the earlier open access allocation for the species allocated under Amendment 21.

II. Amendment 20 Program Description

After considering alternatives, including the status quo, the Council recommended Amendment 20, which divides the trawl fishery into three main management sectors: Shore-based (whiting and non-whiting) to be managed by IFQs; and the MS and C/P sectors (at-sea whiting), both to be managed by separate coop programs. The shore-based trawl fleet would consist of IFQ participants who land groundfish to shore-based processors, or other entities that receive but do not process the groundfish. Both are referred to as first receivers. The at-sea trawl fleet would consist of fishery participants harvesting and processing whiting (i.e., whiting C/P vessels, whiting motherships that process whiting at sea, and whiting catcher vessels that deliver to motherships). The at-sea trawl fleet would be further divided as follows: (1) The whiting C/P sector; and (2) the whiting MS sector. The MS sector program may include multiple coops where vessels pool their harvest together to form fishing cooperatives, as well as vessels not associated with a coop (i.e., the "non-coop" segment of the MS fishery).

A key feature of the trawl rationalization program would be a shift from the current catch accounting system (that uses fleetwide estimates of

discards based on an observer sampling system that has 20-percent coverage) to an 'individual accountability' system where all catch by shore-based vessels would count against individual participants' shares, including both retained and discarded catch, based on 100 percent observer coverage on vessels and 100 percent monitoring of the vessel's offload in the plants (called "catch monitoring"). Under the current management system, shore-based fishermen fish against bimonthly trip limits and annual fleetwide quotas and have no direct accountability for discards. Under the proposed system, shore-based fishermen would fish against "individual" quotas, against which their discards would count. Thus, fishermen would have a strong incentive to fish in a manner that reduces discards because excessive discards would either lead to shortening their fishing season when their quota is reached, or greater costs to them if they had to buy additional quota from other quota holders.

The management approaches set forth in the trawl rationalization program would consist of different types of limited-access approaches. These limited-access approaches grant permission to the holder of the privilege or permit to participate in the program. Such permission may be revoked, limited, or modified at any time. In other words, it is a conditional privilege.

Amendment 20 would include features such as annual renewal requirements and regular program reviews to ensure program goals are being met, provide NMFS the ability to review, track, and monitor program implementation and needs, and prevent the perception that the program confers "rights" as opposed to privileges.

Amendment 20 establishes programs that are "limited-access privilege programs," which are consistent with the MSA provisions at section 303A. Limited-access privileges, including the quota shares, quota pounds, and catch history assignments, may be revoked, limited or modified at any time in accordance with the MSA—and do not create any right of compensation to the holder of the limited-access privilege, quota share, quota pound, or catch history assignment if it is revoked, limited or modified. The limited-access privilege program does not create any right, title, or interest in or to any fish before the fish is harvested by the holder and shall be considered a grant of permission to the holder of the limited-access privilege to engage in activities permitted by the limited-access privilege program. For further statutory provisions related to limited-access privileges, see section 303A of the MSA.

Section 303A contains an "antitrust savings clause" that provides that "nothing in this Act shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of the preceding sentence, the term 'antitrust laws' has the meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition."

NOAA advises that any fishery participants who are uncertain about the legality of their activities under the antitrust laws of the United States should consult legal counsel prior to commencing those activities. NOAA intends to restate this advice in the regulations for the program components.

A. IFQ Program Details

IFQs offer a powerful accountability measure for maintaining catch levels within limits (as required by the MSA). The IFQ program would feature complete accounting for all catch, both landings and discards, and would facilitate accountability down to the individual vessel level.

1. Structure Overview

Amendment 20 would establish an IFQ program for the shore-based LE trawl fleet. The IFQ program would apply to a specified list of species, set forth in § 660.140(c) of the proposed rule, which includes both whiting and non-whiting species. The program would apply to shore-based harvesters with LE permits and first receivers, and would apply to all trips with IFQ species delivered shoreside. The IFQ program would provide for total catch accounting and individual vessel responsibility. This means that both landed catch and discards would count against the quota pounds in an individual vessel's vessel account.

Accountability for landings and discards are expected to increase the certainty managers have regarding fishing mortality, which in turn is expected to foster the rebuilding of overfished species and help prevent overfishing. Furthermore, the increased observation necessary to monitor landings and discard is expected to increase the information flow on the status of the fishery as the fishery occurs. Finally, responsibility for landings and discards—and the monitoring necessary for that type of management—is expected to increase accounting ability and result in changes to fishing behavior, which include a reduction in the bycatch rate of constraining stocks and a reduction in regulatory discarding.

To implement the IFQ program, NMFS would divide the trawl allocation for these species between the IFQ and at-sea whiting sectors. NMFS would then divide the IFQ allocation among individual participants as percentages of the total sector allocation. This individual apportionment of catch percentage would be called Quota Share (QS). Each year, the percentage of catch represented by the QS would be converted into poundage based on the total amount of catch available to the sector. This poundage would be known as Quota Pounds (QP). The QP would be issued to the QS permit owner, but in order to be fished, the QP would have to be transferred into a vessel account. In order to land an IFQ species, a vessel's account would be required to contain sufficient QP to cover the catch within 30 days of the landing. Special provisions for addressing overages are discussed below in section II.A.7 of this preamble.

Within the IFQ program, vessels would be allowed to use a variety of directed groundfish commercial gear (including non-trawl gear) to take the shore-based trawl sector allocation, which would thus allow for "gear switching." To prevent the OA and fixed gear allocations from being reduced due to landings by people with IFQ, catch that is made with non-trawl gear by a person with QP would count against the QP and against the IFQ allocation. In addition, QS and QP would be tied to specific species groups, areas, and sectors.

The assignment of QP would constitute a revocable privilege to harvest a certain portion of the trawl sector's allocation within a given year, which would not constitute a permanent right or privilege. NMFS and the Council would review the program at regular intervals to determine whether the program should be continued. Results of these reviews could lead to dissolution of the program, revocation of QS, or other fundamental changes to the program. The first review would occur no later than 5 years after implementation, with subsequent reviews, if applicable, at 4-year intervals after that. Holders of QS should remain cognizant of this fact when making decisions regarding their QS, including the buying, selling, and leasing of these shares.

2. IFQ species

IFQ requirements would apply for most species of groundfish under the

FMP (although some would still be managed collectively at the stock-complex level, such as remaining minor slope rockfish). Dogfish and some groundfish species rarely caught by trawl gear would be excluded from the IFQ program. T o ensure that OY for species not covered by the IFQ are not exceeded, catch of those species would be monitored.

QS would be assigned for the following species: lingcod, Pacific cod, Pacific whiting, sablefish north of 36° N. lat., sablefish south of 36° N. lat., Pacific ocean perch, widow rockfish, canary rockfish, chilipepper rockfish, bocaccio, splitnose rockfish, yellowtail rockfish, shortspine thornyhead north of 34°27′ N. lat., shortspine thornyhead south of 34°27′ N. lat., longspine thornyhead north of 34°27′ N. lat., cowcod, darkblotched rockfish, yelloweye rockfish, minor rockfish north slope species complex, minor rockfish north shelf species complex, minor rockfish south slope species complex, minor rockfish south shelf species complex, Dover sole, English sole, petrale sole, arrowtooth flounder, starry flounder, and the "Other Flatfish" stock complex.

The purpose of covering species with quota is to provide a catch-control tool to ensure that management targets are adhered to and that other sectors are not affected by higher-than-expected catch levels in the trawl fishery, or both. In determining which species to recommend for coverage, the Council considered cases in which it would not be necessary or appropriate to cover certain species, such as species that are inaccessible to groundfish trawl gear, species that are constrained by the catch of other species, species caught predominantly within state waters, and species encountered in very small volumes. For these types of species, management through IFQ is not necessary for successful management of fishing mortality.

For species not covered by IFQ, trip limits and set-asides may still be used and would be implemented through the biennial specification process.

For Pacific halibut taken as bycatch in the IFQ fishery, Amendment 20 would require halibut individual bycatch quota (IBQ) to cover the mortality of the incidental catch of Pacific halibut in the groundfish trawl shore-based fishery. This would be a change from the current trawl fishery in which there is no cap on the amount of halibut caught, discarded, or killed. Retention of halibut caught under the IBQ would not be allowed, which is consistent with the current regulations. The purpose of establishing an IBQ would be to prevent the trawl fishery from preempting or constraining the directed halibut fishery. The level of halibut mortality would be limited by the total catch limits proposed in Amendment 21, if that amendment is approved.

3. Who can participate?

While initial issuance of QS would be limited to Limited Entry permit owners based on catch history, and whiting shoreside processors based on processing history, after the initial issuance, QP would be immediately transferable in increments of whole pounds. In addition, after the first 2 years, QS would become transferable as well. The eligibility requirements for owning QS and QP would be very broad, allowing anyone who meets the following criteria to own them: A U.S. citizen, permanent resident alien, or corporation, partnership, or other entity established under the laws of the United States or any State that is eligible to own and control a U.S. fishing vessel with a fishery endorsement.

a. Initial Issuance

The Council considered which groups should receive QS by initial issuance (vessel owners, permit owners, processors, communities, skippers and crew, or general public through auctions, etc.). In consideration of many factors—including but not limited to dependence on the fishery, economic and market factors, fairness and equity, community impacts, the ability to promote stewardship, and participation history—the Council recommended dividing the initial issuance as follows: The Council recommended that harvesters (those holding LE permits for trawl vessels) be given an initial allocation of 90 percent of the non-whiting QS and 80 percent of the whiting QS. Ten percent of the QS for non-whiting species would be set aside for an adaptive management program (AMP), and eligible shoreside processors would receive 20 percent of the whiting QS. After the first 2 years, transferability would likely affect these initial distribution ratios.

The AMP is intended to be used after the first 2 years to address the following objectives: Community stability, processor stability, conservation, and unintended or unforeseen consequences of IFQ management. During the first 2 years of the program, the AMP QP would be issued ("passed through") to all QS holders pro rata. During the first 2 years of the program, the Council intends to develop the procedures and formulas for distributing the AMP quota set aside starting in year 3 of the program; this could require a recommendation to NMFS, as well as a proposed and final rulemaking in order to approve and implement it.

The Council also considered whether the initial issuance of QS in the harvesting sector should be allocated to the vessel owner or the LE permit owner. Because the ownership of the permit better reflects the amount of investment in the fishery than the ownership of the vessel, and the permit is what authorizes the participation in the fishery, the Council recommended attaching the initial issuance to the qualifying permits. Subsequent transfers, as well as potential additional distributions, would allow for additional groups to buy into the fishery.

The Council also considered the highly controversial issue of allocation of harvest shares to processors. Several alternatives concerning the initial issuance of harvest QS to processors were considered, ranging from fifty percent of QS for all whiting and non-whiting IFQ species, to zero percent of QS for all IFQ species, to amounts within this range for whiting only. In its deliberation on this issue, the Council explored the issue of investment in the fishery, the role of ownership of QS in the conservation benefits of a catch share program, and the importance of a strong working relationship between the community, processors, and the harvesters. The Council's final recommendation was to provide to eligible shoreside processors twenty percent of the initial issuance of whiting QS only. The Council's rationale in choosing the preferred alternative focused on the need to carefully consider the balance of market power between harvesters and processors, as well as the importance to communities of maintaining processing capabilities along the coast. The Council believed that an initial allocation of twenty percent of the whiting resource to eligible shoreside processors struck an appropriate compromise among these multiple factors. In addition, the Council believed that the AMP could be used to lessen potential impacts to processors and communities.

i. Eligibility and Qualifying Criteria for Initial Issuance of QS

Both harvesters and shore-based processors could receive QS permits if they meet the initial eligibility and qualifying criteria.

(A) Eligibility and Qualifying Criteria for Harvesters

A harvester may apply for initial issuance of both whiting and non-whiting QS. To be eligible, the harvester

would need to own a LE trawl-endorsed permit. The Council considered that the significant investment in vessels and permits provide a good indicator of who should be eligible to apply among the fleet.

After considering several possible time periods to serve as the qualifying period, the Council recommended the years 1994–2003 for non-overfished species. These years represent the period of time from the beginning of the license limitation period through the announcement of the trawl rationalization control date. Dates prior to 1994 would not have permit histories because the LE system under which the permits were issued was not implemented until 1994. Other potential start dates between 1994 and 2003 were considered, including 1997 (the first year of fixed allocations among the three whiting sectors), 1998 (to exclude older histories), 1999 (the year of the first major reductions in response to overfished determinations), and 2000 (the year disaster was declared and fishing opportunities were significantly constrained and modified). The Council also considered 2004 as a later end date to the qualifying period, but determined that using 2004 would reward speculative entrants who chose to ignore the control date, create perceptions of inequity, and undermine the ability of the Council to use control dates in the future.

The recommended range of years from 1994–2003 would include fishing patterns from under a variety of circumstances, would recognize long-time users of the fishery, and is intended to mitigate disruptive effects experienced by communities as a result of geographic effort shifts. In addition, the dropping of the two worst years for whiting, or the three worst years for non-whiting, as well as the calculation of "relative history" (described below), is intended to mitigate against hardship cases and could reduce the requests regarding special circumstances and appeals.

Determination of overfished species QS would be based upon bycatch rates for different target species and areas and vessel logbook area distribution data from the years 2003–2006. This time period is used because the Council intended to accommodate more recent fishing patterns and spatial trends—and to provide the allocations of bycatch to those most in need of such allocations for the purpose of targeting healthy stocks. The Council declined to use catch history of these species as a basis for allocation because it would reward those who targeted these species in recent years.

(B) Eligibility and Qualifying Criteria for Processors

A shoreside processor may apply for initial issuance of whiting QS only. To be eligible, the processor would need to have received at least 1 metric ton of whiting from whiting trips (defined as a fishing trip where greater than or equal to 50 percent of all fish reported on the state landing receipt is whiting) in each year of at least two of the years from 1998–2004. The Council considered the greater likelihood of transient participation among processors, and therefore included the additional criteria of the minimum receipt requirement to demonstrate substantial participation.

For eligibility for initial issuance, "shoreside processor" would be defined as an operation on U.S. soil that takes delivery of trawl-caught groundfish that has not been processed and that thereafter engages that fish in shoreside processing activities, which include cutting groundfish into smaller portions; freezing, cooking, smoking, or drying groundfish; packaging that groundfish for resale into 100 pound units or smaller for sale or distribution into a wholesale or retail market; and the purchase of live groundfish from a harvesting vessel and redistribution in to a wholesale or retail market. Entities that received fish that have not undergone at-sea processing or shoreside processing and sell that fish directly to consumers would not be considered a processor for purposes of QS allocations.

The best official data that can be used to identify a processor that processed whiting on shore are the state landing receipts signed by the first receiver of the whiting. In a few cases, the first receiver that signed the landing receipts is not in fact the first processor of the whiting. Because of this, the process established to issue whiting QS to processors will allow the first receiver to apply for the QS. If the first receiver is not in fact the first processor, these regulations establish a process whereby the initial issuance of the QS could be issued to the first processor through agreement by the first processor and first receiver, or by a separate request for correction submitted by the first processor.

(C) Calculation of QS

The Council developed formulas to determine initial issuance allocations of QS. The allocation formulas are based on vessel landings or processor receipt histories within the shoreside sector. Under the proposed rule, NMFS would use data from the Pacific Fisheries Information Network (PacFIN) of the Pacific States Marine Fisheries Commission to derive these histories.

In developing the allocation formulas, the Council considered whether to calculate QS based on a harvester's landings or processor's receipt history as expressed in absolute pounds or by the applicant's relative history. Relative history computes an applicant's history as a percentage of effort within the sector, rather than in absolute pounds, in order to take into account changes in fishing and processing opportunity between years. An example to illustrate the concept of relative history can be shown using a hypothetical fishery with one species, three permits, and four years. The permits' absolute catch history for each year, expressed as species weight, follows:

	Year 1	Year 2	Year 3	Year 4
Permit 1	300	100	200	200
Permit 2	500	600	300	200
Permit 3	400	1200	400	100
Sector Total	1200	1900	900	500

The relative history for each permit would express each permit's catch in terms of a percentage of the total catch. Thus, in this hypothetical example, the permit's catch history would be divided by the total catch history of all permits in the sector. The relative history of this hypothetical fishery would look like this:

	Year 1 (percent)	Year 2 (percent)	Year 3 (percent)	Year 4 (percent)
Permit 1	25	5	22	40
Permit 2	42	32	33	40
Permit 3	33	63	44	20
Sector Total	100	100	100	100

For calculating QS, some calculations drop years with the lowest relative history before summing all relative histories, with the QS determined by dividing the permit's total relative histories by the aggregate total for the sector. This can be shown in this hypothetical example by demonstrating one dropped year as follows (each permit's lowest relative history is crossed out and not counted in the total relative history for the permit or year in which it occurs):

	Year 1 (percent)	Year 2 (percent)	Year 3 (percent)	Year 4 (percent)	Total (sum of relative histories, less worst year) (percent)	QS Allocation (permit total relative history/total of sector relative histories) (percent)
Permit 1	25	~~5~~	22	40	87	25.36
Permit 2	42	~~32~~	33	40	115	33.53
Permit 3	33	63	44	~~20~~	140	40.82
Sector Total (less worst years)	100	63	100	80	343	100.00

The calculation of relative history uses all catch history associated with the sector, regardless of whether all of that catch qualifies for QS, in order to demonstrate the permit or processor's actual performance relative to other participants.

The Council recommended specific allocation formulas for determining the initial amount of QS each eligible entity would receive. For harvesters, calculation of QS under this program would differ based on the eligibility of the underlying permits. The QS associated with the history of permits retired in the buyback program for all species (except incidentally-caught overfished species other than canary) would be distributed equally among the remaining qualified permits. The QS pool associated with the buyback permits would be the buyback permit history as a percent of the total fleet history for the allocation period, based on absolute pounds with no dropped years or other adjustments (about 44 percent of the QS would be allocated in this fashion).

The remaining harvester QS after computing the equal distribution would be calculated based on the history associated with each harvester's own current limited entry trawl permit. Different allocation formulas are used for whiting trips and non-whiting trips, as well as different formulas for target species and incidentally-caught overfished species in non-whiting trips. For initial issuance, a whiting trip would be defined as a fishing trip where greater than or equal to 50 percent of all fish reported on the state landing receipt are whiting (a non-whiting trip for purposes of initial issuance would be a fishing trip where less than 50 percent of all fish reported on the state landing receipt are whiting). For calculating QS based on a permit's landing history, NMFS would combine the landings histories of permits that have been combined. If two or more permits are registered to a single vessel, then NMFS would divide the landings history evenly among the permits. Landings history associated with provisional "A" permits that did not result in an "A" permit and landings associated with "B" permits would not be used; these permits no longer exist.

Within the regulations deemed by the Council as necessary or appropriate under the Magnuson Act, there were regulations where the Council expected NMFS to undertake the following when allocating catch history: "After applying standard PacFIN species composition algorithms and where the resulting species categorizations do not match IFQ species categories, NMFS will assign species to an IFQ species category based on other information from state landings receipts or logbook information in PacFIN." As discussed in Appendix A to the Draft Environmental Impact Statement (DEIS) for Amendment 20 (*see* Tables A–57 and A–58), most of this issue concerns unspecified rockfish within the minor rockfish north and south IFQ categories. NMFS is unsure that such an analysis can be reasonably undertaken given the Council's staff estimate that about 25,000 fish tickets would have to be reviewed. As noted in Appendix A, this could be a source of appeal: "Another area in which some discretion will be exercised is the classification of fish ticket records for which species remains unspecified, even after the application of species composition information (unspecified flatfish and unspecified rockfish). Unspecified flatfish can be reasonably assigned to the "Other Flatfish" category. Unspecified rockfish is most likely remaining shelf rockfish but might also be remaining nearshore rockfish (outside the scope of the IFQ program) or remaining slope rockfish. A more accurate determination may be made by considering other species listed on the fish ticket as well as any logbook data that can be correlated with a particular trip. Judgments made in the application of this ancillary data to determine the correct attribution for unspecified rockfish may be a source of appeal. Data on the extent of this issue is provided in Section A–2.1.3. The precautionary note regarding changing fish tickets is included in response to rumors that during the license limitation program implementation state agency personnel were changing fish tickets at fishermen's requests without realizing the implications with respect to the license limitation permit issuance process."

NMFS highlights this issue to request comments specifically on whether the agency should use information other than PacFIN data to assign species to an IFQ species category when such action would be impracticable in that it would be extremely time consuming and result in information that would not necessarily be accurate.

The Council also adopted language that stated: "History for illegal landings will not count for allocation of QS. Landings made under non-whiting Experimental Fishing Permits (EFPs) that are in excess of the cumulative limits in place for the nonEFP fishery will not count toward an allocation of QS." However, the draft regulations deemed as necessary or appropriate under the Magnuson Act, by the Council stated that "Landings identified as being in excess of the cumulative landings limits in place (e.g., illegal landings, non-whiting EFP landings, etc.) will not count toward the allocation of QS." The proposed regulation at § 660.140(d)(8)(iii)(A)(*5*) differs from what the Council initially deemed in order to match the language adopted by the Council. NMFS would rely upon information reported into the state fish ticket system (as documented in the PacFIN database) to identify such landings.

Allocations of QS based on a LE trawl-endorsed permit's catch history from whiting trips would be calculated from the permit's relative history from 1994–2003, dropping the two years with the worst relative history. Allocations for incidental catch in the whiting fishery would be made pro rata based on the qualifying permit's whiting history, meaning QS of bycatch species from whiting trips would be allocated at the same percent as whiting QS. Allocations of QS based on a LE trawl-endorsed permit's catch history for certain target species from non-whiting trips (called "Group 1" species in the proposed rule) would be calculated from the permit's relative history from 1994–2003, dropping the three years with the worst relative history.

Allocations of QS based on a LE trawl-endorsed permit's catch history for incidentally-caught overfished species from non-whiting trips ("Group 2" and "Group 3" species in the proposed rule) would be calculated by a formula that takes into account average bycatch rates based on 2003–2006 data from the West Coast Groundfish Observer Program (WCGOP), specific depth and latitude distributions determined from vessel logbook data, and the permit's QS allocations of certain target species. Bycatch rates specified in the proposed rule have been calculated by the NMFS' Northwest Fishery Science Center, and may be modified in the final rule for greater precision. To determine the weighting of various target species against which bycatch rates would be applied, NMFS would calculate a permit's estimated QP based on short-term non-whiting allocations applied to 2011 harvest specifications (initial calculations would be based on projections, subject to revision pending final specifications). The goal would be to address the QS recipient's need to cover incidental catch on non-whiting trips under current fishing practices. In order to make sure each qualifying permit receives an initial allocation of canary rockfish QS ("Group 3" species in the proposed rule), as described above, the landings history of vessels bought out through the buyback program for canary rockfish would be distributed evenly among qualifying QS permits.

Allocation of QS from whiting trips and from non-whiting trips would be calculated separately and weighted according to short-term allocations between whiting and non-whiting as set forth in 660.140(d)(8). The resulting amounts would be combined into a single QS for each species. Although not specifically addressed in the Council motion, for the first year of implementation only, NMFS would round overfished species QP up to the nearest pound for qualifying QS permits that would receive greater than zero, but less than one pound of an overfished species. This is intended to help mitigate the effects of initial issuance of overfished species QS.

Halibut IBQ for harvesters would be calculated using a formula based on QS for arrowtooth flounder and petrale sole, two target species that correlate to halibut bycatch. The formula would include additional factors such as area distribution of fishing effort and bycatch rates from WCGOP data applied to projected 2011 specifications, as set forth in full at § 660.140(d)(8). As with the QS calculation for overfished species, bycatch rates specified in the proposed rule may be modified in the final rule for greater precision.

For shoreside processors, calculation of whiting QS would be based on the relative history of the eligible processing company's receipts of whiting from whiting trips. NMFS would calculate whiting QS based on the processor's relative history from 1998–2004, dropping the 2 years with the worst relative history. NMFS would rely on PacFIN records to determine the first receiver/processor. A key consideration for this formula was to minimize disruption in the processing sector. An appeals process would allow NMFS to subsequently reassign landings history to another shoreside processor, if applicable.

ii. How To Obtain an Initial QS Permit

(A) Application and Correction

The proposed rule, at § 660.140(d)(8), sets forth two ways for qualified applicants to apply for a QS permit, either by responding to NMFS' prequalification materials, or by requesting a blank application and completing and submitting it to NMFS with evidence of qualification.

NMFS would mail "prequalified applications" to the eligible LE trawl permit holders and first receivers that appear to qualify for QS. The prequalification materials would show the basis for NMFS' calculations. If an eligible applicant does not receive a prequalified application from NMFS, the applicant may request a blank application from NMFS. The applicant would be required to complete the application and submit it to NMFS, along with additional information, by the application deadline. Failure to submit a complete application package to NMFS by the application deadline date would result in forgoing the ability to qualify for initial issuance of QS.

In preparation for this process, NMFS published, on January 29, 2010 (75 FR 4684), a final rule on data collection that included providing notice to participants in the industry to review their catch data for purposes of ensuring that the QS and other calculations undertaken by NMFS would be based on the best available data. In the February 19, 2010, "Small Entity Compliance Guide" associated with this rule, NMFS provided the following instructions: "For those individuals wanting to participate in the IFQ fishery, the data source is the Pacific States Marine Fisheries Commission's PacFIN database and includes the following: 1. Landings data during 1994–2003 from state fish tickets, as provided by the states to the PacFIN database, would be used to determine initial allocation of IFQ QS for the shore-based whiting and non-whiting harvesters and for the shore-based whiting processors. 2. The first receiver listed on the state fish ticket, as recorded in PacFIN, would be used to determine to whom whiting processing history should be attributed for whiting QS. Through NMFS' initial issuance process for QS, there would be an opportunity to reassign the whiting processing history. 3. State logbook information from 2003 through 2006, as

recorded in PacFIN, would be used to determine the area fished for individual permits (depth and latitudinal strata associated with permits). This information would be used in a formula to determine a permit's initial allocation of overfished species. For those seeking to participate in the MS or C/P fisheries, the data sources are from the NMFS' Northwest Fisheries Science Center's Pacific whiting observer data in NORPAC (NORPAC data). Observer data from the NORPAC database would be used to determine initial issuance of MS permits, mothership catcher vessel (MS/CV) endorsed permits, and C/P endorsed permits and allocation of whiting catch history assignments on MS/CV endorsed permits. Information on trawl-endorsed groundfish limited entry permits or permit combinations would come from limited entry permit records at NMFS, Northwest Region, Sustainable Fisheries Division, Fisheries Permits Office."

All potential participants in the trawl rationalization program were requested to check the data that NMFS would use for initial issuance of permits and allocations of harvest privileges. This includes potential QS permit owners in the IFQ fishery, including harvesters and shore-based whiting processors. It also includes potential coop participants that may be issued a MS permit, a MS/CV endorsement with an associated whiting catch history assignment, or a C/P endorsement.

Participants were instructed that this would be the only opportunity for potential participants in the trawl rationalization program to review and, if necessary, correct their fishery data prior to initial issuance of permits and allocations. At that time, NMFS stated that it was very important that this information be reviewed prior to the publication of the proposed rule for the trawl rationalization program, so that when NMFS extracts a copy of the databases for the initial issuance of permits and allocations, the data is correct. Participants were further instructed that NMFS would not allow this data to be corrected during the initial issuance and appeals process. Only NMFS' extraction, expansion, or aggregation of the data would be subject to appeal, not whether the raw data NMFS used was correct.

Because none of the data is publicly available at the individual level, for confidentiality reasons, NMFS provided instructions and Federal and state contact information for participants to use in requesting data and correcting data. (In support of this process, the PSMFC developed scripts for the States to use in providing fishermen and processors their data.) NMFS also indicated that if existing data contains a mistake, such as a transcription error, then the participant may request a correction. However, requests to add new data to PacFIN or NORPAC would not be considered. For logbooks, only existing logbook information in PacFIN may be corrected (i.e., only transcription errors); no new logbooks dating back to 2003 through 2006 would be accepted. Any revisions to an entity's fish tickets or logbooks would have to be approved by the state in order to be accepted by NMFS.

NMFS previously announced that the agency intended to extract a copy of the databases for the purposes of initial issuance on the date of publication of the proposed rule for initial issuance (i.e., the date of publication of this proposed rule). However, upon further consideration, NMFS has chosen to specify the date of extraction as July 1, 2010, in order to give the public more time to verify their data. Potential participants have had notice of the significance of verifying their data, and this extension to July 1, 2010, gives them additional time.

NMFS is proposing in this rule that the only basis for appeal would be the same as the basis for corrections which are errors in NMFS' extraction, aggregation, or expansion of data, including: Errors in NMFS extraction of landings data from PacFIN; errors in NMFS extraction of state logbook data from PacFIN; errors in NMFS application of the QS allocation formula; errors in the identification of the permit owner, permit combinations, or vessel registration as listed in NMFS' permit database; and errors in ownership information for first receivers and shoreside processors. The proposed rule, at § 660.140(d)(8), sets forth requirements for requesting these corrections. If an applicant does not accept NMFS' calculation in the pre-qualified application, the applicant would be required to identify in writing to NMFS which parts of the application the applicant contends to be inaccurate, and provide specific, credible information to substantiate any request for correction by the application deadline date. The proposed rule also sets forth requirements for reassignment of whiting landings history for shoreside processors, which require a written request signed by both parties providing specific information. An additional basis for requesting a correction or appeal for whiting QS based on shoreside processing would also be an allegation that the first receiver to which a QS permit and QS have been assigned was not in fact the first processor of the fish included in the qualifying history.

In support of this process, the Council provided the industry a series of tables with its preliminary estimates of QS. (*See http://www.pcouncil.org/groundfish/fishery-management-plan/fmp-amendment-20/trawl-rationalization-schedule-and-quota-share-allocation-tables/#qs*). The Council provided a QS allocation table for permits that shows the estimated initial allocations of QS on a permit-by-permit basis, as developed for purposes of analysis. The last line of the tables provides the whiting allocations for the MS/CV-endorsed permit catch history assignments that would be part of the MS coop program. The permit identifiers were masked for confidentiality reasons; the unmasked number for any particular permit is available only to the owner of that permit. The Council office mailed those numbers to permit owner. (A list of the owners of LE permits is available from the NMFS Limited Entry Permit Office Web site at *https://nwr2.nmfs.noaa.gov/nwp_public_ss/HOME/index_pub_permits_ss.cfm*.)

The Council described how its QS estimates were calculated. The QS estimates are based on 1994–2003 state fish ticket information acquired in the fall of 2006 from the PacFIN database, port sampler information which records the average species mixes for species reported on fish tickets as a group (*e.g.,* "Other Rockfish"); WCGOP data from 2003 to 2006; and individual permit logbook information for 2003 through 2006. With respect to the logbook information, if a permit was not active from 2003–2006, fleet-wide averages were used in place of the permit-specific logbook information. The allocation formulas that were applied are those from Section A–2.1.3 of the Council recommended program.

A similar table was provided for initial estimates of whiting QS that may be allocated to whiting processors. Twenty percent of the total whiting QS would be allocated to processors, as determined for the purpose of analysis. For processors to qualify they would be required to first meet a recent participation criteria, which requires that—in each of at least 2 years from 1998 through 2004—a processor would be required to have processed at least one metric ton (mt) from a vessel making a whiting trip. Available data indicates there are 11 companies that meet this criterion. Two tables were provided for processors; one provided a list of the companies meeting the recent participation criteria and the other showed an estimate of the amount of QS

projected for each company. For the QS estimates, the identity of the processor expected to receive the QS was masked, as was done for the permit owners.

The Council indicated that the actual QS allocations would be determined by NMFS and may vary from these estimates for a variety of reasons, including (but not limited to):

- A change in the allocation of harvest between shore-based whiting and non-whiting sectors or a change in the QS initial allocation formula arising through a partial disapproval of the program by NMFS;
- A change in the rebuilding status for overfished species or a new finding that a particular species is overfished, since the shoreside whiting/non-whiting sector split and QS allocation formulas for overfished species differ from that of non-overfished species; and
- The correction of an error in the fish tickets or logbooks on record for a particular permit (such a change may cause adjustments to the initial allocations for all other permits).

The Council also provided a hypothetical conversion of the initial QS allocations to QP based on OYs for the 2010 fishery and the trawl sector allocations recommended by the Council in April 2009. This is hypothetical because (1) actual QP available to the fishery, if and when this program begins after 2010, would differ from the 2010 example used here, and (2) the estimated QS for a permit may vary from the final actual QS issued to that permit, for the reasons cited above.

The November 11, 2009, update of these tables included modification of the canary QS allocations pursuant to actions taken by the Council at its November 2009 meeting and modification of the catch area assignments. Modification of the catch area assignments primarily affected the allocation of southern sablefish and southern shortspine thornyheads. The Council also noted that for some species, such as bocaccio, the trawl sector allocations may be greater than those assumed in the example. On December 18, 2009, the Pacific halibut and MS whiting estimates were added. On January 25, 2010, the Processor Whiting QS Allocation Table was added. This table was revised on April 9, 2010.

Applicants would be required to submit completed, signed, notarized applications by the deadline date (60 days after date of publication of the final rule in the **Federal Register**). The proposed rule sets forth the requirements for complete applications at § 660.140(d)(8). To be complete, the application would be required to include: Certification that the applicant qualifies to own QS; indication as to whether the applicant accepts NMFS' calculation of initial issuance of QS provided in the prequalified application, or credible information that demonstrates their qualification for QS; and a complete Trawl Identification of Ownership Interest Form identifying all individuals with 2 percent or greater interest in the permit. Business entities may be required to submit a corporate resolution or other credible documentation as proof that the representative of the entity is authorized to act on behalf of the entity. NMFS may request additional information of the applicant as necessary to make an initial administrative determination (IAD) on initial QS issuance.

(B) IAD and Appeals

NMFS would issue an IAD for all complete, certified applications received by the application deadline date. If NMFS approves an application for initial issuance of QS, the applicant would receive a QS Permit specifying the amounts of QS for which the applicant has qualified and the applicant would be registered to a QS Account. If NMFS disapproves an application or a portion of the QS applied for, the IAD would provide the reasons NMFS did not approve or only partially approved the application. If the applicant does not appeal the IAD within 30 calendar days of the date on the IAD, the IAD would become the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

An applicant who disagrees with NMFS' determination on the application would be required to appeal within 30 days or the IAD would become final. The proposed rule sets forth procedures and timelines for making appeals at § 660.25(g). Only the applicant may appeal the IAD. In this proposed rule, NMFS is proposing that there is no option to appeal a decision based on incomplete or inadequate data; the only basis for appeal would be the same as the basis for corrections which are errors in NMFS' extraction, aggregation, or expansion of data, including: Errors in NMFS extraction of landings data from PacFIN; errors in NMFS extraction of state logbook data from PacFIN; errors in NMFS application of the QS allocation formula; errors in identification of the permit owner, permit combinations, or vessel registration as listed in NMFS permit database; and errors in ownership information for first receivers and shoreside processors. An additional basis for appeal for whiting QS based on shoreside processing would also be an allegation that the first receiver to which a QS permit and QS have been assigned is not in fact the first processor for those fish. The appeal would be required to be in writing and allege credible facts to show why the criteria have been met. In addition, § 660.140(d)(8) of the proposed rule specifies that certain issues may not be appealed, including but not limited to: The accuracy of the permit landings data or shoreside first receiver landings data in the dataset extracted from PacFIN by NMFS on July 1, 2010.

(C) Permit Pending Appeal

The proposed rule would address the status of permits pending appeal as follows. For permits and endorsement qualifications and eligibility appeals (i.e., QS permit (permit eligibility, not amounts), MS permit, MS/CV endorsement, C/P endorsement), any permit or endorsement under appeal may not fish in the Pacific Coast groundfish fishery until a final decision on the appeal has been made. If the permit or endorsement is issued, the permit or endorsement would be effective upon approval, except for QS permits, which would be effective at the start of the next fishing year.

For a QS amount for specific IFQ management unit species under appeal, the QS amount for the IFQ species under appeal would remain as that previously assigned to the associated QS in the IAD. The QS permit could be used to fish in the Pacific Coast groundfish fishery with the QS amounts assigned to the QS permit in the IAD. Once a final decision on the appeal has been made—and if a revised QS amount for a specific IFQ species would be assigned to the QS permit—the QS amount associated with the QS permit would be effective at the start of the next calendar year.

b. Transfers

After the first 2 years of program implementation, transfers of QS would be allowed. While criteria for initial issuance limit recipients to owners of LE trawl permits, after the first 2 years, transfers could be made to a broader group. Generally, anyone eligible to own a U.S.-documented fishing vessel could acquire QS and QP in increments as small as one pound. These provisions would allow for new entrants into the fishery; for example, a crew member could slowly purchase amounts of quota. They would also allow for ownership of QS by communities, non-governmental organizations, or other entities.

This transferability would be expected to facilitate bycatch reduction and efficiency. Through the transfer of QS/QP (bought and sold or "leased" through private contract), it is anticipated that those best able to avoid catching overfished species, and those who are most efficient, would increase the amount of QS/QP registered to them, while those who consistently have high bycatch rates or operate less efficiently might choose to sell their QS and leave the fishery.

c. Requirement to Transfer QP Into Vessel Account

Each year, all QP would be required to be transferred into a vessel account by September 1. This requirement is intended to encourage its availability for use by the fleet.

d. Distribution of Additional Quota Shares

In Amendment 20, the Council indicates that it would consider the use of an auction or other non-history-based method when distributing QS that may become available after initial allocation. This may include quota created when a stock transitions from overfished to non-overfished status, quota not used by the AMP, quota forfeited to "use it or lose it" provisions, and any quota that becomes available as a result of the initial or subsequent reviews of the program. The method of distribution would be designed to achieve the goals of Amendment 20, including minimizing the adverse effects from an IFQ program on fishing communities to the extent practical.

4. Ownership Limitations and Accumulation Limits

While transferability is an important component of the Amendment 20 program, there would also be accumulation limits on the amount of QS or QP that could be controlled by a person. The intent of these limits is to prevent excessive control of quota by a participant. The MSA specifically requires the establishment of a maximum share that each limited access privilege holder is permitted to hold, acquire, or use.

a. Limits

In developing limits, the Council noted the tension between allowing sufficient accumulation to improve the efficiencies of harvesting activities and preventing levels of accumulation that could result in adverse economic and social effects. In determining the appropriate levels, the Council considered a wide range of factors such as social benefits, impact on labor, impacts on processors, impacts on harvesters, impacts on the public, the number and sizes of firms, within-sector competition, market power, efficiency, geographic distribution, communities, and fairness and equity.

Amendment 20 would establish limits (by species group and area) on the amount of QS an individual can control (control limits). Control limits would apply to individual species, species groups (and area, for some species), expressed as a percentage of the shore-based IFQ program's allocation. The proposed control limits are set forth in the proposed rule in the table at § 660.140(d)(4). In addition, the proposed rule would establish a control limit for the amount of non-whiting QS a person may control in aggregate.

To determine a person's aggregate amount of non-whiting QS, the Council adopted a formula that would convert QS to poundage to reflect the weighting between individual stocks. Because individual non-whiting species' stock fluctuations would affect a QS owner's aggregate QS holdings, the Council motion states that "This conversion will always be conducted using the trawl allocations applied to the 2010 OYs, until such time as the Council recommends otherwise" and that "QS for each species will be multiplied by the shoreside trawl allocation for that species." However, because no shoreside trawl allocation existed in 2010 that could be applied to the 2010 OYs, it is not clear how NMFS would calculate the aggregate non-whiting control limit. If the Council intended to use the OYs from the initial implementation year (i.e., if it were under the mistaken impression that 2010 was to be the implementation year) and the 2011 OYs were used, there would be no problem determining the aggregate non-whiting amount, as the sector allocation could be calculated by deducting the at-sea sector set asides for each species from the limited entry trawl sector allocation for that species. In 2010, however, non-whiting target species did not have at-sea set asides that could be deducted from the limited entry trawl sector allocation to calculate a shoreside trawl allocation. NMFS specifically requests comment on this issue to address in the final rule.

NMFS would determine and track ownership interest in QS to determine if individuals are within set limits, both at the initial allocation stage and during the operation of the program. As part of the IAD on the initial application, NMFS would indicate if the QS Permit owner has QS in amounts that exceed the accumulation limits and are subject to divestiture provisions set forth in § 660.140(d)(4). NMFS would determine ownership interest based on the "Individual and Collective Rule," which means that the QS that counts toward a person's accumulation limit would include both the QS owned by that person, and a portion of the QS owned by an entity in which that person has an interest.

The proposed rule contains additional interpretation of the word "control," which is intended to address the Council's concern that a person could control QS by controlling QP. The proposed rule is intended to set the boundaries around QS control limits, including QP but excluding QP in a vessel account if subject to separate accumulation limits. If control of QP is not subject to the QS control limits, a person could use control over QP to control a percentage of the harvest from the fishery in excess of that intended under the QS control-limit percentage. In other words, if the QS control limits are not extended to QP, there is no assurance that QS control limits would perform their intended function. At some point, QP control amounts to the functional equivalent of QS control. The following examples illustrate undesirable forms of control:

Example 1. A QS holder enters into a multi-year agreement under which another person has the right to direct how the QS holder's QP is used. The person controlling the QP has essentially gained control of the QS even beyond the duration of the QP issued during the first year of the agreement.

Example 2. Vessel financing arrangements under which a lender who is engaged in the seafood business exercises control over the catch delivered by a fisherman-borrower are not uncommon. These arrangements sometimes require that the fisherman deliver his catch as the lender directs, and provide for a method of calculating "market value" of the catch. In other cases, the lender may hold a right of first refusal ("ROFR") over the catch. While the ROFR does not in and of itself require that the fisherman deliver to the lender, it provides the lender with the authority to decide on a delivery-by-delivery basis whether the catch would be delivered to a third party or the lender, and thereby effectively gives the lender control over catch. If a single lender entered into arrangements of this type with a number of fishermen, the lender could potentially control a percentage of QP for the fishery in excess of the QS control limit percentage through those arrangements, without having asserted direct control over the fishermen's QS.

Example 3. Crew assign QP to a vessel, or fishermen transfer QP to a vessel but do not grant control over QS. This would not count toward QS control limits; however, it would indicate control if long term control of disposition of the QP derived from the QS were granted.

Similar regulatory language would apply a control limit to Pacific halibut IBQ.

b. Divestiture

Amendment 20 would establish different rules for complying with the accumulation limits depending on when the permits were transferred. For permits transferred prior to November 8, 2008, and which exceed the accumulation limits, the permit owner would initially receive the entire amount of QS for which the permit qualifies. However, the permit owner would be required to divest of the amount in excess of the limit sometime during years 3 and 4 of the IFQ program, and, at the end of year 4 of the IFQ program, any QS owned or controlled by a person in excess of the accumulation limits would be revoked and redistributed to the remainder of the QS owners in proportion to the QS holdings in year 5. No compensation would be due for any revoked shares.

For permits transferred after November 8, 2008, the permit owner would only be able to receive QS amounts that are within the appropriate limits. The initial issuance of QS would be reduced in order to comply with the applicable control limits. For non-whiting species, whether NMFS applies the aggregate non-whiting control limit first or applies individual non-whiting species control limits first may affect the initial QS allocation for each species. Generally, application of the aggregate non-whiting control limit first would result in an allocation that more closely reflects the weighting of non-whiting species in the permit's history. NMFS highlights this issue to seek specific comment on which approach to use.

5. QS Account/Annual Renewal

Once a person is found eligible for a QS permit, NMFS would issue QS and register it to a QS account. At the beginning of each year and after QS permit renewal, NMFS would assign a specific amount of QP representing the QS percentage to the account. QS owners would be required to transfer their QP from their QS account to a vessel account in order for those QP to be fished.

6. Overages and Carryovers

Amendment 20 would provide flexibility by allowing a 30-day grace period after which an overage occurred to acquire QP into the vessel account to cover the overage. However, during this 30-day period, no more fishing could occur and no QS transfers could take place until the account is settled. If an overage shows on the fish ticket at the time of landing or in the vessel account at any time after the landing, the clock would start when any data/documentation from the trip which caused the overage is available or the vessel account shows there is an overage.

To the extent allowed by the conservation requirements of the MSA, Amendment 20 would include a "carryover allowance" that would allow surplus QP in a vessel account to be carried over from one year to the next or allow a deficit in a vessel account for one year to be carried over and covered with QP from a subsequent year. Surplus QP could not be carried over for more than 1 year and could not exceed in 1 year the carryover allowance as described below.

A vessel with a QP surplus at the end of the current year would be able to use that QP in the immediately following year, up to the limit of the carryover allowance (see below). However, if there is a decline in the OY, the amount of QP carried over as a surplus would be reduced in proportion to the reduction in the OY.

A vessel with a QP deficit in the current year would be able to cover that deficit with QP from the following year without incurring a violation if the amount of QP it needs from the following year is within the carryover allowance and the QP are acquired within the specified time limits.

The carryover amount for a deficit is based on the amount of QP in the vessel account at the end of the 30-day period during which a vessel would be required to cover its overage. The carryover amount for a surplus is based on the amount of QP in the vessel account at the end of the year.

The carryover allowance would be limited to up to 10 percent carryover for each species. This would apply to both non-overfished species and overfished species. The percentage would be calculated based on the total pounds (used and unused) in a vessel account for the current year. The percentage used for the carryover provision could be changed during the biennial specifications process.

7. Catch Monitoring and Tracking (or Tracking, Monitoring and Enforcement)

Amendment 20 would include a tracking and monitoring program to assure that all catch (including discards) would be documented and matched against QP. The Council specified that observers would be required on all vessels and shoreside monitoring (catch monitors) would be required during all offloading (100 percent coverage). Compared to status quo monitoring, this would be a monitoring and observer coverage level increase for a large portion of the trawl fleet, particularly non-whiting shore-based vessels. As a result, more accurate estimates of total mortality would be expected to benefit stock conservation goals, as well as other goals discussed herein.

The Council recommended providing NMFS flexibility to develop a monitoring program that would achieve the objectives of the trawl rationalization program. NMFS is working closely with the States and the Council to develop the details of the tracking and monitoring program, as reported by PSMFC at the April 2010 Council meeting. The details of the program would be proposed in the upcoming program components rule. As reported by PSMFC, the following tracking and monitoring components would be addressed.

Amendment 20 would require NMFS-certified at-sea observers on each vessel. These include shore-based catcher vessels, catcher vessels in the mothership sector, motherships, and C/Ps. Because this is a new program, ensuring adequate observer coverage would be particularly important for monitoring the complex suite of allocations. Observers aboard vessels would be required to adequately account for catch and bycatch in the fishery. Among his or her duties, the observer would record fishing effort and estimate total, retained and discarded catch weight by species; determine species composition of retained and discarded catch (non-whiting vessels) and document the reasons for discard; record interactions and sightings of protected species; and take biological samples from tagged fish and discards, and estimate the viability of Pacific halibut. Observers would be essential for monitoring the use of IBQ in the fishery, including the weighing and discarding of halibut bycatch.

An increase in observer and catch-monitoring coverage requirements would result in increased costs over the status quo observer program costs. There would be a combined status quo, pay-as-you-go industry funding and agency-funded observer and catch monitor system as required for each sector. The agency has announced its intent, subject to available Federal funding, that participants would initially be responsible for 10 percent of the cost of hiring observers and catch monitors. The industry proportion of the costs of hiring observers and catch monitors would be increased every year so that by 2014, once the fishery has transitioned to the rationalization program, the industry would be

responsible for 100 percent of the cost of hiring the observers and catch monitors. NMFS believes that an incrementally reduced subsidy to industry-funding would enhance the observer and catch monitor program's stability, ensure 100 percent observer and catch monitor coverage, and facilitate the industry's successful transition to the new rationalized trawl fishery.

Amendment 20 would require that first receivers—the shoreside processors—sort, weigh and report all landings of IFQ species under a catch monitoring plan. First receivers would be required to hire NMFS-certified catch monitors to verify all shoreside deliveries of IFQ species, ensure that species are sorted to Federal species of species group, ensure that the fish are weighed on state-certified scales that are periodically tested, and record and submit catch data daily.

To ensure that the IFQ program goals are met and landings are tracked, first receivers would be required to submit electronic fish tickets using software provided by the PSMFC. Further, vessels would be required to use vessel monitoring systems (VMS) for purposes of indicating location of the vessels and to make declarations. In addition, there are plans to develop and require an electronic vessel logbook, but this component would not be immediately implemented.

To ensure that program goals are met to track transferrable QS and QP, NMFS is also developing an online accounting system for the tracking and trading of QS by owner and for the tracking, trading, and use of the QP that results from these QS by vessels.

8. Fees

The agency would collect fees to cover the administrative costs of issuing the QS, permit endorsements (one-time fee and annual renewal), and first receiver site licenses (annual). Amendment 20 would allow for assessing cost recovery fees of up to 3 percent of ex-vessel value, consistent with section 303A(e) of the MSA. The costs to be recovered would be the agency's costs of management, data collection, analysis, and enforcement activities. The Council would develop the methodology required by section 303(A)(e) in a trailing action.

9. Management (Accountability Measures)

If individual vessel overages (catch not covered by QP) make it necessary, area restrictions, season closures, or other measures could be used to prevent the trawl sector (in aggregate or the individual trawl sectors listed here) from going over allocations. The IFQ fishery may also be restricted or closed as a result of overages in other sectors.

10. Retention and Discard Provisions

For non-whiting vessels and whiting vessels sorting at-sea, Amendment 20 would allow discarding of IFQ species, but such discards would have to be covered by QP. Discarding of Pacific halibut would be required and would have to be covered by IBQ. Discarding of non-IFQ species and non-groundfish species would be allowed.

For whiting maximized retention vessels, discarding of fish covered by IFQ or IBQ, and discarding of nongroundfish species, would be prohibited.

11. First Receiver/Processor Permit

Amendment 20 would require processors that are the first receivers of IFQ species to obtain a site license in order to accept shoreside deliveries. A license could be issued to any site that meets the monitoring requirements.

12. Adaptive Management Program

Amendment 20 contains an AMP for the shore-based non-whiting sector that is intended to address: Community stability; processor stability; conservation; unintended and unforeseen consequences of IFQ management; and facilitating new entrants. Ten percent of the shore-based non-whiting QS would be reserved, or set aside, for the AMP. During the first 2 years of the IFQ program, the method to be used in distributing QP in years 3–5 would be determined, including the decision-making and organization structure to be used in distributing the QP set aside.

The set aside of QP for the identified objectives would be reviewed as part of the year 5 comprehensive review and a range of sunset dates would be considered, including 10-, 15-, 20-year and no sunset date options.

13. Data Collection

Amendment 20 would require expansion of the data collection program. Submission of economic data by harvesters and processors would be mandatory. Random and targeted audits could be used to validate mandatory data submissions. Information on QS transaction prices would be included in a central QS ownership registry.

14. Program Review

Amendment 20 provides for a review of the IFQ program to begin no later than 5 years after implementation of the program. The review would evaluate the progress the IFQ program has made in achieving the goal and objectives of Amendment 20. The result of this evaluation could include dissolution of the program, revocation of all or part of QS, or other fundamental changes to the program. Owners of QS should remain cognizant of this fact when making decisions regarding their QS, including buying selling, and leasing of these shares.

Amendment 20 requires the Council to consider the use of an auction or other non-history based methods when distributing QS that may become available after initial allocation. This may include quota created when a stock transitions from overfished to non-overfished status, quota not used by the adaptive management program, quota forfeited to "use it or lose it" provisions, and any quota that becomes available as a result of the initial or subsequent reviews of the program. The specific form of the auction or other method of distribution would be designed to achieve the goals of Amendment 20, specifically including minimizing the adverse effects from an IFQ program on fishing communities to the extent practical.

After the initial review, there would be a review process every four years. A community advisory committee would take part in the review of IFQ program performance.

B. Mothership Coop Program

The term "cooperative" refers to a collective arrangement among a like-minded group of individuals. Cooperatives, also called coops, are entities that are controlled by the people who use them. They differ from other business entities because they are member owned and operate for the benefit of members. The cooperatives designed under Amendment 20 are designed to coordinate harvest among members, thus they can be described as "harvest cooperatives." Under Amendment 20, each MS cooperative would annually be allocated an amount of catch based on the combined catch histories of its members for that year. As designed under Amendment 20, the harvest cooperatives for both the MS and C/P sectors would constitute a form of allocation that facilitates catch accounting down to individual vessel levels by allowing private contracts and intra-coop self-monitoring.

1. Structure Overview

The Mothership Coop Program (MS Coop Program) would apply to harvesters and processors in the MS sector of the at-sea whiting trawl fishery. The MS Coop Program would

also apply both to vessels participating in a coop as well those not participating in a coop. For those participating in coops, the program would assign to each MS coop a designated amount of harvest privilege representing a "sub-allocation" of the total MS sector allocation. MS coop membership would consist of MS/CV-endorsed permit owners who enter into a coop agreement that is accepted by NMFS. Participants in the MS coop include the catcher vessels registered to the member MS/CV-endorsed permits, LE permitted trawl vessels without an MS/CV-endorsed permit that are working with the coop, and the motherships to which the MS/CVs-endorsed permits are obligated. Once a coop agreement is accepted, NMFS would issue the coop a permit, and would assign to the coop a "sub-allocation" of catch that is derived from the catch histories of the individual MS/CV-endorsed permits in the coop.

The MS Coop Program would establish new requirements for MS permits and MS/CV permit endorsements. Similar to the shore-based IFQ program, NMFS would be required to track ownership interest in both MS permits and MS/CV-endorsed permits to determine if individual vessels are within set accumulation and usage limits, as described further below.

The vessels registered to MS/CV endorsed permits in the MS sector that do not participate in a coop would be able to fish in the non-coop fishery. The non-coop whiting fishery would be authorized to harvest the Pacific whiting remaining in the MS sector annual allocation after the deduction of all coop allocations. For non-whiting, the sub-allocation to the non-coop fishery would be in proportion to the MS/CV Pacific whiting catch history assignments for the non-coop fishery.

Participants in the MS sector would be required to declare annually in what capacity they would operate: Coop or non-coop. Additionally, MS/CV-endorsed permits operating in a coop would be required to indicate to which MS permit they would be obligated.

2. Coop Species

Pursuant to Amendment 20, hard caps would be established for the following species: Pacific whiting, Pacific ocean perch, widow rockfish, canary rockfish, and darkblotched rockfish. In addition, annual MS sector set-asides would be established for lingcod, Pacific cod, sablefish S. of 36° N. lat., chilipepper S. of 40°10′ N. lat., splitnose S. of 40°10′ N. lat., yellowtail N. of 40°10′ N. lat., shortspine N. of 34°27′ N. lat., shortspine S. of 34°27′ N. lat., longspine N. of 34°27′ N. lat., minor slope rockfish N. of 40°10′ N. lat., minor slope rockfish S. of 40°10′ N. lat., Dover sole, English sole, petrale sole, arrowtooth flounder, starry flounder, and Other Flatfish. Groundfish species with MS sector set-asides would be managed on an annual basis unless there is a risk of a harvest specification being exceeded, unforeseen impact on another fisheries, or conservation concerns in which case inseason action may be taken. Set-asides may be adjusted through the biennial specifications and management measures process as necessary.

The MS Coop Program would not establish allocations or set-asides for infrequently occurring species, such as shortbelly rockfish, longspine thornyhead S. of 34°27′ N. lat., black rockfish (WOC), minor rockfish north nearshore species complex, minor rockfish south nearshore species complex, CA scorpionfish, cabezon (CA only), kelp greenling, and Other Fish. Many of these occur primarily in nearshore areas where trawl gear does not operate and are mostly managed by the states. There is no market for shortbelly, and its OY is large compared to the amount of incidental catch. Other rockfish and other fish are not caught in large volumes and catch of these species would be constrained by limits on other species. Like set-asides, these species would be managed on an annual basis unless there is a risk of a harvest specification being exceeded, unforeseen impact on another fisheries, or conservation concerns (in which case inseason action may be taken). Annually, a specified amount of the Pacific halibut would be held in reserve as a set-aside for the Pacific whiting MS sector.

3. Who/How To Participate

The MS Coop Program would issue MS permits and MS/CV endorsements for LE permits to qualified applicants and would establish new requirements for participation.

a. Permit and Endorsement Requirements

Under the MS coop program, vessels participating as motherships would be required to be registered to MS permits. Catcher vessels fishing for a MS coop would need to be registered to a MS/CV-endorsed permit, or be registered to a LE trawl endorsed permit without an MS/CV endorsement with permission of the coop, as described below. Catcher vessels in the non-coop fishery would be required to be registered to a MS/CV-endorsed permit.

i. MS Permit Initial Issuance

The proposed program would close the MS sector by creating a LE program and requiring registration of the vessel to a new type of LE permit, an MS permit. The restriction preventing mothership vessels from operating as catcher vessels or C/Ps during a year in which they operate as motherships would be maintained. The owners of qualifying motherships would be issued MS permits. The following requirements govern the process for obtaining an MS permit.

(A) Eligibility

Generally, an owner of a vessel that processed whiting in the MS sector in the qualifying years would be eligible to apply for a MS permit. However, there would be an exception to address a vessel that was a bareboat charter during the qualifying period.

(B) Qualifying Criteria

In order for an owner of a mothership to qualify for a MS permit, the mothership would be required to have processed at least 1,000 mt of whiting in each of 2 years during the qualifying years of 1997–2003. The Council intended these criteria to recognize those participants that have substantially participated as a mothership in the Pacific whiting fishery. Using the years 1997 to 2003 is intended to reflect the time period between the date the C/P sector and the MS sector were separated from a general at-sea sector in regulation (1997) and to be consistent with the control date (2003).

(C) Application and Correction

NMFS would make a preliminary determination of whether a mothership meets the qualifying criteria using Pacific Whiting Observer data as extracted from the NORPAC database on July 1, 2010. If a mothership meets the qualifying criteria for an MS permit, NMFS would mail to the owner of the vessel an application pre-filled with qualifying information at the address of record as currently given in NMFS permit database. Pre-filled applications would be required to be completed and returned to NMFS by the application deadline date.

Owners of vessels that do not receive a prequalified application from NMFS, and believe they are qualified for a MS Permit, would be required to complete an application package (available from NMFS) and submit the completed application to NMFS by the deadline date. If an applicant fails to complete and return an application by the deadline date, the person forgoes the

opportunity to receive consideration for initial issuance of a MS permit.

If an applicant does not agree with the basis for NMFS' determination, the applicant would be required to submit, by the application deadline, a written statement identifying the incorrect information and providing credible documentation to support a correction, as set forth in the proposed rule at § 660.150(f)(6). Corrections may only be submitted for errors in NMFS' extraction, aggregation, or expansion of the dataset that was extracted from NORPAC by NMFS on July 1, 2010. Corrections may be submitted for errors in NMFS extraction of data from NORPAC, errors in NMFS calculation, and errors in the vessel registration as listed in NMFS permit database or in the identification of the mothership owner or bareboat charterer.

The current vessel owner would be required to then submit a completed application by the deadline date (60 days after date of publication of the final rule in the **Federal Register**). A complete application would be required to be signed and notarized, and must include all of the information required by NMFS which includes, but is not limited to, the factors specified at § 660.150(f)(6), including: Certification that the applicant qualifies to own a MS permit and indication of whether they agree or disagree with NMFS' determination on initial issuance of the MS permit provided in the application; a complete Trawl Identification of Ownership Interest Form; business entities may be required to submit a corporate resolution or any other credible documentation as proof that the representative of the entity is authorized to act on behalf of the entity; a bareboat charterer would be required to provide credible evidence that demonstrates it was chartering the MS vessel under a private contract during the qualifying years. NMFS may request additional information of the applicant as necessary to make an IAD.

(D) IAD and Appeals

NMFS would issue an IAD for all complete, certified applications received by the application deadline date. If NMFS approves an application, the applicant would receive a MS permit. If NMFS disapproves an applicant's request to correct the application, the IAD would provide the reasons NMFS did not accept the corrections. If the applicant does not appeal the IAD within 30 calendar days of the date on the IAD, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

An applicant who disagrees with NMFS' determination on the application would be required to appeal within 30 days or the IAD would become final. The proposed rule's appeals procedures at § 660.25(g) would apply to this section as well as additional specific requirements at § 660.25(f)(6), which limit the scope of appeals to the issues that can be corrected and further specify that some issues are not subject to appeal, including but not limited to: The accuracy of data in the dataset extracted from NORPAC by NMFS on July 1, 2010.

ii. MS/CV Endorsement, Initial Issuance, Catch History Assignment (CHA), and Appeals

In order to fish in the MS sector, a catcher vessel would be required to be either registered to a MS/CV-endorsed LE permit or registered to a trawl-endorsed LE permit without a MS/CV or C/P endorsement. Vessels registered to a MS/CV-endorsed LE permit would be able to elect to fish in either the coop or non-coop sector. Vessels registered to a trawl-endorsed LE permit without MS/CV-endorsed LE permits would only be able to fish in the coop sector under a specific coop agreement with permission of the coop. Vessels registered to a C/P-endorsed LE permit could not fish in the MS sector. Vessels fishing as catcher vessels in the MS sector could not function as motherships or C/Ps during the same calendar year.

(A) Eligible Applicant

Only an owner of a current trawl endorsed LE permit with a history of whiting deliveries in the MS whiting sector is eligible to receive a MS/CV endorsement. Any past catch history associated with a current trawl permit would accrue to the current permit owner. If a trawl limited entry permit is eligible to receive both a C/P endorsement and a MS/CV endorsement, the permit owner would be required to choose which endorsement to apply for (i.e., the owner of such a permit may not receive both a C/P and MS/CV endorsement).

(B) Endorsement Qualifying Criteria

In order to qualify for a MS/CV endorsement, vessels registered to a trawl-endorsed LE permit would be required to have caught and delivered more than 500 mt of whiting to motherships from 1994 through 2003. Deliveries of whiting by vessels registered to permits that were subsequently combined to generate the current permit would count toward qualifying tonnage unless the permit owner also applies for a C/P permit. These criteria were selected to demonstrate substantial participation and to include the years between the establishment of the LE period and the control date. While the at-sea sectors were separated in 1997, this would not necessarily have affected catcher vessels.

(C) Catch History Assignment Qualifying Criteria

The catch history assignment (CHA) calculation for the MS/CV-endorsed permit would be based on the whiting relative history of vessels registered to the permit in each year from 1994 through 2003, dropping the two worst years (lowest relative history) unless otherwise indicated by the applicant.

The proposed rule sets forth the specific approach NMFS would use to calculate the CHA at § 660.150(g)(6). Based on Pacific whiting observer data that reside in NORPAC on July 1, 2010, NMFS would calculate the CHA as a percentage of Pacific whiting of the total MS sector allocation for each year. The catch history would be used to assign both whiting and bycatch species allocations to a coop and the non-coop fishery. The catch history would include any deliveries of whiting by vessels registered to a permit that were combined to generate the current permit. Illegal landings would not count towards catch history; nor would landings history from Federal LE groundfish permits that were revoked or retired either through the Federal buyback program. Landings history associated with provisional "A" permits that did not result in an "A" permit and that associated with "B" permits would also not count towards catch history; these permits no longer exist.

(D) Application and Correction

The proposed rule sets forth the process for applications and corrections at § 660.150(g)(6). NMFS would mail a prequalified application form to current trawl permit owners where NMFS finds their LE permits to have a catch history that meets the qualifying criteria. This application would be mailed to current permit owner's address of record in the NMFS permit data base. Prequalified applications would be partially pre-filled by NMFS and would be required to be completed by the applicant and returned to NMFS by the application deadline date.

If a current trawl LE permit owner does not receive a prequalified application from NMFS and the permit owner believes the permit's catch history qualifies for a MS/CV endorsement and associated CHA, the

permit owner would be required to complete an application package (available from NMFS) and submit the application package to NMFS by the application deadline. If the permit owner fails to submit an application to NMFS by the deadline date, the person forgoes the opportunity to receive consideration for initial issuance of a MS/CV endorsement and associated CHA.

If an applicant does not accept NMFS' calculation in the prequalified application, the applicant would be required to identify in writing to NMFS which parts of the application the applicant contends to be inaccurate, and provide credible information to substantiate any request for correction by the application deadline date. Requests for corrections, as specified in § 660.150(g)(6), may only be granted for changes to the selection of eight years with the highest relative history of whiting and errors in NMFS' extraction, aggregation, or expansion of data, including errors in NMFS extraction of data from NORPAC; errors in NMFS calculation; and errors in the identification of the permit owner, permit combinations, or vessel registration as listed in NMFS permit database. Requests for corrections would be required to be submitted no later than the application deadline date. NMFS would review a correction provided by the applicant and either accept or not accept the correction. If a correction is accepted by NMFS, the CHA would be revised. If the applicant fails to provide the request for correction or documentation supporting the correction by the deadline date, NMFS would make its IAD based on the catch history data provided in the prequalified application.

An applicant would be required to sign and notarize the completed application and return it to NMFS by the application deadline date (60 days after date of publication of the final rule in the **Federal Register**). A completed application would be required to contain the items listed in § 660.150(g)(6), which include, but are not limited to: Certification that the applicant qualifies to own a MS/CV-endorsed permit and indication as to whether they agree or disagree with NMFS' determination on initial issuance of the MS/CV-endorsed permit and CHA provided in the application; and a complete Trawl Identification of Ownership Interest Form. Business entities may be required to submit a corporate resolution or any other credible documentation as proof that the representative of the entity is authorized to act on behalf of the entity. NMFS could request additional information of the applicant as necessary to make an IAD.

(E) IAD

NMFS would issue an IAD for all complete, certified applications received by the application deadline date. If NMFS approves the application, the applicant would receive a MS/CV endorsement and associated Pacific whiting CHA on their LE trawl-endorsed permit. If NMFS disapproves an applicant's request to correct the application, the IAD would provide the reasons NMFS did not accept the corrections. If known at the time of the IAD, NMFS would indicate if the MS/CV-endorsed permit owner has ownership interest in CHAs that exceed the accumulation limits and are subject to divestiture provisions given at § 660.150(g)(3). If the applicant does not appeal the IAD within 30 calendar days of the date on the IAD, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(F) Appeals

An applicant who disagrees with NMFS' determination on the application would be required to appeal within 30 days or the IAD would become final. The proposed rule sets forth procedures and timelines for making appeals at § 660.25(g). Only the applicant may appeal the IAD. The appeal would be required to be in writing and allege credible facts to show why the criteria have been met. In addition, § 660.150(g)(6) of the proposed rule specifies that certain issues may not be appealed, including but not limited to the accuracy of data in the dataset extracted from NORPAC by NMFS on July 1, 2010.

The proposed rule would address the status of permits pending appeal as follows. For the MS/CV endorsement qualifications and eligibility appeals, any endorsement under appeal after December 31, 2010, may not fish in the Pacific Coast groundfish fishery until a final decision on the appeal has been made. If the MS/CV endorsement would be issued, the endorsement would be effective upon approval. For a Pacific whiting CHA associated with a MS/CV endorsement under appeal, the CHA would remain as that previously assigned to the associated MS/CV-endorsed LE permit before the appeals process (i.e. at the time of the IAD). The MS/CV-endorsed LE permit may be used to fish in the Pacific Coast groundfish fishery with the catch history assigned to the MS/CV-endorsed permit before the appeal. Once a final decision on the appeal has been made and if a revised CHA would be issued, the Pacific whiting CHA associated with the MS/CV endorsement would be effective at the start of the second year after the trawl rationalization program is implemented.

(G) Permit Transfer During Application Period

There would be a prohibition on transferring ownership of LE trawl permits during the application process until the final decision for that application has been made.

iii. MS Coop Permit

In order for NMFS to assign a sub-allocation to an MS coop, the coop would be required to obtain a coop permit each year. A coop permit would not be renewable and would need to be reissued annually. The application would be required to be submitted between February 1 and March 31 each year, which is before the start of the whiting season. While formation of a coop would be voluntary, certain rules would apply: The coop would be required to be a legal entity with a designated manager, it would be required to include at least 20 percent of the MS/CV-endorsed LE permit owners as members, and it would be required to represent all of its members. Coops would have to be responsible for monitoring and enforcing the terms of the coop agreement on their members. The MS Coop Program would allow for inter-coop agreements as well. Additional requirements pertaining to contents of coop agreements, inter-coop agreements, and the application process for a coop permit would be set forth in the program components rule.

b. CHAs Allocation to the MS Coop

CHAs would initially be allocated to the LE permits associated with individual whiting catcher vessels in the MS fishery that also qualify for an MS/CV endorsement, and would be non-severable from the LE permit. The CHA allocated to the LE permit would reflect that permit's contribution to the total amount of fish its MS coop can harvest.

Under the proposed program, NMFS would calculate the CHA for each individual MS/CV-endorsed LE permit as follows. First, NMFS would determine the total catch of whiting associated with each such permit for the years 1994–2003. Next, NMFS would calculate the permit's "relative" pounds for each year by dividing the total catch of whiting by vessels registered to that permit by the total catch of whiting by all qualified permits. Unless otherwise

specified by the permit owner, the 8 years with the highest relative history would be used. NMFS would then calculate the permit's CHA as a percentage of the total relative histories of all eligible permits combined. NMFS would permanently assign a CHA to the MS/CV-endorsed LE permit, and the CHA would not be severable from its underlying permit.

c. Transfer Provisions

An MS permit would be transferable, and could be transferred to a vessel of any size (there would be no size endorsements associated with the permit). MS permits could not be transferred to a vessel engaged in the harvest of whiting in the year of the transfer. MS permits could be transferred two times during the fishing year provided that the second transfer is back to the original mothership (i.e., only one transfer per year to a different mothership). However, in order to acquire an MS permit, a person would have to be a U.S. citizen, permanent resident alien, or a corporation, partnership or other entity established under the laws of the United States or any State.

MS/CV endorsements would not be severable from the LE permit. The CHA associated with the MS/CV endorsement could not be subdivided. MS/CV endorsed LE permits could be transferred two times during the fishing year, provided that the second transfer would be back to the original catcher vessel (i.e., only one transfer per year to a different catcher vessel).

The annual allocations received by a coop based on catch history of the whiting endorsements held by its members could be transferred among coop members and, through the inter-coop agreement, from one coop to another so long as obligations to processors are met. Whiting allocations may not be transferred from the MS sector to another sector. However, non-whiting groundfish species with MS allocations may be reapportioned between the MS and C/P sectors subject to the provisions at § 660.150(d).

4. Accumulation and Use Limits

a. MS/CV-Endorsed Permit Ownership Limits

An MS/CV-endorsed permit owner would not be allowed to accumulate more than 20 percent of the sector's whiting allocation. NMFS would require submission of an ownership information form to track this requirement. In addition to the ownership limit, the program would restrict catcher vessel usage to no more than 30 percent of the MS sector whiting allocation. Ownership interest would be tracked pursuant to the "individual and collective" rule, which means that the whiting CHA that counts toward a person's accumulation limit would include both the CHA owned by the person, and a portion of the CHA owned by an entity in which that person has an interest.

NMFS would notify entities found to exceed these limits so that they could come into compliance prior to issuance of the permit.

b. MS Usage Limits

Owners of MS permits would be prohibited from processing more than 45 percent of the MS sector whiting allocation. To monitor this requirement, NMFS would require annual renewal of the MS permit along with annual submission of an ownership interest form. Details regarding the MS permit usage limits would be set forth in the program components rule.

5. Annual Renewal and MS Obligations

Participants in the MS sector would be required to declare annually (between September 1 and December 31 of the year before the whiting season) through the LE permit renewal process in what capacity they would operate: Coop or non-coop. Additionally, catcher vessels operating in a coop would be required to indicate which mothership they would be associated with, and which mothership it intends to obligate its catch to for the following year.

If a mothership transfers its MS permit to a different mothership or different owner, the MS/CV-endorsed permit obligation for that year would remain in place and transfer with the MS permit to the replacement mothership unless the obligation is changed by mutual agreement. The obligation would not extend beyond the fishing year.

If a MS/CV-endorsed permit owner transfers coop allocations to another coop member within the coop, or if a coop transfers allocations to another coop within an inter-coop agreement, such allocations would have to be delivered to the mothership to which the allocation is obligated through the preseason declaration, unless released by mutual agreement. By mutual agreement of the MS/CV-endorsed permit owner and mothership to which the permit is obligated, a permit would be allowed to deliver to a licensed mothership other than that to which it is obligated.

If a mothership withdraws subsequent to quota assignment, then the MS/CV-endorsed permit that it is obligated to would be free to participate in the coop or non-coop fishery. The MS permit owner would be required to notify NMFS as well as linked MS/CV-endorsed permit owners of its withdrawal, and MS/CV-endorsed permit owners would be required to notify NMFS of their intent to participate in the coop or non-coop fishery thereafter. If continuing in a coop fishery, then the MS/CV-endorsed permit owner would be required to provide NMFS with the name of the new mothership to which it would be obligated for that season.

6. Closures and Reapportionment

Coops would provide for more direct accountability from coop participants. NMFS would be able to close the coop fishery (all MS coops combined), non-coop fishery, or entire MS sector upon the attainment, or projection of attainment, of its sub-allocation of any groundfish species with a formal allocation to the MS sector. The program would allow NMFS to close or restrict the MS Coop Program fisheries through management measures such as the inseason implementation of bycatch reduction areas. The MS Coop Program may be restricted or closed as a result of projected overages within the MS Coop Program, the C/P Coop Program, or the Shorebased IFQ Program. As determined necessary by the Regional Administrator, area restrictions, season closures, or other measures would be used to prevent the trawl sectors in aggregate or the individual sector (Shorebased IFQ, MS Coop, or C/P Coop) from exceeding an OY, or allocation. The program would also allow for the reallocation of non-whiting between MS and C/P sectors, as well as redistribution of a sub-allocation within a sector.

7. Monitoring and Observer Requirements

Amendment 20 would continue the current observer coverage aboard motherships. Catcher vessels would be required to carry a single observer whenever they are participating in the fishery. To ensure accurate catch weights, motherships would be required to make sure that all catch is weighed in its round form on a NMFS-approved scale. Scales meeting the NMFS-approval and the use of such scales, including testing and maintenance, would be specified. NMFS is working with the PSMFC to develop additional details regarding this provision. It is anticipated that observers would record fishing effort and estimate total, retained and discard catch weight by species; determine species composition of

retained and discarded catch (non-whiting vessels) and document the reasons for discard; record interactions and sightings of protected species; and take biological samples from tagged fish and discards, and estimate viability of Pacific halibut.

The agency has announced its intent, subject to available Federal funding, that participants would initially be responsible for 10 percent of the cost of hiring observers. The industry proportion of the costs of hiring observers would be increased every year so that by 2014, once the fishery has transitioned to the rationalization program, the industry would be responsible for 100 percent of the cost of hiring the observers.

8. Fees

The agency would collect fees to cover the administrative costs of issuing permits (one-time fee and annual renewal). In addition, Amendment 20 would allow for assessing cost recovery fees of up to 3 percent of ex-vessel value, consistent with section 303A(e) of the MSA. The costs to be recovered would be the agency's costs of management, data collection, analysis, and enforcement activities. The Council would develop the methodology required by section 303(A)(e) in a trailing action.

9. Retention Requirements

Catcher vessels would be prohibited from sorting or discarding any portion of the catch taken before the observer on the catcher vessel completes sampling of the catch, with the exception of minor amounts of catch that are lost when the codend is separated from the net and prepared for transfer. This is different from current regulations where catcher vessels are prohibited from discarding catch other than minor operational amounts.

10. Data Collection

Amendment 20 includes a comprehensive plan for collection of economic data as part of the coop program. While the upcoming program components rule would provide details on these provisions, the following are the central elements:

- Mandatory submission of economic data for LE trawl industry (harvesters and processors).
- Voluntary submission of economic data for other sectors of the fishing industry.
- Include transaction value information in a centralized registry of ownership.
- Formal monitoring of government costs.

The mandatory data collection would focus on cost, revenue, ownership, and employment data. Data would be collected on a periodic basis (based on scientific requirements) to provide the information necessary to study the impacts of the program, including achievement of goals and objectives associated with the rationalization program. These data may also be used to analyze the economic and social impacts of future FMP amendments on industry, regions, and localities.

The program would address the type of enforcement actions that could be taken if inaccuracies are found in mandatory data submissions. The intent of this provision is to ensure that accurate data are collected without being overly burdensome to the industry in the event of unintended errors. Annual reports would be provided to NMFS and the Council.

A voluntary data collection program would collect information to assess spillover impacts on non-trawl fisheries. There would be a central registry for maintaining information on transaction prices. Data would also be collected and maintained on the costs to the government of monitoring, administration, and enforcement related to governance of the rationalization program.

11. Reporting

Each permitted MS coop would be required to submit a complete annual coop report to NMFS before the issuance of a new coop permit in a subsequent year. The contents of a complete annual report would be specified in regulation by NMFS through the program components rule.

12. Bycatch Allocation and Management

Amendment 20 provides for management of bycatch species with hard caps in both at-sea whiting fisheries (MS and C/P) as follows. Allocations of bycatch species with hard caps would be subdivided between the MS and C/P sectors. The MS subdivision would then be further subdivided between the coop and non-coop sectors. The MS coop sector subdivision would then be distributed among the individual coops.

Unused bycatch could be rolled over (*i.e.,* reapportioned) from one sector to another if the sector's full allocation of whiting has been harvested or participants in the sector do not intend to harvest the remaining sector allocation, as indicated by the submission of a cease fishing report.

NMFS could choose to close the whole MS sector, the non-coop fishery, and permitted coops based on the projected attainment of the at-sea whiting fishery bycatch cap for any one species. Each permitted MS coop would be responsible for monitoring its catch and to cease fishing when its bycatch allocation is reached.

C. Catcher/Processor (C/P) Coop Program

1. Structure Overview

The C/P Coop Program would be a limited-access program that applies to participants in the C/P sector of the Pacific whiting at-sea trawl fishery. It would allow for the establishment of a single voluntary coop consisting of owners of C/P-endorsed LE permits and vessels registered to those permits. NMFS would annually permit the coop. The entire C/P sector allocations of whiting and non-whiting groundfish with formal allocations would be allocated to the permitted C/P sector coop. For the issuance of a C/P coop permit, a coop agreement would need to be accepted by NMFS. The coop would be expected to help achieve benefits that result from a slower-paced, more controlled harvest. If the coop fails, NMFS would implement an IFQ system that would equally divide the whiting QS for the C/P sector among all C/P-endorsed permits.

2. Coop Species

Pursuant to Amendment 20, hard caps would be established for the following species: Pacific whiting, canary rockfish, darkblotched rockfish, Pacific ocean perch, and widow rockfish.

3. How To Participate

a. The C/P-Endorsed Permit Requirement

All vessels participating in the C/P coop fishery would be required to be registered to a LE permit with a C/P endorsement. The C/P endorsement would not be severable from the LE permit and would have to be renewed each year with a declaration of the participant's intent to participate in the C/P coop fishery. Only parties who are eligible to own a U.S.-documented vessel may own a C/P-endorsed LE permit.

A C/P permit that is combined with a LE trawl permit that is not C/P endorsed would result in a single C/P permit with a larger size endorsement. An MS/CV endorsement on one of the permits being combined would not be reissued on the resulting permit. The resulting size endorsement would be determined based on the existing permit combination formula.

Length endorsement restrictions on LE permits endorsed for groundfish gear

would be retained; however, the provision that requires that the size endorsements on trawl permits transferred to smaller vessels be reduced to the size of that smaller vessel would be eliminated (i.e., length endorsements would not change when a trawl-endorsed permit is transferred to a smaller vessel).

i. Eligible To Apply

Only an owner of a current trawl-endorsed LE permit that has been registered to a vessel that has participated in the C/P fishery during the qualifying period would be eligible to receive a C/P endorsement. Any past catch history associated with the current limited entry trawl permit accrues to the current permit owner. NMFS would not recognize any other person as the limited entry permit owner other than the person listed as the limited entry permit owner in the NMFS permit database.

ii. Qualifying Criteria

In order to qualify for the endorsement, vessels registered to the permit would be required to have caught and/or processed any amount of whiting during a primary C/P season during the period January 1, 1997, through December 31, 2003. This criterion recognizes participants who purchased LE permits and have historically participated as a C/P sector of the Pacific whiting fishery. Using the years 1997 to 2003 reflects the time period after the separation of the at-sea sector into the C/P and MS sectors and is consistent with the control date for this action (2003).

NMFS would rely on Pacific whiting observer data residing in the NORPAC database and NMFS trawl LE permit data as extracted by NMFS on July 1, 2010, to determine whether a permit meets the qualifying criteria. A permit's catch and/or processing history would include only the C/P history of whiting for those vessels registered to that particular permit during the qualifying years. Only whiting regulated by this subpart that was taken with midwater (or pelagic) trawl gear would count for the C/P endorsement. History of illegal landings would not count; nor would landings history from Federal LE groundfish permits that were revoked, retired through the Federal buyback program or otherwise discontinued, including B permits. NMFS recognizes that some permits combined to meet the size endorsements for C/Ps may have catch history as catcher vessels in the MS sector. Because a current permit may not qualify for both catch history under a MS/CV and a C/P endorsement, the proposed rule provides that the current permit owner may only apply for one and not both.

iii. Application and Correction

NMFS would mail a prequalified application to the owner of a vessel that NMFS preliminarily determines qualifies for a C/P endorsement. NMFS would mail the application to the current address of record in the NMFS permit database. The application would contain the basis of NMFS' determination based on Pacific whiting observer data recorded in the data set that was extracted from NORPAC by NMFS on July 1, 2010. Prequalified applications would be partially pre-filled by NMFS and would be required to be completed by the applicant and returned to NMFS by the application deadline date.

If a current owner of a LE trawl-endorsed permit does not receive a prequalified application and the permit owner believes the permit's catch history qualifies for a C/P endorsement, the permit owner would be required to complete an application package (available from NMFS) and submit the application package to NMFS by the application deadline date. The applicant would be required to provide credible documentation to substantiate their claim as described in the proposed rule at § 660.160(d)(7). If the permit owner fails to contact NMFS in writing by the application deadline date, the person forgoes the opportunity to receive consideration for a C/P endorsement.

If the applicant does not accept NMFS' calculation in the prequalified application, the applicant would be required to identify in writing to NMFS which parts of the application the applicant contends to be in accurate, and provide credible information to substantiate any request for correction by the application deadline date, as described in the proposed rule at § 660.160(d)(7). Requests for corrections may only be granted for errors in NMFS' extraction, aggregation, or expansion of data, including errors in NMFS extraction of data from NORPAC, errors in NMFS' calculation, and errors in identification of the permit owner, permit combinations, or vessel registration as listed in NMFS permit database.

The applicant would be required to submit a completed application, which has been signed and notarized by the application deadline date (60 days after date of publication of the final rule in the **Federal Register**). To be complete, an application would be required to include certification that the applicant qualifies to own a C/P-endorsed permit and indication as to whether the applicant agrees or disagrees with NMFS' determination on initial issuance of the C/P endorsed permit provided in the application. Business entities may be required to submit a corporate resolution or any other credible documentation as proof that the representative of the entity is authorized to act on behalf of the entity. NMFS may request additional information of the applicant as necessary to make an IAD.

iv. IAD and Appeal

NMFS would issue an IAD for all complete, certified applications received by the application deadline date. If NMFS approves the application, the applicant would receive a C/P-endorsed LE permit. If NMFS disapproves an applicant's request to correct the application, the IAD would provide the reasons NMFS did not accept the corrections. If the applicant does not appeal the IAD within 30 calendar days of the date on the IAD, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

For a C/P-endorsed permit issued under this section, the appeals process and timelines are specified at § 660.25(g). For the initial issuance of a C/P-endorsed permit, the basis for appeal is described in § 660.160(d)(7). Items not subject to appeal include, but are not limited to, the accuracy of data in the dataset extracted from NORPAC by NMFS on July 1, 2010.

v. Permit Transfer During Application Period

During the application process for initial issuance of a C/P endorsement, a LE trawl permit owner would not be able to transfer ownership of the LE trawl permit until the final decision for that application has been made.

vi. Renewals and Declarations

A C/P endorsed LE permit would be required to be renewed annually during the existing LE permit renewal process. A C/P vessel would be prohibited from acting as a mothership or catcher vessel in the MS sector during the same year in which it operates as a C/P. A vessel would have to declare, at the beginning of each year, in which capacity it would operate.

b. C/P Coop Permit

In order for the C/P coop to receive the C/P sector allocation, the coop would be required to apply for and obtain a permit each year. A C/P coop permit would not be renewable and would need to be reissued annually. Between February 1 and March 31,

before the whiting season, the coop would be required to apply for a coop permit, which would include submitting a coop agreement to NMFS. While formation of a coop would be voluntary, coops would have to be responsible for monitoring and enforcing the terms of the coop agreement on their members. Additional requirements pertaining to the contents of coop agreements and the application process for a coop permit would be set forth in the program components rule.

c. Transfers

C/P permits may be transferred two times during the fishing year, provided that the second transfer would be back to the original vessel (*i.e.,* only one transfer per year to a different vessel).

4. Coop Failure/IFQ

If the coop system fails, it would be replaced by an IFQ program and the initial issuance of IFQ would be allocated equally among the permits (equally divided among all C/P-endorsed permits).

5. Accumulation Limits

There would be no accumulation limits for the C/P coop since there would be only one coop. Within the coop, accumulation limits could be addressed through private arrangements if desired.

6. Annual Report

The C/P coop would be required to submit an annual report to NMFS and to the Council at its November meeting. The report would contain information about the current year's C/P fishery, including the C/P sector's annual allocation of Pacific whiting; the C/P coop's actual retained and discarded catch of Pacific whiting, salmon, rockfish, groundfish, and other species on a vessel-by-vessel basis; a description of the method used by the C/P coop to monitor performance of coop vessels that participated in the C/P sector of the fishery; and a description of any actions taken by the C/P coop in response to any vessels that exceed their allowed catch and bycatch. The report would also identify plans for the next year's C/P fishery, including the companies participating in the coop, the harvest agreement, and catch monitoring and reporting requirements.

7. Catch Management

Under Amendment 20, unused catch of non-whiting groundfish species with formal allocations could be rolled over (*i.e.* reapportioned) from one sector to another if the sector's full allocation of whiting has been harvested or if participants in the sector do not intend to harvest the remaining sector allocation of whiting, as indicated by the submission of a cease fishing report. The C/P coop would be responsible for monitoring its catch of all species with formal allocations and to cease fishing when any formal allocation is reached.

The C/P Coop Program may be restricted or closed as a result of projected overages within the C/P Coop Program, the MS Coop Program, or the Shore-based IFQ Program. As determined necessary by the Regional Administrator, area restrictions, season closures, or other measures would be used to prevent the trawl sectors in aggregate or the individual sector (Shore-based IFQ, MS Coop, or C/P Coop) from exceeding an OY, or formal allocation. To prevent the attainment of an overfished species allocation, NMFS could implement bycatch reduction areas inseason. These provisions would be implemented through the program components rule.

8. Monitoring and Observer Requirements

Amendment 20 would require 100 percent observer coverage. Additional details regarding monitoring provisions would be set forth in the upcoming program components rule.

9. Data Collection

Amendment 20 includes a mandatory provision for collection of economic data as part of the coop program, consistent with the MSA. While the upcoming program components rule would provide details on these provisions, the following are the central elements:

- Mandatory submission of economic data for LE trawl industry (harvesters and processors).
- Voluntary submission of economic data for other sectors of the fishing industry.

The mandatory data collection would focus on cost, revenue, ownership, and employment data. Data would be collected on a periodic basis (based on scientific requirements) to provide the information necessary to study the impacts of the program, including achievement of goals and objectives associated with the rationalization program. These data may also be used to analyze the economic and social impacts of future FMP amendments on industry, regions, and localities.

The program would address the type of enforcement actions that could be taken if inaccuracies are found in mandatory data submissions. The intent of this provision is to ensure that accurate data are collected without being overly burdensome to the industry in the event of unintended errors. Annual reports would be provided to the Council.

A voluntary data collection program would collect information to assess spillover impacts on non-trawl fisheries.

10. Reporting

The permitted C/P coop would be required to submit a complete annual coop report before the issuance of a new coop permit in a subsequent year. Amendment 20 outlines the requirement for an annual report. The contents of a complete annual report would be specified in regulation through the program components rule.

The Council gave NMFS the flexibility to further develop the tracking and monitoring components of the trawl rationalization program.

III. Amendment 21 Allocations Description

A. Overview

For species subject to trawl rationalization, Amendment 21 would modify the manner in which the annual OYs are distributed. Under the current allocation strategy established in Amendment 6, a commercial HG is divided between LE and OA, as necessary. For groundfish species covered under Amendment 21, the LE fixed gear fishery would no longer share an allocation with the LE trawl fishery. The recreational, directed OA, and the limited entry fixed gear fisheries would share an allocation. The OY would be reduced by the tribal fishery, incidental catch in the non-groundfish fishery, research catch, and the bycatch limits in exempted fishing permits, which would result in the fishery harvest guideline. The fishery harvest guideline would be divided between the trawl fishery and non-trawl fisheries (recreational, limited entry fixed gear, and directed open access) based on the percentages in Amendment 21. The distribution of harvest among the non-trawl fisheries would be established during the biennial specifications process. This proposed rule sets forth the specific percentages of the fishery HG for Amendment 21 species that would be allocated to the trawl and non-trawl fisheries.

In order to implement the recommended IFQ and coop programs, it would be necessary for each of these trawl sectors to have a specific allocation of catch that could be divided among participants. While this could be accomplished through the specification process under the status quo, the Council determined that a fixed

allocation within the FMP would be preferable because it would promote predictability and the type of stability that facilitates successful relationships that make individual-based programs work. Thus, the Council recommended the allocations contained in Amendment 21. In addition, Amendment 21 would establish total catch limits (TCLs) for Pacific halibut, as well as set-asides to accommodate the rationalized trawl fleet. The TCLs would protect the directed fishery for halibut.

Species not covered by Amendment 21 would continue to be allocated through the biennial specifications process. The allocations in Amendment 21 would constrain trawl harvests to a slightly lower level than status quo.

Amendment 21 addresses six separate issues pertaining to allocation decisions:

1. How to allocate species between the trawl and non-trawl categories;

2. How to allocate between shore-based whiting and shore-based non-whiting, for species other than darkblotched, Pacific ocean perch, widow, and sablefish North of 36° N. lat.;

3. How to apportion among the 4 trawl sectors (shore-based whiting, shore-based non-whiting, MS, and CP) the LE trawl allocation of darkblotched, Pacific ocean perch, widow, and sablefish North of 36° N.;

4. Providing yield set-asides to accommodate non-overfished species bycatch in the at-sea (whiting) sectors;

5. Limiting bycatch of halibut (a prohibited species); and

6. Determining the process for future modification of allocations.

B. Covered Species

Species subject to Amendment 21's trawl/non-trawl allocations would be: Lingcod, Pacific cod, sablefish south of 36° N. lat., Pacific ocean perch, widow rockfish, chilipepper rockfish, splitnose rockfish, yellowtail rockfish north of 40° 10′ N. lat., shortspine thornyhead (north and south of 34°27′ N. lat.), longspine thornyhead north of 34°27′ N. lat., darkblotched rockfish, minor slope rockfish (north and south of 40°10′ N. lat.), Dover sole, English sole, petrale sole, arrowtooth flounder, starry flounder, and the Other Flatfish complex.

C. Proposed Actions

1. Trawl vs. Non-Trawl

Amendment 21 would formally allocate a subset of the HG to the 4 trawl sectors: Shore-based (whiting and non-whiting), MS, and C/P. With respect to covered species, this would leave the LE fixed gear, OA, and recreational fisheries in a pool that would divide the remaining HG (via the biennial specification process). These allocations are set forth in the proposed rule at § 660.55(m).

In general, the allocations are based on catch history from 2003–2005 and the recommendations of the Groundfish Allocation Committee. The reason for this period is that the Council believed that a relatively recent catch period should form the basis for deciding sector allocations since discards during this period were better informed, and current management strategies, such as specification of Rockfish Conservation Areas, are more likely in the near future. However, for several species, the Council made modifications. For chilipepper rockfish south of 40°10′ N. lat., Amendment 21 contains a higher non-trawl allocation. This is intended to provide greater non-trawl access to this healthy stock off California.

Amendment 21 would not allocate longspine thornyhead south of 34°27′ N. lat. to the trawl fishery. Longspine thornyhead are an incidentally caught species south of 34°27′ N. lat. and the available yields are not projected to constrain any of the groundfish fisheries there that incidentally catch these fish.

Amendment 21 would allocate a much higher percentage of the available yield of starry flounder to non-trawl sectors (50 percent) than recommended by the Groundfish Allocation Committee. The catch history of starry flounder is highly uncertain, but they are significantly caught in nearshore trawl fisheries and recreational fisheries. The Council thought a 50:50 trawl and non-trawl sharing of the available harvest of starry flounder was the fairest allocation.

Amendment 21 includes a higher non-trawl allocation of species in the Other Flatfish complex than recommended by the Groundfish Allocation Committee (10 percent vs. 5 percent). While most of these species are dominant to the trawl fishery, there are some species, such as Pacific sanddabs, that are significantly caught in non-trawl fisheries. The Council believed a higher non-trawl share of the available harvest of Other Flatfish species would better preserve non-trawl fishing opportunities.

2. Allocations Between Shore-Based Whiting and Non-Whiting Sectors

For the shore-based trawl fishery, Amendment 21 would establish a weighting scheme for distributing IFQ for covered species other than darkblotched rockfish, Pacific ocean perch, widow rockfish, and sablefish N. of 36° N. lat. between the shore-based whiting and shore-based non-whiting sectors. For species other than yellowtail rockfish and the trawl-dominant overfished species, Amendment 21 uses a weighting scheme based on the shore-based sector catch percentages during the 1995–2005 period.

Amendment 21 would allocate 300 mt of yellowtail rockfish to the shore-based whiting sector, and the shore-based non-whiting sector would receive the remaining yield of yellowtail rockfish available to the LE trawl sectors minus any set-aside amount of yellowtail rockfish for the at-sea whiting sectors decided in the future. The initial set-aside of yellowtail rockfish to accommodate bycatch by the at-sea whiting sectors is 300 mt.

3. Apportionment of Three Overfished Species Among the Four Trawl Sectors

For darkblotched, Pacific ocean perch, and widow, Amendment 21 would apportion the LE trawl allocation among the four main subdivisions: Shore-based whiting, shore-based non-whiting, MS, and C/P. These allocations would take the form of QS for the shore-based sectors and of non-whiting groundfish species catch limits for the at-sea sectors (MS and C/P). Initial sector allocation of canary rockfish would be decided in the biennial harvest specification and management measures process.

The initial sector allocation of the trawl-dominant overfished species under Amendment 21 would be as follows:

- For darkblotched rockfish, there would be an allocation of 9 percent or 25 mt, whichever is greater, of the total LE trawl allocation of darkblotched rockfish to the whiting fisheries (at-sea and shore-based combined). The distribution of the whiting trawl allocation of darkblotched to individual whiting sectors would be done pro rata relative to the sectors' whiting allocation. The remainder would be made available to the shore-based non-whiting trawl fishery.
- For Pacific ocean perch, there would be an allocation of 17 percent or 30 mt, whichever is greater, of the total LE trawl allocation of Pacific ocean perch to the whiting fisheries (at-sea and shore-based combined). The distribution of the whiting trawl allocation of Pacific ocean perch to individual whiting sectors would be done pro rata relative to the sectors' whiting allocation. The remainder would be made available to the shore-based non-whiting trawl fishery.
- For widow rockfish, there would be an initial allocation of 52 percent of the total LE trawl allocation of widow

rockfish to the whiting sectors if the stock is under rebuilding or 10 percent of the total LE trawl allocation or 500 mt of the trawl allocation to the whiting sectors, whichever is greater, if the stock is rebuilt. If the stock is overfished when the initial allocation is implemented, the latter allocation scheme automatically kicks in when it is declared rebuilt. The distribution of the whiting trawl allocation of widow to individual whiting sectors would be done pro rata relative to the sectors' whiting allocation. The remainder would be made available to the shore-based non-whiting trawl fishery.

4. Yield Set-Asides for Bycatch of Non-Overfished Species by the Two At-Sea Sectors

The estimated fishing mortality of Amendment 21 species in the at-sea whiting fishery (MS and C/P sectors) other than Pacific whiting and the three trawl-dominant overfished species would be set-aside from the LE trawl allocations prior to making the initial shore-based trawl sector allocations. Set-aside amounts would not be allocations specified in the PCGFMP. It is anticipated that the projected incidental bycatch amounts in the at-sea whiting fishery will change in the future as better information becomes available. Therefore, set-asides would be implemented in and could be modified through the biennial specifications and management measures process.

5. Halibut

As set forth in the proposed rule at § 660.55(m), Amendment 21 would establish a trawl mortality bycatch limit for legal and sublegal halibut in Area 2A (off Washington, Oregon and California) at 15 percent of the Area 2A constant exploitation yield (CEY) for legal size halibut, not to exceed 130,000 lbs for the first 4 years of trawl rationalization and not to exceed 100,000 lbs starting in the fifth year. This total bycatch limit may be adjusted downward or upward through the biennial specifications and management measures process. Part of the overall TCL would be a set-aside of 10 mt of Pacific halibut, to accommodate bycatch in the at-sea Pacific whiting fishery and in the shore-based trawl fishery south of 40°10′ N. lat. (estimated at approximately 5 mt each).

By holding the limit at 130,000 lbs for 4 years and providing flexibility to make adjustments, the Council intended to address the uncertainty of how these constraints would affect the fleet and give the fleet time to learn strategies and areas for minimizing its halibut bycatch.

6. Process for Future Re-Allocations

The Council considered allowing the allocations in Amendment 21 that are specified in the PCGFMP to be modified through a framework action as part of the biennial management measures, but decided to recommend that these allocations specified in the PCGFMP be modified through an FMP amendment. The rationale was that the FMP amendment process imposes a higher standard for considering a change to the fishery, and that the Amendment 21 allocations should be durable and not subject to reconsideration every 2 years in the biennial management process. Many representatives of the trawl industry recommended maintaining this process to provide more long-term stability to allow better business planning.

7. Declaration as Overfished

Amendment 21 would not affect the FMP provision to temporarily suspend any formal allocations for a species if it is declared overfished. Shorter-term ad hoc allocations would then be decided in an approved rebuilding plan (or in the biennial management process while the stock is still being managed under a rebuilding plan).

8. 5-Year Review

Amendment 21 would provide for a formal review of all Amendment 21 allocations 5 years after implementation. This 5-year review is also a provision in the Amendment 20 preferred alternative to formally review the trawl rationalization program 5 years after implementation.

IV. Proposed Rule

As referenced above, while NMFS is reviewing Amendments 20 and 21 in their entirety, due to the complexity of the proposed program, this proposed rule focuses only on certain key components that would be necessary to have permits and endorsements issued in time for use in the 2011 fishery and in order to have the 2011 specifications reflect the new allocation scheme. On May 12, 2010, NMFS published a notice of availability of Amendments 20 and 21, and consistent with requirements of the MSA, must make a decision to approve, disapprove, or partially approve the amendments by August 10, 2010. Comments on the approvability of the amendments must be submitted to NMFS by July 12, 2010.

At the April, 2010 Council meeting in Portland, Oregon, the Council deemed a version of these regulations as being necessary or appropriate to implement Amendments 20 and 21 and directed the Council staff to make specific revisions to the regulations, and additional edits as appropriate. The Council staff and NMFS coordinated on revisions to those regulations. The Council's Executive Director has deemed that these regulations continue to be necessary or appropriate for the purpose of implementing the plan amendments consistent with the Council's policy intent.

A primary modification from the regulations reviewed by the Council in April, other than the ones specifically directed by the Council, is a revision of the sections regarding the formulas for the initial allocations. After the April meeting, NOAA and the Council staff corrected the regulations to ensure that they accurately reflect the amendments. The preamble highlights some questions regarding these formulas, and specifically seeks comment on them. Other changes have been made to ensure consistency with the amendments, to ensure consistency within the regulations, and to clarify some of the language.

Specifically, this rule would establish the formal allocations set forth under Amendment 21 and establish procedures for initial issuance and appeals of permits, endorsements, and QS under the IFQ and coop programs. While there are changes in many sections of these draft regulations for the trawl rationalization program, the main areas that are new for the trawl rationalization program are highlighted below.

- Section 660.25 contains general rules regarding permit requirements, including requirements for new permits and endorsements required for trawl rationalization: MS permits, MS/CV endorsements, and C/P endorsements.
- Section 660.55 is the allocation section and contains the proposed allocations set forth in Amendment 21.
- Section 660.111 contains definitions specific to the trawl fisheries, including new terminology that would be used under the proposed rationalization program, such as "catch history assignment," "IFQ," "first receivers," and "processor obligations."
- Section 660.140 would set forth the requirements for the proposed IFQ program for the shore-based trawl sector. The provisions contained in this proposed rule would include initial requirements, including: The species covered; the general program structure and management; accumulation limits and how to define ownership and control; divestiture; the application process, and deadlines; eligibility criteria; how QS would be calculated; how to reassign landings history for Pacific whiting; IADs, and limitations

on appeals; and rules regarding transfers of permits during the application period.

• Section 660.150 would set forth the requirements for the proposed MS Coop Program. The provisions contained in this proposed rule would include initial requirements including the species covered; the general program structure and management; accumulation limits and how to define ownership and control; divestiture; the application process, and deadlines; eligibility criteria for MS permits, MS/CV endorsement, and CHA assignments; characteristics of permits, how CHA would be assigned; IADs, and limitations on appeals; and rules regarding transfers of permits during the application period.

• Section 660.160 would set forth the requirements for the proposed CP Coop Program. The provisions contained in this proposed rule would include initial requirements, including: The species covered; the general program structure and management; the application process and deadlines; eligibility criteria; IADs and limitations on appeals; and rules regarding transfers of permits during the application period.

In addition, this proposed rule would also restructure the entire Pacific Coast groundfish regulations at 50 CFR part 660 by moving from one subpart (subpart G) to five subparts (subparts C–G). This restructuring of existing groundfish regulations is necessary to make room for the expansion of regulations with the new trawl rationalization program and to make the regulations more clearly organized according to sectors within the groundfish fishery. The following table lists the distribution of the sections of 50 CFR part 660 subpart G to the new subparts in 50 CFR 660 subparts C through G in this restructuring.

Old	New
§ 660.301 Purpose and scope	§ 660.10, Subpart C Purpose and scope.
§ 660.302 Definitions	§ 660.11, Subpart C General definitions.
	§ 660.111, Subpart D Trawl fishery definitions.
	§ 660.211, Subpart E Fixed gear fishery definitions.
	§ 660.311, Subpart F Open access fishery definitions.
	§ 660.351, Subpart G Recreational fishery definitions.
§ 660.303 Reporting and recordkeeping	§ 660.113, Subpart C Recordkeeping and reporting.
	§ 660.113, Subpart D Trawl fishery recordkeeping and reporting.
	§ 660.213, Subpart E Fixed gear fishery recordkeeping and reporting.
	§ 660.313, Subpart F Open access fishery recordkeeping and reporting.
	§ 660.353, Subpart G Recreational fishery recordkeeping and reporting.
§ 660.305 Vessel identification	§ 660.20, Subpart C Vessel and gear identification.
	§ 660.219, Subpart C Fixed gear identification and marking.
	§ 660.319, Subpart C Open access fishery gear identification and marking.
§ 660.306 Prohibitions	§ 660.12, Subpart C General groundfish prohibitions.
	§ 660.112, Subpart D Trawl fishery prohibitions.
	§ 660.212, Subpart E Fixed gear fisheries prohibitions.
	§ 660.312, Subpart F Open access fisheries prohibitions.
	§ 660.352, Subpart G Recreational fishery prohibitions.
§ 660.312 Vessel Monitoring System (VMS) requirements	§ 660.14, Subpart C Vessel Monitoring System (VMS) requirements.
§ 660.314 Groundfish observer program	§ 660.16, Subpart C Groundfish observer program.
	§ 660.18, Subpart C Certification and decertification procedures for observers, catch monitors, catch monitor providers and observer providers.
	§ 660.116, Subpart D Trawl fishery observer requirements.
	§ 660.216, Subpart E Fixed gear fishery observer requirements.
	§ 660.316, Subpart F Open access fishery observer requirements.
	§ 660.356, Subpart G Recreational fishery observer requirements.
§ 660.320 Allocations	§ 660.55, Subpart C Allocations.
§ 660.321 Black rockfish harvest guideline	§ 660.55(l), Subpart C Black rockfish harvest guideline.
§ 660.322 Sablefish allocations	§ 660.55(h), Subpart C Sablefish allocations (north of 36° N. lat.).
§ 660.323 Pacific whiting allocations, allocation attainment, and inseason allocation reapportionment.	§ 660.55(i), Subpart C.
	§ 660.131 Pacific Whiting Fishery Management Measures.
§ 660.324 Pacific Coast treaty Indian fisheries	§ 660.50, Subpart C.
§ 660.331 Limited entry and open access fisheries—general	§ 660.24, Subpart C Limited entry and open access fisheries.
§ 660.333 Limited entry fishery—eligibility and registration	§ 660.25(b)(1), Subpart C.
§ 660.334 Limited entry permits—endorsements	§ 660.25(b)(3), Subpart C.
§ 660.335 Limited entry permits—renewal, combination, stacking, change of permit ownership or permit holdership, and transfer.	§ 660.25(b)(4), Subpart C.
§ 660.336 Pacific whiting vessel licenses	§ 660.26, Subpart C Pacific Whiting Vessel Licenses.
§ 660.337 Trawl Rationalization program—data collection requirements.	removed.
§ 660.338 Limited entry permits—small fleet	§ 660.25(b)(5), Subpart C.
§ 660.339 Limited entry permit and Pacific whiting vessel license fees	§ 660.26, Subpart C Pacific Whiting Vessel Licenses.
§ 660.340 Limited entry permit appeals	§ 660.25(g), Subpart C.
§ 660.341 Limited entry permit sanctions	§ 660.25(h), Subpart C.
§ 660.350 Compensation with fish for collecting resource information—exempted fishing permits off Washington, Oregon, and California.	§ 660.30, Subpart C Compensation With Fish for Collecting Resource Information—EFPs.
§ 660.365 Overfished species rebuilding plans	§ 660.40, Subpart C Overfished species rebuilding plans.
§ 660.370 Specifications and management measures	§ 660.60, Subpart C Specifications and Management Measures.

Old	New
	§ 660.120, Subpart D Trawl Fishery Crossover Provisions.
	§ 660.220, Subpart E Fixed Gear Fishery Crossover Provisions.
	§ 660.320, Subpart F Open Access Crossover Provisions.
§ 660.371 Black rockfish fishery management	§ 660.230(d), Subpart E Fixed Gear Fishery Management Measures.
	§ 660.330(e), Subpart E Fixed Gear Fishery Management Measures.
§ 660.372 Fixed gear sablefish fishery management	§ 660.231, Subpart E Limited Entry Fixed Gear Primary Fishery for Sablefish.
	§ 660.232, Subpart E Limited Entry Sablefish Daily Trip Limit (DTL) Fishery for Sablefish.
	§ 660.332, Subpart F Open Access Sablefish Daily Trip Limit (DTL) Fishery for Sablefish.
§ 660.373 Pacific whiting (whiting) fishery management	§ 660.131, Subpart D Pacific Whiting Fishery Management Measures.
(j) Additional requirements for participants in the Pacific Whiting Shoreside fishery.	§ 660.15, Subpart C Equipment Requirements.
	§ 660.12 General Groundfish Prohibitions (a)(13).
§ 660.380 Groundfish harvest specifications	§ 660.65, Subpart C.
§ 660.381 Limited entry trawl fishery management measures	§ 660.130 Trawl Fishery Management Measures.
	§ 660.230, Subpart E Fixed Gear Fishery Management Measures.
§ 660.382 Limited entry fixed gear fishery management measures	§ 660.330, Subpart F Open Access Fishery Management Measures.
§ 660.383 Open access fishery management measures	§ 660.333, Subpart F Open Access Non-groundfish Trawl Fishery—Management Measures.
§ 660.384 Recreational fishery management measures	§ 660.360, Subpart G Recreational Fishery Management Measures.
§ 660.385 Washington coastal tribal fisheries management measures	§ 660.50, Subpart C Pacific Coast Treaty Indian Fisheries.
§ 660.390 Groundfish conservation areas	§ 660.70, Subpart C Groundfish conservation areas.
§ 660.391 Latitude/longitude coordinates defining the 10-fm (18-m) through 40-fm (73-m) depth contours.	§ 660.71, Subpart C Latitude/longitude coordinates defining the 10-fm (18-m) through 40-fm (73-m) depth contours.
§ 660.392 Latitude/longitude coordinates defining the 50 fm (91 m) through 75 fm (137 m) depth contours.	§ 660.72, Subpart C Latitude/longitude coordinates defining the 50 fm (91 m) through 75 fm (137 m) depth contours.
§ 660.393 Latitude/longitude coordinates defining the 100 fm (183 m) through 150 fm (274 m) depth contours.	§ 660.73, Subpart C Latitude/longitude coordinates defining the 100 fm (183 m) through 150 fm (274 m) depth contours.
§ 660.394 Latitude/longitude coordinates defining the 180 fm (329 m) through 250 fm (457 m) depth contours.	§ 660.74, Subpart C Latitude/longitude coordinates defining the 180 fm (329 m) through 250 fm (457 m) depth contours.
§ 660.395 Essential Fish Habitat (EFH)	§ 660.75, Subpart C Essential Fish Habitat (EFH).
§ 660.396 EFH Conservation Areas	§ 660.76, Subpart C EFH Conservation Areas.
§ 660.397 EFH Conservation Areas off the Coast of Washington	§ 660.77, Subpart C Conservation Areas off the Coast of Washington.
§ 660.398 EFH Conservation Areas off the Coast of Oregon	§ 660.78, Subpart C Conservation Areas off the Coast of Oregon.
§ 660.399 EFH Conservation Areas off the Coast of California	§ 660.79, Subpart C Conservation Areas off the Coast of California.
Table 1a to Part 660, Subpart G—2009, Specifications of ABCs, OYs, and HGs, by Management Area (weights in metric tons).	Table 1a to Part 660, Subpart C—2009, Specifications of ABCs, OYs, and HGs, by Management Area (weights in metric tons).
Table 1b to Part 660, Subpart G—2009, Harvest Guidelines for Minor Rockfish by Depth Sub-groups (weights in metric tons).	Table 1b to Part 660, Subpart C—2009, Harvest Guidelines for Minor Rockfish by Depth Sub-groups (weights in metric tons).
Table 1c to Part 660, Subpart G—2009, Open Access and Limited Entry Allocations by Species or Species Group (weights in metric tons).	Table 1c to Part 660, Subpart C—2009, Open Access and Limited Entry Allocations by Species or Species Group (weights in metric tons).
Table 2a to Part 660, Subpart G—2010, Specifications of ABCs, OYs, and HGs, by Management Area (weights in metric tons).	Table 2ato Part 660, Subpart C—2010, Specifications of ABCs, OYs, and HGs, by Management Area (weights in metric tons).
Table 3 (North) 660, Subpart G—2010 Trip Limits for Limited Entry Trawl Gear North of 40°10′ N. Lat.	Table 1 (North) 660, Subpart D—2010 Trip Limits for Limited Entry Trawl Gear North of 40°10′ N. Lat.
Table 3 (South) 660, Subpart G—2010 Trip Limits for Limited Entry Trawl Gear South of 40°10′ N. Lat.	Table 1 (South) 660, Subpart D—2010 Trip Limits for Limited Entry Trawl Gear South of 40°10′ N. Lat.
Table 4 (North) 660, Subpart G—2009–2010 Trip Limits for Limited Entry Fixed Gear North of 40°10′ N. Lat.	Table 2 (North) 660, Subpart E—2009–2010 Trip Limits for Limited Entry Fixed Gear North of 40°10′ N. Lat.
Table 4 (South) 660, Subpart G—2009–2010 Trip Limits for Limited Entry Fixed Gear South of 40°10′ N. Lat.	Table 2 (South) 660, Subpart E—2009–2010 Trip Limits for Limited Entry Fixed Gear South of 40°10′ N. Lat.
Table 5 (North) 660, Subpart G—2009–2010 Trip Limits for Open Access Gears North of 40°10′ N. Lat.	Table 3 (North) 660, Subpart F—2009–2010 Trip Limits for Open Access Gears North of 40°10′ N. Lat.
Table 5 (South) 660, Subpart G—2009–2010 Trip Limits for Open Access Gears South of 40°10′ N. Lat.	Table 3 (South) 660, Subpart F—2009–2010 Trip Limits for Open Access Gears South of 40°10′ N. Lat.
Figure 1 to Subpart G of Part 660—Diagram of Selective Flatfish Trawl	Figure 1 to Subpart C of Part 660—Diagram of Selective Flatfish Trawl.
Table 2 to Part 660—Vessel Capacity Ratings for West Coast Groundfish Limited Entry Permits.	Table 3 to Subpart C of Part 660—Vessel Capacity Ratings for West Coast Groundfish Limited Entry Permits.

In addition to the reorganization of the existing groundfish regulations into the new regulatory structure, NMFS has made some minor revisions to regulatory language. Most changes revise the existing regulatory language to work with the new structure and the proposed changes to the limited entry trawl fishery, including but not limited to: Revising the definitions used for the trawl fishery; revising definitions used for allocations; moving definitions, prohibitions, recordkeeping and reporting requirements, observer requirements, crossover provisions, and management measures to the subpart for each fishery (trawl, fixed gear, open access, recreational); and updating cross references.

Some minor revisions not directly related to the trawl rationalization program or intersector allocations were made to update regulatory language. The following definitions were revised: Address of record, Council, fishing gear, groundfish, groundfish trawl, initial

administrative determination, non-groundfish trawl, overage, permit holder, and permit owner. New definitions were added for the following terms: Bag limits, boat limits, daily trip limit fishery, endorsement, entity, calendar year, fish, fishing, fishing vessel, hook limits, non-groundfish fishery, observer, operate a vessel, primary season, sablefish tier limit fishery, tier limit, vessel of the United States, and vessel owner. In order to improve clarity and better match the MSA definition, the term "participate" was changed to "fish" where appropriate throughout the regulations. NMFS is particularly seeking comment on the revised and new definitions. NMFS may implement these definitions under section 303(d) of the Magnuson Act.

In the new § 660.20, vessel and gear identification language was combined to make it easier for readers to find the identification requirements. In the new § 660.25, old language referring to the LE fixed gear sablefish permit stacking program's application requirements and qualifying criteria for the endorsement/tier assignment and various exemptions (at-sea processing, adding spouse to permit, owner on board exemption) were removed because the application window for these closed between 1998 and 2007, depending on the provision. In the new § 660.50, regulations affecting treaty tribes were combined from §§ 660.324 and 660.385 to make it easier for the reader to find the tribal requirements. In the new § 660.60 paragraph (f), the description of Exempted Fishing Permits (EFPs) was revised to clarify the different types of EFPs: Compensation fishing EFPs versus all other EFPs. In the new §§ 660.231 and 660.232, the fixed gear sablefish tier limit fishery and the LE daily trip limit fishery have been separated from one section to two to make it easier to find the requirements for each of these fisheries. In the new § 660.333, the OA non-groundfish trawl fishery management measures were separated into their own section to make it easier to find these requirements; they were previously combined with the general OA fishery management measures listed in the new § 660.330. In the new § 660.352, new gear and trip prohibitions were added for the recreational fishery.

Revisions to Paperwork Reduction Act (PRA) References

Section 3507 of the PRA requires that agencies inventory and display a current control number assigned by the Director, OMB, for each agency information collection, and 15 CFR 902.1(b) identifies the location of NOAA regulations for which OMB approvals have been issued. Because this rule codifies recordkeeping and reporting requirements, 15 CFR 902.1(b) is revised to correctly reference the new sections resulting from the reorganization.

The following table lists the derivation of the NOAA PRA approvals for regulatory requirements in 50 CFR part 660:

Old section	New section	OMB Control No.
§ 660.303 Reporting and recordkeeping	§ 660.113, Subpart C Recordkeeping and Reporting § 660.113, Subpart D Trawl Fishery Recordkeeping and Reporting § 660.213, Subpart E Fixed Gear Fishery Recordkeeping and Reporting § 660.313, Subpart F Open Access Fishery Recordkeeping and Reporting § 660.353, Subpart G Recreational Fishery Recordkeeping and reporting	−0271
§ 660.305 Vessel identification	§ 660.20, Subpart C Vessel and Gear Identification § 660.219, Subpart C Fixed Gear Identification and Marking § 660.319, Subpart C Open Access Fishery Gear Identification and Marking	−0355
§ 660.322 Sablefish allocations	§ 660.55 (h), Subpart C Sablefish Allocations (north of 36° N. lat.).	−0352
§ 660.323 Pacific whiting allocations, allocation attainment, and inseason allocation reapportionment	§ 660.55 (i), Subpart C § 660.131 Pacific Whiting Fishery Management Measures	−0243
§ 660.331 Limited Entry and open access fisheries—general	§ 660.25(a), Subpart C	−0243
§ 660.333 Limited entry fishery—eligibility and registration	§ 660.25(b)(1), Subpart C	−0203
§ 660.334 Limited entry permits—endorsements	§ 660.25(b)(3), Subpart C	−0203
§ 660.335 Limited entry permits—renewal, combination, stacking, change of permit ownership or permit holdership, and transfer	§ 660.25(b)(4), Subpart C	−0203
§ 660.336 Pacific whiting vessel licenses	§ 660.26, Subpart C	−0583
§ 660.337 Trawl Rationalization program—data collection requirements	removed.	−0599
§ 660.338 Limited entry permits—small fleet	§ 660.25(b)(5), Subpart C	−0203
§ 660.339 Limited entry permit and Pacific whiting vessel license fees	§ 660.26, Subpart C	−0203
§ 660.340 Limited entry permit appeals	§ 660.25(g), Subpart C	−0203
§ 660.341 Limited entry permit sanctions	§ 660.25(h), Subpart C	−0203
§ 660.350 Compensation with fish for collecting resource information—exempted fishing permits off Washington, Oregon, and California	§ 660.30, Subpart C	−0203

V. Related Rulemakings and Future Actions

Previous Rule

On January 29, 2009, NMFS published a final rule to initiate the data collection necessary to support initial issuance of permits, endorsement, and QS under the IFQ and Coop programs. This rule provided notice to participants in the industry to review their catch data for purposes of ensuring that the quota share and other calculations undertaken by NMFS would be based on the best available data (74 FR 4684).

Program Components Rule

NMFS plans to publish additional details regarding implementation of Amendment 20 through an upcoming "program components" rule. This rule would address details regarding IFQ gear switching provisions, observer programs, retention requirements, equipment requirements, catch monitors, catch weighing requirements, coop permits/agreements, first receiver site licenses, and vessel QP accounts. Additionally, further tracking and monitoring components may be proposed, as well as requirements for economic data collection requirements, and cost recovery.

The Council plans to address additional details related to implementation of Amendments 20 and 21 through subsequent Council actions ("trailing actions"). Details to be addressed through trailing actions could include:

- Adaptive Management Program.
- Community Fishing Associations.
- Cost Recovery details.
- Safe harbors for control language.
- Severability for MS/CV–endorsed permits and catch history assignment.

Classification.

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Pacific Coast Groundfish FMP.

The Council prepared a draft environmental impact statement for Amendment 20 to the Pacific Coast Groundfish FMP; a notice of availability was published on December 4, 2009 (74 FR 63751). The Council also prepared a draft environmental impact statement for Amendment 21 to the Pacific Coast Groundfish FMP; a notice of availability was published on January 29, 2010 (75 FR 4812). The trawl rationalization program would consist of: (1) An IFQ program for the shore-based LE groundfish trawl fleet; and (2) coop programs for the at-sea whiting LE groundfish trawl fleet. The trawl rationalization program is intended to increase net economic benefits, create economic stability, provide full utilization of the trawl sector allocation, consider environmental impacts, and promote conservation through individual accountability for catch and bycatch.

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the IRFA is available from NMFS (*see* **ADDRESSES**) and a summary of the IRFA, per the requirements of 5 U.S.C. 604(a) follows:

The Council has prepared two EIS documents: Amendment 20—Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery, which would create the structure and management details of the trawl fishery rationalization program; and Amendment 21—Allocation of Harvest Opportunity Between Sectors of the Pacific Coast Groundfish Fishery, which would allocate the groundfish stocks between trawl and non-trawl fisheries. The two draft EIS's prepared by the Council provide economic analyses of the Council's preferred alternatives and draft RIR and IRFAs. The draft RIR and IRFAs were updated and combined into a single RIR/IRFA. Among other things, this single RIR/IRFA contains additional information on characterizing the participants in the fishery and on the tracking and monitoring costs associated with this program.

Due to the complexity of the proposed fishery management measures, the rule associated with this analysis proposes only certain key components that would be necessary to have permits and endorsements issued in time for use in the 2011 fishery and in order to have the 2011 specifications reflect the new allocation scheme. Specifically, this rule would establish the allocations set forth under Amendment 21 and would establish procedures for initial issuance of permits, endorsements, and QS under the IFQ and Coop programs. NMFS plans to propose additional program details in a future proposed rule. Such additional details would include: Program components applicable to IFQ gear switching, observer programs, retention requirements, equipment requirements, catch monitors, catch weighing requirements, coop permits/agreements, first receiver site licenses, quota share accounts, vessel QP accounts, further tracking and monitoring components, and economic data collection requirements. In order to encourage more informed public comment, this proposed rule includes a general description of these additional program requirements. NMFS is also planning a future "Cost-Recovery" rule, based on a recommended methodology yet to be developed by the Pacific Fishery Management Council.

The RIR/IRFA analyzes two alternatives—the No-Action Alternative and the Preferred Alternative. The analysis of the no action alternative describes what is likely to occur in the absence of the proposed action. It provides a benchmark against which the incremental effects of the proposed action can be compared. Under the no action alternative, the current, primary management tool used to control the Pacific coast groundfish trawl catch includes a system of two month cumulative landing limits for most species and season closures for Pacific whiting. This management program would continue under the no action alternative. Only long-term, fixed allocations for Pacific whiting and sablefish north of 36° N. lat. would exist. All other groundfish species would not be formally allocated between the trawl and non-trawl sectors. Allocating the available harvest of groundfish species and species complexes would occur in the Council process of deciding biennial harvest specifications and management measures and, as such, would be considered short term allocations.

The analysis of the preferred alternative describes what is likely to occur as a result of the proposed action. Under the preferred alternative, the existing shore-based whiting and shore-based non-whiting sectors of the Pacific Coast groundfish limited entry trawl fishery would be managed as one sector under a system of IFQs, and the at-sea whiting sectors of the fishery (i.e., catcher-processor sector and mothership sector, which includes motherships and catcher vessels) would be managed under a system of sector-specific harvesting cooperatives (co-ops). The catcher-processor sector would continue to operate under the existing, self-developed co-op program entered into voluntarily by that sector. A distinct set of groundfish species and Pacific halibut would be covered by the rationalization program. Amendment 20 would include a tracking and

monitoring program to assure that all catch (including discards) would be documented and matched against QP. The Council specified that observers would be required on all vessels and shore-based monitoring (catch monitors) would be required during all off-loading (100 percent coverage). Compared to status quo monitoring, this would be a monitoring and observer coverage level increase for a large portion of the trawl fleet, particularly for non-whiting shore-based vessels.

The limited entry trawl fishery is divided into two broad sectors: A multi-species trawl fishery, which most often uses bottom trawl gear (hereafter called the non-whiting fishery), and the Pacific whiting fishery, which uses midwater trawl gear. The non-whiting fishery is principally managed through 2-month cumulative landing limits along with closed areas to limit overfished species bycatch. Fishery participants target the range of species described above with the exception of Pacific whiting. By weight, the vast majority of trawl vessel groundfish is caught in the Pacific whiting fishery. In contrast, the non-whiting fishery accounts for the majority of limited entry trawl fishery ex-vessel revenues. On average for the period 2000–2005, Pacific whiting accounted for about 75 percent of the quantity of groundfish landed in the limited entry trawl fishery, but only 21 percent of the value due to their relatively low ex-vessel price.

Non-whiting trawl vessels deliver their catch to shoreside processors and buyers located along the coasts of Washington, Oregon, and California, and tend to have their homeports located in towns within the same general area where they make deliveries, though there are several cases of vessels delivering to multiple ports during a year. Some Pacific whiting trawl vessels are catcher-processors, which, as their name implies, process their catch on-board, while other vessels in this sector deliver their catch to shoreside processors or motherships that receive Pacific whiting for processing but do not directly harvest the fish.

Over time, landings in the limited entry trawl fishery have fluctuated, especially on a species-specific basis. Pacific whiting has grown in importance, especially in recent years. Through the 1990s, the volume of Pacific whiting landed in the fishery increased. In 2002 and 2003, landings of Pacific whiting declined due to information showing the stock was depleted and the subsequent regulations that restricted harvest in order to rebuild the species. Over the years 2003–2007, estimated Pacific whiting ex-vessel revenues averaged about $29 million. In 2008, these participants harvested about 248,000 tons of whiting worth about $63 million in ex-vessel revenues, based on shore-based ex-vessel prices of $254 per ton, the highest ex-vessel revenues and prices on record. In comparison, the 2007 fishery harvested about 224,000 tons worth $36 million at an average ex-vessel price of about $160 per ton.

While the Pacific whiting fishery has grown in importance in recent years, harvests in the non-whiting component of the limited entry trawl fishery have declined steadily since the 1980s. Ex-vessel revenues in the fishery peaked in the mid 1990s at over $60 million. Following the passage of the Sustainable Fisheries Act (1996) and the listing of several species as overfished, harvests became increasingly restricted and landings and revenues declined steadily until 2002. Since 2002, ex-vessel revenues have stabilized at approximately $23–$27 million per year. In 2007, the Council estimates that 159 trawlers landed 94,000 mt of groundfish, earning $37 million in ex-vessel revenues, for an average of $234,000 per vessel.

Expected Effects of Amendment 21—Intersector Allocation

The allocation of harvest opportunity between sectors under the proposed regulation does not differ significantly from the allocation made biennially under the no action alternative. The primary economic effect of the long-term allocation under the proposed regulations is to provide more certainty in future trawl harvest opportunities, which would enable better business planning for participants in the rationalized fishery. As described elsewhere, the trawl rationalization program could create an incentive structure and facilitate more comprehensive monitoring to allow bycatch reduction and effective management of the groundfish fisheries. In support of the trawl rationalization program, the main socioeconomic impact of Amendment 21 allocations is longer term stability for the trawl industry. While the preferred Amendment 21 allocations do not differ significantly from status quo ad hoc allocations made biennially, there is more certainty in future trawl harvest opportunities, which enables better business planning for participants in the rationalized fishery. This is the main purpose for the Amendment 21 actions. The economic effects of Amendment 21 arise from the impacts on current and future harvests. The need to constrain groundfish harvests to address overfishing has had substantial socioeconomic impacts. The groundfish limited entry trawl sector has experienced a large contraction, spurred in part by a partially federally-subsidized vessel and permit buyback program implemented in 2005. This $46 million buyback program was financed by a Congressional appropriation of $10 million and an industry loan of $36 million. Approximately 240 groundfish, crab, and shrimp permits were retired from state and federal fisheries, and there was a 35 percent reduction in the groundfish trawl permits. To repay the loan, groundfish, shrimp and crab fisheries are subject to landings fees. Follow-on effects of the buyback have been felt in coastal communities where groundfish trawlers comprise a large portion of the local fleet. As the fleet size shrinks and ex-vessel revenues decline, income and employment in these communities is affected. Fishery-related businesses in the community may cease operations because of lost business. This can affect non-groundfish fishery sectors that also depend on the services provided by these businesses, such as providing ice and buying fish. An objective to the trawl rationalization program is to mitigate some of these effects by increasing revenues and profits within the trawl sector. However, because further fleet consolidation is expected, the resulting benefits are likely to be unevenly distributed among coastal communities. Some communities may see their groundfish trawl fleet shrink further as the remaining vessels concentrate in a few major ports. Species subject to Amendment 21 allocations would be: Lingcod, Pacific cod, sablefish south of 36°N. lat., Pacific ocean perch, widow rockfish, chilipepper rockfish, splitnose rockfish, yellowtail rockfish north of 40°10′ N. lat., shortspine thornyhead (north and south of 34°27′ N. lat.), longspine thornyhead north of 34°27′ N. lat., darkblotched rockfish, minor slope rockfish (north and south of 40°10′ N. lat.), Dover sole, English sole, petrale sole, arrowtooth flounder, starry flounder, and Other Flatfish. While the preferred Amendment 21 allocations of these species do not differ significantly from status quo ad hoc allocations made biennially, there is more certainty in future trawl harvest opportunities, which enables better business planning for participants in the rationalized fishery. This is the main purpose for the Amendment 21 actions.

Based on ex-vessel revenue projections, Table 4–18 (ISA DEIS) shows the potential 2010 yield to trawl and non-trawl (including recreational)

sectors under the Amendment 21 alternatives and the potential 2010 value of alternative trawl allocations. Under the status quo option Alternative 1, the projected ex-vessel value of the trawl allocation is $56 million while the projected ex-vessel value of the Council's preferred alternative is $54 million, indicating a potential increase to the non-trawl sectors and a potential decrease to the trawl sector.

In addition to the species above, halibut would also be specifically allocated to the trawl fishery. The proposed regulations include a halibut trawl bycatch reduction program in phases to provide sufficient time to establish a baseline of trawl halibut bycatch and for harvesters to explore methods (*e.g.,* adjustments to time and/or area fished, gear modifications) to reduce halibut bycatch and bycatch mortality. Pacific halibut are currently not allowed to be retained in any U.S. or Canadian trawl fisheries per the policy of the IPHC. The Council's intent on setting a total catch limit of Pacific halibut in Area 2A trawl fisheries is to limit the bycatch and progressively reduce the bycatch to provide more benefits to directed halibut fisheries. The program establishes a limit for total Pacific halibut bycatch mortality (legal-sized and sublegal fish) through the use of an individual bycatch quota in the trawl fishery. The initial amount for the first two years of the trawl rationalization program would be calculated by taking 15% of the Area 2A Total Constant Exploitation Yield (CEY) as set by the International Pacific Halibut Commission (IPHC) for the previous year, not to exceed 130,000 lbs per year for total mortality. For example, if the trawl rationalization program went into effect in 2013, the trawl halibut IBQ would be set at 15% of the Area 2A CEY adopted for 2012 or 130,000 lbs per year, whichever is less, for 2013 and 2014 (Years 1 and 2 of the program). Beginning with the third year of implementation, the maximum amount set aside for the trawl rationalization program would be reduced to 100,000 lbs per year for total mortality. This amount may be adjusted downward through the biennial specifications process for future years.

Currently there are no total catch limits of Pacific halibut specified for the west coast trawl fishery. Trawl bycatch of Pacific halibut, therefore, does not limit the trawl fishery. A phased in, halibut bycatch reduction program, would provide sufficient time to establish a baseline of trawl halibut bycatch under the new rationalization program and for harvesters to explore methods (e.g., adjustments to time and/or area fished, gear modifications) to reduce both halibut bycatch and bycatch mortality. By limiting the bycatch of Pacific halibut in the LE trawl fisheries, Amendment 21 would control bycatch and could provide increased benefits to Washington, Oregon, and California fishermen targeting Pacific halibut. Reducing the trawl limit would also provide more halibut to those who participate in the directed tribal, commercial and recreational halibut fisheries.

Effects of Amendment 20—Trawl Rationalization

Due to the lack of quantitative data, an overall comprehensive model was not feasible. Instead, a set of models designed to focus on specific issues was developed. For example, models were used to: Analyze the effects of the initial allocation of QS in the trawl IFQ program; project geographic shifts in fishery patterns; and illustrate the potential for reducing bycatch, increasing target catch, and increasing revenues. To illustrate the benefits of the IFQ program, a model projecting the expected amount of fleet consolidation in the shore-based non-whiting fishery was developed. This model illustrates the potential for the fleet to reduce bycatch and potentially increase the amount of target species harvested. This model is primarily based on bycatch reduction experiences in the Pacific whiting fishery and under an Exempted Fishing Permit carried out in the arrowtooth flounder fishery. The model accounts for the fact that trawlers harvest many species (multiple outputs). The model also uses fish ticket data and the data from the recently completed West Coast Limited Entry Cost Earnings Survey sponsored by the NMFS Northwest Fisheries Science Center. (For the other sectors, similar models could not be developed because the appropriate cost data was unavailable).

Estimates of potential economic benefits are generated based on the predicted harvesting practices from the first step analysis. Because the west coast non-whiting groundfish fishery is not a derby fishery, it is expected that economic benefits will come through cost reductions and increased access to target species that arise from modifications in fishing behavior (overfished species avoidance). The key output of this analysis is an estimate of post-rationalization equilibrium harvesting cost.

Changes in harvesting costs can arise from three sources. First, the total fixed costs incurred by the groundfish trawl fleet change as the size of the fleet changes. Since many limited entry trawlers incur annual fixed costs of at least $100,000, reductions in fleet size can result in substantial cost savings. In other words, a fewer number of vessels in the fishery will lead to decreased costs through a decrease in annual fixed costs. Second, costs may change as fishery participation changes and no longer incur diseconomies of scope (such as the costs of frequently switching gear for participating in multiple fisheries). Third, costs may change as vessels are able to buy and sell quota to take advantage of economies of scale and operate at the minimum point on their long-run average cost curve (i.e. the strategy that minimizes the cost of harvesting).

The major conclusions of this model suggest that (with landings held at 2004 levels), the current groundfish fleet (non-whiting component) which consisted of 117 vessels in 2004, will be reduced by roughly 50% to 66%, or 40–60 vessels under an IFQ program. The reduction in fleet size implies cost savings of $18–$22 million for the year 2004 (most recent year of the data). Vessels that remain active will, on average, be more cost efficient and will benefit from economies of scale that are currently unexploited under controlled access regulations in the fishery. The cost savings estimates are significant, amounting to 60% of the costs incurred currently, suggesting that IFQ management may be an attractive option for the Pacific Coast Groundfish Fishery. Assuming a 10% annual return to the vessel capital investment, estimates indicate that the 2004 groundfish fleet incurred a total cost of $39 million. The PacFIN data indicate fleetwide revenue at roughly $36 million in 2004, and, therefore, fleet wide losses of about $3 million occurred in 2004. Based on a lower 5% return to vessel capital, the results suggest that the groundfish fleet merely broke even in 2004; i.e., dockside revenues were offset by the fleet wide harvesting costs. The results also suggest a switch from the current controlled access management program to IFQs could yield a significant increase in resource rents in the Pacific Coast Groundfish fishery. For instance, the analysis finds that the 2004 groundfish catch generated zero resource rent. Instead, it could have yielded a substantial positive rent at about $14 million.

As the model was based on the 2004 fishery, it may be useful to show current trends in the fishery. In 2004, the shorebased non-whiting trawl fishery generated about $30 million in ex-vessel revenues. But according to cost estimates discussed above, this fishery

was at best breaking even or perhaps suffering a loss of up to $2 million. Since 2004, shorebased non-whiting trawl fisheries have increased their revenues to about $40 million. The increases in shorebased revenues have come from increased landings of flatfish and sablefish and significant increase in sablefish ex-vessel prices. Sablefish now accounts for almost half of the trawl fleet's revenues. While revenues were increasing, so were fuel prices. Fuel costs are about 30 to 40% of the vessels' revenues. The average 2005–2009 revenues were about $28 million, or 22 percent greater than 2004. The average 2005–2009 fuel price was about $2.81, 70% greater than that of 2004. Therefore, it appears that 2009 fishery may not be that much improved over that of 2004.

Based on the various models, ex-vessel revenues for the non-whiting sector of the limited entry trawl fishery are estimated to be approximately $30–50 million per year under the preferred alternative, compared to $22–25 million under the no action alternative. This revenue increase is expected to occur in a rationalized fishery, because target species quotas can be more fully utilized. Currently, in the non-whiting sector, cumulative landing limits for target species have to be set lower because the bycatch of overfished species cannot be directly controlled. Introducing accountability at the individual vessel level by means of IFQs provides a strong incentive for bycatch avoidance (because of the actual or implicit cost of quota needed to cover bycatch species) and prevents the bycatch of any one vessel from affecting the harvest opportunity of others. In addition, under the preferred alternative, the non-whiting sector would have control over harvest timing over the whole calendar year. Under the no action alternative, the non-whiting sector would continue to operate under 2-month cumulative landing limits, which reduces flexibility within the period, because any difference between actual limits and the period limit cannot be carried over to the next period. Finally, the ability for vessels managed under IFQs to use other types of legal groundfish gear could allow some increases in revenue by targeting higher-value line or pot gear caught fish. This opportunity would mainly relate to sablefish, which are caught in deeper water, rather than nearshore species where state level regulatory constraints apply.

The preferred alternative may also increase ex-vessel revenues of non-whiting trawl harvesters by changing their bargaining power with processors over ex-vessel prices. Under the preferred alternative, the current 2-month cumulative limits structure of the non-whiting trawl fishery would be replaced with QP that is available for a year, thereby extending the time horizon harvesters have to negotiate prices with processors without losing available fishing opportunity. The extended period would give harvesters greater latitude to hold out for better prices compared to the no action alternative. However, it should also be noted that these negotiations will also be affected by the availability of target species, as well as the availability of bycatch.

Costs for the non-whiting sector of the limited entry trawl fishery are expected to decrease under the preferred alternative because of productivity gains related to fleet consolidation. Productivity gains would be achieved through lower capital requirements and a move to more efficient vessels. Operating costs for the non-whiting sector are predicted to decrease by as much as 60 percent annually. Based on estimates of current costs, this percentage decrease represents a $13.8 million cost reduction relative to the no action alternative.

The accumulation limits considered under the preferred alternative are not expected to introduce cost inefficiencies in the non-whiting sector, provided that current prices and harvest volumes do not decrease. However, the preferred alternative would impose new costs on the non-whiting sector that would not be incurred under the no action alternative. First, a landings fee of up to 3 percent of the ex-vessel value of fish harvested would be assessed under the preferred alternative to recover management costs, such as maintenance of the system of QS accounts. Second, new at-sea observer requirements would be introduced, and vessels would have to pay the costs of complying with these requirements, estimated at $500 a day if independent contractors are hired. The daily observer cost could place a disproportionate adverse economic burden on small businesses because such costs would comprise a larger portion of small vessels costs than that of larger vessels.

The increase in profits that commercial harvesters are expected to experience under the preferred alternative may render them better able to sustain the costs of complying with the new reporting and monitoring requirements. The improved harvesting cost efficiency under the preferred alternative may allow the non-whiting sector to realize profits of $14–23 million compared to $0 or less under the no action alternative. In addition, a provision that allows vessels managed under the IFQ program to use other legal gear (gear switching) would allow sablefish allocated to the trawl sector to be sold at a higher price per pound, possibly contributing to increased profits. The imposition of accumulation limits could reduce the expected increase in the profitability of the non-whiting sector by restricting the amount of expected cost savings, and the costs of at-sea observers may reduce profits by about $2.2 million, depending on the fee structure. However, the profits earned by the non-whiting sector would still be substantially higher under the preferred alternative than under the no action alternative.

New entrants are likely to face a barrier to entry in the Pacific Coast groundfish limited entry trawl fishery in the form of the cost of acquiring QS (or a co-op share in the case of the at-sea whiting sector). This disadvantages them in comparison to those entities that receive an initial allocation of harvest privileges. Small entities may be particularly disadvantaged to the degree that they may find it more difficult to finance such quota purchases. Among the goals the Council identified for the adaptive management program was to use the reserved non-whiting QS to facilitate new entry into the fishery. In addition, the Council identified, as a trailing action, a framework to allow the establishment and implementation of Community Fishing Associations as part of the adaptive management program. These entities could facilitate entry into the fishery by leasing QS at below market rates, thereby leveling the playing field in terms of costs between initial recipients of QS and new entrants.

The incremental effects of the preferred alternative on buyers and processors of trawl caught groundfish are detailed Sections 4.9–4.10 of the Rationalization of the Amendment 20 Pacific Coast Groundfish Limited Entry Trawl Fishery DEIS. Even though processors may have to pay fishermen higher ex-vessel prices, processors may see cost savings under the preferred alternative to the degree that rationalization allows greater control over the timing and location of landings. Processors could use current plant capacity more efficiently, because available information suggests that processing facilities are currently underutilized. Fleet consolidation in the non-whiting sector could also provide cost savings for processors if landings occur in fewer locations, thereby reducing the need for facilities and/or transport. The preferred alternative would also impose new costs on

processors that would not be incurred under the no action alternative. Processors would be required to pay some or all of the costs of plant monitors, who would verify landings. Similar to at-sea observers, these monitors would be independent contractors rather than direct employees of the processing firm.

In the non-whiting processing industry, harvest volumes may increase because of a decrease in constraining species bycatch and a subsequent increase in under-utilized target species catch. This boost in target species catch may increase utilization of processing capital and processing activity. (It should be noted that if under the current system bycatch has been underreported, with 100 percent observer coverage under the new system, the gains in increased target catches may be less than expected.) Consequently, the possibility of capital consolidation in the non-whiting shore-based sector may be less than in the shore-based whiting sector. However, shifts in the distribution of landings across ports as a result of fleet consolidation, industry agglomeration, and the comparative advantage of ports (a function of bycatch rates in the waters constituting the operational area for the port, differences in infrastructure, and other factors) could lead to consolidation in processing activity at a localized or regional scale and an expansion in processing activity elsewhere. To mitigate harm to adversely impacted non-whiting shoreside processors, the adaptive management program provides a mechanism to distribute non-whiting QS to processors, thereby ensuring that some processors receive greater landings of groundfish than would otherwise be the case.

As noted above, the preferred alternative may reduce the power of non-whiting shoreside processors to negotiate ex-vessel prices with harvesters. The larger harvest volume due to bycatch avoidance may lower processor average costs, which could offset the negative effects on non-whiting shoreside processors of a shift in bargaining power. In addition, QS could be purchased by processors over the long term, thereby increasing processors' negotiation power. However, the accumulation limits included in the preferred alternative would limit the ability of processors to purchase substantial quantities of QS. Alternatively, the adaptive management provision could be used to allocate QS to non-whiting shoreside processors, thereby providing them additional leverage when negotiating terms with harvesters.

The allocation of 20 percent of the initial shore-based whiting QS to the shoreside processor portion of the groundfish fishery would give these processors more influence in negotiations over ex-vessel prices and would tend to offset the gains in bargaining power for harvesters. For example, a processor could use QS to induce a harvester that is short of quota pounds for a Pacific whiting trip to make deliveries under specified conditions and prices. However, because of a reduction in peak harvest volume, fewer processing companies and/or facilities may be necessary to handle harvest volumes of Pacific whiting, meaning some companies may find themselves without enough product to continue justifying processing operations of Pacific whiting. Revenues from harvesting and processing trawl-caught groundfish are expected to increase. Total revenue from non-whiting trawl fisheries was $25 million in 2007. Revenue is expected to increase 1.1 to 1.6 times in a rationalized fishery, depending on bycatch rate reductions and stock status. Revenue increases are mainly expected because under rationalized fisheries, target species quotas can be more fully utilized. Currently, in the non-whiting sector, cumulative landing limits for target species have to be set lower because the bycatch of overfished species cannot be directly controlled. Introducing accountability at the individual vessel level provides a strong incentive for bycatch avoidance (because of the actual or implicit cost of quota needed to cover bycatch species) and prevents the bycatch of any one vessel from affecting the harvest opportunity of others. Whiting fisheries are more directly managed through quotas, and in recent years, by limits on bycatch. Beginning in 2009, bycatch limits have been established for each of the three whiting sectors. For the shore-based and mothership whiting sectors, the fishery can potentially close before the whiting allocation is fully harvested because a bycatch cap is reached. (The catcher-processor sector currently operates as a voluntary co-op and is therefore better able to coordinate harvest strategy to avoid reaching bycatch limits.) However, in general, the whiting sectors have been able to harvest their sector allocations. Whiting vessels could increase revenues due to improved product recovery as a result of the ability to better control harvest timing. As mentioned above, the ability for vessels managed under IFQs to use other types of legal groundfish gear could allow some increases in revenue by targeting higher-value line or pot gear caught fish.

Harvester and possibly processor costs are expected to decrease because of productivity gains related to fleet consolidation. Cost savings would be due to lower capital requirements and a move to more efficient vessels in the non-whiting sector. Costs are predicted to decrease by as much as 60 percent annually, which based on estimates of current operating costs would represent a $13.8 million decrease. Similar levels of consolidation are expected for shorebased and mothership catcher vessels. Proposed mitigation measures could reduce these costs savings. For example, a 1 percent quota share accumulation limit could reduce cost savings by as much as 20 percent. But the accumulation limits considered in the alternatives are not expected to introduce higher costs at current prices and harvest volume. The proposed action would introduce some new costs. First, up to 3 percent of the value of landings may be assessed to cover administrative and management costs. Second, new at-sea observer requirements would be introduced and vessels would have to pay the cost, estimated at $350–$500 a day.

Processors may see cost-savings to the degree that rationalization allows greater control over the timing and location of landings. Processors could use current plant capacity more efficiently, because available information suggests that processing facilities are currently underutilized. Fleet consolidation could also drive some cost savings on the part of processors if landings occur in fewer locations. This would reduce the need for facilities and/or transport. Under the proposed action, processors would be required to pay the costs of plant monitors, who would verify landings. These monitors would not be directly employed by the processing firm but, similar to at-sea observers, be independent contractors.

Rationalization of the groundfish trawl sector is expected to free up capital and labor because of increases in productivity. (Since the basic input, trawl-caught fish, is subject to an underlying constraint due to biological productivity, increases in labor and capital productivity are expected to reduce the amount of those inputs needed.) However, from a national net benefit perspective these effects are neutral since capital and labor can be put to some productive use elsewhere in the broader economy. Also, current groundfish fishery participants that

receive QS (trawl limited entry trawl permit holders and eligible shoreside processors) are compensated to the degree that the asset value of the QS covers capital losses.

The tracking and monitoring costs of this program will be provided in more detail with the "program components" rule making. However, the RIR/IRFA to this rule contains some preliminary estimates. After a transition period, for the shore-based fishery, the initial estimates of the annual federal and state agency costs to run this program are about $5 million. Based on the observer cost of $500 per day, the annual costs of observers monitoring is about $4 million and at $350 per day, the compliance monitor program is just over $1 million annually. These figures add up just over $10 million. From a cost-benefit view point, if consolidation leads to $14 million savings from reduced harvesting costs and the new program increases the tracking and monitoring costs of $10 million, there is a projected net gain of about $4 million. This does not take into account expectations that costs will likely be reduced due to consolidation or the expected increases in revenues discussed above.

While the effect of the preferred alternative on revenues and costs in the whiting sector of the limited entry trawl fishery is more difficult to estimate, the lower motivation to "race for fish" due to coop harvest privileges is expected to result in improved product quality, slower-paced harvest activity, increased yield (which should increase exvessel prices), and enhanced flexibility and ability for business planning. The overall effect of these changes would be higher revenues and profits for harvesters in the shoreside and mothership portions of the whiting fishery in comparison to the no action alternative. Under the preferred alternative, some consolidation may occur in the shoreside and mothership sectors of the Pacific whiting fishery, though the magnitude of consolidation is expected to be less than in the non-whiting sector. The existing catcher-processor coop would continue under the preferred alternative, with effects on the catcher-processor sector that look similar, or identical, to those of the no action alternative. However, the change from a vessel-based limit under Amendment 15 to the permit-based limit of Amendment 21 will provide additional flexibility that currently does not exist in the whiting fishery.

This proposed rule would regulate businesses that harvest groundfish and processors that wish to process limited entry trawl groundfish. Under the RFA, the term "small entities" includes small businesses, small organizations, and small governmental jurisdictions. For small businesses, the SBA has established size criteria for all major industry sectors in the US, including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of $4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the $4.0 million criterion for fish harvesting operations. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide. For marinas and charter/party boats, a small business is one with annual receipts not in excess of $7.0 million. The RFA defines a small organization as any nonprofit enterprise that is independently owned and operated and is not dominant in its field. The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

NMFS makes the following conclusions based primarily on analyses associated with fish ticket data and limited entry permit data, available employment data provided by processors, information on the charterboat and tribal fleets, and available industry responses to on-going survey on ownership. Entities were analyzed as to whether they were only affected by the Amendment 21 allocation processes (non-trawl), or if they were affected by both Amendment 20 and 21 (trawl).

The non-trawl businesses are associated with the following fleets: Limited entry fixed gear (approximately 150 companies), open access groundfish (1,100), charterboats (465), and the tribal fleet (four tribes with 66 vessels). Available information on average revenue per vessel suggests that all the entities in this group can be considered small.

For the trawl sector, there are 177 permit holders. Nine limited entry trawl permits are associated with the catcher-processing vessels which are considered "large" companies. Of the remaining 168 limited entry permits, 25 limited entry trawl permits are either owned or closely associated with a "large" shore-based processing company or with a non-profit organization who considers itself a "large" organization. Nine other permit owners indicated that they were large "companies." Almost all of these companies are associated with the shorebased and mothership whiting fisheries. The remaining 134 limited entry trawl permits are projected to be held "small" companies. Three of the six mothership processors are "large" companies. Within the 14 shorebased whiting first receivers/processors, there are four "large" companies. Including the shorebased whiting first receivers, in 2008, there were 75 first receivers that purchased limited entry trawl groundfish. There were 36 small purchasers (less than $150,000); 26 medium purchasers (purchases greater than $150,000 but less than $1,000,000); and 13 large purchasers (purchases greater than $1.0 million). Because of the costs of obtaining a "processor site license", procuring and scheduling a catch monitor, and installing and using the electronic fish ticket software, these "small" purchasers will likely opt out of buying groundfish, or make arrangements to purchase fish from another company that has obtained a processing site license.

The major impacts of this rule appear to be on three groups: Shoreside processors which are a mix of large and small processors; and shore-based trawlers which are also a mix of large and small companies. The non-whiting shore-based trawlers are currently operating at a loss or at best are "breaking even." The new rationalization program would lead to profitability, but only with a reduction of about 60 percent of the fleet. This program would lead to major changes in the fishery. To help mitigate against these changes, as discussed above, the agency has announced its intent, subject to available Federal funding, that participants would initially be responsible for 10 percent of the cost of hiring observers and catch monitors. The industry proportion of the costs of hiring observers and catch monitors would be increased every year so that by 2014, once the fishery has transitioned to the rationalization program, the industry would be responsible for 100 percent of the cost of hiring the observers and catch monitors. NMFS believes that an incrementally reduced subsidy to industry funding would

enhance the observer and catch monitor program's stability, ensure 100 percent observer and catch monitor coverage, and facilitate the industries' successful transition to the new quota system. In addition, to help mitigate against the negative impacts of this program, the Council has adopted an Adaptive Management Program where starting in year 3 of the program, 10 percent of non-whiting QS would be set aside every year to address community impacts and industry transition needs. After reviewing the initial effects of ITQ programs in other parts of the world, the council had placed a short term QS trading prohibition so that fishermen can learn from their experiences and not make premature sales of their QS. The Council is also envisioning future regulatory processes that would allow community fisheries associations to be established to help aid communities and fishermen.

A summary of the proposed action is as follows. The proposed action is to replace the current, primary management tool used to control the West Coast groundfish trawl catch—a system of 2-month cumulative landing limits for most species and season closures for whiting—with a system requiring more individual accountability by the assignment of limited access privileges (LAPs). LAPs are a form of output control whereby an individual fisherman, community, or other entity is granted the privilege to catch a specified portion of the total allowable catch (TAC). The alternatives include (1) a catch-based IFQ system where all groundfish catch (landings plus bycatch) by LE trawl vessels would count against a vessel's IFQ holdings, which could be applied to the whole groundfish trawl fishery or selected trawl sectors; and (2) a system of coops that would be applied to one or more of the fishery sectors that target Pacific whiting. The status quo alternative (no action) could also be considered for application to one or more trawl fishery sectors even if one or both action alternatives (IFQs or coops) are chosen for the other trawl sectors.

The description of purpose and need in section 1.2 of the Amendment 20 DEIS also outlines the objectives of the proposed action. The introductory paragraph in Chapter 1 and section 1.3 of the DEIS, background to the purpose and need, provide information on the legal basis for the proposed action (proposed rule). The Council articulated the following goal for the trawl rationalization program: "Create and implement a capacity rationalization plan that increases net economic benefits, creates individual economic stability, provides for full utilization of the trawl sector allocation, considers environmental impacts, and achieves individual accountability of catch and bycatch." The objectives supporting this goal are: Provide a mechanism for total catch accounting; provide for a viable, profitable, and efficient groundfish fishery; promote practices that reduce bycatch and discard mortality, and minimize ecological impacts; increase operational flexibility; minimize adverse effects from an IFQ program on fishing communities and other fisheries to the extent practical; promote measurable economic and employment benefits through the seafood catching, processing, distribution elements, and support sectors of the industry; provide quality product for the consumer; and increase safety in the fishery.

As part of the proposed action, NMFS would be placing observers and/or cameras on board all catcher vessels in the shore-based sector (which combines the current shore-based whiting and non-whiting trawl sectors). Existing requirements for motherships, catcher vessels in the MS sector, and C/Ps would continue. Independently contracted processing plant monitors would track landings. Also, there would be new reporting requirements related to the tracking of QS and QP in the shore-based fishery.

No Federal rules have been identified that duplicate, overlap, or conflict with the alternatives. Public comment is hereby solicited, identifying such rules. A copy of this analysis is available from NMFS (*see* **ADDRESSES**).

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for the QS Initial Issuance/QS Permit Application is estimated to average 6 hours per response (180 responses). Public reporting burden for the MS Permit Application is estimated to average 1 hour per response (6 responses). Public reporting burden for the MS/CV Endorsement Application is estimated to average 2 hours per response (30 responses). Public reporting burden for the C/P Endorsement Application is estimated to average 30 minutes per response (10 responses). Public reporting burden for the Ownership Interest form is estimated to average 30 minutes per response (216 responses). Public reporting burden for the Appeals is estimated to average 6 hours per response (100 responses). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS, Northwest Region, at the **ADDRESSES** section above; e-mail to *David_Rostker@omb.eop.gov;* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the Pacific Coast groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the FMP for the Pacific Coast groundfish fishery was not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS reinitiated a formal section 7 consultation under the ESA in 2005 for both the Pacific whiting midwater trawl fishery and the groundfish bottom trawl fishery. The December 19, 1999,

Biological Opinion had defined an 11,000 Chinook incidental take threshold for the Pacific whiting fishery. During the 2005 Pacific whiting season, the 11,000 fish Chinook incidental take threshold was exceeded, triggering reinitiation. Also in 2005, new data from the West Coast Groundfish Observer Program became available, allowing NMFS to complete an analysis of salmon take in the bottom trawl fishery.

NMFS prepared a Supplemental Biological Opinion dated March 11, 2006, which addressed salmon take in both the Pacific whiting midwater trawl and groundfish bottom trawl fisheries. In its 2006 Supplemental Biological Opinion, NMFS concluded that catch rates of salmon in the 2005 whiting fishery were consistent with expectations considered during prior consultations. Chinook bycatch has averaged about 7,300 fish over the last 15 years and has only occasionally exceeded the reinitiation trigger of 11,000 fish.

Since 1999, annual Chinook bycatch has averaged about 8,450 fish. The Chinook ESUs most likely affected by the whiting fishery have generally improved in status since the 1999 section 7 consultation. Although these species remain at risk, as indicated by their ESA listing, NMFS concluded that the higher observed bycatch in 2005 does not require a reconsideration of its prior "no jeopardy" conclusion with respect to the fishery. For the groundfish bottom trawl fishery, NMFS concluded that incidental take in the groundfish fisheries is within the overall limits articulated in the Incidental Take Statement of the 1999 Biological Opinion. The groundfish bottom trawl limit from that opinion was 9,000 fish annually. NMFS will continue to monitor and collect data to analyze take levels. NMFS also reaffirmed its prior determination that implementation of the Groundfish FMP is not likely to jeopardize the continued existence of any of the affected ESUs.

Lower Columbia River coho (70 FR 37160, June 28, 2005) were recently listed and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead. The Southern Distinct Population Segment (DPS) of green sturgeon (71 FR 17757, April 7, 2006) were also recently listed as threatened under the ESA. As a consequence, NMFS has reinitiated its Section 7 consultation on the PFMC's Groundfish FMP.

After reviewing the available information, NMFS concluded that, in keeping with Sections 7(a)(2) and 7(d) of the ESA, the proposed action would not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

This proposed rule was developed after meaningful consultation and collaboration with the tribal representative on the Council who has agreed with the provisions that apply to tribal vessels.

This action does not conflict with the provisions implemented to protect migratory birds. Vessels participating in the limited entry trawl fishery rarely interact with migratory birds or their habitat.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 660

Fisheries, Fishing, and Indian Fisheries.

Dated: May 27, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR Chapter IX and 50 CFR Chapter VI are proposed to be amended as follows:

15 CFR CHAPTER IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. Amend the table in § 902.1(b) under 50 CFR by:

a. Removing the entries and corresponding OMB numbers for §§ 660.303, 660.305, 660.322, 660.323, 660.333, and 660.337.

b. Adding new entries and corresponding OMB numbers for §§ 660.20, 660.25, 660.55, 660.113, 660.131, 660.213, 660.219, 660.313, 660.319, and 660.353.

The additions read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR	
* * * * *	
660.20	–0355
660.25	–0203
660.55	–0243 and –0352
660.113	–0271
660.131	–0243
660.213	–0271
660.219	–0355
660.313	–0271
660.319	–0355
660.353	–0271
* * * * *	

50 CFR CHAPTER VI

PART 660—FISHERIES OFF WEST COAST STATES

3. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 773 *et seq.*

4. Add subparts C through F to read as follows:

Subpart C—West Coast Groundfish Fisheries

Sec.

Subpart C—West Coast Groundfish Fisheries

§ 660.10 Purpose and scope.

(a) Subparts C through G of this part implement the Pacific Coast Groundfish Fishery Management Plan (PCGFMP) developed by the Pacific Fishery Management Council. Subparts C through G govern fishing vessels of the U.S. in the EEZ off the coasts of Washington, Oregon, and California. All weights are in round weight or round-weight equivalents, unless specified otherwise.

(b) Any person fishing subject to subparts C through G of this part is bound by the international boundaries described in this section, notwithstanding any dispute or negotiation between the U.S. and any neighboring country regarding their respective jurisdictions, until such time as new boundaries are established or recognized by the U.S.

§ 660.11 General definitions.

These definitions are specific to the fisheries covered in subparts C through G of this part.

Active sampling unit means the portion of the groundfish fleet in which an observer coverage plan is being applied.

Address of Record means the business address a person has provided to NMFS for NMFS use in providing notice of agency actions and other business with that person.

Allocation. (*See* § 600.10 of this chapter)

Base permit, with respect to a limited entry permit stacking program, means a limited entry permit described at § 660.25(b)(3)(i), subpart C registered for use with a vessel that meets the permit length endorsement requirements appropriate to that vessel, as described at § 660.25(b)(3)(iii), subpart C.

Biennial fishing period means a 24–month period beginning at 0001 local time on January 1 and ending at 2400 local time on December 31 of the subsequent year.

B_{MSY} means the biomass level that produces maximum sustainable yield (MSY), as stated in the PCGFMP at Section 4.2.

Calendar day means the day beginning at 0001 hours local time and continuing for 24 consecutive hours.

Calendar year. (see "fishing year")

Catch, take, harvest. (*See* § 600.10 of this chapter)

Catch monitor means an individual that is certified by NMFS, is deployed to a first receiver, and whose primary duties include: Monitoring and verification of the sorting of fish relative to federal requirements defined in § 660.60, subpart C; documentation of the weighing of fish relative to the requirements of § 660.13, subpart C; and verification of first receivers reporting relative to the requirements defined in § 660.113, subpart D.

Change in partnership or corporation means the addition of a new shareholder or partner to the corporate or partnership membership. This definition of a "change" will apply to any person added to the corporate or partnership membership since November 1, 2000, including any family member of an existing shareholder or partner. A change in membership is not considered to have occurred if a member dies or becomes legally incapacitated and a trustee is appointed to act on his behalf, nor if the ownership of shares among existing members changes, nor if a member leaves the corporation or partnership and is not replaced. Changes in the ownership of publicly held stock will not be deemed changes in ownership of the corporation.

Closure or closed means, when referring to closure of a fishery or a closed fishery, that taking and retaining, possessing, or landing the particular species or species group covered by the fishing closure is prohibited. Unless otherwise announced in the **Federal Register** or authorized in this subpart, offloading must begin before the closure time.

Commercial fishing means:

(1) Fishing by a person who possesses a commercial fishing license or is required by law to possess such license issued by one of the states or the Federal Government as a prerequisite to taking, landing and/or sale of fish; or

(2) Fishing that results in or can be reasonably expected to result in sale, barter, trade or other disposition of fish for other than personal consumption.

Commercial harvest guideline or commercial quota means the fishery harvest guideline minus the estimated recreational catch. Limited entry and open access allocations are derived from the commercial harvest guideline or quota.

Conservation area(s) means either a Groundfish Conservation Area (GCA), an Essential Fish Habitat Conservation Area (EFHCA), or both.

(1) *Groundfish Conservation Area or GCA* means a geographic area defined by coordinates expressed in degrees latitude and longitude, wherein fishing by a particular gear type or types may be prohibited. GCAs are created and enforced for the purpose of contributing to the rebuilding of overfished West Coast groundfish species. Regulations at § 660.70, Subpart C define coordinates for these polygonal GCAs: Yelloweye Rockfish Conservation Areas, Cowcod Conservation Areas, waters encircling the Farallon Islands, and waters encircling the Cordell Banks. GCAs also include Rockfish Conservation Areas or RCAs, which are areas closed to fishing by particular gear types, bounded by lines approximating particular depth contours. RCA boundaries may and do change seasonally according to the conservation needs of the different overfished species. Regulations at §§ 660.70 through 660.74, subpart C

define RCA boundary lines with latitude/longitude coordinates; regulations at Tables 1 (North) and 1 (South) of subpart D, Tables 2 (North) and 2 (South) of subpart E, and Tables 3 (North) and 3 (South) of subpart F set RCA seasonal boundaries. Fishing prohibitions associated with GCAs are in addition to those associated with EFH Conservation Areas.

(2) *Essential Fish Habitat Conservation Area or EFHCA* means a geographic area defined by coordinates expressed in degrees latitude and longitude, wherein fishing by a particular gear type or types may be prohibited. EFHCAs are created and enforced for the purpose of contributing to the protection of West Coast groundfish essential fish habitat. Regulations at §§ 660.75, through 660.79, Subpart C define EFHCA boundary lines with latitude/longitude coordinates. Fishing prohibitions associated with EFHCAs, which are found at § 660.12, subpart C, are in addition to those associated with GCAs.

Continuous transiting or transit through means that a fishing vessel crosses a groundfish conservation area or EFH conservation area on a constant heading, along a continuous straight line course, while making way by means of a source of power at all times, other than drifting by means of the prevailing water current or weather conditions.

Corporation means a legal, business entity, including incorporated (INC) and limited liability corporations (LLC).

Council means the Pacific Fishery Management Council, including its Groundfish Management Team (GMT), Scientific and Statistical Committee (SSC), Groundfish Advisory Subpanel (GAP), and any other advisory body established by the Council.

Date of landing means the date on which the transfer of fish or offloading of fish from any vessel to a processor or other first receiver begins.

Direct financial interest means any source of income to or capital investment or other interest held by an individual, partnership, or corporation or an individual's spouse, immediate family member or parent that could be influenced by performance or non-performance of observer or catch monitor duties.

Electronic fish ticket means a software program or data files meeting data export specifications approved by NMFS that is used to send landing data to the Pacific States Marine Fisheries Commission. Electronic fish tickets are used to collect information similar to the information required in state fish receiving tickets or landing receipts, but do not replace or change any state requirements.

Electronic Monitoring System or EMS means a data collection tool that uses a software operating system connected to an assortment of electronic components, including video recorders, to create a collection of data on vessel activities.

Endorsement means an additional specification affixed to the limited entry permit that further restricts fishery participation or further specifies a harvest privilege, and is non-severable from a limited entry permit.

Entity. (*See* "Person")

Essential Fish Habitat or EFH. (*See* § 600.10 of this chapter)

First Receiver means a person who receives, purchases, or takes custody, control, or possession of catch onshore directly from a vessel.

Fish. (*See* § 600.10 of this chapter)

Fishery. (See § 600.10 of this chapter)

Fishery harvest guideline means the harvest guideline or quota after subtracting from the OY any allocation for the Pacific Coast treaty Indian tribes, projected research catch, deductions for fishing mortality in non-groundfish fisheries, as necessary, and set-asides for EFPs.

Fishery management area means the EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nm offshore, and bounded on the north by the Provisional International Boundary between the U.S. and Canada, and bounded on the south by the International Boundary between the U.S. and Mexico. The inner boundary of the fishery management area is a line coterminous with the seaward boundaries of the States of Washington, Oregon, and California (the "3-mile limit"). The outer boundary of the fishery management area is a line drawn in such a manner that each point on it is 200 nm from the baseline from which the territorial sea is measured, or is a provisional or permanent international boundary between the U.S. and Canada or Mexico. All groundfish possessed between 0–200 nm offshore or landed in Washington, Oregon, or California are presumed to have been taken and retained from the EEZ, unless otherwise demonstrated by the person in possession of those fish.

Fishing. (*See* § 600.10 of this chapter)

Fishing gear includes the following types of gear and equipment:

(1) *Bottom contact gear* means fishing gear designed or modified to make contact with the bottom. 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 bottom dwelling organisms (*e.g.* by hand, rakes, and knives) are also considered bottom contact gear for purposes of this subpart.

(2) *Demersal seine* means a net designed to encircle fish on the seabed. The demersal seine is characterized by having its net bounded by lead-weighted ropes that are not encircled with bobbins or rollers. Demersal seine gear is fished without the use of steel cables or otter boards (trawl doors). Scottish and Danish Seines are demersal seines. Purse seines, as defined at § 600.10 of this chapter, are not demersal seines. Demersal seine gear is included in the definition of bottom trawl gear in paragraph (11)(i) of this definition.

(3) *Dredge gear* means a gear consisting of a metal frame attached to a holding bag constructed of metal rings or mesh. As the metal frame is dragged upon or above the seabed, fish are pushed up and over the frame, then into the mouth of the holding bag.

(4) *Entangling nets* include the following types of net gear:

(i) *Gillnet.* (*See* § 600.10 of this chapter)

(ii) *Set net* means a stationary, buoyed, and anchored gillnet or trammel net.

(iii) *Trammel net* means a gillnet made with two or more walls joined to a common float line.

(5) *Fixed gear (anchored nontrawl gear)* means the following gear types: Longline, trap or pot, set net, and stationary hook-and-line (including commercial vertical hook-and-line) gears.

(6) *Hook-and-line* means one or more hooks attached to one or more lines. It may be stationary (commercial vertical hook-and-line) or mobile (troll).

(i) *Bottom longline* means a stationary, buoyed, and anchored groundline with hooks attached, so as to fish along the seabed. It does not include pelagic hook-and-line or troll gear.

(ii) *Commercial vertical hook-and-line* means commercial fishing with hook-and-line gear that involves a single line anchored at the bottom and buoyed at the surface so as to fish vertically.

(iii) *Dinglebar gear* means one or more lines retrieved and set with a troll gurdy or hand troll gurdy, with a terminally attached weight from which one or more leaders with one or more lures or baited hooks are pulled through the water while a vessel is making way.

(iv) *Troll gear* means a lure or jig towed behind a vessel via a fishing line. Troll gear is used in commercial and recreational fisheries.

(7) *Mesh size* means the opening between opposing knots. Minimum mesh size means the smallest distance allowed between the inside of one knot to the inside of the opposing knot, regardless of twine size.

(8) *Nontrawl gear* means all legal commercial groundfish gear other than trawl gear.

(9) *Spear* means a sharp, pointed, or barbed instrument on a shaft.

(10) *Trap or pot See* § 600.10 of this chapter, definition of "trap". These terms are used as interchangeable synonyms.

(11) *Trawl gear* means a cone or funnel-shaped net that is towed through the water, and can include a pair trawl that towed simultaneously by two boats. For the purpose of this definition, trawl gear includes groundfish and non-groundfish trawl. See definitions for groundfish trawl and non-groundfish trawls (previously called "exempted trawl").

(i) *Bottom trawl* means a trawl in which the otter boards or the footrope of the net are in contact with the seabed. It includes demersal seine gear, and pair trawls fished on the bottom. Any trawl not meeting the requirements for a midwater trawl in § 660.130(b), subpart D is a bottom trawl.

(A) *Beam trawl gear* means a type of trawl gear in which a beam is used to hold the trawl open during fishing. Otter boards or doors are not used.

(B) *Large footrope trawl gear* means a bottom trawl gear with a footrope diameter larger than 8 inches (20 cm,) and no larger than 19 inches (48 cm) including any rollers, bobbins, or other material encircling or tied along the length of the footrope.

(C) *Small footrope trawl gear* means a bottom trawl gear with a footrope diameter of 8 inches (20 cm) or smaller, including any rollers, bobbins, or other material encircling or tied along the length of the footrope. Selective flatfish trawl gear that meets the gear component requirements in § 660.130(b), subpart D is a type of small footrope trawl gear.

(ii) *Midwater (pelagic or off-bottom)* trawl means a trawl in which the otter boards and footrope of the net remain above the seabed. It includes pair trawls if fished in midwater. A midwater trawl has no rollers or bobbins on any part of the net or its component wires, ropes, and chains. For additional midwater trawl gear requirements and restrictions, see § 660.130(b), subpart D.

(iii) *Trawl gear components* include:

(A) *Breastline* means a rope or cable that connects the end of the headrope and the end of the trawl fishing line along the edge of the trawl web closest to the towing point.

(B) *Chafing gear* means webbing or other material attached to the codend of a trawl net to protect the codend from wear.

(C) *Codend.* (*See* § 600.10 of this chapter)

(D) *Double-bar mesh* means webbing comprised of two lengths of twine tied into a single knot.

(E) *Double-walled codend* means a codend constructed of two walls (layers) of webbing.

(F) *Footrope* means a chain, rope, or wire attached to the bottom front end of the trawl webbing forming the leading edge of the bottom panel of the trawl net, and attached to the fishing line.

(G) *Headrope* means a chain, rope, or wire attached to the trawl webbing forming the leading edge of the top panel of the trawl net.

(H) *Rollers or bobbins* means devices made of wood, steel, rubber, plastic, or other hard material that encircle the trawl footrope. These devices are commonly used to either bounce or pivot over seabed obstructions, in order to prevent the trawl footrope and net from snagging on the seabed.

(I) *Single-walled codend* means a codend constructed of a single wall of webbing knitted with single or double-bar mesh.

(J) *Trawl fishing line* means a length of chain, rope, or wire rope in the bottom front end of a trawl net to which the webbing or lead ropes are attached.

(K) *Trawl riblines* means a heavy rope or line that runs down the sides, top, or underside of a trawl net from the mouth of the net to the terminal end of the codend to strengthen the net during fishing.

Fishing or Calendar year means the year beginning at 0001 local time on January 1 and ending at 2400 local time on December 31 of the same year. There are two fishing years in each biennial fishing period.

Fishing trip means a period of time between landings when fishing is conducted.

Fishing vessel. (*See* § 600.10 of this chapter)

Grandfathered or first generation, when referring to a limited entry sablefish-endorsed permit owner, means those permit owners who owned a sablefish-endorsed limited entry permit prior to November 1, 2000, and are, therefore, exempt from certain requirements of the sablefish permit stacking program within the parameters of the regulations at § 660.25(b), subpart C and § 660.231, subpart E.

Groundfish means species managed by the PCGFMP, specifically:

(1) Sharks: leopard shark, *Triakis semifasciata;* soupfin shark, *Galeorhinus zyopterus;* spiny dogfish, *Squalus acanthias.*

(2) Skates: big skate, *Raja binoculata;* California skate, *R. inornata;* longnose skate, *R. rhina.*

(3) Ratfish: ratfish, *Hydrolagus colliei.*

(4) Morids: finescale codling, *Antimora microlepis.*

(5) Grenadiers: Pacific rattail, *Coryphaenoides acrolepis.*

(6) Roundfish: cabezon, *Scorpaenichthys marmoratus;* kelp greenling, *Hexagrammos decagrammus;* lingcod, *Ophiodon elongatus;* Pacific cod, *Gadus macrocephalus;* Pacific whiting, *Merluccius productus;* sablefish, *Anoplopoma fimbria.*

(7) Rockfish: In addition to the species below, longspine thornyhead, *S. altivelis,* and shortspine thornyhead, *S. alascanus,* "rockfish" managed under the PCGFMP include all genera and species of the family *Scorpaenidae* that occur off Washington, Oregon, and California, even if not listed below. The *Scorpaenidae* genera are *Sebastes, Scorpaena, Scorpaenodes,* and *Sebastolobus.* Where species below are listed both in a major category (nearshore, shelf, slope) and as an area-specific listing (north or south of 40°10′ N. lat.) those species are considered "minor" in the geographic area listed.

(i) Nearshore rockfish includes black rockfish, Sebastes melanops and the following minor nearshore rockfish species:

(A) North of 40°10′ N. lat.: black and yellow rockfish, *S. chrysomelas;* blue rockfish, *S. mystinus;* brown rockfish, *S. auriculatus;* calico rockfish, *S. dalli;* China rockfish, *S. nebulosus;* copper rockfish, *S. caurinus;* gopher rockfish, *S. carnatus;* grass rockfish, *S. rastrelliger;* kelp rockfish, *S. atrovirens;* olive rockfish, *S. serranoides;* quillback rockfish, *S. maliger;* treefish,. *S. serriceps*

(B) South of 40°10′ N. lat., nearshore rockfish are divided into three management categories:

(1) *Shallow nearshore rockfish* consists of black and yellow rockfish, *S. chrysomelas;* China rockfish, *S. nebulosus;* gopher rockfish, *S. carnatus;* grass rockfish, *S. rastrelliger;* kelp rockfish, *S. atrovirens.*

(2) Deeper nearshore rockfish consists of black rockfish, *S. melanops;* blue rockfish, *S. mystinus;* brown rockfish, *S. auriculatus;* calico rockfish, *S. dalli;* copper rockfish, *S. caurinus;* olive rockfish, *S. serranoides;* quillback rockfish, *S. maliger;* treefish, *S. serriceps.*

(3) *California scorpionfish, Scorpaena guttata.*

(ii) *Shelf rockfish* includes bocaccio, *Sebastes paucispinis;* canary rockfish, *S. pinniger;* chilipepper, *S. goodei;* cowcod, *S. levis;* shortbelly rockfish, *S. jordani;* widow rockfish, *S. entomelas;* yelloweye rockfish, *S. ruberrimus;* yellowtail rockfish, *S. flavidus* and the following minor shelf rockfish species:

(A) *North of 40°10′ N. lat.:* Bronzespotted rockfish, *S. gilli;* bocaccio, *S. paucispinis;* chameleon rockfish, *S. phillipsi;* chilipepper, *S. goodei;* cowcod, *S. levis;* dusky rockfish, *S. ciliatus;* dwarf-red, *S. rufianus;* flag rockfish, *S. rubrivinctus;* freckled, *S. lentiginosus;* greenblotched rockfish, *S. rosenblatti;* greenspotted rockfish, *S. chlorostictus;* greenstriped rockfish, *S. elongatus;* halfbanded rockfish, *S. semicinctus;* harlequin rockfish, *S. variegatus;* honeycomb rockfish, *S. umbrosus;* Mexican rockfish, *S. macdonaldi;* pink rockfish, *S. eos;* pinkrose rockfish, *S. simulator;* pygmy rockfish, *S. wilsoni;* redstripe rockfish, *S. proriger;* rosethorn rockfish, *S. helvomaculatus;* rosy rockfish, *S. rosaceus;* silvergray rockfish, *S. brevispinis;* speckled rockfish, *S. ovalis;* squarespot rockfish, *S. hopkinsi;* starry rockfish, *S. constellatus;* stripetail rockfish, *S. saxicola;* swordspine rockfish, *S. ensifer;* tiger rockfish, *S. nigrocinctus;* vermilion rockfish, *S. miniatus.*

(B) South of 40°10′ N. lat.: Bronzespotted rockfish, *S. gilli;* chameleon rockfish, *S. phillipsi;* dusky rockfish, *S. ciliatus;* dwarf-red rockfish, *S. rufianus;* flag rockfish, *S. rubrivinctus;* freckled, *S. lentiginosus;* greenblotched rockfish, *S. rosenblatti;* greenspotted rockfish, *S. chlorostictus;* greenstriped rockfish, *S. elongatus;* halfbanded rockfish, *S. semicinctus;* harlequin rockfish, *S. variegatus;* honeycomb rockfish, *S. umbrosus;* Mexican rockfish, *S. macdonaldi;* pink rockfish, *S. eos;* pinkrose rockfish, *S. simulator;* pygmy rockfish, *S. wilsoni;* redstripe rockfish, *S. proriger;* rosethorn rockfish, *S. helvomaculatus;* rosy rockfish, *S. rosaceus;* silvergray rockfish, S. brevispinis; speckled rockfish, *S. ovalis;* squarespot rockfish, *S. hopkinsi;* starry rockfish, *S. constellatus;* stripetail rockfish, *S. saxicola;* swordspine rockfish, *S. ensifer;* tiger rockfish, *S. nigrocinctus;* vermilion rockfish, *S. miniatus;* yellowtail rockfish, *S. flavidus.*

(iii) Slope rockfish includes darkblotched rockfish, *S. crameri;* Pacific ocean perch, *S. alutus;* splitnose rockfish, *S. diploproa;* and the following minor slope rockfish species:

(A) North of 40°10′ N. lat.: Aurora rockfish, *Sebastes aurora;* bank rockfish, *S. rufus;* blackgill rockfish, *S. melanostomus;* redbanded rockfish, *S. babcocki;* rougheye rockfish, *S. aleutianus;* sharpchin rockfish, *S. zacentrus;* shortraker rockfish, *S. borealis;* splitnose rockfish, *S. diploproa;* yellowmouth rockfish, *S. reedi.*

(B) South of 40°10′ N. lat.: Aurora rockfish, *Sebastes aurora;* bank rockfish, *S. rufus;* blackgill rockfish, *S. melanostomus;* Pacific ocean perch, *S. alutus;* redbanded rockfish, *S. babcocki;* rougheye rockfish, *S. aleutianus;* sharpchin rockfish, *S. zacentrus;* shortraker rockfish, *S. borealis;* yellowmouth rockfish, *S. reedi.*

(8) Flatfish: Arrowtooth flounder (arrowtooth turbot), *Atheresthes stomias;* butter sole, *Isopsetta isolepis;* curlfin sole, *Pleuronichthys decurrens;* Dover sole, *Microstomus pacificus;* English sole, *Parophrys vetulus;* flathead sole, *Hippoglossoides elassodon;* Pacific sanddab, *Citharichthys sordidus;* petrale sole, *Eopsetta jordani;* rex sole, *Glyptocephalus zachirus;* rock sole, *Lepidopsetta bilineata;* sand sole, *Psettichthys melanostictus;* starry flounder, *Platichthys stellatus.* Where regulations of subparts C through G of this part refer to landings limits for "other flatfish," those limits apply to all flatfish cumulatively taken except for those flatfish species specifically listed in Tables 1a and 2a of this subpart. (*i.e.,* "other flatfish" includes butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.)

(9) "Other fish": Where regulations of subparts C through G of this part refer to landings limits for "other fish," those limits apply to all groundfish listed here in paragraphs (1) through (8) of this definition except for the following: Those groundfish species specifically listed in Tables 1a and 2a of this subpart with an ABC for that area (generally north and/or south of 40°10′ N. lat.); and Pacific cod and spiny dogfish coastwide. (*i.e.,* "other fish" may include all sharks (except spiny dogfish), skates, ratfish, morids, grenadiers, and kelp greenling listed in this section, as well as cabezon in the north.)

(10) "DTS complex": Where regulations of subparts C through G of this part refer to "DTS complex" species, that group of species includes Dover sole, shortspine thornyhead, longspine thornyhead, and sablefish.

Groundfish trawl means trawl gear that is used under the authority of a valid limited entry permit issued under subparts C and D of this part endorsed for trawl gear and which meets the gear requirements specified in subpart D of this part. It does not include any type of trawl gear listed as non-groundfish trawl gear (previously called "exempted gear").

Harvest guideline means a specified numerical harvest objective that is not a quota. Attainment of a harvest guideline does not require closure of a fishery.

Incidental catch or incidental species means groundfish species caught while fishing for the primary purpose of catching a different species.

Initial Administrative Determination (IAD) means a formal, written determination made by NMFS on an application or permit request, that is subject to an appeal within NMFS.

Land or landing means to begin transfer of fish, offloading fish, or to offload fish from any vessel. Once transfer of fish begins, all fish aboard the vessel are counted as part of the landing.

Legal fish means fish legally taken and retained, possessed, or landed in accordance with the provisions of 50 CFR part 660, subparts C through G, the Magnuson-Stevens Act, any document issued under part 660, and any other regulation promulgated or permit issued under the Magnuson-Stevens Act.

Length overall or LOA (with respect to a vessel) means the length overall set forth in the Certificate of Documentation (CG–1270) issued by the USCG for a documented vessel, or in a registration certificate issued by a state or the USCG for an undocumented vessel; for vessels that do not have the LOA stated in an official document, the LOA is the LOA as determined by the USCG or by a marine surveyor in accordance with the USCG method for measuring LOA.

License owner means a person who is the owner of record with NMFS, SFD, Permits Office of a License issued under § 660.140, subpart D.

Limited entry fishery means the fishery composed of vessels registered for use with limited entry permits.

Limited entry gear means longline, trap (or pot), or groundfish trawl gear used under the authority of a valid limited entry permit affixed with an endorsement for that gear.

Limited entry permit means:

(1) The Federal permit required to fish in the limited entry "A" endorsed fishery, and includes any gear, size, or species endorsements affixed to the permit, or

(2) The Federal permit required to receive and process fish as a mothership processor.

Maximum Sustainable Yield or MSY. (*See* § 600.310 of this chapter.)

Mobile transceiver unit means a vessel monitoring system or VMS device, as set forth at § 660.14, subpart C installed on board a vessel that is used for vessel

monitoring and transmitting the vessel's position as required by subpart C.

Non-groundfish fishery means any fishing using non-groundfish trawl gear or nontrawl gear when targeting salmon, HMS, CPS, crab, prawn, or any other species not managed under the PCGFMP. Non-groundfish fishery is sometimes referred to as the incidental open access fishery in which groundfish could be encountered with the gear used, regardless of whether groundfish is retained.

Non-groundfish trawl (previously "exempted" trawl) means any trawl gear other than the Pacific Coast groundfish trawl gear that is authorized for use with a valid groundfish limited entry permit endorsed for trawl gear. Non-groundfish trawl gear includes trawl gear used to fish for pink shrimp, ridgeback prawn, California halibut south of Pt. Arena, and sea cucumbers south of Pt. Arena.

Nontrawl fishery means

(1) For the purpose of allocations at § 660.55, subpart C, nontrawl fishery means the limited entry fixed gear fishery, the open access fishery, and the recreational fishery.

(2) For the purposes of all other management measures in subparts C through G of this part, nontrawl fishery means fishing with any legal limited entry fixed gear or open access non-trawl groundfish gear other than trawl gear (groundfish trawl gear and non-groundfish trawl gear), but does not include the recreational fishery.

North-South management area means the management areas defined in paragraph (1) of this definition, or defined and bounded by one or more or the commonly used geographic coordinates set out in paragraph (2) of this definition for the purposes of implementing different management measures in separate geographic areas of the U.S. West Coast.

(1) *Management areas.*

(i) *Vancouver.*

(A) The northeastern boundary is that part of a line connecting the light on Tatoosh Island, WA, with the light on Bonilla Point on Vancouver Island, British Columbia (at 48°35.73′ N. lat., 124°43.00′ W. long.) south of the International Boundary between the U.S. and Canada (at 48°29.62′ N. lat., 124°43.55′ W. long.), and north of the point where that line intersects with the boundary of the U.S. territorial sea.

(B) The northern and northwestern boundary is a line connecting the following coordinates in the order listed, which is the provisional international boundary of the EEZ as shown on NOAA/NOS Charts 18480 and 18007:

Point	N. lat.	W. long.
1	48°29.62′	124°43.55′
2	48°30.18′	124°47.22′
3	48°30.37′	124°50.35′
4	48°30.23′	124°54.87′
5	48°29.95′	124°59.23′
6	48°29.73′	125°00.10′
7	48°28.15′	125°05.78′
8	48°27.17′	125°08.42′
9	48°26.78′	125°09.20′
10	48°20.27′	125°22.80′
11	48°18.37′	125°29.97′
12	48°11.08′	125°53.80′
13	47°49.25′	126°40.95′
14	47°36.78′	127°11.97′
15	47°22.00′	127°41.38′
16	46°42.08′	128°51.93′
17	46°31.78′	129°07.65′

(C) The southern limit is 47°30′ N. lat.

(ii) *Columbia.*

(A) The northern limit is 47°30′ N. lat.

(B) The southern limit is 43°00′ N. lat.

(iii) *Eureka.*

(A) The northern limit is 43°00′ N. lat.

(B) The southern limit is 40°30′ N. lat.

(iv) *Monterey.*

(A) The northern limit is 40°30′ N. lat.

(B) The southern limit is 36°00′ N. lat.

(v) *Conception.*

(A) The northern limit is 36°00′ N. lat.

(B) The southern limit is the U.S.-Mexico International Boundary, which is a line connecting the following coordinates in the order listed:

Point	N. lat.	W. long.
1	32°35.37′	117°27.82′
2	32°37.62′	117°49.52′
3	31°07.97′	118°36.30′
4	30°32.52′	121°51.97′

(2) *Commonly used geographic coordinates.*

(i) Cape Alava, WA—48°10.00′ N. lat.

(ii) Queets River, WA—47°31.70′ N. lat.

(iii) Pt. Chehalis, WA—46°53.30′ N. lat.

(iv) Leadbetter Point, WA—46°38.17′ N. lat.

(v) Washington/Oregon border—46°16.00′ N. lat.

(vi) Cape Falcon, OR—45°46.00′ N. lat.

(vii) Cape Lookout, OR—45°20.25′ N. lat.

(viii) Cascade Head, OR—45°03.83′ N. lat.

(ix) Heceta Head, OR—44°08.30′ N. lat.

(x) Cape Arago, OR—43°20.83′ N. lat.

(xi) Cape Blanco, OR—42°50.00′ N. lat.

(xii) Humbug Mountain—42°40.50′ N. lat.

(xiii) Marck Arch, OR—42°13.67′ N. lat.

(xiv) Oregon/California border—42°00.00′ N. lat.

(xv) Cape Mendocino, CA—40°30.00′ N. lat.

(xvi) North/South management line—40°10.00′ N. lat.

(xvii) Point Arena, CA—38°57.50′ N. lat.

(xviii) Point San Pedro, CA—37°35.67′ N. lat.

(xix) Pigeon Point, CA—37°11.00′ N. lat.

(xx) Ano Nuevo, CA—37°07.00′ N. lat.

(xxi) Point Lopez, CA—36°00.00′ N. lat.

(xxii) Point Conception, CA—34°27.00′ N. lat. [**Note:** Regulations that apply to waters north of 34°27.00′ N. lat. are applicable only west of 120°28.00′ W. long.; regulations that apply to waters south of 34°27.00′ N. lat. also apply to all waters both east of 120°28.00′ W. long. and north of 34°27.00′ N. lat.]

Observer. (See § 600.10 of this chapter—U.S. Observer or Observer)

Observer Program or Observer Program Office means the West Coast Groundfish Observer Program (WCGOP) Office of the Northwest Fishery Science Center, National Marine Fisheries Service, Seattle, Washington.

Office of Law Enforcement or OLE refers to the National Marine Fisheries Service, Office of Law Enforcement, Northwest Division.

Open access fishery means the fishery composed of commercial vessels using open access gear fished pursuant to the harvest guidelines, quotas, and other management measures governing the harvest of open access allocations (detailed in § 660.55 and Tables 1c and 2c of subpart C of this part) or governing the fishing activities of open access vessels (detailed in subpart F of this part) Any commercial vessel that is not registered to a limited entry permit and which takes and retains, possesses or lands groundfish is a participant in the open access groundfish fishery.

Open access gear means all types of fishing gear except:

(1) *Longline or trap (or pot) gear* fished by a vessel that has a limited entry permit affixed with a gear endorsement for that gear.

(2) *Groundfish trawl.*

Operate a vessel means any use of a vessel, including, but not limited to, fishing or drifting by means of the prevailing water current or weather conditions.

Operator. (See § 600.10)

Optimum yield or OY means the amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and, taking into account the protection of marine ecosystems, is

prescribed as such on the basis of the MSY from the fishery, as reduced by any relevant economic, social, or ecological factor; and, in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the MSY in such fishery. OY may be expressed numerically (as a harvest guideline, quota, or other specification) or non-numerically.

Overage means the amount of fish harvested by a vessel in excess of:

(1) The applicable trip limit for any fishery to which a trip limit applies;

(2) The amount authorized by the applicable permit for trawl fisheries at subpart D of this part;

(3) The amount authorized by the applicable sablefish endorsed permits for fixed gear sablefish fisheries at subpart E of this part.

Ownership interest means participation in ownership of a corporation, partnership, or other entity:

(1) For sablefish-endorsed permits, ownership interest means participation in ownership of a corporation, partnership, or other entity that owns a sablefish endorsed permit. Ownership interest does not mean owning stock in a publicly owned corporation.

(2) For the limited entry trawl fishery in subpart D of this part, ownership interest means participation in ownership of a corporation, partnership, or other entity that owns a QS permit, mothership permit, and a MS/CV-endorsed limited entry permit.

Pacific Coast Groundfish Fishery Management Plan or PCGFMP means the Fishery Management Plan for the Washington, Oregon, and California Groundfish Fishery developed by the Pacific Fishery Management Council and approved by the Secretary on January 4, 1982, and as it may be subsequently amended.

Partnership is two or more individuals, partnerships, or corporations, or combinations thereof, who have ownership interest in a permit, including married couples and legally recognized trusts and partnerships, such as limited partnerships (LP), general partnerships (GP), and limited liability partnerships (LLP).

Permit holder means a vessel owner as identified on the USCG form 1270 or state motor vehicle licensing document and as registered on a limited entry permit issued under Subparts C through E of this part.

Permit owner means a person who is the owner of record with NMFS, SFD, Permits Office of a limited entry permit. For first receiver site licenses, see definition for "license owner."

Person, as it applies to limited entry and open access fisheries conducted under 50 CFR part 660, Subparts C through G, means any individual, corporation, partnership, association or other entity (whether or not organized or existing under the laws of any state), and any Federal, state, or local government, or any entity of any such government that is eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a).

Processing or to process means the preparation or packaging of groundfish to render it suitable for human consumption, retail sale, industrial uses or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil, but does not mean heading and gutting unless additional preparation is done. (Also see an exception to certain requirements at § 660.131(a), subpart D pertaining to Pacific whiting shoreside vessels 75-ft (23-m) or less LOA that, in addition to heading and gutting, remove the tails and freeze catch at sea.)

(1) At-sea processing means processing that takes place on a vessel or other platform that floats and is capable of being moved from one location to another, whether shore-based or on the water.

(2) Shore-based processing or processing means processing that takes place at a facility that is permanently fixed to land. (Also see the definition for shoreside processing at § 660.140, subpart D which defines shoreside processing for the purposes of qualifying for a shoreside IFQ program QS permit.)

Processor means person, vessel, or facility that engages in processing; or receives live groundfish directly from a fishing vessel for retail sale without further processing. (Also see the definition for processors at § 660.140, subpart D which defines processor for the purposes of qualifying for a shoreside IFQ program QS permit.)

Prohibited species means those species and species groups whose retention is prohibited unless authorized by provisions of this section or other applicable law. The following are prohibited species: Any species of salmonid, Pacific halibut, Dungeness crab caught seaward of Washington or Oregon, and groundfish species or species groups under the PCGFMP for which quotas have been achieved and/or the fishery closed.

Quota means a specified numerical harvest objective, the attainment (or expected attainment) of which causes closure of the fishery for that species or species group.

Recreational fishing means fishing with authorized recreational fishing gear for personal use only, and not for sale or barter.

Regional Administrator means the Administrator, Northwest Region, NMFS.

Reserve means a portion of the harvest guideline or quota set aside at the beginning of the fishing year or biennial fishing period to allow for uncertainties in preseason estimates.

Round weight. (*See* § 600.10 of this chapter). Round weight does not include ice, water, or slime.

Sale or sell. (*See* § 600.10 of this chapter)

Scientific research activity. (*See* § 600.10 of this chapter)

Secretary. (*See* § 600.10 of this chapter)

Specification is a numerical or descriptive designation of a management objective, including but not limited to: Acceptable biological catch; optimum yield; harvest guideline; quota; limited entry or open access allocation; a set-aside or allocation for a recreational or treaty Indian fishery; an apportionment of the above to an area, gear, season, fishery, or other subdivision.

Spouse means a person who is legally married to another person as recognized by state law (i.e., one's wife or husband).

Stacking is the practice of registering more than one limited entry permit for use with a single vessel (*See* § 660.25(b)(4)(iii), subpart C).

Sustainable Fisheries Division or SFD means the Chief, Sustainable Fisheries Division, Northwest Regional Office, NMFS, or a designee.

Target fishing means fishing for the primary purpose of catching a particular species or species group (the target species).

Tax-exempt organization means an organization that received a determination letter from the Internal Revenue Service recognizing tax exemption under 26 CFR part 1 (1.501 to 1.640).

Totally lost means the vessel being replaced no longer exists *in specie,* or is absolutely and irretrievably sunk or otherwise beyond the possible control of the owner, or the costs of repair (including recovery) would exceed the value of the vessel after repairs.

Trawl fishery means

(1) For the purpose of allocations at § 660.55, subpart C, trawl fishery means the groundfish limited entry trawl fishery.

(2) For the purposes of all other management measures in subparts C through G of this part, trawl fishery

means any fishery using trawl gear as defined under the definition of fishing gear in this section.

Trip. (*See* § 600.10 of this chapter)

Trip limits. Trip limits are used in the commercial fishery to specify the maximum amount of a fish species or species group that may legally be taken and retained, possessed, or landed, per vessel, per fishing trip, or cumulatively per unit of time, or the number of landings that may be made from a vessel in a given period of time, as follows:

(1) A per trip limit is the total allowable amount of a groundfish species or species group, by weight, or by percentage of weight of legal fish on board, that may be taken and retained, possessed, or landed per vessel from a single fishing trip.

(2) A daily trip limit is the maximum amount of a groundfish species or species group that may be taken and retained, possessed, or landed per vessel in 24 consecutive hours, starting at 0001 hours local time. Only one landing of groundfish may be made in that 24-hour period. Daily trip limits may not be accumulated during multiple day trips.

(3) A weekly trip limit is the maximum amount of a groundfish species or species group that may be taken and retained, possessed, or landed per vessel in 7 consecutive days, starting at 0001 hours local time on Sunday and ending at 2400 hours local time on Saturday. Weekly trip limits may not be accumulated during multiple week trips. If a calendar week falls within two different months or two different cumulative limit periods, a vessel is not entitled to two separate weekly limits during that week.

(4) A cumulative trip limit is the maximum amount of a 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. The cumulative trip limit periods for limited entry and open access fisheries, which start at 0001 hours local time and end at 2400 hours local time, are as follows, unless otherwise specified:

(i) The 2-month or "major" cumulative limit periods are: January 1–February 28/29, March 1–April 30, May 1–June 30, July 1–August 31, September 1–October 31, and, November 1–December 31.

(ii) One month means the first day through the last day of the calendar month.

(iii) One week means 7 consecutive days, Sunday through Saturday.

Vessel manager means a person or group of persons whom the vessel owner has given authority to oversee all or a portion of groundfish fishing activities aboard the vessel.

Vessel monitoring system or VMS means a vessel monitoring system or mobile transceiver unit as set forth in § 660.14, subpart C and approved by NMFS for use on vessels that take (directly or incidentally) species managed under the PCGFMP, as required by this subpart.

Vessel of the United States or U.S. vessel. (*See* § 600.10)

Vessel owner or owner of a vessel, as used in subparts C through G of this part, means a person identified as the current owner in the Certificate of Documentation (CG–1270) issued by the USCG for a documented vessel, or in a registration certificate issued by a state or the USCG for an undocumented vessel.

§ 660.12 General groundfish prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to:

(a) *General.* (1) Retain any prohibited species (defined in § 660.11, subpart C and restricted in § 660.60(e), subpart C) caught by means of fishing gear authorized under this subpart, unless authorized by part 600 or part 300 of this chapter. Prohibited species must be returned to the sea as soon as practicable with a minimum of injury when caught and brought on board.

(2) Falsify or fail to affix and maintain vessel and gear markings as required by § 660.20 or § 660.219, subpart E or § 660.319, subpart F.

(3) Fish for groundfish in violation of any terms or conditions attached to an EFP under § 600.745 of this chapter or § 660.30, subpart C.

(4) Fish for groundfish using gear not authorized in subparts C through G of this part or in violation of any terms or conditions attached to an EFP under § 660.30, subpart C or part 600 of this chapter.

(5) Take and retain, possess, or land more groundfish than specified under § 660.50, § 660.55, § 660.60 of subpart C, or subpart D through G of this part, or under an EFP issued under § 660.30, Subpart C or part 600 of this chapter.

(6) Take, retain, possess, or land more than a single cumulative limit of a particular species, per vessel, per applicable cumulative limit period, except for sablefish taken in the primary limited entry, fixed gear sablefish season from a vessel authorized to fish in that season, as described at § 660.231, subpart E.

(7) Take and retain, possess, or land groundfish in excess of the landing limit for the open access fishery without having a valid limited entry permit for the vessel affixed with a gear endorsement for the gear used to catch the fish.

(8) Fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, scientific sorting designation, quota, harvest guideline, or OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, scientific sorting designation, quota, harvest guideline, or OY applied; except as specified at § 660.131, subpart C for vessels participating in the Pacific whiting at-sea sectors.

(9) When requested or required by an authorized officer, refuse to present fishing gear for inspection, refuse to present fish subject to such persons control for inspection; or interfere with a fishing gear or marine animal or plant life inspection.

(10) Transfer fish to another vessel at sea unless a vessel is participating in the primary Pacific whiting fishery as part of the mothership or catcher/processor sectors.

(11) Fish with dredge gear (defined in § 660.11, subpart C) anywhere within EFH within the EEZ. For the purposes of regulation, EFH within the EEZ is described at § 660.75, subpart C.

(12) Fish with beam trawl gear (defined in § 660.11, subpart C) anywhere within EFH within the EEZ. For the purposes of regulation, EFH within the EEZ is described at § 660.75, subpart C.

(13) During times or in areas where at-sea processing is prohibited, take and retain or receive Pacific whiting, except as cargo or fish waste, on a vessel in the fishery management area that already has processed Pacific whiting on board. An exception to this prohibition is provided if the fish are received within the tribal U&A from a member of a Pacific Coast treaty Indian tribe fishing under § 660.50, subpart C.

(b) *Reporting and Recordkeeping.* (1) Falsify or fail to make and/or file, retain or make available any and all reports of groundfish landings, containing all data, and in the exact manner, required by the applicable State law, as specified in § 660.13, subpart C, provided that person is required to do so by the applicable state law.

(2) Fail to retain on board a vessel from which groundfish is landed, and provide to an authorized officer upon request, copies of any and all reports of groundfish landings, or receipts containing all data, and made in the exact manner required by the applicable state law throughout the cumulative

limit period during which such landings occurred and for 15 days thereafter.

(c) *Limited entry fisheries.* (1) Carry on board a vessel, or deploy, limited entry gear when the limited entry fishery for that gear is closed, except that a vessel may carry on board limited entry groundfish trawl gear as provided in § 660.112(a)(1), subpart D.

(2) [Reserved]

(d) *Limited entry permits.* (1) If a limited entry permit is registered for use with a vessel, fail to carry that permit onboard the vessel registered for use with the permit. A photocopy of the permit may not substitute for the original permit itself.

(2) Make a false statement on an application for issuance, renewal, transfer, vessel registration, replacement of a limited entry permit, or a declaration of ownership interest in a limited entry permit.

(e) *Groundfish observer program.* (1) Forcibly assault, resist, oppose, impede, intimidate, harass, sexually harass, bribe, or interfere with an observer.

(2) Interfere with or bias the sampling procedure employed by an observer including either mechanically or manually sorting or discarding catch before sampling.

(3) Tamper with, destroy, or discard an observer's collected samples, equipment, records, photographic film, papers, or personal effects without the express consent of the observer.

(4) Harass an observer by conduct that:

(i) Has sexual connotations,

(ii) Has the purpose or effect of interfering with the observer's work performance, and/or

(iii) Otherwise creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

(5) Fish for, land, or process fish without observer coverage when a vessel is required to carry an observer under subparts C through G of this part.

(6) Require, pressure, coerce, or threaten an observer to perform duties normally performed by crew members, including, but not limited to, cooking, washing dishes, standing watch, vessel maintenance, assisting with the setting or retrieval of gear, or any duties associated with the processing of fish, from sorting the catch to the storage of the finished product.

(7) Fail to provide departure or cease fishing reports specified at § 660.116, subpart D, § 660.216, subpart E, or § 660.316, subpart F.

(8) Fail to meet the vessel responsibilities specified at § 660.116, subpart D, § 660.216, subpart E, or § 660.316, subpart F.

(f) *Vessel Monitoring Systems.* (1) Use any vessel required to operate and maintain a VMS unit under § 660.14(b) unless that vessel carries a NMFS OLE type-approved mobile transceiver unit and complies with all the requirements described at § 660.14(c).

(2) Fail to install, activate, repair or replace a mobile transceiver unit prior to leaving port as specified at § 660.14.

(3) Fail to operate and maintain a mobile transceiver unit on board the vessel at all times as specified at § 660.14.

(4) Tamper with, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate the VMS, mobile transceiver unit, or VMS signal required to be installed on or transmitted by a vessel as specified at § 660.14.

(5) Fail to contact NMFS OLE or follow NMFS OLE instructions when automatic position reporting has been interrupted as specified at § 660.14.

(6) Register the same VMS transceiver unit to more than one vessel at the same time.

(7) Falsify any VMS activation report or VMS exemption report that is authorized or required, as specified at § 660.14.

(8) Falsify any declaration report that is required, as specified at § 660.13.

§ 660.13 Recordkeeping and reporting.

(a) This subpart recognizes that catch and effort data necessary for implementing the PCGFMP are collected by the States of Washington, Oregon, and California under existing state data collection requirements.

(b) Any person who is required to do so by the applicable state law must make and/or file, retain, or make available any and all reports (*i.e.,* logbooks, state landing receipts, etc.) of groundfish harvests and landings containing all data, and in the exact manner, required by the applicable state law.

(c) Any person landing groundfish must retain on board the vessel from which groundfish is landed, and provide to an authorized officer upon request, copies of any and all reports of groundfish landings containing all data, and in the exact manner, required by the applicable state law throughout the cumulative limit period during which a landing occurred and for 15 days thereafter.

(d) *Declaration reporting requirements*—(1) *Declaration reports for vessels registered to limited entry permits.* The operator of any vessel registered to a limited entry permit must provide NMFS OLE with a declaration report, as specified at paragraph (d)(5)(iv) of this section, before the vessel leaves port on a trip in which the vessel is used to fish in U.S. ocean waters between 0 and 200 nm offshore of Washington, Oregon, or California.

(2) *Declaration reports for all vessels using non-groundfish trawl gear.* The operator of any vessel that is not registered to a limited entry permit and which uses non-groundfish trawl gear to fish in the EEZ (3–200 nm offshore), must provide NMFS OLE with a declaration report, as specified at paragraph (d)(5)(iv) of this section, before the vessel leaves port to fish in the EEZ.

(3) *Declaration reports for open access vessels using nontrawl gear (all types of open access gear other than non-groundfish trawl gear).* The operator of any vessel that is not registered to a limited entry permit, must provide NMFS with a declaration report, as specified at paragraph (d)(5)(iv) of this section, before the vessel leaves port on a trip in which the vessel is used to take and retain or possess groundfish in the EEZ or land groundfish taken in the EEZ.

(4) *Declaration reports for tribal vessels using trawl gear.* The operator of any tribal vessel using trawl gear must provide NMFS with a declaration report, as specified at paragraph (d)(5)(iv) of this section, before the vessel leaves port on a trip in which fishing occurs within the trawl RCA.

(5) *Declaration reports.* (i) The operator of a vessel specified in paragraphs (d)(1), (d)(2), and (d)(3) of this section must provide a declaration report to NMFS OLE prior to leaving port on the first trip in which the vessel meets the requirement specified at § 660.14(b) to have a VMS.

(ii) The vessel operator must send a new declaration report before leaving port on a trip in which a gear type that is different from the gear type most recently declared for the vessel will be used. A declaration report will be valid until another declaration report revising the existing gear declaration is received by NMFS OLE.

(iii) During the period of time that a vessel has a valid declaration report on file with NMFS OLE, it cannot fish with a gear other than a gear type declared by the vessel.

(iv) Declaration reports will include: The vessel name and/or identification number, and gear type (as defined in paragraph (d)(5)(iv)(A) of this section). Upon receipt of a declaration report, NMFS will provide a confirmation code or receipt to confirm that a valid declaration report was received for the vessel. Retention of the confirmation code or receipt to verify that a valid declaration report was filed and the declaration requirement was met is the responsibility of the vessel owner or operator. Vessels using nontrawl gear may declare more than one gear type, however, vessels using trawl gear may only declare one of the trawl gear types listed in paragraph (d)(5)(iv)(A) of this section on any trip and may not declare nontrawl gear on the same trip in which trawl gear is declared.

(A) One of the following gear types must be declared:

(*1*) Limited entry fixed gear,

(*2*) [Reserved]

(*3*) Limited entry midwater trawl, non-whiting,

(*4*) Limited entry midwater trawl, Pacific whiting shorebased sector,

(*5*) Limited entry midwater trawl, Pacific whiting catcher/processor sector,

(*6*) Limited entry midwater trawl, Pacific whiting mothership sector,

(*7*) Limited entry bottom trawl, not including demersal trawl,

(*8*) Limited entry demersal trawl,

(*9*) Non-groundfish trawl gear for pink shrimp,

(*10*) Non-groundfish trawl gear for ridgeback prawn,

(*11*) Non-groundfish trawl gear for California halibut,

(*12*) Non-groundfish trawl gear for sea cucumber,

(*13*) Open access longline gear for groundfish,

(*14*) Open access Pacific halibut longline gear,

(*15*) Open access groundfish trap or pot gear,

(*16*) Open access Dungeness crab trap or pot gear,

(*17*) Open access prawn trap or pot gear,

(*18*) Open access sheephead trap or pot gear,

(*19*) Open access line gear for groundfish,

(*20*) Open access HMS line gear,

(*21*) Open access salmon troll gear,

(*22*) Open access California Halibut line gear,

(*23*) Open access net gear,

(*24*) Other gear, or

(*25*) Tribal trawl.

(B) [Reserved]

§ 660.14 Vessel Monitoring System (VMS) requirements.

(a) *What Is a VMS*? A VMS consists of a NMFS OLE type-approved mobile transceiver unit that automatically determines the vessel's position and transmits it to a NMFS OLE type-approved communications service provider. The communications service provider receives the transmission and relays it to NMFS OLE.

(b) *Who Is Required To Have a VMS*? The following vessels are required to install a NMFS OLE type-approved mobile transceiver unit and to arrange for a NMFS OLE type-approved communications service provider to receive and relay transmissions to NMFS OLE prior to fishing:

(1) Any vessel registered for use with a limited entry permit that fishes in state or Federal waters seaward of the baseline from which the territorial sea is measured off the States of Washington, Oregon or California (0–200 nm offshore).

(2) Any vessel that uses non-groundfish trawl gear to fish in the EEZ.

(3) Any vessel that uses open access gear to take and retain, or possess groundfish in the EEZ or land groundfish taken in the EEZ.

(c) *How Are Mobile Transceiver Units and Communications Service Providers Approved by NMFS OLE*?

(1) NMFS OLE will publish type-approval specifications for VMS components in the **Federal Register** or notify the public through other appropriate media.

(2) Mobile transceiver unit manufacturers or communication service providers will submit products or services to NMFS OLE for evaluation based on the published specifications.

(3) NMFS OLE may publish a list of NMFS OLE type-approved mobile transceiver units and communication service providers for the Pacific Coast groundfish fishery in the **Federal Register** or notify the public through other appropriate media. As necessary, NMFS OLE may publish amendments to the list of type-approved mobile transceiver units and communication service providers in the **Federal Register** or through other appropriate media. A list of VMS transceivers that have been type-approved by NMFS OLE may be mailed to the permit owner's address of record. NMFS will bear no responsibility if a notification is sent to the address of record and is not received because the applicant's actual address has changed without notification to NMFS, as required at § 660.25(b)(4)(i)(B).

(d) *What Are the Vessel Owner's Responsibilities*? If you are a vessel owner that must participate in the VMS program, you or the vessel operator must:

(1) Obtain a NMFS OLE type-approved mobile transceiver unit and have it installed on board your vessel in accordance with the instructions provided by NMFS OLE. You may obtain a copy of the VMS installation and operation instructions from the NMFS OLE Northwest, VMS Program Manager upon request at 7600 Sand Point Way NE., Seattle, WA 98115–6349, phone: (206) 526–6133.

(2) Activate the mobile transceiver unit, submit an activation report at least 72 hours prior to leaving port on a trip in which VMS is required, and receive confirmation from NMFS OLE that the VMS transmissions are being received before participating in a fishery requiring the VMS. Instructions for submitting an activation report may be obtained from the NMFS, Northwest OLE VMS Program Manager upon request at 7600 Sand Point Way NE., Seattle, WA 98115–6349, *phone:* (206)526–6133. An activation report must again be submitted to NMFS OLE following reinstallation of a mobile transceiver unit or change in service provider before the vessel may be used to fish in a fishery requiring the VMS.

(i) *Activation reports.* If you are a vessel owner who must use VMS and you are activating a VMS transceiver unit for the first time or reactivating a VMS transceiver unit following a reinstallation of a mobile transceiver unit or change in service provider, you must fax NMFS OLE an activation report that includes: Vessel name; vessel owner's name, address and telephone number, vessel operator's name, address and telephone number, USCG vessel documentation number/state registration number; if applicable, the groundfish permit number the vessel is registered to; VMS transceiver unit manufacturer; VMS communications service provider; VMS transceiver identification; identifying if the unit is the primary or backup; and a statement signed and dated by the vessel owner confirming compliance with the installation procedures provided by NMFS OLE.

(ii) *Transferring ownership of VMS unit.* Ownership of the VMS transceiver unit may be transferred from one vessel owner to another vessel owner if all of the following documents are provided to NMFS OLE: a new activation report, which identifies that the transceiver unit was previously registered to another vessel; a notarized bill of sale showing proof of ownership of the VMS transceiver unit; documentation from the communications service provider showing proof that the service agreement for the previous vessel was

terminated and that a service agreement was established for the new vessel.

(3) *Transceiver unit operation.* Operate and maintain the mobile transceiver unit in good working order continuously, 24 hours a day throughout the fishing year, unless such vessel is exempted under paragraph (d)(4) of this section. The mobile transceiver unit must transmit a signal accurately indicating the vessel's position at least once every hour, 24 hours a day, throughout the year unless a valid exemption report, as described in paragraph (b)(4) of this section, has been received by NMFS OLE. Less frequent position reporting at least once every four hours is authorized when a vessel remains in port for an extended period of time, but the mobile transceiver unit must remain in continuous operation at all times unless the vessel is exempted under this section.

(4) *VMS exemptions.* A vessel that is required to operate and maintain the mobile transceiver unit continuously 24 hours a day throughout the fishing year may be exempted from this requirement if a valid exemption report, as described at paragraph (d)(4)(vii) of this section, is received by NMFS OLE and the vessel is in compliance with all conditions and requirements of the VMS exemption identified in this section and specified in the exemption report.

(i) *Haul out exemption.* When it is anticipated that a vessel will be continuously out of the water for more than 7 consecutive days and a valid exemption report has been received by NMFS OLE, electrical power to the VMS mobile transceiver unit may be removed and transmissions may be discontinued. Under this exemption, VMS transmissions can be discontinued from the time the vessel is removed from the water until the time that the vessel is placed back in the water.

(ii) *Outside areas exemption.* When the vessel will be operating seaward of the EEZ off Washington, Oregon, or California continuously for more than 7 consecutive days and a valid exemption report has been received by NMFS OLE, the VMS mobile transceiver unit transmissions may be reduced or discontinued from the time the vessel leaves the EEZ off the coasts of Washington, Oregon or California until the time that the vessel re-enters the EEZ off the coasts of Washington, Oregon or California. Under this exemption, the vessel owner or operator can request that NMFS OLE reduce or discontinue the VMS transmissions after receipt of an exemption report, if the vessel is equipped with a VMS transceiver unit that NMFS OLE has approved for this exemption.

(iii) *Permit transfer exemption.* If the limited entry permit has been transferred from a vessel (for the purposes of this section, this includes permits placed into "unidentified" status) the vessel may be exempted from VMS requirements providing the vessel is not used to fish in state or Federal waters seaward of the baseline from which the territorial sea is measured off the States of Washington, Oregon or California (0–200 nm offshore) for the remainder of the fishing year. If the vessel is used to fish in this area for any species of fish at any time during the remaining portion of the fishing year without being registered to a limited entry permit, the vessel is required to have and use VMS.

(iv) *Long-term departure exemption.* A vessel participating in the open access fishery that is required to have VMS under paragraph (b)(3) of this section may be exempted from VMS provisions after the end of the fishing year in which it fished in the open access fishery, providing the vessel submits a completed exemption report signed by the vessel owner that includes a statement signed by the vessel owner indicating that the vessel will not be used to take and retain or possess groundfish in the EEZ or land groundfish taken in the EEZ during the new fishing year.

(v) *Emergency exemption.* Vessels required to have VMS under paragraph (b) of this section may be exempted from VMS provisions in emergency situations that are beyond the vessel owner's control, including but not limited to: fire, flooding, or extensive physical damage to critical areas of the vessel. A vessel owner may apply for an emergency exemption from the VMS requirements specified in paragraph (b) of this section for his/her vessel by sending a written request to NMFS OLE specifying the following information: The reasons for seeking an exemption, including any supporting documents (*e.g.,* repair invoices, photographs showing damage to the vessel, insurance claim forms, etc.); the time period for which the exemption is requested; and the location of the vessel while the exemption is in effect. NMFS OLE will issue a written determination granting or denying the emergency exemption request. A vessel will not be covered by the emergency exemption until NMFS OLE issues a determination granting the exemption. If an exemption is granted, the duration of the exemption will be specified in the NMFS OLE determination.

(vi) *Submission of exemption reports.* Signed long-term departure exemption reports must be submitted by fax or by e-mailing an electronic copy of the actual report. In the event of an emergency in which an emergency exemption request will be submitted, initial contact with NMFS OLE must be made by telephone, fax or e-mail within 24 hours from when the incident occurred. Emergency exemption requests must be requested in writing within 72 hours from when the incident occurred. Other exemption reports must be submitted through the VMS or another method that is approved by NMFS OLE and announced in the **Federal Register**. Submission methods for exemption requests, except long-term departures and emergency exemption requests, may include e-mail, facsimile, or telephone. NMFS OLE will provide, through appropriate media, instructions to the public on submitting exemption reports. Instructions and other information needed to make exemption reports may be mailed to the vessel owner's address of record. NMFS will bear no responsibility if a notification is sent to the address of record for the vessel owner and is not received because the vessel owner's actual address has changed without notification to NMFS, Owners of vessels required to use VMS who do not receive instructions by mail are responsible for contacting NMFS OLE during business hours at least 3 days before the exemption is required to obtain information needed to make exemption reports. NMFS OLE must be contacted during business hours (Monday through Friday between 0800 and 1700 Pacific Time).

(vii) *Valid exemption reports.* For an exemption report to be valid, it must be received by NMFS at least 2 hours and not more than 24 hours before the exempted activities defined at paragraphs (d)(4)(i) through (iv) of this section occur. An exemption report is valid until NMFS receives a report canceling the exemption. An exemption cancellation must be received at least 2 hours before the vessel re-enters the EEZ following an outside areas exemption; at least 2 hours before the vessel is placed back in the water following a haul out exemption; at least 2 hours before the vessel resumes fishing for any species of fish in state or Federal waters off the States of Washington, Oregon, or California after it has received a permit transfer exemption; or at least 2 hours before a vessel resumes fishing in the open access fishery after a long-term departure exemption. If a vessel is required to submit an activation report

under paragraph (d)(2)(i) of this section before returning to fish, that report may substitute for the exemption cancellation. Initial contact must be made with NMFS OLE not more than 24 hours after the time that an emergency situation occurred in which VMS transmissions were disrupted and followed by a written emergency exemption request within 72 hours from when the incident occurred. If the emergency situation upon which an emergency exemption is based is resolved before the exemption expires, an exemption cancellation must be received by NMFS at least 2 hours before the vessel resumes fishing.

(5) When aware that transmission of automatic position reports has been interrupted, or when notified by NMFS OLE that automatic position reports are not being received, contact NMFS OLE at 7600 Sand Point Way NE., Seattle, WA 98115–6349, phone: (206) 526–6133 and follow the instructions provided to you. Such instructions may include, but are not limited to, manually communicating to a location designated by NMFS OLE the vessel's position or returning to port until the VMS is operable.

(6) After a fishing trip during which interruption of automatic position reports has occurred, the vessel's owner or operator must replace or repair the mobile transceiver unit prior to the vessel's next fishing trip. Repair or reinstallation of a mobile transceiver unit or installation of a replacement, including change of communications service provider shall be in accordance with the instructions provided by NMFS OLE and require the same certification.

(7) Make the mobile transceiver units available for inspection by NMFS OLE personnel, USCG personnel, state enforcement personnel or any authorized officer.

(8) Ensure that the mobile transceiver unit is not tampered with, disabled, destroyed, operated, or maintained improperly.

(9) Pay all charges levied by the communication service provider as necessary to ensure continuous operation of the VMS transceiver units.

§ 660.15 Equipment requirements.

(a) *Applicability.* This section contains the equipment and operational requirements for scales used to weigh catch at sea, scales used to weigh catch at IFQ first receivers, computer hardware for electronic fish ticket software and computer hardware for electronic logbook software.

(b) *Performance and technical requirements for scales used to weigh catch at sea.* [Reserved]

(c) *Performance and technical requirements for scales used to weigh catch at IFQ first receivers.* [Reserved]

(d) *Electronic fish tickets.* Pacific whiting shoreside first receivers using the electronic fish ticket software provided by Pacific States Marine Fish Commission are required to meet the hardware and software requirements below. Those Pacific whiting shoreside first receivers who have NMFS-approved software compatible with the standards specified by Pacific States Marine Fish Commission for electronic fish tickets are not subject to any specific hardware or software requirements.

(1) *Hardware and software requirements.* (i) A personal computer with Pentium 75–MHz or higher. Random Access Memory (RAM) must have sufficient megabyte (MB) space to run the operating system, plus an additional 8 MB for the software application and available hard disk space of 217 MB or greater. A CD–ROM drive with a Video Graphics Adapter (VGA) or higher resolution monitor (super VGA is recommended).

(ii) Microsoft Windows 2000 (64 MB or greater RAM required), Windows XP (128 MB or greater RAM required) or later operating system.

(iii) Microsoft Access 2003 or newer.

(2) *NMFS approved software standards and internet access.* The first receiver is responsible for obtaining, installing and updating electronic fish tickets software either provided by Pacific States Marine Fish Commission, or compatible with the data export specifications specified by Pacific States Marine Fish Commission and for maintaining internet access sufficient to transmit data files via e-mail. Requests for data export specifications can be submitted to: *Attn:* Frank Lockhart, National Marine Fisheries Service, Northwest Region Sustainable Fisheries Division, 7600 Sand Point Way NE., Seattle, WA 98115, or via e-mail to *frank.lockhart@noaa.gov.*

(3) *Maintenance.* The Pacific whiting shoreside first receiver is responsible for ensuring that all hardware and software required under this subsection are fully operational and functional whenever the Pacific whiting primary season deliveries are accepted. .

(4) *Improving data quality.* Vessel owners and operators, Pacific whiting shoreside first receivers, or shoreside processor owners, or managers may contact NMFS in writing to request assistance in improving data quality and resolving issues. Requests may be submitted to: Attn: Frank Lockhart, National Marine Fisheries Service, Northwest Region Sustainable Fisheries Division, 7600 Sand Point Way NE., Seattle, WA 98115, or via e-mail to *frank.lockhart@noaa.gov.*

§ 660.16 Groundfish observer program.

(a) *General.* Vessel owners, operators, and managers are jointly and severally responsible for their vessel's compliance with observer requirements specified in this section and within § 660.116, subpart D, § 660.216, subpart E, § 660.316, subpart F, or subpart G.

(b) *Purpose.* The purpose of the Groundfish Observer Program is to collect fisheries data deemed by the Northwest Regional Administrator, NMFS, to be necessary and appropriate for management, compliance monitoring, and research in the groundfish fisheries and for the conservation of living marine resources and their habitat.

(c) *Catcher vessels.* For the purposes of observer coverage requirements the term "catcher vessel" includes the vessels described in paragraphs (c)(1) through (3) of this section. The term "catcher vessel" does not include: catcher/processor or mothership vessels, Pacific whiting shoreside vessels that sort catch at sea, or recreational vessels.

(1) Any vessel registered for use with a Pacific Coast groundfish limited entry permit that fishes in state or Federal waters seaward of the baseline from which the territorial sea is measured off the States of Washington, Oregon or California (0–200 nm offshore).

(2) Any vessel other than a vessel described in paragraph (c)(1) of this section that is used to take and retain, possess, or land groundfish in or from the EEZ.

(3) Any vessel that is required to take a Federal observer by the applicable State law.

(d) *Observer coverage requirements.* The following table provides references to the regulatory sections with the observer coverage requirements.

West Coast Groundfish Fishery/Program	Regulation subpart and section
Catcher Vessels in the Trawl Fishery, and Pacific Whiting Shoreside Vessels that Sort Catch At Sea	subpart D, § 660.116.
Mothership Processors	subpart D, § 660.116.
Catcher/Processors	subpart D, § 660.116.
Catcher Vessels in the Fixed Gear Fisheries	subpart E, § 660.216.
Catcher Vessels in the Open Access Fisheries	subpart F, § 660.316.

(e) *NMFS-certified Observer Certification and Observer Responsibilities*—(1) *Observer Certification*—(i) *Applicability.* Observer certification authorizes an individual to fulfill duties as specified in writing by the NMFS Observer Program Office while under the employ of a NMFS-permitted observer provider and according to certification endorsements as designated under paragraph (e)(3) of this section.

(ii) *Certification requirements.* NMFS will certify individuals who:

(A) Are employed by an observer provider company permitted pursuant to 50 CFR 679.50 at the time of the issuance of the certification;

(B) Have provided, through their observer provider:

(*1*) Information identified by NMFS at 50 CFR 679.50(i)(2)(x)(A)(1)(iii) and (iv); and

(*2*) Information identified by NMFS at 50 CFR 679.50(i)(2)(x)(C) regarding the observer candidate's health and physical fitness for the job;

(C) Meet all education and health standards as specified in 50 CFR 679.50(i)(2)(i)(A) and (i)(2)(x)(C), respectively; and

(D) Have successfully completed NMFS-approved training as prescribed by the Observer Program.

(*1*) Successful completion of training by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Observer Program.

(*2*) If a candidate fails training, he or she will be notified in writing on or before the last day of training. The notification will indicate: The reasons the candidate failed the training; whether the candidate can retake the training, and under what conditions, or whether, the candidate will not be allowed to retake the training. If a determination is made that the candidate may not pursue further training, notification will be in the form of an IAD denying certification, as specified under paragraph (e)(2)(i) of this section.

(E) Have not been decertified as specified in § 660.18(b), or pursuant to 50 CFR 679.50.

(2) *Agency determinations on observer certification*—(i) *Issuance of an observer certification.* An observer certification will be issued upon determination by the observer certification official (*see* § 660.18, subpart C) that the candidate has successfully met all requirements for certification as specified in paragraph (e)(1)(ii) of this section.

(ii) *Denial of a certification.* The NMFS observer certification official (*see* § 660.18, subpart C) will issue a written IAD denying observer certification when the observer certification official determines that a candidate has unresolvable deficiencies in meeting the requirements for certification as specified in § 660.18, subpart C. The IAD will identify the reasons certification was denied and what requirements were deficient.

(iii) *Appeals.* A candidate who receives an IAD that denies his or her certification may appeal pursuant to § 660.18, subpart C. A candidate who appeals the IAD will not be issued an interim observer certification, and will not receive a certification unless the final resolution of that appeal is in the candidate's favor.

(3) *Endorsements.* The following endorsements must be obtained, in addition to observer certification, in order for an observer to deploy.

(i) *Certification training endorsement.* A certification training endorsement signifies the successful completion of the training course required to obtain observer certification. This endorsement expires when the observer has not been deployed and performed sampling duties as required by the Observer Program Office for a period of time, specified by the Observer Program, after his or her most recent debriefing. The observer can renew the endorsement by successfully completing certification training once more.

(ii) *Annual general endorsements.* Each observer must obtain an annual general endorsement to their certification prior to his or her first deployment within any calendar year subsequent to a year in which a certification training endorsement is obtained. To obtain an annual general endorsement, an observer must successfully complete the annual briefing, as specified by the Observer Program. All briefing attendance, performance, and conduct standards required by the Observer Program must be met.

(iii) *Deployment endorsements.* Each observer who has completed an initial deployment after certification or annual briefing must receive a deployment endorsement to their certification prior to any subsequent deployments for the remainder of that year. An observer may obtain a deployment endorsement by successfully completing all pre-cruise briefing requirements. The type of briefing the observer must attend and successfully complete will be specified in writing by the Observer Program during the observer's most recent debriefing.

(iv) *Pacific whiting fishery endorsements.* A Pacific whiting fishery endorsement is required for purposes of performing observer duties aboard vessels that process groundfish at sea in the Pacific whiting fishery. A Pacific whiting fishery endorsement to an observer's certification may be obtained by meeting the following requirements:

(A) Be a prior NMFS-certified observer in the groundfish fisheries off Alaska or the Pacific Coast, unless an individual with this qualification is not available;

(B) Receive an evaluation by NMFS for his or her most recent deployment (if any) that indicated that the observer's performance met Observer Program expectations for that deployment;

(C) Successfully complete a NMFS-approved observer training and/or Pacific whiting briefing as prescribed by the Observer Program; and

(D) Comply with all of the other requirements of this section.

(4) *Standards of observer conduct*—(i) *Standards of behavior.* Observers must avoid any behavior that could adversely affect the confidence of the public in the integrity of the Observer Program or of the government, including but not limited to the following:

(A) Observers must perform their assigned duties as described in the Observer Manual or other written

instructions from the Observer Program Office.

(B) Observers must accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.

(C) Observers must not disclose collected data and observations made on board the vessel or in the processing facility to any person except the owner or operator of the observed vessel or processing facility, an authorized officer, or NMFS.

(D) Observers must refrain from engaging in any illegal actions or any other activities that would reflect negatively on their image as professional scientists, on other observers, or on the Observer Program as a whole. This includes, but is not limited to:

(*1*) Violating the drug and alcohol policy established by and available from the Observer Program;

(*2*) Engaging in the use, possession, or distribution of illegal drugs; or

(*3*) Engaging in physical sexual contact with personnel of the vessel or processing facility to which the observer is assigned, or with any vessel or processing plant personnel who may be substantially affected by the performance or non-performance of the observer's official duties.

§ 660.17 Catch monitors and catch monitor service providers. [Reserved]

§ 660.18 Certification and decertification procedures for observers, catch monitors, catch monitor providers, and observer providers.

(a) *Observer certification official.* The Regional Administrator (or a designee) will designate a NMFS observer certification official who will make decisions for the Observer Program Office on whether to issue or deny observer certification pursuant to the regulations at § 660.16 (e), subpart C.

(b) *Observer suspension and decertification.*

(1) *Suspension and decertification review official.* The Regional Administrator (or a designee) will designate a suspension and decertification review official(s), who will have the authority to review certifications and issue initial administrative determinations of certification suspension and/or decertification.

(2) *Causes for suspension or decertification.* The suspension/decertification official may initiate suspension or decertification proceedings against an observer:

(i) When it is alleged that the observer has committed any acts or omissions of any of the following:

(A) Failed to satisfactorily perform the duties of observers as specified in writing by the NMFS Observer Program; or

(B) Failed to abide by the standards of conduct for observers as prescribed under § 660.16(e)(4), subpart C.

(ii) Upon conviction of a crime or upon entry of a civil judgment for:

(A) Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties as specified in writing by the NMFS Observer Program;

(B) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(C) Commission of any other offense indicating a lack of integrity or honesty that seriously and directly affects the fitness of observers.

(D) Conflict of interest as specified at § 660.18 (d) of this section.

(3) *Issuance of initial administrative determination.* Upon determination that suspension or decertification is warranted under § 660.18(b) of this section the suspension/decertification official will issue a written IAD to the observer and send it via certified mail to the observer's most current address of record as provided to NMFS. The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken. If the IAD issues a suspension of a certification, the terms of the suspension will be specified. Suspension or decertification is effective immediately as of the date of issuance, unless the suspension/decertification official notes a compelling reason for maintaining certification for a specified period and under specified conditions.

(4) *Appeals.* A certified observer who receives an IAD that suspends or revokes certification may appeal pursuant to paragraph (c) of this section.

(c) *Appeals process*—(1) *Decisions.* Decisions on appeals of initial administrative decisions denying certification to, or suspending, or decertifying, will be made by the Regional Administrator (or designated official). Appeals decisions shall be in writing and shall state the reasons therefore.

(2) *Filing an appeal of the determination.* An appeal must be filed with the Regional Administrator within 30 days of the initial administrative determination denying, suspending, or revoking the certification.

(3) *Content of an appeal.* The appeal must be in writing, and must allege facts or circumstances to show why the certification should be granted, or should not be suspended or revoked, under the criteria in this section.

(4) *Decision on an appeal.* Absent good cause for further delay, the Regional Administrator (or designated official) will issue a written decision on the appeal within 45 days of receipt of the appeal. The Regional Administrator's decision is the final administrative decision of the Department as of the date of the decision.

(d) *Limitations on conflict of interest*—(1) *Limitations on conflict of interest for observers:* (i) Must not have a direct financial interest, other than the provision of observer or catch monitor services, in a North Pacific fishery managed pursuant to an FMP for the waters off the coast of Alaska, Alaska state waters, or in a Pacific Coast fishery managed by either the state or Federal governments in waters off Washington, Oregon, or California, including but not limited to:

(A) Any ownership, mortgage holder, or other secured interest in a vessel, shore-based or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish,

(B) Any business involved with selling supplies or services to any vessel, shore-based or floating stationary processing facility; or

(C) Any business involved with purchasing raw or processed products from any vessel, shore-based or floating stationary processing facilities.

(ii) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(iii) May not serve as observer on any vessel or at any shoreside or floating stationary processing facility owned or operated where a person was previously employed.

(iv) May not solicit or accept employment as a crew member or an employee of a vessel, shoreside processor, or stationary floating processor while employed by an observer or catch monitor provider.

(2) Provisions for remuneration of observers or catch monitors under this section do not constitute a conflict of interest.

(3) *Limitations on conflict of interest for catch monitors.* [Reserved]

(4) *Limitations on conflict of interest for catch monitors providers.* [Reserved]

§ 660.20 Vessel and gear identification.

(a) *Vessel identification*—(1) *Display.* The operator of a vessel that is over 25 ft (7.6 m) in length and is engaged in commercial fishing for groundfish must display the vessel's official number on the port and starboard sides of the deckhouse or hull, and on a weather deck so as to be visible from above. The number must contrast with the background and be in block Arabic numerals at least 18 inches (45.7 cm) high for vessels over 65 ft (19.8 m) long and at least 10 inches (25.4 cm) high for vessels between 25 and 65 ft (7.6 and 19.8 m) in length. The length of a vessel for purposes of this section is the length set forth in USCG records or in state records, if no USCG record exists.

(2) *Maintenance of numbers.* The operator of a vessel engaged in commercial fishing for groundfish must keep the identifying markings required by paragraph (a)(1) of this section clearly legible and in good repair, and must ensure that no part of the vessel, its rigging, or its fishing gear obstructs the view of the official number from an enforcement vessel or aircraft.

(3) *Commercial passenger vessels.* This section does not apply to vessels carrying fishing parties on a per-capita basis or by charter.

(b) *Gear identification.* Gear identification requirements specific to fisheries using fixed gear (limited entry and open access) are described at § 660.219, subpart E and § 660.319, subpart F.

§ 660.24 Limited entry and open access fisheries.

(a) *General.* All commercial fishing for groundfish must be conducted in accordance with the regulations governing limited entry and open access fisheries, except such fishing by treaty Indian tribes as may be separately provided for.

(b) [Reserved].

§ 660.25 Permits.

(a) *General.* Each of the permits or licenses in this section has different conditions or privileges as part of the permit or license. The permits or licenses in this section confer a conditional privilege of participating in the Pacific coast groundfish fishery, in accordance with Federal regulations in 50 CFR part 660, subparts C through G.

(b) *Limited entry permit*—(1) *Eligibility and registration*—(i) *General.* In order for a vessel to be used to fish in the limited entry fishery, the vessel owner must hold a limited entry permit and, through SFD, must register that vessel for use with a limited entry permit. When participating in the limited entry fishery, a vessel is authorized to fish with the gear type endorsed on the limited entry permit registered for use with that vessel, except that the MS permit does not have a gear endorsement. There are three types of gear endorsements: trawl, longline, and pot (or trap). All limited entry permits, except the MS permit, have size endorsements; a vessel registered for use with a limited entry permit must comply with the vessel size requirements of this subpart. A sablefish endorsement is also required for a vessel to be used to fish in the primary season for the limited entry fixed gear sablefish fishery, north of 36° N. lat. Certain limited entry permits will also have endorsements required for participation in a specific fishery, such as the MS/CV endorsement and the C/P endorsement.

(A) Until the trawl rationalization program is implemented, a catcher vessel participating in either the Pacific whiting shore-based or mothership sector must, in addition to being registered for use with a limited entry permit, be registered for use with a sector-appropriate Pacific whiting vessel license under § 660.26, subpart C. A vessel participating in the Pacific whiting catcher/processor sector must, in addition to being registered for use with a limited entry permit, be registered for use with a sector-appropriate Pacific whiting vessel license under § 660.26, subpart C. Although a mothership vessel participating in the Pacific whiting mothership sector is not required to be registered for use with a limited entry permit, such vessel must be registered for use with a sector-appropriate Pacific whiting vessel license under § 660.26, subpart C.

(B) [Reserved]

(ii) *Eligibility.* Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12113(a) may be issued or may hold a limited entry permit.

(iii) *Registration.* Limited entry permits will normally be registered for use with a particular vessel at the time the permit is issued, renewed, transferred, or replaced. If the permit will be used with a vessel other than the one registered on the permit, the permit owner must register that permit for use with the new vessel through the SFD. The reissued permit must be placed on board the new vessel in order for the vessel to be used to fish in the limited entry fishery.

(A) For all limited entry permits, including MS permits, MS/CV endorsed permits and C/P endorsed permits when they are not fishing in the at-sea whiting fisheries, registration of a limited entry permit to be used with a new vessel will take effect no earlier than the first day of the next major limited entry cumulative limit period following the date SFD receives the transfer form and the original permit.

(B) For MS permits, MS/CV endorsed permits and C/P endorsed permits when they are fishing in the at-sea whiting fisheries, registration of a limited entry permit to be used with a new vessel will take effect on the date NMFS approves and issuance of the transferred permit.

(iv) *Limited entry permits indivisible.* Limited entry permits may not be divided for use by more than one vessel.

(v) *Initial administrative determination.* SFD will make an IAD regarding permit endorsements, renewal, replacement, and change in vessel registration. SFD will notify the permit owner in writing with an explanation of any determination to deny a permit endorsement, renewal, replacement, or change in vessel registration. The SFD will decline to act on an application for permit endorsement, renewal, transfer, replacement, or registration of a limited entry permit if the permit is subject to sanction provisions of the Magnuson-Stevens Act at 16 U.S.C. 1858(a) and implementing regulations at 15 CFR part 904, subpart D, apply.

(2) *Mothership (MS) permit.* The MS permit conveys a conditional privilege for the vessel registered to it, to participate in the MS fishery by receiving and processing deliveries of groundfish in the Pacific whiting mothership sector. A MS permit is a type of limited entry permit. A MS permit does not have any endorsements affixed to the permit, as listed in paragraph (b)(3) of this section. The provisions for the MS permit, including eligibility, renewal, change of permit ownership, vessel registration, fees, and appeals are described at § 660.150, subpart D.

(3) *Endorsements*—(i) "*A*" *endorsement.* A limited entry permit with an "A" endorsement entitles the vessel registered to the permit to fish in the limited entry fishery for all groundfish species with the type(s) of limited entry gear specified in the endorsement, except for sablefish harvested north of 36° N. lat. during times and with gears for which a sablefish endorsement is required. See paragraph (b)(3)(iv) of this section for provisions on sablefish endorsement requirements. An "A" endorsement is transferable with the limited entry permit to another person, or to a

different vessel under the same ownership under paragraph (b)(4) of this section. An "A" endorsement expires on failure to renew the limited entry permit to which it is affixed. A MS permit is not considered a limited entry "A" endorsed permit.

(ii) *Gear endorsement.* There are three types of gear endorsements: trawl, longline and pot (trap). When limited entry "A" endorsed permits were first issued, some vessel owners qualified for more than one type of gear endorsement based on the landings history of their vessels. Each limited entry "A" endorsed permit has one or more gear endorsement(s). Gear endorsement(s) assigned to the permit at the time of issuance will be permanent and shall not be modified. While participating in the limited entry fishery, the vessel registered to the limited entry "A" endorsed permit is authorized to fish the gear(s) endorsed on the permit. While participating in the limited entry, fixed gear primary fishery for sablefish described at § 660.231, subpart E, a vessel registered to more than one limited entry permit is authorized to fish with any gear, except trawl gear, endorsed on at least one of the permits registered for use with that vessel. During the limited entry fishery, permit holders may also fish with open access gear, except that vessels fishing against primary sablefish season cumulative limits described at § 660.231, subpart E, may not fish with open access gear against those limits. An MS permit does not have a gear endorsement.

(iii) *Vessel size endorsements*—(A) *General.* Each limited entry "A" endorsed permit will be endorsed with the LOA for the size of the vessel that initially qualified for the permit, except when permits are combined into one permit to be registered for use with a vessel requiring a larger size endorsement, the new permit will be endorsed for the size that results from the combination of the permits.

(B) *Limitations of size endorsements.* (*1*) A limited entry permit may be registered for use with a vessel up to 5 ft (1.52 m) longer than, the same length as, or any length shorter than, the size endorsed on the existing permit without requiring a combination of permits or a change in the size endorsement.

(*2*) The vessel harvest capacity rating for each of the permits being combined is that indicated in Table 3 of subpart C for the LOA (in feet) endorsed on the respective limited entry permit. Harvest capacity ratings for fractions of a foot in vessel length will be determined by multiplying the fraction of a foot in vessel length by the difference in the two ratings assigned to the nearest integers of vessel length. The length rating for the combined permit is that indicated for the sum of the vessel harvest capacity ratings for each permit being combined. If that sum falls between the sums for two adjacent lengths on Table 3 of subpart C, the length rating shall be the higher length.

(C) *Size endorsement requirements for sablefish-endorsed permits.* Notwithstanding paragraphs (b)(3)(iii)(A) and (B) of this section, when multiple permits are "stacked" on a vessel, as described in paragraph (b)(4)(iii), at least one of the permits must meet the size requirements of those sections. The permit that meets the size requirements of those sections is considered the vessel's "base" permit, as defined in § 660.11, Subpart C. If more than one permit registered for use with the vessel has an appropriate length endorsement for that vessel, NMFS SFD will designate a base permit by selecting the permit that has been registered to the vessel for the longest time. If the permit owner objects to NMFS' selection of the base permit, the permit owner may send a letter to NMFS SFD requesting the change and the reasons for the request. If the permit requested to be changed to the base permit is appropriate for the length of the vessel, NMFS SFD will reissue the permit with the new base permit. Any additional permits that are stacked for use with a vessel participating in the limited entry fixed gear primary sablefish fishery may be registered for use with a vessel even if the vessel is more than 5 ft (1.5 m) longer or shorter than the size endorsed on the permit.

(iv) *Sablefish endorsement and tier assignment*—(A) *General.* Participation in the limited entry fixed gear sablefish fishery during the primary season north of 36° N. lat., described in § 660.231, Subpart E, requires that an owner of a vessel hold (by ownership or lease) a limited entry permit, registered for use with that vessel, with a longline or trap (or pot) endorsement and a sablefish endorsement. Up to three permits with sablefish endorsements may be registered for use with a single vessel. Limited entry permits with sablefish endorsements are assigned to one of three different cumulative trip limit tiers, based on the qualifying catch history of the permit.

(*1*) A sablefish endorsement with a tier assignment will be affixed to the permit and will remain valid when the permit is transferred.

(*2*) A sablefish endorsement and its associated tier assignment are not separable from the limited entry permit, and therefore may not be transferred separately from the limited entry permit.

(B) *Issuance process for sablefish endorsements and tier assignments.* No new applications for sablefish endorsements will be accepted after November 30, 1998. All tier assignments and subsequent appeals processes were completed by September 1998.

(C) *Ownership requirements and limitations.* (*1*) No partnership or corporation may own a limited entry permit with a sablefish endorsement unless that partnership or corporation owned a limited entry permit with a sablefish endorsement on November 1, 2000. Otherwise, only individual human persons may own limited entry permits with sablefish endorsements.

(*2*) No individual person, partnership, or corporation in combination may have ownership interest in or hold more than 3 permits with sablefish endorsements either simultaneously or cumulatively over the primary season, except for an individual person, or partnerships or corporations that had ownership interest in more than 3 permits with sablefish endorsements as of November 1, 2000. The exemption from the maximum ownership level of 3 permits only applies to ownership of the particular permits that were owned on November 1, 2000. An individual person, or partnerships or corporations that had ownership interest in 3 or more permits with sablefish endorsements as of November 1, 2000, may not acquire additional permits beyond those particular permits owned on November 1, 2000. If, at some future time, an individual person, partnership, or corporation that owned more than 3 permits as of November 1, 2000, sells or otherwise permanently transfers (not holding through a lease arrangement) some of its originally owned permits, such that they then own fewer than 3 permits, they may then acquire additional permits, but may not have ownership interest in or hold more than 3 permits.

(*3*) A partnership or corporation will lose the exemptions provided in paragraphs (b)(3)(iv)(C)(*1*) and (*2*) of this section on the effective date of any change in the corporation or partnership from that which existed on November 1, 2000. A "change" in the partnership or corporation is defined at § 660.11, subpart C. A change in the partnership or corporation must be reported to SFD within 15 calendar days of the addition of a new shareholder or partner.

(*4*) Any partnership or corporation with any ownership interest in or that holds a limited entry permit with a sablefish endorsement shall document the extent of that ownership interest or

the individuals that hold the permit with the SFD via the Identification of Ownership Interest Form sent to the permit owner through the annual permit renewal process and whenever a change in permit owner, permit holder, and/or vessel registration occurs as described at paragraph (b)(4)(iv) and (v) of this section. SFD will not renew a sablefish-endorsed limited entry permit through the annual renewal process described at paragraph (b)(4)(i) of this section, or approve a change in permit owner, permit holder, and/or vessel registration unless the Identification of Ownership Interest Form has been completed. Further, if SFD discovers through review of the Identification of Ownership Interest Form that an individual person, partnership, or corporation owns or holds more than 3 permits and is not authorized to do so under paragraph (b)(3)(iv)(C)(*2*) of this section, the individual person, partnership or corporation will be notified and the permits owned or held by that individual person, partnership, or corporation will be void and reissued with the vessel status as "unidentified" until the permit owner owns and/or holds a quantity of permits appropriate to the restrictions and requirements described in paragraph (b)(3)(iv)(C)(*2*) of this section. If SFD discovers through review of the Identification of Ownership Interest Form that a partnership or corporation has had a change in membership since November 1, 2000, as described in paragraph (b)(3)(iv)(C)(*3*) of this section, the partnership or corporation will be notified, SFD will void any existing permits, and reissue any permits owned and/or held by that partnership or corporation in "unidentified" status with respect to vessel registration until the partnership or corporation is able to transfer those permits to persons authorized under this section to own sablefish-endorsed limited entry permits.

(*5*) A person, partnership, or corporation that is exempt from the owner-on-board requirement may sell all of their permits, buy another sablefish-endorsed permit within up to a year from the date the last permit was approved for transfer, and retain their exemption from the owner-on-board requirements. An individual person, partnership or corporation could only obtain a permit if it has not added or changed individuals since November 1, 2000, excluding individuals that have left the partnership or corporation or that have died.

(D) *Sablefish at-sea processing prohibition and exemption.* Vessels are prohibited from processing sablefish at sea that were caught in the primary sablefish fishery without sablefish at-sea processing exemptions. The sablefish at-sea processing exemption has been issued to a particular vessel and that permit and vessel owner who requested the exemption. The exemption is not part of the limited entry permit. The exemption is not transferable to any other vessel, vessel owner, or permit owner for any reason. The sablefish at-sea processing exemption will expire upon transfer of the vessel to a new owner or if the vessel is totally lost, as defined at § 660.11, subpart C.

(v) *MS/CV endorsement.* A MS/CV endorsement on a trawl limited entry permit conveys a conditional privilege that allows a vessel registered to it to fish in either the coop or non-coop fishery in the Mothership Coop Program described at § 660.150, subpart D. The provisions for the MS/CV endorsed limited entry permit, including eligibility, renewal, change of permit ownership, vessel registration, combinations, accumulation limits, fees, and appeals are described at § 660.150, subpart D.

(vi) *C/P endorsement.* A C/P endorsement on a trawl limited entry permit conveys a conditional privilege that allows a vessel registered to it to fish in the C/P Coop Program described at § 660.160, subpart D. The provisions for the C/P endorsed limited entry permit, including eligibility, renewal, change of permit ownership, vessel registration, combinations, fees, and appeals are described at § 660.160, subpart D.

(vii) *Endorsement and exemption restrictions.* "A" endorsements, gear endorsements, sablefish endorsements and sablefish tier assignments, MS/CV endorsements, and C/P endorsements may not be transferred separately from the limited entry permit. Sablefish at-sea processing exemptions are associated with the vessel and not with the limited entry permit and may not be transferred at all.

(4) *Limited entry permit actions-renewal, combination, stacking, change of permit ownership or permit holdership, and transfer*—(i) *Renewal of limited entry permits and gear endorsements.* (A) Limited entry permits expire at the end of each calendar year, and must be renewed between October 1 and November 30 of each year in order to remain in force the following year.

(B) Notification to renew limited entry permits will be issued by SFD prior to September 1 each year to the permit owner's most recent address in the SFD record. The permit owner shall provide SFD with notice of any address change within 15 days of the change.

(C) Limited entry permit renewal requests received in SFD between November 30 and December 31 will be effective on the date that the renewal is approved. A limited entry permit that is allowed to expire will not be renewed unless the permit owner requests reissuance by March 31 of the following year and the SFD determines that failure to renew was proximately caused by illness, injury, or death of the permit owner.

(D) Limited entry permits with sablefish endorsements, as described at paragraph (b)(3)(iv) of this section, will not be renewed until SFD has received complete documentation of permit ownership as required under paragraph (b)(3)(iv)(C)(*4*) of this section.

(E) Limited entry permits with an MS/CV endorsement or a MS permit, will not be renewed until SFD has received complete documentation of permit ownership as required under § 660.150(g) and § 660.150(f) of subpart D, respectively.

(ii) *Combining Limited Entry "A" Permits.* Two or more limited entry permits with "A" gear endorsements for the same type of limited entry gear may be combined and reissued as a single permit with a larger size endorsement as described in paragraph (b)(3)(iii) of this section.

(A) *Sablefish-endorsed Permit.* With respect to limited entry permits endorsed for longline and pot (trap) gear, a sablefish endorsement will be issued for the new permit only if all of the permits being combined have sablefish endorsements. If two or more permits with sablefish endorsements are combined, the new permit will receive the same tier assignment as the tier with the largest cumulative landings limit of the permits being combined.

(B) *MS/CV Endorsed Permit.* When a MS/CV endorsed permit is combined with another non-C/P endorsed permit (including unendorsed permits), the resulting permit will be MS/CV endorsed. If a MS/CV endorsed permit is combined with a C/P endorsed permit, the MS/CV endorsement and catch history assignment will not be reissued on the combined permit.

(C) *C/P Endorsed Permit.* A C/P endorsed permit that is combined with a limited entry trawl permit that is not C/P endorsed will result in a single C/P endorsed permit with a larger size endorsement. A MS/CV endorsement on one of the permits being combined will not be reissued on the resulting permit.

(iii) *Stacking limited entry permits.* "Stacking" limited entry permits, as defined at § 660.11, subpart C, refers to

the practice of registering more than one sablefish endorsed permit for use with a single vessel. Only limited entry permits with sablefish endorsements may be stacked. Up to 3 limited entry permits with sablefish endorsements may be registered for use with a single vessel during the primary sablefish season described at § 660.231, subpart E. Privileges, responsibilities, and restrictions associated with stacking permits to fish in the primary sablefish fishery are described at § 660.231, subpart E and at paragraph (b)(3)(iv) of this section.

(iv) *Changes in permit ownership and permit holder.* (A) *General.* The permit owner may convey the limited entry permit to a different person. The new permit owner will not be authorized to use the permit until the change in permit ownership has been registered with and approved by the SFD. The SFD will not approve a change in permit ownership for a limited entry permit with a sablefish endorsement that does not meet the ownership requirements for such permit described at paragraph (b)(3)(iv)(C) of this section. The SFD will not approve a change in permit ownership for a limited entry permit with a MS/CV endorsement that does not meet the ownership requirements for such permit described at § 660.150(g)(3), subpart D. Change in permit owner and/or permit holder applications must be submitted to SFD with the appropriate documentation described at paragraph (b)(4)(vii) of this section.

(B) *Effective date.* The change in ownership of the permit or change in the permit holder will be effective on the day the change is approved by SFD, unless there is a concurrent change in the vessel registered to the permit. Requirements for changing the vessel registered to the permit are described at paragraph (e) of this section.

(C) *Sablefish-endorsed permits.* If a permit owner submits an application to transfer a sablefish-endorsed limited entry permit to a new permit owner or holder (transferee) during the primary sablefish season described at § 660.231, subpart E (generally April 1 through October 31), the initial permit owner (transferor) must certify on the application form the cumulative quantity, in round weight, of primary season sablefish landed against that permit as of the application signature date for the then current primary season. The transferee must sign the application form acknowledging the amount of landings to date given by the transferor. This certified amount should match the total amount of primary season sablefish landings reported on state landing receipts. As required at § 660.12(b), subpart C, any person landing sablefish must retain on board the vessel from which sablefish is landed, and provide to an authorized officer upon request, copies of any and all reports of sablefish landings from the primary season containing all data, and in the exact manner, required by the applicable state law throughout the primary sablefish season during which a landing occurred and for 15 days thereafter.

(v) *Changes in vessel registration—transfer of limited entry permits and gear endorsements*—(A) *General.* A permit may not be used with any vessel other than the vessel registered to that permit. For purposes of this section, a permit transfer occurs when, through SFD, a permit owner registers a limited entry permit for use with a new vessel. Permit transfer applications must be submitted to SFD with the appropriate documentation described at paragraph (b)(4)(vii) of this section. Upon receipt of a complete application, and following review and approval of the application, the SFD will reissue the permit registered to the new vessel. Applications to transfer limited entry permits with sablefish endorsements will not be approved until SFD has received complete documentation of permit ownership as described at paragraph (b)(3)(iv)(C)(*4*) and as required under paragraph (b)(4)(vii) of this section.

(B) *Application.* A complete application must be submitted to SFD in order for SFD to review and approve a change in vessel registration. At a minimum, a permit owner seeking to transfer a limited entry permit shall submit to SFD a signed application form and his/her current limited entry permit before the first day of the cumulative limit period in which they wish to fish. If a permit owner provides a signed application and current limited entry permit after the first day of a cumulative limit period, the permit will not be effective until the succeeding cumulative limit period. SFD will not approve a change in vessel registration (transfer) until it receives a complete application, the existing permit, a current copy of the USCG 1270, and other required documentation.

(C) *Effective date.* Changes in vessel registration on permits will take effect no sooner than the first day of the next major limited entry cumulative limit period following the date that SFD receives the signed permit transfer form and the original limited entry permit. No transfer is effective until the limited entry permit has been reissued as registered with the new vessel.

(D) *Sablefish-endorsed permits.* If a permit owner submits an application to register a sablefish-endorsed limited entry permit to a new vessel during the primary sablefish season described at § 660.231, subpart E (generally April 1 through October 31), the initial permit owner (transferor) must certify on the application form the cumulative quantity, in round weight, of primary season sablefish landed against that permit as of the application signature date for the then current primary season. The new permit owner or holder (transferee) associated with the new vessel must sign the application form acknowledging the amount of landings to date given by the transferor. This certified amount should match the total amount of primary season sablefish landings reported on state landing receipts. As required at § 660.12(b), subpart C, any person landing sablefish must retain on board the vessel from which sablefish is landed, and provide to an authorized officer upon request, copies of any and all reports of sablefish landings from the primary season containing all data, and in the exact manner, required by the applicable state law throughout the primary sablefish season during which a landing occurred and for 15 days thereafter.

(vi) *Restriction on frequency of transfers*—(A) *General.* A permit owner may designate the vessel registration for a permit as "unidentified," meaning that no vessel has been identified as registered for use with that permit. No vessel is authorized to use a permit with the vessel registration designated as "unidentified." A vessel owner who removes a permit from his vessel and registers that permit as "unidentified" is not exempt from VMS requirements at § 660.14, subpart C unless specifically authorized by that section. When a permit owner requests that the permit's vessel registration be designated as "unidentified," the transaction is not considered a "transfer" for purposes of this section. Any subsequent request by a permit owner to change from the "unidentified" status of the permit in order to register the permit with a specific vessel will be considered a change in vessel registration (transfer) and subject to the restriction on frequency and timing of changes in vessel registration (transfer).

(B) *Limited entry fixed gear and trawl-endorsed permits (without MS/CV or C/P endorsements).* Limited entry fixed gear and trawl-endorsed permits (without MS/CV or C/P endorsements) permits may not be registered for use with a different vessel (transfer) more than once per calendar year, except in cases of death of a permit holder or if

the permitted vessel is totally lost as defined in § 660.11, subpart C. The exception for death of a permit holder applies for a permit held by a partnership or a corporation if the person or persons holding at least 50 percent of the ownership interest in the entity dies.

(C) *Limited Entry MS permits and Limited Entry Permits with MS/CV or C/P Endorsements.* Limited entry MS permits and limited entry permits with MS/CV or C/P endorsements may be registered to another vessel up to two times during the fishing season as long as the second transfer is back to the original vessel. The original vessel is either the vessel registered to the permit as of January 1, or if no vessel is registered to the permit as of January 1, the original vessel is the first vessel to which the permit is registered after January 1. After the original vessel has been established, the first transfer would be to another vessel, but any second transfer must be back to the original vessel.

(vii) *Application and supplemental documentation.* Permit holders may request a transfer (change in vessel registration) and/or change in permit ownership or permit holder by submitting a complete application form. In addition, a permit owner applying for renewal, replacement, transfer, or change of ownership or change of permit holder of a limited entry permit has the burden to submit evidence to prove that qualification requirements are met. The following evidentiary standards apply:

(A) For a request to change a vessel registration and/or change in permit ownership or permit holder, the permit owner must provide SFD with a current copy of the USCG Form 1270 for vessels of 5 net tons or greater, or a current copy of a state registration form for vessels under 5 net tons.

(B) For a request to change a vessel registration and/or change in permit ownership or permit holder for sablefish-endorsed permits with a tier assignment for which a corporation or partnership is listed as permit owner and/or holder, an Identification of Ownership Interest Form must be completed and included with the application form.

(C) For a request to change permit ownership for an MS permit or for a request to change a vessel registration and/or change in permit ownership or permit holder for an MS/CV endorsed limited entry trawl permit, an Identification of Ownership Interest Form must be completed and included with the application form.

(D) For a request to change the vessel registration to a permit, the permit owner must submit to SFD a current marine survey conducted by a certified marine surveyor in accordance with USCG regulations to authenticate the length overall of the vessel being newly registered with the permit. Marine surveys older than 3 years at the time of the request for change in vessel registration will not be considered "current" marine surveys for purposes of this requirement.

(E) For a request to change a permit's ownership where the current permit owner is a corporation, partnership or other business entity, the applicant must provide to SFD a corporate resolution that authorizes the conveyance of the permit to a new owner and which authorizes the individual applicant to request the conveyance on behalf of the corporation, partnership, or other business entity.

(F) For a request to change a permit's ownership that is necessitated by the death of the permit owner(s), the individual(s) requesting conveyance of the permit to a new owner must provide SFD with a death certificate of the permit owner(s) and appropriate legal documentation that either: specifically transfers the permit to a designated individual(s); or, provides legal authority to the transferor to convey the permit ownership.

(G) For a request to change a permit's ownership that is necessitated by divorce, the individual requesting the change in permit ownership must submit an executed divorce decree that awards the permit to a designated individual(s).

(H) Such other relevant, credible documentation as the applicant may submit, or the SFD or Regional Administrator may request or acquire, may also be considered.

(viii) *Application forms available.* Application forms for the change in vessel registration (transfer) and change of permit ownership or permit holder of limited entry permits are available from the SFD (*see* part 600 for address of the Regional Administrator). Contents of the application, and required supporting documentation, are specified in the application form.

(ix) *Records maintenance.* The SFD will maintain records of all limited entry permits that have been issued, renewed, transferred, registered, or replaced.

(5) *Small fleet.* (i) Small limited entry fisheries fleets that are controlled by a local government, are in existence as of July 11, 1991, and have negligible impacts on the groundfish resource, may be certified as consistent with the goals and objectives of the limited entry program and incorporated into the limited entry fishery. Permits issued under this subsection will be issued in accordance with the standards and procedures set out in the PCGFMP and will carry the rights explained therein.

(ii) A permit issued under this section may be registered only to another vessel that will continue to operate in the same certified small fleet, provided that the total number of vessels in the fleet does not increase. A vessel may not use a small fleet limited entry permit for participation in the limited entry fishery outside of authorized activities of the small fleet for which that permit and vessel have been designated.

(c) *Quota Share (QS) Permit.* A QS permit conveys a conditional privilege to a person to own quota share for designated species and species groups and to fish in the Shorebased IFQ Program described in § 660.140, subpart D. A QS permit is not a limited entry permit. The provisions for the QS permit, including eligibility, renewal, change of permit ownership, accumulation limits, fees, and appeals are described at § 660.140, subpart D.

(d) *First receiver site license.* The first receiver site license conveys a conditional privilege to a first receiver to receive, purchase, or take custody, control or possession of landings from the Shorebased IFQ Program. The first receiver site license is issued for a person and a unique physical site consistent with the terms and conditions required to account for and weigh the landed species. A first receiver site license is not a limited entry permit. The provisions for the First Receiver Site License, including eligibility, registration, change of ownership, fees, and appeals are described at § 660.140(f), subpart D.

(e) *Coop Permits.* [Reserved]

(1) *MS coop permit.* [Reserved]

(2) *C/P coop permit.* [Reserved]

(f) *Permit fees.* The Regional Administrator is authorized to charge fees to cover administrative expenses related to issuance of permits including initial issuance, renewal, transfer, vessel registration, replacement, and appeals. The appropriate fee must accompany each application.

(g) *Permit appeals process*—(1) *General.* For permit actions, including issuance, renewal, change in vessel registration, change in permit owner or permit holder, and endorsement upgrade, the Assistant Regional Administrator for Sustainable Fisheries will make an initial administrative determination (IAD) on the action. In cases where the applicant disagrees

with the IAD, the applicant may appeal that decision. Final decisions on appeals of IADs regarding issuance, renewal, change in vessel registration, change in permit owner or permit holder, and endorsement upgrade, will be made in writing by the Regional Administrator acting on behalf of the Secretary of Commerce and will state the reasons therefore. This section describes the procedures for appealing the IAD on permit actions made in this title under subpart C through G of part 660. Additional information regarding appeals of an IAD related to the trawl rationalization program is contained in the specific program sections under subpart D of part 660.

(2) *Who May Appeal?* Only a person who received an IAD that disapproved any part of their application may file a written appeal. For purposes of this section, such person will be referred to as the "applicant."

(3) *Submission of appeals.* (i) The appeal must be in writing, must allege credible facts or circumstances to show why the criteria in this subpart have been met, and must include any relevant information or documentation to support the appeal.

(ii) Appeals must be mailed or faxed to: National Marine Fisheries Service, Northwest Region, Sustainable Fisheries Division, ATTN: Appeals, 7600 Sand Point Way NE., Seattle, WA 98115; Fax: 206–526–6426; or delivered to National Marine Fisheries Service at the same address.

(4) *Timing of appeals.* (i) If an applicant appeals an IAD, the appeal must be postmarked, faxed, or hand delivered to NMFS no later than 30 calendar days after the date on the IAD. If the applicant does not appeal the IAD within 30 calendar days, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(ii) The time period to submit an appeal begins with the date on the IAD. If the last day of the time period is a Saturday, Sunday, or Federal holiday, the time period will extend to the close of business on the next business day.

(5) *Address of record.* For purposes of the appeals process, NMFS will establish as the address of record, the address used by the applicant in initial correspondence to NMFS. Notifications of all actions affecting the applicant after establishing an address of record will be mailed to that address, unless the applicant provides NMFS, in writing, with any changes to that address. NMFS bears no responsibility if a notification is sent to the address of record and is not received because the applicant's actual address has changed without notification to NMFS.

(6) *Decisions on appeals.* (i) For the appeal of an IAD related to the application and initial issuance process for the trawl rationalization program listed in subpart D of part 660, the RA shall appoint an appeals officer. After determining there is sufficient information and that all procedural requirements have been met, the appeals officer will review the record and issue a recommendation on the appeal to the RA, which shall be advisory only. The recommendation must be based solely on the record. Upon receiving the findings and recommendation, the RA shall issue a final decision on the appeal in accordance with paragraph (g)(6)(ii) of this section.

(ii) *Final decision on appeal.* The RA will issue a written decision on the appeal which is the final decision of the Secretary of Commerce.

(7) *Status of permits pending appeal.* (i) For all permit actions, except those actions related to the application and initial issuance process for the trawl rationalization program listed in subpart D of part 660, the permit registration remains as it was prior to the request until the final decision has been made.

(ii) For permit actions related to the application and initial issuance process for the trawl rationalization program listed in subpart D of part 660, the status of permits pending appeal is as follows:

(A) For permit and endorsement qualifications and eligibility appeals (i.e., QS permit, MS permit, MS/CV endorsement, C/P endorsement), any permit or endorsement under appeal after December 31, 2010, may not be used to fish in the Pacific Coast groundfish fishery until a final decision on the appeal has been made. If the permit or endorsement will be issued, the permit or endorsement will be effective upon approval, except for QS permits, which will be effective at the start of the next fishing year.

(B) For a QS amount for specific IFQ management unit species under appeal, the QS amount for the IFQ species under appeal will remain as the amount assigned to the associated QS permit in the IAD. The QS permit may be used to fish in the Pacific Coast groundfish fishery with the QS amounts assigned to the QS permit in the IAD. Once a final decision on the appeal has been made and if a revised QS amount for a specific IFQ species will be assigned to the QS permit, the additional QS amount associated with the QS permit will be effective at the start of the next calendar year following the final decision.

(C) For a Pacific whiting catch history assignment associated with a MS/CV endorsement under appeal, the catch history assignment will remain as that previously assigned to the associated MS/CV endorsed limited entry permit in the IAD. The MS/CV endorsed limited entry permit may be used to fish in the Pacific Coast groundfish fishery with the catch history assigned to the MS/CV endorsed permit in the IAD. Once a final decision on the appeal has been made, and if a revised catch history assignment will be issued, the additional Pacific whiting catch history assignment associated with the MS/CV endorsement will be effective at the start of the next calendar year following the final decision.

(h) *Permit sanctions.* (1) All permits and licenses issued or applied for under Subparts C through G are subject to sanctions pursuant to the Magnuson Act at 16 U.S.C. 1858(g) and 15 CFR part 904, subpart D.

(2) All shorebased IFQ fishery permits (QS permit, first receiver site license), QS accounts, vessel accounts, and Coop fishery permits (MS permit, MS/CV endorsed permit, C/P endorsed permit, coop permit) issued under subpart D:

(i) Are considered permits for the purposes of 16 U.S.C. 1857, 1858, and 1859;

(ii) May be revoked, limited, or modified at any time in accordance with the Magnuson Act, including revocation if the system is found to have jeopardized the sustainability of the stocks or the safety of fishermen;

(iii) Shall not confer any right of compensation to the holder of such permits, licenses, and accounts if it is revoked, limited, or modified;

(iv) Shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested by the holder; and

(v) Shall be considered a grant of permission to the holder of the permit, license, or account to engage in activities permitted by such permit, license, or account.

§ 660.26 Pacific whiting vessel licenses.

(a) *General.* After May 11, 2009, participation in the Pacific whiting seasons described in § 660.131(b), subpart D requires:

(1) An owner of any vessel that catches Pacific whiting must own a limited entry permit, registered for use with that vessel, with a trawl gear endorsement; and, a Pacific whiting vessel license registered for use with that vessel and appropriate to the sector or sectors in which the vessel intends to fish;

(2) An owner of any mothership vessel that processes Pacific whiting to hold a Pacific whiting vessel license registered for use with that vessel and appropriate to the sector or sectors in which the vessel intends to fish.

(b) *In combination with a Limited Entry Permit.* Pacific whiting vessel licenses are separate from limited entry permits and do not license a vessel to harvest Pacific whiting in the primary Pacific whiting season unless that vessel is also registered for use with a limited entry permit with a trawl gear endorsement.

(c) *Pacific whiting vessel license qualifying criteria.* (1) *Qualifying catch and/or processing history.* Vessel catch and/or processing history will be used to determine whether that vessel meets the qualifying criteria for a Pacific whiting vessel license and to determine the sectors for which that vessel may qualify. Vessel catch and/or processing history includes only the catch and/or processed product of that particular vessel, as identified in association with the vessel's USCG number. Only Pacific whiting regulated 50 CFR part 660, subparts C and D that was taken with midwater (or pelagic) trawl gear will be considered for the Pacific whiting vessel license. Pacific whiting harvested or processed by a vessel that has since been totally lost, scrapped, or is rebuilt such that a new U.S.C.G. documentation number would be required will not be considered for this license. Pacific whiting harvested or processed illegally or landed illegally will not be considered for this license. Catch and/or processing history associated with a vessel whose permit was purchased by the Federal Government through the Pacific Coast groundfish fishing capacity reduction program, as identified at 68 FR 62435 (November 4, 2003), does not qualify a vessel for a Pacific whiting vessel license and no vessel owner may apply for or receive a Pacific whiting vessel license based on catch and/or processing history from one of those buyback vessels. The following sector-specific license qualification criteria apply:

(i) For catcher/processor vessels, the qualifying criteria for a Pacific whiting vessel license is evidence of having caught and processed any amount of Pacific whiting during a primary catcher/processor season during the period January 1, 1997 through January 1, 2007.

(ii) For mothership at-sea processing vessels, the qualifying criteria for a Pacific whiting vessel license is documentation of having received and processed any amount of Pacific whiting during a primary mothership season during the period January 1, 1997 through January 1, 2007.

(iii) For catcher vessels delivering Pacific whiting to at-sea mothership processing vessels, the qualifying criteria for a Pacific whiting vessel license is documentation of having delivered any amount of Pacific whiting to a mothership processor during a primary mothership season during the period January 1, 1997, through January 1, 2007.

(iv) For catcher vessels delivering Pacific whiting to Pacific whiting shoreside first receivers, the qualifying criteria for a Pacific whiting vessel license is documentation of having made at least one landing of Pacific whiting taken with midwater trawl gear during a primary shore-based season during the period January 1, 1994, through January 1, 2007, and where the weight of Pacific whiting exceeded 50 percent of the total weight of the landing.

(2) *Documentation and burden of proof.* A vessel owner applying for a Pacific whiting vessel license has the burden to submit documentation that qualification requirements are met. An application that does not include documentation of meeting the qualification requirements during the qualifying years will be considered incomplete and will not be reviewed. The following standards apply:

(i) A certified copy of the current vessel document (USCG or State) is the best documentation of vessel ownership and LOA.

(ii) A certified copy of a State fish receiving ticket is the best documentation of a landing at a Pacific whiting shoreside first receiver, and of the type of gear used.

(iii) For participants in the at-sea Pacific whiting fisheries, documentation of participation could include, but is not limited to: A final observer report documenting a particular catcher vessel, mothership, or catcher/processor's participation in the Pacific whiting fishery in an applicable year and during the applicable primary season, a bill of lading for Pacific whiting from an applicable year and during the applicable primary season, a catcher vessel receipt from a particular mothership known to have fished in the Pacific whiting fishery during an applicable year, a signed copy of a Daily Receipt of Fish and Cumulative Production Logbook (mothership sector) or Daily Fishing and Cumulative Production Logbook (catcher/processor sector) from an applicable year during the applicable primary season.

(iv) Such other relevant, credible documentation as the applicant may submit, or the SFD or the Regional Administrator request or acquire, may also be considered.

(d) *Issuance process for Pacific whiting vessel licenses.* (1) SFD will mail, to the most recent address provided to the SFD, Permits Office, a Pacific whiting vessel license application to all current and prior owners of vessels that have been registered for use with limited entry permits with trawl endorsements, excluding owners of those vessels whose permits were purchased through the Pacific Coast groundfish fishing capacity reduction program. NMFS will also make license applications available online at: *http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Permits/index.cfm.* A vessel owner who believes that his/her vessel may qualify for the Pacific whiting vessel license will have until May 11, 2009, to submit an application with documentation showing how his/her vessel has met the qualifying criteria described in this section. NMFS will not accept applications for Pacific whiting vessel licenses received after May 11, 2009.

(2) After receipt of a complete application, NMFS will notify applicants by letter of its determination whether their vessels qualify for Pacific whiting vessel licenses and the sector or sectors to which the licenses apply. Vessels that have met the qualification criteria will be issued the appropriate licenses at that time. After May 11, 2009, NMFS will publish a list of vessels that qualified for Pacific whiting vessel licenses in the **Federal Register**.

(3) If a vessel owner files an appeal from the determination under paragraph (d)(2) of this section, the appeal must be filed with the Regional Administrator within 30 calendar days of the issuance of the letter of determination. The appeal must be in writing and must allege facts or circumstances, and include credible documentation demonstrating why the vessel qualifies for a Pacific whiting vessel license. The appeal of a denial of an application for a Pacific whiting vessel license will not be referred to the Council for a recommendation, nor will any appeals be accepted by NMFS after June 15, 2009.

(4) Absent good cause for further delay, the Regional Administrator will issue a written decision on the appeal within 30 calendar days of receipt of the appeal. The Regional Administrator's decision is the final administrative decision of the Department of Commerce as of the date of the decision.

(e) *Notification to NMFS of changes to Pacific whiting vessel license information.* The owner of a vessel

registered for use with a Pacific whiting vessel license must provide a written request to NMFS to change the name or names of vessel owners provided on the vessel license, or to change the licensed vessel's name. The request must detail the names of all new vessel owners as registered with U.S. Coast Guard, a business address for the vessel owner, business phone and fax number, tax identification number, date of birth, and/or date of incorporation for each individual and/or entity, and a copy of the vessel documentation (USCG 1270) to show proof of ownership. NMFS will reissue a new vessel license with the names of the new vessel owners and/or vessel name information. The Pacific Whiting vessel license is considered void if the name of the vessel or vessel owner is changed from that given on the license. In addition, the vessel owner must report to NMFS any change in address for the vessel owner within 15 days of that change. Although the name of an individual vessel registered for use with a Pacific whiting vessel license may be changed, the license itself may not be registered to any vessel other than the vessel to which it was originally issued, as identified by that vessel's United States Coast Guard documentation number.

§ 660.30 Compensation with fish for collecting resource information—EFPs.

In addition to the reasons stated in § 600.745(b)(1) of this chapter, an EFP may be issued under this subpart C for the purpose of compensating the owner or operator of a vessel for collecting resource information according to a protocol approved by NMFS. NMFS may issue an EFP allowing a vessel to retain fish as compensation in excess of trip limits or to be exempt from other specified management measures for the Pacific coast groundfish fishery.

(a) *Compensation EFP for vessels under contract with NMFS to conduct a resource survey.* NMFS may issue an EFP to the owner or operator of a vessel that conducted a resource survey according to a contract with NMFS. A vessel's total compensation from all sources (in terms of dollars or amount of fish, including fish from survey samples or compensation fish) will be determined through normal Federal procurement procedures. The compensation EFP will specify the maximum amount or value of fish the vessel may take and retain after the resource survey is completed.

(1) *Competitive offers.* NMFS may initiate a competitive solicitation (request for proposals or RFP) to select vessels to conduct resource surveys that use fish as full or partial compensation, following normal Federal procurement procedures.

(2) *Consultation and approval.* At a Council meeting, NMFS will consult with the Council and receive public comment on upcoming resource surveys to be conducted if groundfish could be used as whole or partial compensation. Generally, compensation fish would be similar to surveyed species, but there may be reasons to provide payment with healthier, more abundant, less restricted stocks, or more easily targeted species. For example, NMFS may decline to pay a vessel with species that are, or are expected to be, overfished, or that are subject to overfishing, or that are unavoidably caught with species that are overfished or subject to overfishing. NMFS may also consider levels of discards, bycatch, and other factors. If the Council does not approve providing whole or partial compensation for the conduct of a survey, NMFS will not use fish, other than fish taken during the scientific research, as compensation for that survey. For each proposal, NMFS will present:

(i) The maximum number of vessels expected or needed to conduct the survey,

(ii) An estimate of the species and amount of fish likely to be needed as compensation,

(iii) When the survey and compensation fish would be taken, and

(iv) The year in which the compensation fish would be deducted from the ABC before determining the optimum yield (harvest guideline or quota).

(3) *Issuance of the compensation EFP.* Upon successful completion of the survey, NMFS will issue a "compensation EFP" to the vessel if it has not been fully compensated. The procedures in § 600.745(b)(1) through (b)(4) of this chapter do not apply to a compensation EFP issued under this subpart for the Pacific coast groundfish fishery (50 CFR part 660, subparts C through G).

(4) *Terms and conditions of the compensation EFP.* Conditions for disposition of bycatch or any excess catch, for reporting the value of the amount landed, and other appropriate terms and conditions may be specified in the EFP. Compensation fishing must occur during the period specified in the EFP, but no later than the end of September of the fishing year following the survey, and must be conducted according to the terms and conditions of the EFP.

(5) *Reporting the compensation catch.* The compensation EFP may require the vessel owner or operator to keep separate records of compensation fishing and to submit them to NMFS within a specified period of time after the compensation fishing is completed.

(6) *Accounting for the compensation catch.* As part of the harvest specifications process, as described at § 660.60, subpart C, NMFS will advise the Council of the amount of fish authorized to be retained under a compensation EFP, which then will be deducted from the next harvest specifications (ABCs) set by the Council. Fish authorized in an EFP too late in the year to be deducted from the following year's ABCs will be accounted for in the next management cycle where it is practicable to do so.

(b) Compensation for commercial vessels collecting resource information under a standard EFP. NMFS may issue an EFP to allow a commercial fishing vessel to take and retain fish in excess of current management limits for the purpose of collecting resource information (§ 600.745(b) of this chapter). The EFP may include a compensation clause that allows the participating vessel to be compensated with fish for its efforts to collect resource information according to NMFS' approved protocol. If compensation with fish is requested in an EFP application, or proposed by NMFS, the following provisions apply in addition to those at § 600.745(b) of this chapter.

(1) *Application.* In addition to the requirements in § 600.745(b) of this chapter, application for an EFP with a compensation clause must clearly state whether a vessel's participation is contingent upon compensation with groundfish and, if so, the minimum amount (in metric tons, round weight) and the species. As with other EFPs issued under § 600.745 of this chapter, the application may be submitted by any individual, including a state fishery management agency or other research institution.

(2) *Denial.* In addition to the reasons stated in § 600.745(b)(3)(iii) of this chapter, the application will be denied if the requested compensation fishery, species, or amount is unacceptable for reasons such as, but not limited to, the following: NMFS concludes the value of the resource information is not commensurate with the value of the compensation fish; the proposed compensation involves species that are (or are expected to be) overfished or subject to overfishing, fishing in times or areas where fishing is otherwise prohibited or severely restricted, or fishing for species that would involve unavoidable bycatch of species that are overfished or subject to overfishing; or NMFS concludes the information can

reasonably be obtained at a less cost to the resource.

(3) *Window period for other applications.* If the Regional Administrator or designee agrees that compensation should be considered, and that more than a minor amount would be used as compensation, then a window period will be announced in the **Federal Register** during which additional participants will have an opportunity to apply. This notification would be made at the same time as announcement of receipt of the application and request for comments required under § 600.745(b). If there are more qualified applicants than needed for a particular time and area, NMFS will choose among the qualified vessels, either randomly, in order of receipt of the completed application, or by other impartial selection methods. If the permit applicant is a state, university, or Federal entity other than NMFS, and NMFS approves the selection method, the permit applicant may choose among the qualified vessels, either randomly, in order of receipt of the vessel application, or by other impartial selection methods.

(4) *Terms and conditions.* The EFP will specify the amounts that may be taken as scientific samples and as compensation, the time period during which the compensation fishing must occur, management measures that NMFS will waive for a vessel fishing under the EFP, and other terms and conditions appropriate to the fishery and the collection of resource information. NMFS may require compensation fishing to occur on the same trip that the resource information is collected.

(5) *Accounting for the catch.* Samples taken under this EFP, as well as any compensation fish, count toward the current year's catch or landings.

§ 660.40 Overfished species rebuilding plans.

For each overfished groundfish stock with an approved rebuilding plan, this section contains the standards to be used to establish annual or biennial OYs, specifically the target date for rebuilding the stock to its MSY level and the harvest control rule to be used to rebuild the stock. The harvest control rule is expressed as a "Spawning Potential Ratio" or "SPR" harvest rate.

(a) *Bocaccio.* The target year for rebuilding the southern bocaccio stock to B_{MSY} is 2026. The harvest control rule to be used to rebuild the southern bocaccio stock is an annual SPR harvest rate of 77.7 percent.

(b) *Canary rockfish.* The target year for rebuilding the canary rockfish stock to B_{MSY} is 2021. The harvest control rule to be used to rebuild the canary rockfish stock is an annual SPR harvest rate of 88.7 percent.

(c) *Cowcod.* The target year for rebuilding the cowcod stock south of Point Conception to B_{MSY} is 2072. The harvest control rule to be used to rebuild the cowcod stock is an annual SPR harvest rate of 82.1 percent.

(d) *Darkblotched rockfish.* The target year for rebuilding the darkblotched rockfish stock to B_{MSY} is 2028. The harvest control rule to be used to rebuild the darkblotched rockfish stock is an annual SPR harvest rate of 62.1 percent.

(e) *Pacific Ocean Perch (POP).* The target year for rebuilding the POP stock to B_{MSY} is 2017. The harvest control rule to be used to rebuild the POP stock is an annual SPR harvest rate of 86.4 percent.

(f) *Widow rockfish.* The target year for rebuilding the widow rockfish stock to B_{MSY} is 2015. The harvest control rule to be used to rebuild the widow rockfish stock is an annual SPR harvest rate of 95.0 percent.

(g) *Yelloweye rockfish.* The target year for rebuilding the yelloweye rockfish stock to B_{MSY} is 2084. The harvest control rule to be used to rebuild the yelloweye rockfish stock is an annual SPR harvest rate of 66.3 percent in 2009 and in 2010. Yelloweye rockfish is subject to a ramp-down strategy where the harvest level has been reduced annually from 2007 through 2009. Yelloweye rockfish will remain at the 2009 level in 2010. Beginning in 2011, yelloweye rockfish will be subject to a constant harvest rate strategy with a constant SPR harvest rate of 71.9 percent.

§ 660.50 Pacific Coast treaty Indian fisheries.

(a) *Pacific Coast treaty Indian tribes have treaty rights.* Pacific Coast treaty Indian tribes have treaty rights to harvest groundfish in their usual and accustomed fishing areas in U.S. waters. In 1994, the United States formally recognized that the four Washington coastal treaty Indian tribes (Makah, Quileute, Hoh, and Quinault) have treaty rights to fish for groundfish in the Pacific Ocean, and concluded that, in general terms, the quantification of those rights is 50 percent of the harvestable surplus of groundfish that pass through the tribes U&A fishing areas.

(b) *Pacific Coast treaty Indian tribes.* For the purposes of this part, Pacific Coast treaty Indian tribes means the Hoh, Makah, and Quileute Indian Tribes and the Quinault Indian Nation.

(c) *Usual and accustomed fishing areas (U&A).* The Pacific Coast treaty Indian tribes' U&A fishing areas within the fishery management area (FMA) are set out below in paragraphs (c)(1) through (c)(4) of this section. Boundaries of a tribe's fishing area may be revised as ordered by a Federal court.

(1) *Makah.* That portion of the FMA north of 48°02.25′ N. lat. (Norwegian Memorial) and east of 125°44′ W. long.

(2) *Quileute.* That portion of the FMA between 48°07.60′ N. lat. (Sand Point) and 47°31.70′ N. lat. (Queets River) and east of 125°44′ W. long.

(3) *Hoh.* That portion of the FMA between 47°54.30′ N. lat. (Quillayute River) and 47°21′ N. lat. (Quinault River) and east of 125°44′ W. long.

(4) *Quinault.* That portion of the FMA between 47°40.10′ N. lat. (Destruction Island) and 46°53.30′ N. lat. (Point Chehalis) and east of 125°44′ W. long.

(d) *Procedures.* The rights referred to in paragraph (a) of this section will be implemented by the Secretary, after consideration of the tribal request, the recommendation of the Council, and the comments of the public. The rights will be implemented either through an allocation or set-aside of fish that will be managed by the tribes, or through regulations in this section that will apply specifically to the tribal fisheries.

(1) *Tribal allocations, set-asides, and regulations.* An allocation, set-aside or a regulation specific to the tribes shall be initiated by a written request from a Pacific Coast treaty Indian tribe to the Regional Administrator, prior to the first Council meeting in which biennial harvest specifications and management measures are discussed for an upcoming biennial management period. The Secretary generally will announce the annual tribal allocations at the same time as the announcement of the harvest specifications.

(2) *Co-management.* The Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. Accordingly, the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

(e) *Fishing by a member of a Pacific Coast treaty Indian tribe.* A member of a Pacific Coast treaty Indian tribe fishing under this section and within their U&A fishing area is not subject to the provisions of other sections of subparts C through G of this part.

(1) *Identification.* A valid treaty Indian identification card issued pursuant to 25 CFR part 249, subpart A, is prima facie evidence that the holder

is a member of the Pacific Coast treaty Indian tribe named on the card.

(2) *Permits.* A limited entry permit described under § 660.25, subpart C is not required for a member of a Pacific Coast treaty Indian tribe to fish in a tribal fishery described in paragraph (d) of this section.

(3) *Federal and tribal laws and regulations.* Any member of a Pacific Coast treaty Indian tribe must comply with this section, and with any applicable tribal law and regulation, when participating in a tribal groundfish fishery described in this section.

(4) *Fishing outside the U&A or without a groundfish allocation.* Fishing by a member of a Pacific Coast treaty Indian tribe outside the applicable Indian tribe's usual and accustomed fishing area, or for a species of groundfish not covered by an allocation, set-aside, or regulation under this section, is subject to the regulations in the other sections of subpart C through subpart G of this part. Treaty fisheries operating within tribal allocations are prohibited from operating outside U&A fishing areas.

(f) *Pacific Coast treaty Indian fisheries allocations and harvest guidelines.* The tribal harvest guideline for black rockfish is provided in paragraph (f)(1) of this section. Tribal fishery allocations for sablefish are provided in paragraph (f)(2) of this section, and Pacific whiting are provided in paragraph (f)(4) of this section. Trip limits for certain species were recommended by the tribes and the Council and are specified here with the tribal allocations.

(1) *Black rockfish.* (i) Harvest guidelines for commercial harvests of black rockfish by members of the Pacific Coast Indian tribes using hook and line gear will be established biennially for two subsequent one-year periods for the areas between the U.S.-Canadian border and Cape Alava (48°09.50′ N. lat.) and between Destruction Island (47°40′ N. lat.) and Leadbetter Point (46°38.17′ N. lat.), in accordance with the procedures for implementing harvest specifications and management measures. Pacific Coast treaty Indians fishing for black rockfish in these areas under these harvest guidelines are subject to the provisions in this section, and not to the restrictions in other sections of subparts C through G of this part.

(ii) For the commercial harvest of black rockfish off Washington State, a treaty Indian tribes' harvest guideline is set at 30,000 lb (13,608 kg) for the area north of Cape Alava, WA (48°09.50′ N. lat.) and 10,000 lb (4,536 kg) for the area between Destruction Island, WA (47°40′ N. lat.) and Leadbetter Point, WA (46°38.17′ N. lat.). This harvest guideline applies and is available to the Pacific Coast treaty Indian tribes. There are no tribal harvest restrictions for black rockfish in the area between Cape Alava and Destruction Island.

(2) *Sablefish.* (i) The sablefish allocation to Pacific coast treaty Indian tribes is 10 percent of the sablefish total catch OY for the area north of 36° N. lat. This allocation represents the total amount available to the treaty Indian fisheries before deductions for discard mortality.

(ii) The tribal allocation is 694 mt per year. This allocation is, for each year, 10 percent of the Monterey through Vancouver area (North of 36° N. lat.) OY, less 1.6 percent estimated discard mortality.

(3) *Lingcod.* Lingcod taken in the treaty fisheries are subject to an overall expected total lingcod catch of 250 mt.

(4) *Pacific whiting.* The tribal allocation for 2010 is 49,939 mt.

(5) *Pacific cod.* There is a tribal harvest guideline of 400 mt of Pacific cod. The tribes will manage their fisheries to stay within this harvest guideline.

(g) *Washington coastal tribal fisheries management measures*—(1) *Rockfish.* The tribes will require full retention of all overfished rockfish species and all other marketable rockfish species during treaty fisheries.

(2) *Thornyheads.* The tribes will manage their fisheries to the limited entry trip limits in place at the beginning on the year for both shortspine and longspine thornyheads as follows:

(i) *Trawl gear.* (A) Shortspine thornyhead cumulative trip limits are as follows:

(*1*) Small and large footrope trawl gear—17,000-lb (7,711-kg) per 2 months.

(*2*) Selective flatfish trawl gear—3,000-lb (1,361-kg) per 2 months.

(*3*) Multiple bottom trawl gear—3,000-lb (1,361-kg) per 2 months.

(B) Longspine thornyhead cumulative trip limits are as follows:

(*1*) Small and large footrope trawl gear—22,000-lb (9,979-kg) per 2 months.

(*2*) Selective flatfish trawl gear—5,000-lb (2,268-kg) per 2 months.

(*3*) Multiple bottom trawl gear—5,000-lb (2,268-kg) per 2 months.

(ii) *Fixed gear.* (A) Shortspine thornyhead cumulative trip limits are 2,000-lb (907-kg) per 2 months.

(B) Longspine thornyhead cumulative trip limits are 10,000-lb (4,536-kg) per 2 months.

(3) *Canary rockfish*—are subject to a 300-lb (136-kg) trip limit.

(4) *Yelloweye rockfish*—are subject to a 100-lb (45-kg) trip limit.

(5) *Yellowtail and widow rockfish.* The Makah Tribe will manage the midwater trawl fisheries as follows: yellowtail rockfish taken in the directed tribal mid-water trawl fisheries are subject to a cumulative limit of 180,000-lb (81,647-kg) per 2-month period for the entire fleet. Landings of widow rockfish must not exceed 10 percent of the weight of yellowtail rockfish landed, for a given vessel, throughout the year. These limits may be adjusted by the tribe inseason to minimize the incidental catch of canary rockfish and widow rockfish, provided the average 2-month cumulative yellowtail rockfish limit does not exceed 180,000-lb (81,647-kg) for the fleet.

(6) *Other rockfish.* Other rockfish, including minor nearshore, minor shelf, and minor slope rockfish groups are subject to a 300-lb (136-kg) trip limit per species or species group, or to the non-tribal limited entry trip limit for those species if those limits are less restrictive than 300-lb (136 kg) per trip.

(7) *Flatfish and other fish.* Treaty fishing vessels using bottom trawl gear are subject to the limits applicable to the non-tribal limited entry trawl fishery for Dover sole, English sole, rex sole, arrowtooth flounder, and other flatfish in place at the beginning of the season. For Dover sole and arrowtooth flounder, the limited entry trip limits in place at the beginning of the season will be combined across periods and the fleet to create a cumulative harvest target. The limits available to individual vessels will then be adjusted inseason to stay within the overall harvest target as well as estimated impacts to overfished species. For petrale sole, treaty fishing vessels are restricted to a 50,000-lb (22,680 kg) per 2 month limit for the entire year. Trawl vessels are restricted to using small footrope trawl gear.

(8) *Pacific whiting.* Tribal whiting processed at-sea by non-tribal vessels, must be transferred within the tribal U&A from a member of a Pacific Coast treaty Indian tribe fishing under this section.

(9) *Spiny dogfish.* The tribes will manage their spiny dogfish fishery within the limited entry trip limits for the non-tribal fisheries.

(10) *Groundfish without a tribal allocation.* Makah tribal members may use midwater trawl gear to take and retain groundfish for which there is no tribal allocation and will be subject to the trip landing and frequency and size limits applicable to the limited entry fishery.

(11) *EFH.* Measures implemented to minimize adverse impacts to groundfish EFH, as described in § 660.12 of this

subpart, do not apply to tribal fisheries in their U&A fishing areas.

§ 660.55 Allocations.

(a) *General.* An allocation is the apportionment of a harvest privilege for a specific purpose, to a particular person, group of persons, or fishery sector. The opportunity to harvest Pacific Coast groundfish is allocated among participants in the fishery when the OYs for a given year are established in the biennial harvest specifications. For certain species, primarily trawl-dominant species, beginning with the 2011–2012 biennial specifications process, separate allocations for the trawl fishery and nontrawl fishery (which for this purpose includes limited entry fixed gear, open access, and recreational fisheries) will be established biennially or annually using the standards and procedures described in Chapter 6 of the PCGFMP. Chapter 6 of the PCGFMP provides the allocation structure and percentages for species allocated between the trawl and nontrawl fisheries. For other species and/or areas, separate allocations for the limited entry and open access fisheries will be established using the procedures described in Chapters 6 and 11 of the PCGFMP and this subpart. Allocation of sablefish north of 36° N. lat. is described in paragraph (h) of this section and in the PCGFMP. Allocation of Pacific whiting is described in paragraph (i) of this section and in the PCGFMP. Allocation of black rockfish is described in paragraph (l) of this section. Allocation of Pacific halibut bycatch is described in paragraph (m) of this section. Allocations not specified in the PCGFMP are established in regulation through the biennial harvest specifications and are listed in Tables 1 a through d and Tables 2 a through d of this subpart.

(b) *Fishery harvest guidelines and reductions made prior to fishery allocations.* Beginning with the 2011–2012 biennial specifications process and prior to the setting of fishery allocations, the OY is reduced by the Pacific Coast treaty Indian tribal harvest (allocations, set-asides, and estimated harvest under regulations at § 660.50); projected scientific research catch of all groundfish species, estimates of fishing mortality in non-groundfish fisheries and, as necessary, set-asides for EFPs. The remaining amount after these deductions is the fishery harvest guideline or quota. (**note:** recreational estimates are not deducted here).

(1) Pacific Coast treaty Indian tribal allocations, set-asides, and regulations are specified during the biennial harvest specifications process and are found at § 660.50 and in Tables 1a and 2a of this subpart.

(2) Scientific research catch results from scientific research activity as defined in regulations at 50 CFR 600.10.

(3) Estimates of fishing mortality in non-groundfish fisheries are based on historical catch and projected fishing activities.

(4) EFPs are authorized and governed by § 660.60(f).

(c) *Trawl/Nontrawl allocations.* (1) Beginning with the 2011–2012 biennial specifications process, the fishery harvest guideline or quota, may be divided into allocations for groundfish trawl and nontrawl (limited entry fixed gear, open access, and recreational) fisheries. IFQ species not listed in the table below will be allocated between the trawl and nontrawl fisheries through the biennial harvest specifications process. Species/species groups and areas allocated between the trawl and nontrawl fisheries listed in Chapter 6, Table 6–1 of the PCGFMP are allocated based on the percentages that follow:

ALLOCATION PERCENTAGES FOR LIMITED ENTRY TRAWL AND NON-TRAWL SECTORS SPECIFIED FOR FMP GROUNDFISH STOCKS AND STOCK COMPLEXES

Stock or complex	All non-treaty LE trawl sectors (percent)	All non-treaty non-trawl sectors (percent)
Lingcod	45	55
Pacific Cod	95	5
Sablefish S. of 36° N. lat.	42	58
PACIFIC OCEAN PERCH	95	5
WIDOW	91	9
Chilipepper S. of 40°10′ N. lat.	75	25
Splitnose S. of 40°10′ N. lat.	95	5
Yellowtail N. of 40°10′ N. lat.	88	12
Shortspine N. of 34°27′ N. lat.	95	5
Shortspine S. of 34°27′ N. lat.	50 mt	Remaining Yield
Longspine N. of 34°27′ N. lat.	95	5
DARKBLOTCHED	95	5
Minor Slope RF North of 40°10′ N. lat.	81	18
Minor Slope RF South of 40°10′ N. lat.	63	37
Dover Sole	95	5
English Sole	95	5
Petrale Sole	95	5
Arrowtooth Flounder	95	5
Starry Flounder	50	50
Other Flatfish	90	10

(i) *Trawl fishery allocation.* The allocation for the limited entry trawl fishery is derived by applying the trawl allocation percentage by species/species group and area as specified in paragraph (c) of this section and as specified during the biennial harvest specifications process to the fishery harvest guideline for that species/species group and area. For IFQ species other than darkblotched rockfish, Pacific Ocean Perch, and widow rockfish, the trawl allocation will be further subdivided among the trawl sectors (MS, C/P, and IFQ) as specified in §§ 660.140, 660.150, and 660.160 of subpart D. For darkblotched rockfish, Pacific Ocean Perch, and widow

rockfish, the trawl allocation is further subdivided among the trawl sectors (MS, C/P, and IFQ) as follows:

(A) *Darkblotched rockfish.* Allocate 9% or 25 mt, whichever is greater, of the total trawl allocation of darkblotched rockfish to the whiting fisheries (MS, C/P, and IFQ combined). The distribution of the whiting trawl allocation of darkblotched to each sector (MS, C/P, and IFQ) will be done pro rata relative to the sectors' whiting allocation. After deducting allocations for the whiting fisheries, allocate the remainder of the trawl allocation to the non-whiting fishery.

(B) *Pacific Ocean Perch (POP).* Allocate 17% or 30 mt, whichever is greater, of the total trawl allocation of Pacific ocean perch to the whiting fisheries (MS, C/P, and IFQ combined). The distribution of the whiting trawl allocation of POP to each sector (MS, C/P, and IFQ) will be done pro rata relative to the sectors' whiting allocation. After deducting allocations for the whiting fisheries, allocate the remainder of the trawl allocation to the non-whiting fishery.

(C) *Widow rockfish.* Allocate 52% of the total trawl allocation of widow rockfish to the whiting sectors if the stock is under rebuilding or 10% of the total trawl allocation or 500 mt of the trawl allocation to the whiting sectors, whichever is greater, if the stock is rebuilt. The latter allocation scheme automatically kicks in when widow rockfish is declared rebuilt. The distribution of the whiting trawl allocation of widow to each sector (MS, C/P, and IFQ) will be done pro rata relative to the sectors' whiting allocation. After deducting allocations for the whiting fisheries, allocate the remainder of the trawl allocation to the non-whiting fishery.

(ii) *Nontrawl fishery allocation.* The allocation for the nontrawl fishery is the fishery harvest guideline minus the allocation of the species/species group and area to the trawl fishery. These amounts will equal the nontrawl allocation percentage or amount by species for species listed in paragraph (c) of this section and the nontrawl allocation percentage from the biennial harvest specifications for other IFQ species. The nontrawl allocation will be shared between the limited entry fixed gear, open access, and recreational fisheries as specified through the biennial harvest specifications process and consistent with allocations in the PCGFMP.

(2) [Reserved]

(d) *Commercial harvest guidelines.* Beginning with the 2011–2012 biennial specifications process, to derive the commercial harvest guideline, the fishery harvest guideline is further reduced by the recreational set-asides. The commercial harvest guideline is then allocated between the limited entry fishery (both trawl and fixed gear) and the directed open access fishery, as appropriate.

(e) *Limited Entry (LE)/Open Access (OA) Allocations*—(1) *LE/OA allocation percentages.* If a species is declared overfished, the open access/limited entry allocation may be suspended for the duration of the rebuilding plan. The allocations between the limited entry and open access fisheries are based on standards from the PCGFMP.

(2) *Species with LE/OA allocations.* For species not listed in paragraph (c) of this section, the allocation between the limited entry (both trawl and fixed gear) and the open access fisheries is determined by applying the percentage for those species with a LE/OA allocation to the commercial harvest guideline plus the amount set-aside for the non-groundfish fisheries.

(i) *Limited entry allocation.* The allocation for the limited entry fishery is the commercial harvest guideline minus any allocation to the directed open access fishery.

(ii) *Open access allocation.* The allocation for the open access fishery is derived by applying the open access allocation percentage to the annual commercial harvest guideline or quota plus the non-groundfish fishery (*i.e.,* incidental open access fishery) amount described in paragraph (b) of this section. The result is the total open access allocation. The portion that is set-aside for the non-groundfish fisheries is deducted and the remainder is the directed open access portion. For management areas or stocks for which quotas or harvest guidelines for a stock are not fully utilized, no separate allocation will be established for the open access fishery until it is projected that the allowable catch for a species will be reached.

(A) *Open access allocation percentage.* For each species with a harvest guideline or quota, the initial open access allocation percentage is calculated by:

(*1*) Computing the total catch for that species during the window period (July 11, 1984 through August 1, 1988) for the limited entry program by any vessel that did not initially receive a limited entry permit.

(*2*) Dividing that amount by the total catch during the window period by all gear.

(*3*) The guidelines in this paragraph apply to recalculation of the open access allocation percentage. Any recalculated allocation percentage will be used in calculating the following biennial fishing period's open access allocation.

(B) [Reserved]

(f) *Catch accounting.* Catch accounting refers to how the catch in a fishery is monitored against the allocations described in this section. For species with trawl/nontrawl allocations, catch of those species are counted against the trawl/nontrawl allocations as explained in paragraph (f)(1) of this section. For species with limited entry/open access allocations in a given biennial cycle, catch of those species are counted against the limited entry/open access allocations as explained in paragraph (f)(2) of this section.

(1) *Between the trawl and nontrawl fisheries*—(i) *Catch accounting for the trawl allocation.* Any groundfish caught by a vessel registered to a limited entry trawl endorsed permit will be counted against the trawl allocation while they are declared in to a groundfish limited entry trawl fishery and while the applicable trawl fishery listed in subpart D of this part for that vessel's limited entry permit is open.

(ii) *Catch accounting for the nontrawl allocation.* All groundfish caught by a vessel not registered to a limited entry permit and not fishing in the non-groundfish fishery will be counted against the nontrawl allocation. All groundfish caught by a vessel registered to a limited entry permit when the fishery for a vessel's limited entry permit has closed or they are not declared in to a limited entry fishery, will be counted against the nontrawl allocation, unless they are declared in to a non-groundfish fishery. Catch by vessels fishing in the non-groundfish fishery, as defined at § 660.11, will be accounted for in the estimated mortality in the non-groundfish fishery that is deducted from the OY.

(2) *Between the limited entry and open access fisheries.* Any groundfish caught by a vessel with a limited entry permit will be counted against the limited entry allocation while the limited entry fishery for that vessel's limited entry gear is open. When the fishery for a vessel's limited entry gear has closed, groundfish caught by that vessel with open access gear will be counted against the open access allocation. All groundfish caught by vessels without limited entry permits will be counted against the open access allocation.

(g) *Recreational fisheries.* Recreational fishing for groundfish is outside the scope of, and not affected by, the regulations governing limited entry and open access fisheries. Certain amounts of groundfish will be set aside for the

recreational fishery during the biennial specifications process. These amounts will be estimated prior to dividing the commercial harvest guideline between the limited entry and open access fisheries.

(h) *Sablefish Allocations (north of 36° N. lat.)*—(1) *Tribal-nontribal allocation.* The sablefish allocation to Pacific coast treaty Indian tribes is identified at § 660.50(f)(2), subpart C. The remainder is available to the nontribal commercial fishery (limited entry and open access).

(2) *Between the limited entry and open access fisheries.* Sablefish is allocated between the limited entry and open access fisheries according to the procedure described in Chapter 6 of the PCGFMP.

(3) *Between the limited entry trawl and limited entry fixed gear fisheries.* The limited entry sablefish allocation is further allocated 58 percent to the trawl fishery and 42 percent to the limited entry fixed gear (longline and pot/trap) fishery.

(4) *Between the limited entry fixed gear primary season and daily trip limit fisheries.* Within the limited entry fixed gear fishery allocation, 85 percent is reserved for the primary season described in § 660.231, subpart E, leaving 15 percent for the limited entry daily trip limit fishery described in § 660.232, subpart E.

(5) *Ratios between tiers for sablefish-endorsed limited entry permits.* The Regional Administrator will biennially or annually calculate the size of the cumulative trip limit for each of the three tiers associated with the sablefish endorsement such that the ratio of limits between the tiers is approximately 1:1.75:3.85 for Tier 3:Tier 2:Tier 1, respectively. The size of the cumulative trip limits will vary depending on the amount of sablefish available for the primary fishery and on estimated discard mortality rates within the fishery. The size of the cumulative trip limits for the three tiers in the primary fishery will be announced in § 660.231(b)(3), subpart E.

(i) *Pacific whiting allocation.* The allocation structure and percentages for Pacific whiting are described in the PCGFMP.

(1) Annual treaty tribal Pacific whiting allocations are provided in § 660.50, subpart C.

(2) The commercial harvest guideline for Pacific whiting is allocated among three sectors, as follows: 34 percent for the catcher/processor sector; 24 percent for the mothership sector; and 42 percent for the Shorebased IFQ Program. No more than 5 percent of the shorebased allocation may be taken and retained south of 42° N. lat. before the start of the primary Pacific whiting season north of 42° N. lat. Specific sector allocations for a given calendar year are found in Tables 1a and 2a of this subpart. Set asides for other species for the at-sea whiting fishery for a given calendar year are found in Tables 1d and 2d of this subpart.

(j) *Fishery set-asides.* Annual set-asides are not formal allocations but they are amounts which are not available to the other fisheries during the fishing year. For the catcher/processor and mothership sectors of the at-sea Pacific whiting fishery, set-asides will be deducted from the limited entry trawl fishery allocation. Set-aside amounts will be specified in Tables 1a through 2d of this subpart and may be adjusted through the biennial harvest specifications and management measures process.

(k) *Exempted fishing permit set-asides.* Annual set-asides for EFPs described at § 660.60(f), will be deducted from the OY. Set-aside amounts will be adjusted through the biennial harvest specifications and management measures process.

(l) *Black rockfish harvest guideline.* The commercial tribal harvest guideline for black rockfish off Washington State is specified at § 660.50(f)(1), subpart C.

(m) *Pacific halibut bycatch allocation.* The Pacific halibut fishery off Washington, Oregon and California (Area 2A in the halibut regulations) is managed under regulations at 50 CFR part 300, subpart E. Beginning with the 2011–2012 biennial specifications process, the PCGFMP sets a trawl mortality bycatch limit for legal and sublegal halibut at 15 percent of the Area 2A constant exploitation yield (CEY) for legal size halibut, not to exceed 130,000 pounds for the first four years of trawl rationalization and not to exceed 100,000 pounds starting in the fifth year. This total bycatch limit may be adjusted downward or upward through the biennial specifications and management measures process. Part of the overall total catch limit is a set-aside of 10 mt of Pacific halibut, to accommodate bycatch in the at-sea Pacific whiting fishery and in the shoreside trawl fishery south of 40°10′ N Lat. (estimated to be approximately 5 mt each).

§ 660.60 Specifications and management measures.

(a) *General.* NMFS will establish and adjust specifications and management measures biennially or annually and during the fishing year. Management of the Pacific Coast groundfish fishery will be conducted consistent with the standards and procedures in the PCGFMP and other applicable law. The PCGFMP is available from the Regional Administrator or the Council. Regulations under this subpart may be promulgated, removed, or revised during the fishing year. Any such action will be made according to the framework standards and procedures in the PCGFMP and other applicable law, and will be published in the **Federal Register**.

(b) *Biennial actions.* The Pacific Coast Groundfish fishery is managed on a biennial, calendar year basis. Harvest specifications and management measures will be announced biennially, with the harvest specifications for each species or species group set for two sequential calendar years. In general, management measures are designed to achieve, but not exceed, the specifications, particularly optimum yields (harvest guidelines and quotas), fishery harvest guidelines, commercial harvest guidelines and quotas, limited entry and open access allocations, or other approved fishery allocations, and to protect overfished and depleted stocks. Management measures will be designed to take into account the co-occurrence ratios of target species with overfished species, and will select measures that will minimize bycatch to the extent practicable.

(c) *Routine management measures.* In addition to the catch restrictions in subparts D through G of this part, other catch restrictions that are likely to be adjusted on a biennial or more frequent basis may be imposed and announced by a single notification in the **Federal Register** if good cause exists under the APA to waive notice and comment, and if they have been designated as routine through the two-meeting process described in the PCGFMP. Routine management measures that may be revised during the fishing year via this process are implemented in paragraph (h) of this section, and in subparts D through G of this part, including Tables 1 (North) and 1 (South) of subpart D, Tables 2 (North) and 2 (South) of subpart E, Tables 3 (North) and 3 (South) of subpart F. Most trip, bag, and size limits, and area closures in the groundfish fishery have been designated "routine," which means they may be changed rapidly after a single Council meeting. Council meetings are held in the months of March, April, June, September, and November. Inseason changes to routine management measures are announced in the **Federal Register** pursuant to the requirements of the Administrative Procedure Act (APA). Changes to trip limits are effective at the times stated in the **Federal Register**. Once a change is

effective, it is illegal to take and retain, possess, or land more fish than allowed under the new trip limit. This means that, unless otherwise announced in the **Federal Register**, offloading must begin before the time a fishery closes or a more restrictive trip limit takes effect. The following catch restrictions have been designated as routine:

(1) *Commercial Limited Entry and Open Access Fisheries.* (i) Trip landing and frequency limits, size limits, all gear. Trip landing and frequency limits have been designated as routine for the following species or species groups: widow rockfish, canary rockfish, yellowtail rockfish, Pacific ocean perch, yelloweye rockfish, black rockfish, blue rockfish, splitnose rockfish, chilipepper rockfish, bocaccio, cowcod, 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; petrale sole, rex sole, arrowtooth flounder, Pacific sanddabs, and the flatfish complex, which is composed of those species plus any other flatfish species listed at § 660.11, subpart C; Pacific whiting; lingcod; Pacific cod; spiny dogfish; and "other fish" as a complex consisting of all groundfish species listed at § 660.11, subpart C 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 and size limits for species with those limits designated as routine may be imposed or adjusted on a biennial or more frequent basis for the purpose of keeping landings within the harvest levels announced by NMFS, and for the other purposes given in paragraphs (c)(1)(i)(A) and (B) of this section.

(A) *Trip landing and frequency limits.* 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, for the open access fishery only, to maintain landings at the historical proportions during the 1984–88 window period.

(B) *Size limits.* To protect juvenile fish; to extend the fishing season.

(ii) *Differential trip landing limits and frequency limits based on gear type, closed seasons, and bycatch limits.* 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, bycatch limits may be established and adjusted to be used to close the primary season for any sector of the Pacific whiting fishery described at § 660.131(b), before the sector's Pacific whiting allocation is achieved if the applicable bycatch limit is reached. Bycatch limit amounts are specified at § 660.131(b)(5), subpart D.

(iii) *Type of limited entry trawl gear on board.* Limits on the type of limited entry trawl gear on board a vessel may be imposed on a biennial or more frequent basis. Requirements and restrictions on limited entry trawl gear type are found at § 660.130, subpart D.

(2) *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.

(i) *Bag limits.* To spread the available catch over a large number of anglers; to protect and rebuild overfished species; to avoid waste.

(ii) *Size limits.* To protect juvenile fish; to protect and rebuild overfished species; to enhance the quality of the recreational fishing experience.

(iii) *Season duration restrictions.* 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.

(3) *All fisheries, all gear types, depth-based management measures.* Depth-based management measures, particularly the setting of closed areas known as Groundfish Conservation Areas, may be implemented in any fishery that takes groundfish directly or incidentally. Depth-based management measures are set using specific boundary lines that approximate depth contours with latitude/longitude waypoints found at § 660.70 through 660.74. Depth-based management measures and the setting of closed areas may be used: to protect and rebuild overfished stocks, to prevent the overfishing of any groundfish species by minimizing the direct or incidental catch of that species, to minimize the incidental harvest of any protected or prohibited species taken in the groundfish fishery, to extend the fishing season; for the commercial fisheries, to minimize disruption of traditional fishing and marketing patterns; 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.

(d) *Automatic actions.* Automatic management actions may be initiated by the NMFS Regional Administrator without prior public notice, opportunity to comment, or a Council meeting. These actions are nondiscretionary, and the impacts must have been taken into account prior to the action. Unless otherwise stated, a single notice will be published in the **Federal Register** making the action effective if good cause exists under the APA to waive notice and comment.

(1) Automatic actions are used in the Pacific whiting fishery to:

(i) Close sectors of the fishery or to reinstate trip limits in the shore-based fishery when a whiting harvest guideline, commercial harvest guideline, or a sector's allocation is reached, or is projected to be reached;

(ii) Close all sectors or a single sector of the fishery when a bycatch limit is reached or projected to be reached;

(iii) Reapportion unused Pacific whiting allocation to other sectors of the fishery;

(iv) Reapportion unused bycatch limit species to other sectors of the Pacific whiting fishery.

(v) Implement the Ocean Salmon Conservation Zone, described at § 660.131(c)(3), subpart D, when NMFS projects the Pacific whiting fishery may take in excess of 11,000 Chinook within a calendar year.

(vi) Implement Pacific Whiting Bycatch Reduction Areas, described at § 660.131(c)(4), subpart D, when NMFS projects a sector-specific bycatch limit will be reached before the sector's whiting allocation.

(2) [Reserved].

(e) *Prohibited Species.* Groundfish species or species groups under the PCGFMP for which quotas have been achieved and/or the fishery closed are prohibited species. In addition, the following are prohibited species:

(1) Any species of salmonid.

(2) Pacific halibut.

(3) Dungeness crab caught seaward of Washington or Oregon.

(f) *Exempted Fishing Permits (EFP).* (1) The Regional Administrator may issue EFPs under regulations at § 660.30, subpart C, for compensation

with fish for collecting resource information. Such EFPs may include the collecting of scientific samples of groundfish species that would otherwise be prohibited for retention.

(2) The Regional Administrator may also issue EFPs under regulations at 50 CFR part § 600.745 for limited testing, public display, data collection, exploratory, health and safety, environmental cleanup, and/or hazard removal purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited.

(3) U.S. vessels operating under an EFP are subject to restrictions in §§ 660.10 through 660.79, unless otherwise provided in the permit.

(g) *Applicability.* Groundfish species harvested in the territorial sea (0–3 nm) will be counted toward the catch limitations in Tables 1a through 2d of this subpart, and those specified in subparts D through G, including Tables 1 (North) and 1 (South) of subpart D, Tables 2 (North) and 2 (South) of subpart E, Tables 3 (North) and 3 (South) of subpart F.

(h) *Fishery restrictions*—(1) *Commercial trip limits and recreational bag and boat limits.* Commercial trip limits and recreational bag and boat limits defined in Tables 1a through 2d of this subpart, and those specified in subparts D through G of this part, including Tables 1 (North) and 1 (South) of subpart D, Tables 2 (North) and 2 (South) of subpart E, Tables 3 (North) and 3 (South) of subpart F must not be exceeded.

(2) *Landing.* As stated at § 660.11, subpart C (in the definition of "Landing"), once the offloading of any species begins, all fish aboard the vessel are counted as part of the landing and must be reported as such. Transfer of fish at sea is prohibited under § 660.12, subpart C, unless a vessel is participating in the primary whiting fishery as part of the mothership or catcher/processor sectors, as described at § 660.131(a), subpart D.

(3) *Fishing ahead.* Unless the fishery is closed, a vessel that has landed its cumulative or daily limit may continue to fish on the limit for the next legal period, so long as no fish (including, but not limited to, groundfish with no trip limits, shrimp, prawns, or other nongroundfish species or shellfish) are landed (offloaded) until the next legal period. Fishing ahead is not allowed during or before a closed period.

(4) *Weights and percentages.* All weights are round weights or round-weight equivalents unless otherwise specified. Percentages are based on round weights, and, unless otherwise specified, apply only to legal fish on board.

(5) *Size limits, length measurement, and weight limits.* (i) *Size limits and length measurement.* Unless otherwise specified, size limits in the commercial and recreational groundfish fisheries apply to the "total length," which is the longest measurement of the fish without mutilation of the fish or the use of force to extend the length of the fish. No fish with a size limit may be retained if it is in such condition that its length has been extended or cannot be determined by these methods. For conversions not listed here, contact the state where the fish will be landed. Washington state regulations require all fish with a size limit landed into Washington to be landed with the head on.

(A) *Whole fish.* For a whole fish, total length is measured from the tip of the snout (mouth closed) to the tip of the tail in a natural, relaxed position.

(B) "*Headed*" *fish.* For a fish with the head removed ("headed"), the length is measured from the origin of the first dorsal fin (where the front dorsal fin meets the dorsal surface of the body closest to the head) to the tip of the upper lobe of the tail; the dorsal fin and tail must be left intact.

(C) *Filets.* A filet is the flesh from one side of a fish extending from the head to the tail, which has been removed from the body (head, tail, and backbone) in a single continuous piece. Filet lengths may be subject to size limits for some groundfish taken in the recreational fishery off California (see subpart G of this part). A filet is measured along the length of the longest part of the filet in a relaxed position; stretching or otherwise manipulating the filet to increase its length is not permitted.

(ii) *Weight limits and conversions.* The weight limit conversion factor established by the state where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. Weight conversions provided herein are those conversions currently in use by the States of Washington, Oregon and California and may be subject to change by those states. Fishery participants should contact fishery enforcement officials in the state where the fish will be landed to determine that state's official conversion factor. To determine the round weight, multiply the processed weight times the conversion factor.

(iii) *Sablefish.* The following conversion applies to both the limited entry and open access fisheries when trip limits are in effect for those fisheries. For headed and gutted (eviscerated) sablefish the weight conversion factor is 1.6 (multiply the headed and gutted weight by 1.6 to determine the round weight).

(iv) *Lingcod.* The following conversions apply in both limited entry and open access fisheries.

(A) North of 42° N. lat., for lingcod with the head removed, the minimum size limit is 18 inches (46 cm), which corresponds to 22 inches (56 cm) total length for whole fish.

(B) South of 42° N. lat., for lingcod with the head removed, the minimum size limit is 19.5 inches (49.5 cm), which corresponds to 24 inches (61 cm) total length for whole fish.

(C) The weight conversion factor for headed and gutted lingcod is 1.5. The conversion factor for lingcod that has only been gutted with the head on is 1.1.

(6) *Sorting.* Trawl fishery sorting requirements are specified at § 660.130(d), subpart D. Limited entry fixed gear fishery sorting requirements are specified at § 660.230(c), subpart E, and Open access fishery sorting requirements are specified at § 660.330(c), subpart F.

(7) *Crossover provisions.* NMFS uses different types of management areas for West Coast groundfish management. One type of management area is the north-south management area, a large ocean area with northern and southern boundary lines wherein trip limits, seasons, and conservation areas follow a single theme. Within each north-south management area, there may be one or more conservation areas, defined at § 660.11 and §§ 660.60 through 660.74, subpart C. The provisions within this paragraph apply to vessels operating in different north-south management areas. Crossover provisions also apply to vessels that fish in both the limited entry and open access fisheries, or that use open access non-trawl gear while registered to limited entry fixed gear permits. Fishery specific crossover provisions can be found in subparts D through F of this part.

(i) *Operating in north-south management areas with different trip limits.* Trip limits for a species or a species group may differ in different north-south management areas along the coast. The following crossover provisions apply to vessels operating in different geographical areas that have different cumulative or "per trip" trip limits for the same species or species group. Such crossover provisions do not apply to species that are subject only to daily trip limits, or to the trip limits for black rockfish off Washington, as described at § 660.230(d), subpart E and § 660.330(e), subpart F.

(A) *Going from a more restrictive to a more liberal area.* If a vessel takes and retains any groundfish species or species group of groundfish in an area where a more restrictive trip limit applies before fishing in an area where a more liberal trip limit (or no trip limit) applies, then that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(B) *Going from a more liberal to a more restrictive area.* If a vessel takes and retains a groundfish species or species group in an area where a higher trip limit or no trip limit applies, and takes and retains, possesses or lands the same species or species group in an area where a more restrictive trip limit applies, that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(C) *Operating in two different areas where a species or species group is managed with different types of trip limits.* During the fishing year, NMFS may implement management measures for a species or species group that set different types of trip limits (for example, per trip limits versus cumulative trip limits) for different areas. If a vessel fishes for a species or species group that is managed with different types of trip limits in two different areas within the same cumulative limit period, then that vessel is subject to the most restrictive overall cumulative limit for that species, regardless of where fishing occurs.

(D) *Minor rockfish.* Several rockfish species are designated with species-specific limits on one side of the 40°10′ N. lat. management line, and are included as part of a minor rockfish complex on the other side of the line. A vessel that takes and retains fish from a minor rockfish complex (nearshore, shelf, or slope) on both sides of a management line during a single cumulative limit period is subject to the more restrictive cumulative limit for that minor rockfish complex during that period.

(*1*) If a vessel takes and retains minor slope rockfish north of 40°10′ N. lat., that vessel is also permitted to take and retain, possess or land splitnose rockfish up to its cumulative limit south of 40°10′ N. lat., even if splitnose rockfish were a part of the landings from minor slope rockfish taken and retained north of 40°10′ N. lat.

(*2*) If a vessel takes and retains minor slope rockfish south of 40°10′ N. lat., that vessel is also permitted to take and retain, possess or land POP up to its cumulative limit north of 40°10′ N. lat., even if POP were a part of the landings from minor slope rockfish taken and retained south of 40°10′ N. lat.

(ii) *Operating in both limited entry and open access fisheries.* Open access trip limits apply to any fishing conducted with open access gear, even if the vessel has a valid limited entry permit with an endorsement for another type of gear. A vessel that operates in both the open access and limited entry fisheries is not entitled to two separate trip limits for the same species. If a vessel has a limited entry permit and uses open access gear, but the open access limit is smaller than the limited entry limit, the open access limit may not be exceeded and counts toward the limited entry limit. If a vessel has a limited entry permit and uses open access gear, but the open access limit is larger than the limited entry limit, the smaller limited entry limit applies, even if taken entirely with open access gear.

§ 660.65 Groundfish harvest specifications.

Fishery specifications include ABCs, the designation of OYs (which may be represented by harvest guidelines (HGs) or quotas for species that need individual management) and the allocation of fishery HGs between the trawl and nontrawl segments of the fishery, and the allocation of commercial HGs between the open access and limited entry segments of the fishery. These specifications include fish caught in state ocean waters (0–3 nm offshore) as well as fish caught in the EEZ (3–200 nm offshore). Harvest specifications are provided at Tables 1a through 2d of this subpart.

TABLE 1d TO PART 660, SUBPART C—2011 AT-SEA WHITING FISHERY SET-ASIDES

Species or species complex	Set-aside (mt)
Lingcod	6
Pacific Cod	5
Pacific Whiting	NA
Sablefish N. of 36°	50
Sablefish S. of 36°	NA
PACIFIC OCEAN PERCH	Allocation
WIDOW ROCKFISH	Allocation
Chilipepper S. of 40°10′	NA
Splitnose S. of 40°10′	NA
Yellowtail N. of 40°10′	300
Shortspine Thornyhead N. of 34°27′.	20
Shortspine Thornyhead S. of 34°27′.	NA
Longspine Thornyhead N. of 34°27′.	5
Longspine Thornyhead S. of 34°27′.	NA
DARKBLOTCHED	Allocation
Minor Slope RF N.	55
Minor Slope RF S.	NA
Dover Sole	5
English Sole	5
Petrale Sole—coastwide	5
Arrowtooth Flounder	10
Starry Flounder	5
Other Flatfish	20
CANARY ROCKFISH	Allocation
BOCACCIO	NA
COWCOD	NA
YELLOWEYE	0
Black Rockfish	NA
Blue Rockfish (CA)	NA
Minor Nearshore RF N.	NA
Minor Nearshore RF S.	NA
Minor Shelf RF N.	35
Minor Shelf RF S.	NA
California scorpionfish	NA
Cabezon (off CA only)	NA
Other Fish	520
Longnose Skate	5
Pacific Halibut	10 [a]

[a] As stated in § 660.55(m), the Pacific halibut set-aside is 10 mt, to accommodate by-catch in the at-sea Pacific whiting fisheries and in the shorebased trawl sector south of 40°10′ N lat. (estimated to be approximately 5 mt each).

TABLE 2d TO PART 660, SUBPART C—2012 AT-SEA WHITING FISHERY SET-ASIDES

Species or species complex	Set-aside (mt)
Lingcod	6
Pacific Cod	5
Pacific Whiting	NA
Sablefish N. of 36°	50
Sablefish S. of 36°	NA
PACIFIC OCEAN PERCH	Allocation
WIDOW ROCKFISH	Allocation
Chilipepper S. of 40°10′	NA
Splitnose S. of 40°10′	NA
Yellowtail N. of 40°10′	300
Shortspine Thornyhead N. of 34°27′.	20
Shortspine Thornyhead S. of 34°27′.	NA
Longspine Thornyhead N. of 34°27′.	5
Longspine Thornyhead S. of 34°27′.	NA
DARKBLOTCHED	Allocation
Minor Slope RF N.	55
Minor Slope RF S.	NA
Dover Sole	5
English Sole	5
Petrale Sole—coastwide	5
Arrowtooth Flounder	10
Starry Flounder	5
Other Flatfish	20
CANARY ROCKFISH	Allocation
BOCACCIO	NA
COWCOD	NA
YELLOWEYE	0

TABLE 2d TO PART 660, SUBPART C—2012 AT-SEA WHITING FISHERY SET-ASIDES—Continued

Species or species complex	Set-aside (mt)
Black Rockfish	NA
Blue Rockfish (CA)	NA
Minor Nearshore RF N.	NA
Minor Nearshore RF S.	NA
Minor Shelf RF N.	35
Minor Shelf RF S.	NA
California scorpionfish	NA
Cabezon (off CA only)	NA
Other Fish	520
Longnose Skate	5
Pacific Halibut	10 [a]

[a] As stated in § 660.55(m), the Pacific halibut set-aside is 10 mt, to accommodate bycatch in the at-sea Pacific whiting fisheries and in the shorebased trawl sector south of 40°10′ N lat. (estimated to be approximately 5 mt each).

Subpart D—West Coast Groundfish—Limited Entry Trawl Fisheries

§ 660.100 Purpose and scope.

This subpart covers the Pacific Coast Groundfish limited entry trawl fishery. Under the trawl rationalization program, the limited entry trawl fishery consists of the shorebased IFQ Program, the Mothership Coop Program, and the C/P Coop Program.

§ 660.111 Trawl fishery—definitions.

These definitions are specific to the limited entry trawl fisheries covered in this subpart. General groundfish definitions are found at § 660.11, subpart C.

Catch history assignment means a percentage of the mothership sector allocation of Pacific whiting based on a limited entry permit's qualifying history and which is specified on the MS/CV-endorsed limited entry permit.

Catcher/processor coop means a harvester group that includes all eligible catcher/processor at-sea Pacific whiting endorsed permit owners who voluntarily form a coop and who manage the catcher/processor-specified allocations through private agreements and contracts.

Catcher/Processor coop program or C/P coop program means the C/P Coop Program described at § 660.160, subpart D.

Coop agreement means a private agreement between a group of MS/CV-endorsed limited entry permit owners or C/P-endorsed permit owners that contains all information specified at §§ 660.150 and 660.160, subpart D.

Coop member means a permit owner of an MS/CV-endorsed permit for the Mothership Program that is a party to the coop agreement, or a permit owner of a C/P-endorsed permit for the C/P Program that is legally obligated to the coop.

Coop permit means a Federal permit required to participate as a Pacific whiting coop in the catcher/processor or mothership sectors.

Designated coop manager means an individual appointed by a permitted coop that is identified in the coop agreement and is responsible for actions described at §§ 660.150 and 660.160, subpart D.

Individual fishing quota (IFQ) means a Federal permit to harvest a quantity of fish, expressed as a percentage of the total allowable catch of a fishery, that may be received or held for exclusive use by a person. An IFQ is a harvest privilege that may be revoked at any time in accordance with the Magnuson Act. IFQ species for the shorebased IFQ fishery are listed at § 660.140, subpart D.

IFQ first receivers mean persons who first receive, purchase, or take custody, control, or possession of catch onshore directly from a vessel that harvested the catch while fishing under the Shorebased IFQ Program described at § 660.140, subpart D.

IFQ landing means an offload of fish harvested under the Shorebased IFQ Program described at § 660.140, subpart D.

Inter-coop means two or more permitted coops that have submitted an accepted inter-coop agreement to NMFS that specifies a coordinated strategy for harvesting pooled allocations of Pacific whiting and non-whiting groundfish.

Inter-coop agreement means a written agreement between two or more permitted mothership coops and which contains private contractual arrangements for sharing catch and/or bycatch with one another.

Material change means, for the purposes of a coop agreement, a change to any of the required components of the coop agreement, defined at §§ 660.150 and 660.160, subpart D, which was submitted to NMFS during the application process for the coop permit.

Mothership coop means a group of MS/CV-endorsed limited entry permit owners that are authorized by means of a coop permit to jointly harvest and process from a single coop allocation.

Mothership coop program or MS coop program means the Mothership Coop Program described at § 660.150, subpart D, and includes both the coop and non-coop fisheries.

Mutual agreement exception means, for the purpose of § 660.150, subpart D, an agreement that allows the owner of a MS/CV-endorsed limited entry permit to withdraw the catcher vessel's obligation to a permitted mothership processor, when mutually agreed to with the mothership processor, and to deliver to a different permitted mothership processor.

Pacific halibut set-aside means an amount of Pacific halibut annually set aside for the at-sea whiting fisheries (mothership and C/P sectors) and which is based on the trawl allocation of Pacific whiting.

Pacific whiting IFQ fishery means a trip in which a vessel registered to a trawl-endorsed limited entry permit uses legal midwater groundfish trawl gear with a valid declaration for limited entry midwater trawl, Pacific whiting IFQ, as specified at § 660.13 (d)(5), subpart C, during the dates when the midwater Pacific whiting season is open.

Pacific whiting shoreside first receivers means persons who first receive, purchase, or take custody, control, or possession of Pacific whiting onshore directly from a Pacific whiting shoreside vessel.

Pacific whiting shoreside or shore-based fishery means Pacific whiting shoreside vessels and Pacific whiting shoreside first receivers.

Pacific whiting shoreside vessel means any vessel that fishes using midwater trawl gear to take, retain, possess and land 4,000-lb (1,814 kg) or more of Pacific whiting per fishing trip from the Pacific whiting shore-based sector allocation for delivery to a Pacific whiting shoreside first receiver during the primary season.

Processor obligation means an annual requirement for a MS/CV-endorsed limited entry permit to assign the amount of catch available from the permit's catch history assignment to a particular MS permit.

Quota pounds (QP) means the quotas, expressed in round weight of fish, that are issued annually to QS permit owners in the Shorebased IFQ Program based on the amount of QS they own and the amount of fish allocated to the shorebased IFQ fishery. QP have the same species/species group and area designations as the QS from which they are issued.

Quota share (QS) means the amount of fishing quota, for an individual species/species group and area, expressed as a percentage of the annual allocation of fish to the Shorebased IFQ Program. The QS is used as the basis for the annual calculation and allocation of a QS permit owner's QP in the Shorebased IFQ Program. Species for which QS will be issued for the Shorebased IFQ Program are listed at § 660.140, subpart D.

Shorebased IFQ program means the Shorebased IFQ Program described at § 660.140, subpart D.

Vessel account means an account held by the vessel owner where QP are registered for use by a vessel in the Shorebased IFQ Program.

Vessel limits means the maximum amount of QP a vessel can hold, acquire, and/or use during a calendar year. Vessel limits specify the maximum amount of QP that may be registered to a single vessel during the year (QP Vessel Limit) and, for some species, the maximum amount of unused QP registered to a vessel account at any one time (Unused QP Vessel Limit).

§ 660.112 Trawl fishery—prohibitions.

These prohibitions are specific to the limited entry trawl fisheries. General groundfish prohibitions are defined at § 660.12, subpart C. In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person or vessel to:

(a) *General*—(1) *Trawl gear endorsement.* Fish with groundfish trawl gear, or carry groundfish trawl gear on board a vessel that also has groundfish on board, unless the vessel is registered for use with a valid limited entry permit with a trawl gear endorsement, with the following exception.

(i) The vessel is in continuous transit from outside the fishery management area to a port in Washington, Oregon, or California;

(ii) The vessel is registered to a limited entry MS permit with a valid mothership fishery declaration, in which case trawl nets and doors must be stowed in a secured and covered manner, and detached from all towing lines, so as to be rendered unusable for fishing.

(2) *Sorting.* [Reserved]

(3) *Recordkeeping and reporting.* (i) Fail to comply with all recordkeeping and reporting requirements at § 660.13, subpart C; including failure to submit information, submission of inaccurate information, or intentionally submitting false information on any report required at § 660.13(d), subpart C.

(ii) Falsify or fail to make and/or file, retain or make available any and all reports of groundfish landings, containing all data, and in the exact manner, required by the regulation at § 660.13, subpart C, or § 660.113, subpart D.

(4) *Fishing in conservation areas with trawl gear.* (i) Operate any vessel registered to a limited entry permit with a trawl endorsement and trawl gear on board in an applicable GCA (defined at § 660.11, subpart C and § 660.130(e), subpart D), except for purposes of continuous transiting, with all groundfish trawl gear stowed in accordance with § 660.130(e)(4), subpart D or except as authorized in the groundfish management measures published at § 660.130, subpart D.

(ii) Fish with bottom trawl gear (defined at § 660.11, subpart C) anywhere within EFH seaward of a line approximating the 700-fm (1280-m) depth contour, as defined in § 660.76, subpart C. For the purposes of regulation, EFH seaward of 700-fm (1280-m) within the EEZ is described at § 660.75, subpart C.

(iii) Fish with bottom trawl gear (defined at § 660.11, subpart C) with a footrope diameter greater than 19 inches (48 cm) (including rollers, bobbins or other material encircling or tied along the length of the footrope) anywhere within EFH within the EEZ. For the purposes of regulation, EFH within the EEZ is described at § 660.75, subpart C.

(iv) Fish with bottom trawl gear (defined at § 660.11, subpart C) with a footrope diameter greater than 8 inches (20 cm) (including rollers, bobbins or other material encircling or tied along the length of the footrope) anywhere within the EEZ shoreward of a line approximating the 100-fm (183-m) depth contour (defined at § 660.73, subpart C).

(v) Fish with bottom trawl gear (defined at § 660.11, subpart C), within the EEZ in the following areas (defined at §§ 660.77 and 660.78, Subpart C): Olympic 2, Biogenic 1, Biogenic 2, Grays Canyon, Biogenic 3, Astoria Canyon, Nehalem Bank/Shale Pile, Siletz Deepwater, Daisy Bank/Nelson Island, Newport Rockpile/Stonewall Bank, Heceta Bank, Deepwater off Coos Bay, Bandon High Spot, Rogue Canyon.

(vi) Fish with bottom trawl gear (defined at § 660.11, subpart C), other than demersal seine, unless otherwise specified in this section or § 660.381, within the EEZ in the following areas (defined at § 660.79, subpart C): Eel River Canyon, Blunts Reef, Mendocino Ridge, Delgada Canyon, Tolo Bank, Point Arena North, Point Arena South Biogenic Area, Cordell Bank/Biogenic Area, Farallon Islands/Fanny Shoal, Half Moon Bay, Monterey Bay/Canyon, Point Sur Deep, Big Sur Coast/Port San Luis, East San Lucia Bank, Point Conception, Hidden Reef/Kidney Bank (within Cowcod Conservation Area West), Catalina Island, Potato Bank (within Cowcod Conservation Area West), Cherry Bank (within Cowcod Conservation Area West), and Cowcod EFH Conservation Area East.

(vii) Fish with bottom contact gear (defined at § 660.11, subpart C) within the EEZ in the following areas (defined at §§ 660.78 and 660.79, subpart C): Thompson Seamount, President Jackson Seamount, Cordell Bank (50-fm (91-m) isobath), Harris Point, Richardson Rock, Scorpion, Painted Cave, Anacapa Island, Carrington Point, Judith Rock, Skunk Point, Footprint, Gull Island, South Point, and Santa Barbara.

(viii) Fish with bottom contact gear (defined at § 660.11, subpart C), or any other gear that is deployed deeper than 500-fm (914-m), within the Davidson Seamount area (defined at § 660.79, subpart C).

(b) *Shorebased IFQ fishery.* [Reserved]

(c) *Mothership and Catcher/Processor Sectors.* [Reserved]

(d) *Mothership Coop Program (Coop And Non-Coop Fisheries).* [Reserved]

(e) *Catcher/Processor Coop Program.* [Reserved]

(f) *Pacific Whiting Fisheries*—(1) *Pacific whiting vessel license requirements prior to trawl rationalization.* Fish in any of the sectors of the whiting fishery described at § 660.131(a), subpart D, after May 11, 2009 using a vessel that is not registered for use with a sector-appropriate Pacific whiting vessel license under § 660.26, subpart C. After May 11, 2009, vessels are prohibited from fishing, landing, or processing primary season Pacific whiting with a catcher/processor, mothership or mothership catcher vessel that has no history of participation within that specific sector of the whiting fishery during the period from January 1, 1997, through January 1, 2007, or with a shoreside catcher vessels that has no history of participation within the shore-based sector of the whiting fishery during the period from January 1, 1994 through January 1, 2007, as specified in § 660.26(c), subpart C. For the purpose of this paragraph, "historic participation" for a specific sector is the same as the qualifying criteria listed in § 660.26(c), subpart C.

(i) If a Pacific whiting vessel license is registered for use with a vessel, fail to carry that license onboard the vessel registered for use with the license at any time the vessel is licensed. A photocopy of the license may not substitute for the license itself.

(ii) [Reserved].

(2) Process whiting in the fishery management area during times or in areas where at-sea processing is prohibited for the sector in which the vessel participates, unless:

(i) The fish are received from a member of a Pacific Coast treaty Indian tribe fishing under § 660.50, subpart C;

(ii) The fish are processed by a waste-processing vessel according to § 660.131(j), subpart D; or

(iii) The vessel is completing processing of whiting taken on board during that vessel's primary season.

(3) During times or in areas where at-sea processing is prohibited, take and retain or receive whiting, except as cargo or fish waste, on a vessel in the fishery management area that already has processed whiting on board. An exception to this prohibition is provided if the fish are received within the tribal U&A from a member of a Pacific Coast treaty Indian tribe fishing under § 660.50, subpart C.

(4) Fish as a mothership if that vessel operates in the same calendar year as a catcher/processor in the whiting fishery, according to § 660.131, subpart D.

(5) Operate as a waste-processing vessel within 48 hours of a primary season for whiting in which that vessel operates as a catcher/processor or mothership, according to § 660.131(j), subpart D.

(6) On a vessel used to fish for whiting, fail to keep the trawl doors on board the vessel, when taking and retention is prohibited under § 660.131(f), subpart D.

(7) Sort or discard any portion of the catch taken by a catcher vessel in the mothership sector prior to the catch being received on a mothership, and prior to the observer being provided access to the unsorted catch, with the exception of minor amounts of catch that are lost when the codend is separated from the net and prepared for transfer.

(8) *Pacific whiting shoreside first receivers.* (i) [Reserved].

(ii) Fail to sort fish received from a Pacific whiting shoreside vessel prior to first weighing after offloading as specified at § 660.131(k)(2), subpart D for the Pacific whiting fishery.

(iii) Process, sell, or discard any groundfish received from a Pacific whiting shoreside vessel that has not been weighed on a scale that is in compliance with requirements at § 660.131(k)(1)(i), subpart D, and accounted for on an electronic fish ticket with the identification number for the Pacific whiting shoreside vessel that delivered the fish.

(iv) Fail to weigh fish landed from a Pacific whiting shoreside vessel prior to transporting any fish from that landing away from the point of landing.

§ 660.113 Trawl fishery—recordkeeping and reporting.

General groundfish recordkeeping and reporting requirements are defined at § 660.13, subpart C. The following recordkeeping and reporting requirements are in addition to those and are specific to the limited entry trawl fisheries.

(a) *IFQ program.* [Reserved].

(b) *Mothership coop program (coop and non-coop fisheries).* [Reserved].

(c) *Catcher/processor coop program.* [Reserved].

(d) *Participants in the Pacific whiting shoreside fishery prior to trawl rationalization.* Reporting requirements defined in the following section are in addition to reporting requirements under applicable state law and requirements described at § 660.13, subpart C.

(1) *Reporting requirements for any Pacific whiting shoreside first receiver.*

(i) *Responsibility for compliance.* The Pacific whiting shoreside first receiver is responsible for compliance with all reporting requirements described in this paragraph.

(ii) *General requirements.* All records or reports required by this paragraph must: be maintained in English, be accurate, be legible, be based on local time, and be submitted in a timely manner as required in paragraph (d)(1)(iv)(E) of this section.

(iii) *Required information.* All Pacific whiting shoreside first receivers must provide the following types of information: date of landing, Pacific whiting shoreside vessel that made the delivery, gear type used, first receiver, round weights of species landed listed by species or species group including species with no value, number of salmon by species, number of Pacific halibut, and any other information deemed necessary by the Regional Administrator as specified on the appropriate electronic fish ticket form.

(iv) *Electronic fish ticket submissions.* The Pacific whiting shoreside first receiver must:

(A) Sort all fish, prior to first weighing, by species or species groups as specified at § 660.131(l)(2)(ii), subpart D.

(B) Include as part of each electronic fish ticket submission, the actual scale weight for each groundfish species as specified by requirements at § 660.131(l)(i), subpart D, and the Pacific whiting shoreside vessel identification number.

(C) Use for the purpose of submitting electronic fish tickets, and maintain in good working order, computer equipment as specified at § 660.15(d), subpart C;

(D) Install, use, and update as necessary, any NMFS-approved software described at § 660.15(d), subpart C;

(E) Submit a completed electronic fish ticket for every landing that includes 4,000-lb (1,814 kg) or more of Pacific whiting (round weight equivalent) no later than 24 hours after the date the fish are received, unless a waiver of this requirement has been granted under provisions specified below at paragraph (d)(1)(vii) of this section.

(v) *Revising a submitted electronic fish ticket submission.* In the event that a data error is found, electronic fish ticket submissions may be revised by resubmitting the revised form. Electronic fish tickets are to be used for the submission of final data. Preliminary data, including estimates of fish weights or species composition, shall not be submitted on electronic fish tickets.

(vi) *Retention of Records.* [Reserved].

(vii) *Waivers for submission of electronic fish tickets upon written request.* On a case-by-case basis, a temporary written waiver of the requirement to submit electronic fish tickets may be granted by the Assistant Regional Administrator or designee if he/she determines that circumstances beyond the control of a Pacific whiting shoreside first receiver would result in inadequate data submissions using the electronic fish ticket system. The duration of the waiver will be determined on a case-by-case basis.

(viii) Reporting requirements when a temporary waiver has been granted. Pacific whiting shoreside first receivers that have been granted a temporary waiver from the requirement to submit electronic fish tickets must submit on paper the same data as is required on electronic fish tickets within 24 hours of the date received during the period that the waiver is in effect. Paper state landing receipts must be sent by facsimile to NMFS, Northwest Region, Sustainable Fisheries Division, 206–526–6736 or by delivering it in person to 7600 Sand Point Way NE., Seattle, WA 98115. The requirements for submissions of paper tickets in this paragraph are separate from, and in addition to existing state requirements for landing receipts or fish receiving tickets.

(2) [Reserved].

§ 660.116 Trawl fishery—observer requirements.

(a) *Observer coverage requirements*—(1) *NMFS-certified observers.*

(i) A catcher/processor or mothership 125-ft (38.1-m) LOA or longer must carry two NMFS-certified observers, and a catcher/processor or mothership shorter than 125-ft (38.1-m) LOA must carry one NMFS-certified observer, each day that the vessel is used to take, retain, receive, land, process, or transport groundfish.

(ii) A Pacific whiting shoreside vessel that sorts catch at sea must carry one NMFS-certified observer, from the time the vessel leaves port on a trip in which the catch is sorted at sea to the time that all catch from that trip has been offloaded.

(2) *Catcher vessels.* When NMFS notifies the owner, operator, permit holder, or the manager of a catcher vessel, specified at § 660.16(c), Subpart C of any requirement to carry an observer, the catcher vessel may not be used to fish for groundfish without carrying an observer.

(i) *Notice of departure—basic rule.* At least 24 hours (but not more than 36 hours) before departing on a fishing trip, a vessel that has been notified by NMFS that it is required to carry an observer, or that is operating in an active sampling unit, must notify NMFS (or its designated agent) of the vessel's intended time of departure. Notice will be given in a form to be specified by NMFS.

(A) *Optional notice—weather delays.* A vessel that anticipates a delayed departure due to weather or sea conditions may advise NMFS of the anticipated delay when providing the basic notice described in paragraph (a)(2)(i) of this section. If departure is delayed beyond 36 hours from the time the original notice is given, the vessel must provide an additional notice of departure not less than 4 hours prior to departure, in order to enable NMFS to place an observer.

(B) *Optional notice—back-to-back fishing trips.* A vessel that intends to make back-to-back fishing trips (i.e., trips with less than 24 hours between offloading from one trip and beginning another), may provide the basic notice described in paragraph (a)(2)(i) of this section for both trips, prior to making the first trip. A vessel that has given such notice is not required to give additional notice of the second trip.

(ii) *Cease fishing report.* Within 24 hours of ceasing the taking and retaining of groundfish, vessel owners, operators, or managers must notify NMFS or its designated agent that fishing has ceased. This requirement applies to any vessel that is required to carry an observer, or that is operating in a segment of the fleet that NMFS has identified as an active sampling unit.

(b) *Waiver.* The Northwest Regional Administrator may provide written notification to the vessel owner stating that a determination has been made to temporarily waive coverage requirements because of circumstances that are deemed to be beyond the vessel's control.

(c) *Procurement of observer services by catcher/processors, motherships, and Pacific whiting shoreside vessels that sort at sea.* Owners of vessels required to carry observers under provisions at paragraph (a)(1)(i) or (ii) of this section must arrange for observer services from an observer provider permitted by the North Pacific Groundfish Observer Program under 50 CFR 679.50(i), except that:

(1) Vessels are required to procure observer services directly from NMFS when NMFS has determined and given notification that the vessel must carry NMFS staff or an individual authorized by NMFS in lieu of an observer provided by a permitted observer provider.

(2) Vessels are required to procure observer services directly from NMFS and a permitted observer provider when NMFS has determined and given notification that the vessel must carry NMFS staff or individuals authorized by NMFS, in addition to an observer provided by a permitted observer provider.

(d) *Vessel responsibilities.* An operator of a vessel required to carry one or more observer(s) must provide:

(1) *Accommodations and food.* Provide accommodations and food that are:

(i) *At-sea processors.* Equivalent to those provided for officers, engineers, foremen, deck-bosses or other management level personnel of the vessel.

(ii) *Catcher vessels.* Equivalent to those provided to the crew.

(2) *Safe conditions.* Maintain safe conditions on the vessel for the protection of observer(s) including adherence to all USCG and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel, and provisions at §§ 600.725 and 600.746 of this chapter.

(3) *Observer communications.* Facilitate observer communications by:

(i) *Observer use of equipment.* Allowing observer(s) to use the vessel's communication equipment and personnel, on request, for the entry, transmission, and receipt of work-related messages, at no cost to the observer(s) or the U.S. or designated agent.

(ii) *Functional equipment.* Ensuring that the vessel's communications equipment, used by observers to enter and transmit data, is fully functional and operational.

(iii) *Hardware and software.* Pacific whiting vessels that are required to carry one or more NMFS-certified observers under provisions at paragraphs (a)(1)(i) or (ii) of this section must provide hardware and software pursuant to regulations at 50 CFR 679.50(g)(1)(iii)(B) and 50 CFR 679.50(g)(2)(iii), as follows:

(A) Providing for use by the observer a personal computer in working condition that contains a full Pentium 120 Mhz or greater capacity processing chip, at least 32 megabytes of RAM, at least 75 megabytes of free hard disk storage, a Windows 9x or NT compatible operating system, an operating mouse, and a 3.5-inch (8.9 cm) floppy disk drive. The associated computer monitor must have a viewable screen size of at least 14.1 inches (35.8 cm) and minimum display settings of 600×800 pixels. The computer equipment specified in this paragraph (A) must be connected to a communication device that provides a modem connection to the NMFS host computer and supports one or more of the following protocols: ITU V.22, ITU V.22bis, ITU V.32, ITU V.32bis, or ITU V.34. Processors that use a modem must have at least a 28.8kbs Hayes-compatible modem. The above-specified hardware and software requirements do not apply to processors that do not process groundfish.

(B) NMFS-supplied software. Ensuring that each vessel that is required to carry a NMFS-certified observer obtains the data entry software provided by the NMFS for use by the observer.

(4) *Vessel position.* Allow observer(s) access to, and the use of, the vessel's navigation equipment and personnel, on request, to determine the vessel's position.

(5) *Access.* Allow observer(s) free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(6) *Prior notification.* Notify observer(s) at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer, unless the observer specifically requests not to be notified.

(7) *Records.* Allow observer(s) to inspect and copy any state or Federal logbook maintained voluntarily or as required by regulation.

(8) *Assistance.* Provide all other reasonable assistance to enable observer(s) to carry out their duties, including, but not limited to:

(i) Measuring decks, codends, and holding bins.

(ii) Providing the observer(s) with a safe work area.

(iii) Collecting bycatch when requested by the observer(s).

(iv) Collecting and carrying baskets of fish when requested by the observer(s).

(v) Allowing the observer(s) to collect biological data and samples.

(vi) Providing adequate space for storage of biological samples.

(9) *At-sea transfers to or from processing vessels.* Processing vessels must:

(i) Ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours, under safe conditions, and with the agreement of observers involved.

(ii) Notify observers at least 3 hours before observers are transferred, such that the observers can collect personal belongings, equipment, and scientific samples.

(iii) Provide a safe pilot ladder and conduct the transfer to ensure the safety of observers during transfers.

(iv) Provide an experienced crew member to assist observers in the small boat or raft in which any transfer is made.

(e) *Sample station and operational*—(1) *Observer sampling station.* This paragraph contains the requirements for observer sampling stations. The vessel owner must provide an observer sampling station that complies with this section so that the observer can carry out required duties.

(i) *Accessibility.* The observer sampling station must be available to the observer at all times.

(ii) *Location.* The observer sampling station must be located within 4 m of the location from which the observer samples unsorted catch. Unobstructed passage must be provided between the observer sampling station and the location where the observer collects sample catch.

(iii) *Minimum work space aboard at-sea processing vessels.* The observer must have a working area of 4.5 square meters, including the observer's sampling table, for sampling and storage of fish to be sampled. The observer must be able to stand upright and have a work area at least 0.9 m deep in the area in front of the table and scale.

(iv) *Table aboard at-sea processing vessels.* The observer sampling station must include a table at least 0.6 m deep, 1.2 m wide and 0.9 m high and no more than 1.1 m high. The entire surface area of the table must be available for use by the observer. Any area for the observer sampling scale is in addition to the minimum space requirements for the table. The observer's sampling table must be secured to the floor or wall.

(v) *Diverter board aboard at-sea processing vessels.* The conveyor belt conveying unsorted catch must have a removable board (diverter board) to allow all fish to be diverted from the belt directly into the observer's sampling baskets. The diverter board must be located downstream of the scale used to weigh total catch. At least 1 m of accessible belt space, located downstream of the scale used to weight total catch, must be available for the observer's use when sampling.

(vi) *Other requirement for at-sea processing vessels.* The sampling station must be in a well-drained area that includes floor grating (or other material that prevents slipping), lighting adequate for day or night sampling, and a hose that supplies fresh or sea water to the observer.

(vii) *Observer sampling scale.* The observer sample station must include a NMFS-approved platform scale (pursuant to requirements at 50 CFR 679.28(d)(5)) with a capacity of at least 50 kg located within 1 m of the observer's sampling table. The scale must be mounted so that the weighing surface is no more than 0.7 m above the floor.

§ 660.120 Trawl fishery—crossover provisions.

(a) *General.* In addition to the General provisions listed at § 660.60, subpart C, the crossover provisions of this section apply to vessels operating in the limited entry trawl fishery.

(b) *Operating in north-south management areas with different trip limits*—(1) *Minor Rockfish.*

(i) If a trawl vessel takes and retains minor shelf rockfish south of 40°10′ N. lat., that vessel is also permitted to take and retain, possess, or land yellowtail rockfish up to its cumulative limits north of 40°10′ N. lat., even if yellowtail rockfish is part of the landings from minor shelf rockfish taken and retained south of 40°10′ N. lat. Widow rockfish is included in overall shelf rockfish limits for all gear groups.

(ii) If a trawl vessel takes and retains minor shelf rockfish north of 40°10′ N. lat., that vessel is also permitted to take and retain, possess, or land chilipepper rockfish up to its cumulative limits south of 40°10′ N. lat., even if chilipepper rockfish is part of the landings from minor shelf rockfish taken and retained north of 40°10′ N. lat.

(2) *DTS complex.* Differential trawl trip limits for the "DTS complex" north and south of latitudinal management lines may be specified in trip limits, Table 1 (North) and Table 1 (South) of this subpart. Vessels operating in the limited entry trawl fishery are subject to the crossover provisions in this paragraph when making landings that include any one of the four species in the "DTS complex."

(3) *Flatfish complex.* There are often differential trip limits for the flatfish complex (butter, curlfin, English, flathead, petrale, rex, rock, and sand soles, Pacific sanddab, and starry flounder) north and south of latitudinal management lines. Vessels operating in the limited entry trawl fishery are subject to the crossover provisions in this paragraph when making landings that include any one of the species in the flatfish complex.

§ 660.130 Trawl fishery—management measures.

(a) *General.* Limited entry trawl vessels include those vessels registered to a limited entry permit with a trawl endorsement. Most species taken in limited entry trawl fisheries will be managed with cumulative trip limits (see trip limits in Tables 1 (North) and 1 (South) of this subpart), size limits (see § 660.60 (h)(5), subpart C), seasons (see Pacific whiting at § 660.131(b), subpart D), gear restrictions (see paragraph (b) of this section) and closed areas (see paragraph (e) of this section and §§ 660.70 through 660.79, subpart C). The trawl fishery has gear requirements and trip limits that differ by the type of trawl gear on board and the area fished. Cowcod retention is prohibited in all fisheries and groundfish vessels operating south of Point Conception must adhere to CCA restrictions (see paragraph (e)(1) of this section and § 660.70, subpart C). The trip limits in Tables 1 (North) and 1 (South) of this subpart apply to vessels participating in the limited entry groundfish trawl fishery and may not be exceeded. Federal commercial groundfish regulations are not intended to supersede any more restrictive state commercial groundfish regulations relating to federally-managed groundfish.

(b) *Trawl gear requirements and restrictions.* Trawl nets may be fished with or without otter boards, and may use warps or cables to herd fish.

(1) *Codends.* Only single-walled codends may be used in any trawl. Double-walled codends are prohibited.

(2) *Mesh size.* Groundfish trawl gear must meet the minimum mesh size requirements in this paragraph. Mesh size requirements apply throughout the net. Minimum trawl mesh sizes are: bottom trawl, 4.5 inches (11.4 cm); midwater trawl, 3.0 inches (7.6 cm). Minimum trawl mesh size requirements are met if a 20-gauge stainless steel wedge, less one thickness of the metal wedge, can be passed with only thumb

pressure through at least 16 of 20 sets of two meshes each of wet mesh.

(3) *Chafing gear.* Chafing gear may encircle no more than 50 percent of the net's circumference. No section of chafing gear may be longer than 50 meshes of the net to which it is attached. Chafing gear may be used only on the last 50 meshes, measured from the terminal (closed) end of the codend. Except at the corners, the terminal end of each section of chafing gear on all trawl gear must not be connected to the net. (The terminal end is the end farthest from the mouth of the net.) Chafing gear must be attached outside any riblines and restraining straps. There is no limit on the number of sections of chafing gear on a net.

(4) *Large footrope trawl gear.* Large footrope gear is bottom trawl gear with a footrope diameter larger than 8 inches (20 cm) (including rollers, bobbins or other material encircling or tied along the length of the footrope). Fishing with bottom trawl gear with a footrope diameter greater than 19 inches (48 cm) (including rollers, bobbins, or other material encircling or tied along the length of the footrope) is prohibited anywhere in EFH within the EEZ, as defined by latitude/longitude coordinates at § 660.75, subpart C.

(5) *Small footrope trawl gear.* Small footrope gear is bottom trawl gear with a footrope diameter of 8 inches (20 cm) or smaller (including rollers, bobbins or other material encircling or tied along the length of the footrope). Other lines or ropes that run parallel to the footrope may not be augmented with material encircling or tied along their length such that they have a diameter larger than 8 inches (20 cm). For enforcement purposes, the footrope will be measured in a straight line from the outside edge to the opposite outside edge at the widest part on any individual part, including any individual disk, roller, bobbin, or any other device.

(i) *Selective flatfish trawl gear.* Selective flatfish trawl gear is a type of small footrope trawl gear. The selective flatfish trawl net must be a two-seamed net with no more than two riblines, excluding the codend. The breastline may not be longer than 3 ft (0.92 m) in length. There may be no floats along the center third of the headrope or attached to the top panel except on the riblines. The footrope must be less than 105 ft (32.26 m) in length. The headrope must be not less than 30 percent longer than the footrope. An explanatory diagram of a selective flatfish trawl net is provided as Figure 1 of part 660, subpart D.

(ii) [Reserved].

(6) *Midwater (or pelagic) trawl gear.* Midwater trawl gear must have unprotected footropes at the trawl mouth, and must not have rollers, bobbins, tires, wheels, rubber discs, or any similar device anywhere on any part of the net. The footrope of midwater gear may not be enlarged by encircling it with chains or by any other means. Ropes or lines running parallel to the footrope of midwater trawl gear must be bare and may not be suspended with chains or any other materials. Sweep lines, including the bottom leg of the bridle, must be bare. For at least 20 ft. (6.15 m) immediately behind the footrope or headrope, bare ropes or mesh of 16-inch (40.6–cm) minimum mesh size must completely encircle the net. A band of mesh (a "skirt") may encircle the net under transfer cables, lifting or splitting straps (chokers), but must be: Over riblines and restraining straps; the same mesh size and coincide knot-to-knot with the net to which it is attached; and no wider than 16 meshes.

(c) *Cumulative trip limits and prohibitions by limited entry trawl gear type.* Management measures may vary depending on the type of trawl gear (i.e., large footrope, small footrope, selective flatfish, or midwater trawl gear) used and/or on board a vessel during a fishing trip, cumulative limit period, and the area fished. Trawl nets may be used on and off the seabed. For some species or species groups, Table 1 (North) and Table 1 (South) of this subpart provide cumulative and/or trip limits that are specific to different types of trawl gear: Large footrope, small footrope (including selective flatfish), selective flatfish, midwater, and multiple types. If Table 1 (North) and Table 1 (South) of this subpart provide gear specific limits for a particular species or species group, it is unlawful to take and retain, possess or land that species or species group with limited entry trawl gears other than those listed.

(1) *Fishing with large footrope trawl gear.* It is unlawful for any vessel using large footrope gear to fish for groundfish shoreward of the RCAs defined at paragraph (e)(4) of this section and at §§ 660.70 through 660.74, subpart C. The use of large footrope gear is permitted seaward of the RCAs coastwide.

(2) *Fishing with small footrope trawl gear.* North of 40°10′ N. lat., it is unlawful for any vessel using small footrope gear (except selective flatfish gear) to fish for groundfish or have small footrope trawl gear (except selective flatfish gear) onboard while fishing shoreward of the RCA defined at paragraph (d) of this section and at §§ 660.70 through 660.74, subpart C. South of 40°10′ N. lat., small footrope gear is required shoreward of the RCA. Small footrope gear is permitted seaward of the RCA coastwide.

(i) North of 40°10′ N. lat., selective flatfish gear is required shoreward of the RCA defined at paragraph (d) of this section and at §§ 660.70, through 660.74, subpart C. South of 40°10′ N. lat., selective flatfish gear is permitted, but not required, shoreward of the RCA. The use of selective flatfish trawl gear is permitted seaward of the RCA coastwide.

(ii) [Reserved].

(3) *Fishing with midwater trawl gear.* North of 40°10′ N. lat., midwater trawl gear is permitted only for vessels participating in the primary Pacific whiting fishery (for details on the Pacific whiting fishery see § 660.131, subpart D.) South of 40°10′ N. lat., the use of midwater trawl gear is prohibited shoreward of the RCA and permitted seaward of the RCA.

(4) *More than one type of trawl gear on board.* The cumulative trip limits in Table 1 (North) or Table 1 (South) of this subpart must not be exceeded.

(i) The following restrictions apply to vessels operating north of 40°10′ N. lat.:

(A) A vessel may not have both groundfish trawl gear and non-groundfish trawl gear onboard simultaneously. A vessel may not have both bottom trawl gear and midwater trawl gear onboard simultaneously. A vessel may have more than one type of limited entry bottom trawl gear on board, either simultaneously or successively, during a cumulative limit period.

(B) If a vessel fishes exclusively with large or small footrope trawl gear during an entire cumulative limit period, the vessel is subject to the small or large footrope trawl gear cumulative limits and that vessel must fish seaward of the RCA during that limit period.

(C) If a vessel fishes exclusively with selective flatfish trawl gear during an entire cumulative limit period, then the vessel is subject to the selective flatfish trawl gear-cumulative limits during that limit period, regardless of whether the vessel is fishing shoreward or seaward of the RCA.

(D) If more than one type of bottom trawl gear (selective flatfish, large footrope, or small footrope) is on board, either simultaneously or successively, at any time during a cumulative limit period, then the most restrictive cumulative limit associated with the bottom trawl gear on board during that cumulative limit period applies for the entire cumulative limit period, regardless of whether the vessel is fishing shoreward or seaward of the RCA.

(E) If a vessel fishes both north and south of 40°10′ N. lat. with any type of small footrope gear onboard the vessel at any time during the cumulative limit period, the most restrictive trip limit associated with the gear on board applies for that trip and will count toward the cumulative trip limit for that gear. (*See* crossover provisions at § 660.120, subpart D.)

(F) Midwater trawl gear is allowed only for vessels participating in the primary whiting season.

(ii) The following restrictions apply to vessels operating south of 40°10′ N. lat.:

(A) A vessel may not have both groundfish trawl gear and non-groundfish trawl gear onboard simultaneously. A vessel may not have both bottom trawl gear and midwater trawl gear onboard simultaneously. A vessel may not have small footrope trawl gear and any other type of bottom trawl gear onboard simultaneously.

(B) For vessels using more than one type of trawl gear during a cumulative limit period, limits are additive up to the largest limit for the type of gear used during that period. (Example: If a vessel harvests 300 lbs. (136 kg) of chilipepper rockfish with small footrope-gear, it may harvest up to 11,700 lbs. (5,209 kg) of chilipepper rockfish with large footrope gear during the July and August cumulative period, because the largest cumulative limit for chilipepper rockfish during that period is 12,000 lbs. (5,443 kg) for large footrope gear.)

(C) If a vessel fishes both north and south of 40°10′ N. lat. with any type of small footrope gear onboard the vessel at any time during the cumulative limit period, the most restrictive trip limit associated with the gear on board applies for that trip and will count toward the cumulative trip limit for that gear (*See* crossover provisions at § 660.120, subpart D.)

(d) *Sorting.* Under § 660.12 (a)(8), subpart C, it is unlawful for any person to "fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, scientific sorting designation, quota, harvest guideline, or OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, scientific sorting designation, quota, harvest guideline, or OY applied." The States of Washington, Oregon, and California may also require that vessels record their landings as sorted on their state landing receipt.

(1) *Coastwide.* Widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, shortbelly rockfish, black rockfish, blue rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, shortspine and longspine thornyhead, Dover sole, arrowtooth flounder, petrale sole, starry flounder, English sole, other flatfish, lingcod, sablefish, Pacific cod, spiny dogfish, other fish, longnose skate, and Pacific whiting;

(2) *North of 40°10′ N. lat.* POP, yellowtail rockfish;

(3) *South of 40°10′ N. lat.* Minor shallow nearshore rockfish, minor deeper nearshore rockfish, California scorpionfish, chilipepper rockfish, bocaccio rockfish, splitnose rockfish, Pacific sanddabs, cowcod, bronzespotted rockfish and cabezon.

(e) *Groundfish conservation areas (GCAs) applicable to trawl vessels.* A GCA, a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude. The latitude and longitude coordinates of the GCA boundaries are specified at §§ 660.70 through 660.74, subpart C. A vessel that is fishing within a GCA listed in this paragraph (d) with trawl gear authorized for use within a GCA may not have any other type of trawl gear on board the vessel. The following GCAs apply to vessels participating in the limited entry trawl fishery. Additional closed areas that specifically apply to the Pacific whiting fisheries are described at § 660.131(c), subpart D.

(1) *Cowcod conservation areas (CCAs).* Vessels using limited entry trawl gear are prohibited from fishing within the CCAs. *See* § 660.70 for the coordinates that define the CCAs. Limited entry trawl vessels may transit through the Western CCA with their gear stowed and groundfish on board only in a corridor through the Western CCA bounded on the north by the latitude line at 33°00.50′ N. lat., and bounded on the south by the latitude line at 32°59.50′ N. lat. It is unlawful to take and retain, possess, or land groundfish within the CCAs, except as authorized in this paragraph, when those waters are open to fishing.

(2) *Farallon islands.* Under California law, commercial fishing for all groundfish is prohibited between the shoreline and the 10-fm (18-m) depth contour around the Farallon Islands. (See § 660.70, subpart C.)

(3) *Cordell Banks.* Commercial fishing for groundfish is prohibited in waters of depths less than 100-fm (183-m) around Cordell Banks as defined by specific latitude and longitude coordinates at § 660.70, subpart C.

(4) *Trawl rockfish conservation areas.* The trawl RCAs are closed areas, defined by specific latitude and longitude coordinates which are specified at §§ 660.70 through 660.74, subpart C. Boundaries for the trawl RCAs applicable to groundfish trawl vessels throughout the year are provided in the header to Table 1 (North) and Table 1 (South) of this subpart and may be modified by NMFS inseason pursuant to § 660.60(c), subpart C.

(i) It is unlawful to operate a vessel with trawl gear onboard within the trawl RCA, except for the purpose of continuous transiting, or when the use of trawl gear is authorized in this section. It is lawful to fish with groundfish trawl gear within the trawl RCA only under the following conditions: Vessels fishing with midwater trawl gear on Pacific whiting trips during the primary whiting season, provided a valid declaration report has been filed with NMFS OLE, as required at § 660.12(d), subpart C; and vessels fishing with demersal seine gear between 38° N. lat. and 36° N. lat. shoreward of a boundary line approximating the 100 fm (183 m) depth contour as defined at § 660.73, subpart C, provided a valid declaration report has been filed.

(ii) Trawl vessels may transit through an applicable GCA, with or without groundfish on board, provided all groundfish trawl gear is stowed either: Below deck; or if the gear cannot readily be moved, in a secured and covered manner, detached from all towing lines, so that it is rendered unusable for fishing; or remaining on deck uncovered if the trawl doors are hung from their stanchions and the net is disconnected from the doors. These restrictions do not apply to vessels fishing with midwater trawl gear for whiting during a primary season.

(iii) It is unlawful to take and retain, possess, or land groundfish taken with limited entry trawl gear within the trawl RCA, unless otherwise authorized in this section.

(iv) If a vessel fishes in the trawl RCA, it may not participate in any fishing on that trip that is prohibited within the trawl RCA. [For example, if a vessel fishes in the pink shrimp fishery within the RCA, the vessel cannot on the same trip fish in the DTS fishery seaward of the RCA.] Nothing in these Federal regulations supersedes any state regulations that may prohibit trawling shoreward of the fishery management area (3–200 nm).

(5) *Essential fish habitat conservation areas.* An EFHCA, a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude at §§ 660.75 through 660.79, subpart C, where specified types of fishing are prohibited in accordance with § 660.12, subpart C. EFHCAs apply to vessels using bottom

trawl gear or to vessels using "bottom contact gear," which is defined at § 660.11, subpart C, to include bottom trawl gear, among other gear types.

(i) The following EFHCAs apply to vessels operating within the West Coast EEZ with bottom trawl gear:

(A) *Seaward of a boundary line approximating the 700-fm (1280-m) depth contour.* Fishing with bottom trawl gear is prohibited in waters of depths greater than 700-fm (1280-m) within the EFH, as defined by specific latitude and longitude coordinates at §§ 660.75 and 660.76, subpart C.

(B) *Shoreward of a boundary line approximating the 100-fm (183-m) depth contour.* Fishing with bottom trawl gear with a footrope diameter greater than 8 inches (20-cm) is prohibited in waters shoreward of a boundary line approximating the 100-fm (183-m) depth contour, as defined by specific latitude and longitude coordinates at § 660.73, subpart C.

(C) *EFHCAs for all bottom trawl gear.* Fishing with bottom trawl gear is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at §§ 660.77 through 660.78, subpart C: Olympic 2, Biogenic 1, Biogenic 2, Grays Canyon, Biogenic 3, Astoria Canyon, Nehalem Bank/Shale Pile, Siletz Deepwater, Daisy Bank/Nelson Island, Newport Rockpile/Stonewall Bank, Heceta Bank, Deepwater off Coos Bay, Bandon High Spot, Rogue Canyon.

(D) *EFHCAs for all bottom trawl gear, except demersal seine gear.* Fishing with bottom trawl gear except demersal seine gear (defined at § 660.11, subpart C) is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at § 660.79, subpart C: Eel River Canyon, Blunts Reef, Mendocino Ridge, Delgada Canyon, Tolo Bank, Point Arena North, Point Arena South Biogenic Area, Cordell Bank/Biogenic Area, Farallon Islands/Fanny Shoal, Half Moon Bay, Monterey Bay/Canyon, Point Sur Deep, Big Sur Coast/Port San Luis, East San Lucia Bank, Point Conception, Hidden Reef/Kidney Bank (within Cowcod Conservation Area West), Catalina Island, Potato Bank (within Cowcod Conservation Area West), Cherry Bank (within Cowcod Conservation Area West), and Cowcod EFH Conservation Area East.

(ii) *EFHCAs for bottom contact gear, which includes bottom trawl gear.* Fishing with bottom contact gear, including bottom trawl gear is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at §§ 660.75 through 660.79, Subpart C: Thompson Seamount, President Jackson Seamount, Cordell Bank (50 fm (91 m) isobath), Harris Point, Richardson Rock, Scorpion, Painted Cave, Anacapa Island, Carrington Point, Judith Rock, Skunk Point, Footprint, Gull Island, South Point, and Santa Barbara. Fishing with bottom contact gear is also prohibited within the Davidson Seamount EFH Area, which is defined with specific latitude and longitude coordinates at § 660.75, subpart C.

§ 660.131 Pacific whiting fishery management measures.

(a) *Sectors.* In order for a vessel to fish in a particular whiting fishery sector after May 11, 2009, that vessel must be registered for use with a sector-specific Pacific whiting vessel license under § 660.26, subpart C.

(1) The catcher/processor sector is composed of catcher/processors, which are vessels that harvest and process whiting during a calendar year.

(2) The mothership sector is composed of motherships and catcher vessels that harvest whiting for delivery to motherships. Motherships are vessels that process, but do not harvest, whiting during a calendar year.

(3) The shore-based sector is composed of vessels that harvest whiting for delivery to Pacific whiting shoreside first receivers. Notwithstanding the other provisions of 50 CFR part 660, subpart C or D, 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.

(b) *Pacific whiting seasons.*

(1) *Primary seasons.* The primary seasons for the whiting fishery are:

(i) For the shore-based sector, the period(s) when the large-scale target fishery is conducted (when trip limits under paragraph (b) of this section are not in effect);

(ii) For catcher/processors, the period(s) when at-sea processing is allowed and the fishery is open for the catcher/processor sector; and

(iii) For vessels delivering to motherships, the period(s) when at-sea processing is allowed and the fishery is open for the mothership sector.

(2) *Before and after the primary seasons.* Before and after the primary seasons, trip landing or frequency limits may be imposed under § 660.60(c). The sectors are defined at § 660.60(a).

(3) *Different primary season start dates.* North of 40°30′ N. lat., different starting dates may be established for the catcher/processor sector, the mothership sector, catcher vessels delivering to shoreside processors north of 42° N. lat., and catcher vessels delivering to shoreside processors between 42° N. lat. through 40°30′ N. lat.

(i) *Procedures.* The primary seasons for the whiting fishery north of 40°30′ N. lat. generally will be established according to the procedures of the PCGFMP for developing and implementing harvest specifications and apportionments. The season opening dates remain in effect unless changed, generally with the harvest specifications and management measures.

(ii) *Criteria.* The start of a primary season may be changed based on a recommendation from the Council and consideration of the following factors, if applicable: Size of the harvest guidelines for whiting and bycatch species; age/size structure of the whiting population; expected harvest of bycatch and prohibited species; availability and stock status of prohibited species; expected participation by catchers and processors; environmental conditions; timing of alternate or competing fisheries; industry agreement; fishing or processing rates; and other relevant information.

(iii) *Primary whiting season start dates and duration.* After the start of a primary season for a sector of the whiting fishery, the season remains open for that sector until the quota is taken or a bycatch limit is reached and the fishery season for that sector is closed by NMFS. The starting dates for the primary seasons for the whiting fishery are as follows:

(A) Catcher/processor sector—May 15.

(B) Mothership sector—May 15.

(C) Shore-based sector

(*1*) North of 42° N. lat.—June 15;

(*2*) Between 42°–40°30′ N. lat.—April 1; and

(*3*) South of 40°30′ N. lat.—April 15.

(4) *Trip limits in the whiting fishery*. The "per trip" limit for whiting before and after the regular (primary) season for the shore-based sector is announced in Table 1 of this subpart, and is a routine management measure under § 660.60(c). This trip limit includes any whiting caught shoreward of 100 fm (183 m) in the Eureka, CA area. The "per trip" limit for other groundfish species before, during, and after the regular (primary) season are announced in Table 1 (North) and Table 1 (South) of this subpart and apply as follows:

(i) During the groundfish cumulative limit periods both before and after the primary whiting season, vessels may use

either small and/or large footrope gear, but are subject to the more restrictive trip limits for those entire cumulative periods.

(ii) If, during a primary whiting season, a whiting vessel harvests a groundfish species other than whiting for which there is a midwater trip limit, then that vessel may also harvest up to another footrope-specific limit for that species during any cumulative limit period that overlaps the start or end of the primary whiting season.

(5) *Bycatch limits in the whiting fishery.* The bycatch limits for the whiting fishery may be established, adjusted, and used inseason to close a sector or sectors of the whiting fishery to achieve the rebuilding of an overfished or depleted stock. These limits are routine management measures under § 660.60(c), subpart C, and, as such, may be adjusted inseason or may have new species added to the list of those with bycatch limits. Closure of a sector or sectors when a bycatch limit is projected to be reached is an automatic action under § 660.60(d), subpart C.

(i) The whiting fishery bycatch limit is apportioned among the sectors identified in paragraph (a) of this section based on the same percentages used to allocate whiting among the sectors, established in § 660.55(i)(2), subpart C. The sector specific bycatch limits are: For catcher/processors 6.1 mt of canary rockfish, 85.0 mt of widow rockfish, and 8.5 mt of darkblotched rockfish; for motherships 4.3 mt of canary rockfish, 60.0 mt of widow rockfish, and 6.0 mt of darkblotched rockfish; and for shore-based 7.6 mt of canary rockfish, 105.0 mt of widow rockfish, and 10.5 mt of darkblotched rockfish.

(ii) The Regional Administrator may make available for harvest to the other sectors of the whiting fishery identified in § 660.131(a) of this subpart, the amounts of a sector's bycatch limit species remaining when a sector is closed because its whiting allocation or a bycatch limit has been reached or is projected to be reached. The remaining bycatch limit species shall be redistributed in proportion to each sector's initial whiting allocation. When considering redistribution of bycatch limits between the sectors of the whiting fishery, the Regional Administrator will take into consideration the best available data on total projected fishing impacts on the bycatch limit species, as well as impacts on other groundfish species.

(iii) If a bycatch limit is reached or is projected to be reached, the following action, applicable to the sector may be taken.

(A) Catcher/processor sector. Further taking and retaining, receiving, or at-sea processing of whiting by a catcher/processor is prohibited. No additional unprocessed whiting may be brought on board after at-sea processing is prohibited, but a catcher/processor may continue to process whiting that was on board before at-sea processing was prohibited.

(B) Mothership sector. Further receiving or at-sea processing of whiting by a mothership is prohibited. No additional unprocessed whiting may be brought on board after at-sea processing is prohibited, but a mothership may continue to process whiting that was on board before at-sea processing was prohibited. Whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the mothership sector.

(C) Shore-based sector. Whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the shore-based sector except as authorized under a trip limit specified under § 660.60(c), subpart C.

(iv) The Regional Administrator will announce in the **Federal Register** when a bycatch limit is reached, or is projected to be reached, specifying the action being taken as specified under paragraph (b)(5) of this section. The Regional Administrator will announce in the **Federal Register** any reapportionment of bycatch limit species. In order to prevent exceeding the bycatch limits or to avoid underutilizing the Pacific whiting resource, prohibitions against further taking and retaining, receiving, or at-sea processing of whiting, or reapportionment of bycatch limits species may be made effective immediately by actual notice to fishers and processors, by e-mail, Internet (*http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Whiting-Management/index.cfm*), phone, fax, letter, press release, and/or USCG Notice to Mariners (monitor channel 16 VHF), followed by publication in the **Federal Register.**

(c) *Closed areas.* Pacific whiting may not be taken and retained in the following portions of the fishery management area:

(1) *Klamath river salmon conservation zone.* The ocean area surrounding the Klamath River mouth bounded on the north by 41°38.80′ N. lat. (approximately 6 nm north of the Klamath River mouth), on the west by 124°23′ W. long. (approximately 12 nm from shore), and on the south by 41°26.80′ N. lat. (approximately 6 nm south of the Klamath River mouth).

(2) *Columbia river salmon conservation zone.* The ocean area surrounding the Columbia River mouth bounded by a line extending for 6 nm due west from North Head along 46°18′ N. lat. to 124°13.30′ W. long., then southerly along a line of 167 True to 46°11.10′ N. lat. and 124°11′ W. long. (Columbia River Buoy), then northeast along Red Buoy Line to the tip of the south jetty.

(3) *Ocean salmon conservation zone.* All waters shoreward of a boundary line approximating the 100 fm (183 m) depth contour. Latitude and longitude coordinates defining the boundary line approximating the 100 fm (183 m) depth contour are provided at § 660.73, subpart C. This closure will be implemented through automatic action, defined at § 660.60(d), subpart C, when NMFS projects the Pacific whiting fishery may take in excess of 11,000 Chinook within a calendar year.

(4) *Pacific whiting bycatch reduction areas (BRAs).* Vessels using limited entry midwater trawl gear during the primary whiting season may be prohibited from fishing shoreward of a boundary line approximating the 75-fm (137-m), 100-fm (183-m) or 150-fm (274-m) depth contours. Latitude and longitude coordinates for the boundary lines approximating the depth contours are provided at § 660.73, subpart C. Closures may be implemented inseason for a sector(s) through automatic action, defined at § 660.60(d), subpart C, when NMFS projects that a sector will exceed a bycatch limit specified for that sector before the sector's whiting allocation is projected to be reached.

(d) *Eureka area trip limits.* Trip landing or frequency limits may be established, modified, or removed under § 660.60, subpart C, or § 660.131, subpart D, specifying the amount of Pacific whiting that may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished in the fishery management area shoreward of the 100 fathom (183 m) contour (as shown on NOAA Charts 18580, 18600, and 18620) in the Eureka area (from 43 00′ to 40 30′ N. lat.). Unless otherwise specified, no more than 10,000-lb (4,536 kg) of whiting may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished in the fishery management area shoreward of the 100 fm (183 m) contour (as shown on NOAA Charts 18580, 18600, and 18620) in the Eureka management area (defined at § 660.11, subpart C).

(e) *At-sea processing.* Whiting may not be processed at sea south of 42°00′ N. lat. (Oregon-California border), unless by a waste-processing vessel as

authorized under paragraph (i) of this section.

(f) *Time of day.* Pacific whiting may not be taken and retained by any vessel in the fishery management area south of 42°00′ N. lat. between 0001 hours to one-half hour after official sunrise (local time). During this time south of 42°00′ N. lat., trawl doors must be on board any vessel used to fish for whiting and the trawl must be attached to the trawl doors. Official sunrise is determined, to the nearest 5° lat., in The Nautical Almanac issued annually by the Nautical Almanac Office, U.S. Naval Observatory, and available from the U.S. Government Printing Office.

(g) *Additional restrictions on catcher/processors*—(1) A catcher/processor may receive fish from a catcher vessel, but that catch is counted against the catcher/processor allocation unless the catcher/processor has been declared as a mothership under paragraph (g)(3) of this section.

(2) A catcher/processor may not also act as a catcher vessel delivering unprocessed whiting to another processor in the same calendar year.

(3) When renewing its limited entry permit each year under § 660.25, subpart C, the owner of a catcher/processor used to take and retain whiting must declare if the vessel will operate solely as a mothership in the whiting fishery during the calendar year to which its limited entry permit applies. Any such declaration is binding on the vessel for the calendar year, even if the permit is transferred during the year, unless it is rescinded in response to a written request from the permit holder. Any request to rescind a declaration must be made by the permit holder and granted in writing by the Regional Administrator before any unprocessed whiting has been taken on board the vessel that calendar year.

(h) *Pacific whiting first receivers*—(1) Pacific whiting shoreside first receivers and processors may receive groundfish species, other than Pacific Whiting, that is in excess of trip limits from a Pacific whiting shoreside vessel that is fishing under an EFP that authorizes the vessel to possess the catch.

(i) *Bycatch reduction and full utilization program for at-sea processors (optional).* If a catcher/processor or mothership in the whiting fishery carries more than one NMFS-approved observer for at least 90 percent of the fishing days during a cumulative trip limit period, then groundfish trip limits may be exceeded without penalty for that cumulative trip limit period, if the conditions in paragraph (h)(2) of this section are met. For purposes of this program, "fishing day" means a 24-hour period, from 0001 hours through 2400 hours, local time, in which fishing gear is retrieved or catch is received by the vessel, and will be determined from the vessel's observer data, if available. Changes to the number of observers required for a vessel to fish under in the bycatch reduction program will be announced prior to the start of the fishery, generally concurrent with the harvest specifications and management measures. Groundfish consumed on board the vessel must be within any applicable trip limit and recorded as retained catch in any applicable logbook or report. [**Note:** For a mothership, non-whiting groundfish landings are limited by the cumulative landings limits of the catcher vessels delivering to that mothership.]

(2) *Conditions.* Conditions for participating in the voluntary full utilization program are as follows:

(i) All catch must be made available to the observers for sampling before it is sorted by the crew.

(ii) Any retained catch in excess of cumulative trip limits must either be: Converted to meal, mince, or oil products, which may then be sold; or donated to a bona fide tax-exempt hunger relief organization (including food banks, food bank networks or food bank distributors), and the vessel operator must be able to provide a receipt for the donation of groundfish landed under this program from a tax-exempt hunger relief organization immediately upon the request of an authorized officer.

(iii) No processor or catcher vessel may receive compensation or otherwise benefit from any amount in excess of a cumulative trip limit unless the overage is converted to meal, mince, or oil products. Amounts of fish in excess of cumulative trip limits may only be sold as meal, mince, or oil products.

(iv) The vessel operator must contact the NMFS enforcement office nearest to the place of landing at least 24 hours before landing groundfish in excess of cumulative trip limits for distribution to a hunger relief agency. Cumulative trip limits and a list of NMFS enforcement offices are found on the NMFS, Northwest Region homepage at *http://www.nwr.noaa.gov.*

(v) If the meal plant on board the whiting processing vessel breaks down, then no further overages may be retained for the rest of the cumulative trip limit period unless the overage is donated to a hunger relief organization.

(vi) Prohibited species may not be retained.

(vii) Donation of fish to a hunger relief organization must be noted in the transfer log (Product Transfer/Offloading Log (PTOL)), in the column for total value, by entering a value of "0" or "donation," followed by the name of the hunger relief organization receiving the fish. Any fish or fish product that is retained in excess of trip limits under this rule, whether donated to a hunger relief organization or converted to meal, must be entered separately on the PTOL so that it is distinguishable from fish or fish products that are retained under trip limits. The information on the Mate's Receipt for any fish or fish product in excess of trip limits must be consistent with the information on the PTOL. The Mate's Receipt is an official document that states who takes possession of offloaded fish, and may be a Bill of Lading, Warehouse Receipt, or other official document that tracks the transfer of offloaded fish or fish product. The Mate's Receipt and PTOL must be made available for inspection upon request of an authorized officer throughout the cumulative limit period during which such landings occurred and for 15 days thereafter.

(j) *Processing fish waste at sea.* A vessel that processes only fish waste (a "waste-processing vessel") is not considered a whiting processor and therefore is not subject to the allocations, seasons, or restrictions for catcher/processors or motherships while it operates as a waste-processing vessel. However, no vessel may operate as a waste-processing vessel 48 hours immediately before and after a primary season for whiting in which the vessel operates as a catcher/processor or mothership. A vessel must meet the following conditions to qualify as a waste-processing vessel:

(1) The vessel makes meal (ground dried fish), oil, or minced (ground flesh) product, but does not make, and does not have on board, surimi (fish paste with additives), fillets (meat from the side of the fish, behind the head and in front of the tail), or headed and gutted fish (head and viscera removed).

(2) The amount of whole whiting on board does not exceed the trip limit (if any) allowed under § 660.60(c), subpart C, or Tables 1 (North) or 1 (South) in subpart D.

(3) Any trawl net and doors on board are stowed in a secured and covered manner, and detached from all towing lines, so as to be rendered unusable for fishing.

(4) The vessel does not receive codends containing fish.

(5) The vessel's operations are consistent with applicable state and Federal law, including those governing disposal of fish waste at sea.

(k) *Additional requirements for participants in the Pacific whiting*

shoreside fishery—(1) *Pacific whiting shoreside first receiver responsibilities*—(i) *Weights and measures.* All groundfish weights reported on electronic fish tickets must be recorded from scales with appropriate weighing capacity that ensures accuracy for the amount of fish being weighed. For example: amounts of fish less than 1,000-lb (454 kg) should not be weighed on scales that have an accuracy range of 1,000-lb to 7,000-lb (454–3,175 kg) and are therefore not capable of accurately weighing amounts less than 1,000-lb (454 kg).

(ii) [Reserved]

(2) *Sorting requirements for the Pacific whiting shoreside fishery.* Fish delivered to Pacific whiting shoreside first receivers (including shoreside processing facilities and buying stations that intend to transport catch for processing elsewhere) must be sorted, prior to first weighing after offloading from the vessel and prior to transport away from the point of landing, to the species groups specified in § 660.60(h)(6), subpart C, for vessels with limited entry permits. Prohibited species must be sorted according to the following species groups: Dungeness crab, Pacific halibut, Chinook salmon, Other salmon. Non-groundfish species must be sorted as required by the state of landing.

§ 660.140 Shorebased IFQ program.

(a) *General.* The Shorebased IFQ Program requirements in § 660.140 will be effective beginning January 1, 2011, except for paragraphs (d)(4), (d)(6), and (d)(8) of this section, which are effective immediately. The IFQ Program applies to qualified participants in the Pacific Coast Groundfish fishery and includes a system of transferable QS for most groundfish species or species groups and trip limits or set-asides for the remaining groundfish species or species groups. The IFQ Program is subject to area restrictions (GCAs, RCAs, and EFHCAs) listed at §§ 660.70 through 660.79, subpart C. The shorebased IFQ fishery may be restricted or closed as a result of projected overages within the Shorebased IFQ Program, the Mothership Coop Program, or the C/P Coop Program. As determined necessary by the Regional Administrator, area restrictions, season closures, or other measures will be used to prevent the trawl sector in aggregate or the individual trawl sectors (Shorebased IFQ, Mothership Coop, or C/P Coop) from exceeding an OY, or formal allocation specified in the PCGFMP or regulation at § 660.55, subpart C, or §§ 660.140, 660.150, or 660.160, subpart D.

(b) *Participation requirements.* [Reserved]

(1) *QS permit owners.* [Reserved]

(2) *IFQ vessels.* [Reserved]

(c) *IFQ species and allocations.*

(1) *IFQ species.* IFQ species are those groundfish species and Pacific halibut in the exclusive economic zone or adjacent state waters off Washington, Oregon and California, under the jurisdiction of the Pacific Fishery Management Council, for which QS will be issued. QS will specify designations for the species/species groups and area to which it applies. QS and QP species groupings and area subdivisions will be those for which OYs are specified in the Tables 1a through 2d, subpart C, and those for which there is an area-specific precautionary harvest policy. QS for remaining minor rockfish will be aggregated for the shelf and slope depth strata (nearshore species are excluded). The following are the IFQ species:

IFQ SPECIES

Roundfish:
Lingcod.
Pacific cod.
Pacific whiting.
Sablefish north of 36° N. lat.
Sablefish south of 36° N. lat.
Flatfish:
Dover sole.
English sole.
Petrale sole.
Arrowtooth flounder.
Starry flounder.
Other Flatfish stock complex.
Pacific halibut (IBQ).
Rockfish:
Pacific ocean perch.
Widow rockfish.
Canary rockfish.
Chilipepper rockfish.
Bocaccio.
Splitnose rockfish.
Yellowtail rockfish.
Shortspine thornyhead north of 34° 27′ N. lat.
Shortspine thornyhead south of 34° 27′ N. lat.
Longspine thornyhead north of 34° 27′ N. lat.
Cowcod.
Darkblotched.
Yelloweye.
Minor Rockfish North slope species complex.
Minor Rockfish North shelf species complex.
Minor Rockfish South slope species complex.
Minor Rockfish South shelf species complex.

(2) *IFQ program allocations.* Allocations for the Shorebased IFQ Program are determined for IFQ species as follows:

(i) For Pacific whiting, the Shorebased IFQ Program allocation is specified at § 660.55(i)(2), subpart C, 42 percent.

(ii) For Sablefish N. of 36° N. lat., the Shorebased IFQ Program allocation is the limited entry trawl allocation specified at § 660.55(h), subpart C, minus any set-asides for the mothership and C/P sectors for that species.

(iii) For IFQ species listed in the trawl/nontrawl allocation table, specified at § 660.55(c), subpart C, allocations are determined by applying the trawl column percent to the fishery harvest guideline minus any set-asides for the mothership and C/P sectors for that species and minus allocations for darkblotched rockfish, POP, and widow rockfish.

(iv) The remaining IFQ species (canary rockfish, bocaccio, cowcod, yelloweye rockfish, minor shelf rockfish N. of 40°10′ N. lat., and minor shelf rockfish S. of 40°10′ N. lat., and minor slope rockfish S. of 40°10′ N. lat.) are allocated through the biennial specifications and management measures process minus any set-asides for the mothership and C/P sectors for that species.

(v) For Pacific halibut N. of 40°10′ N. lat., the Shorebased IFQ Program allocation is specified at 660.55(m).

(vi) Annual sub-allocations of IFQ species to individual QS permits and QS accounts are based on the percent of QS registered to the account and the amount of fish allocated to the Shorebased IFQ Program.

(d) *QS permits and QS accounts*—(1) *General.* In order to obtain QS, a person must apply for a QS permit. NMFS will determine if the applicant is eligible to acquire QS in compliance with the accumulation limits found at paragraph (d)(4) of this section. For those persons that are found to be eligible for a QS permit, NMFS will issue QS and establish a QS account. QP will be issued annually at the start of the calendar year to a QS account based on the percent of QS registered to the account and the amount of fish allocated to the Shorebased IFQ Program. QP will be issued to the nearest whole pound using standard rounding rules (i.e. decimal amounts from 0 up to 0.5 round down and 0.5 and above round up), except that initial allocations of QP for overfished species greater than zero but less than one pound will be rounded up to one pound in the first year of the trawl rationalization program. QS owners must transfer their QP from their QS account to a vessel account in order for those QP to be fished. QP must be transferred in whole pounds (i.e. no fraction of a QP can be transferred). All

QP in a QS account must be transferred to a vessel account by September 1 of each year.

(2) *Eligibility and registration.* [Reserved]

(3) *Renewal, change of permit ownership, and transfer.* [Reserved]

(4) *Accumulation limits*—(i) *QS and IBQ control limits.* QS and IBQ control limits are accumulation limits and are the amount of QS and IBQ that a person, individually or collectively, may own or control. QS control limits are expressed as a percentage of the Shorebased IFQ Program's allocation.

(A) *Control limits for individual species.* No person may own or control by any means whatsoever an amount of QS or IBQ for any individual species that exceeds the Shorebased IFQ Program accumulation limits.

(B) *Control limit for aggregate non-whiting QS holdings.* To determine how much aggregate non-whiting QS a person holds, NMFS will convert the person's QS to pounds. This conversion will always be conducted using the trawl allocations applied to the 2010 OYs, until such time as the Council recommends otherwise. Specifically, NMFS will multiply each person's QS for each species by the shoreside trawl allocation for that species. The person's pounds for all non-whiting species will be summed and divided by the shoreside trawl allocation of all non-whiting species to calculate the person's share of the aggregate non-whiting trawl quota.

(C) The Shorebased IFQ Program accumulation limits are as follows:

Species category	QS control limit (percent)
Non-whiting Groundfish Species	2.7
Lingcod—coastwide	2.5
Pacific Cod	12.0
Pacific whiting (shoreside)	10.0
Sablefish	
N. of 36° (Monterey north)	3.0
S. of 36° (Conception area)	10.0
PACIFIC OCEAN PERCH	4.0
WIDOW ROCKFISH*	5.1
CANARY ROCKFISH	4.4
Chilipepper Rockfish	10.0
BOCACCIO	13.2
Splitnose Rockfish	10.0
Yellowtail Rockfish	5.0
Shortspine Thornyhead	
N. of 34°27′	6.0
S. of 34°27′	6.0
Longspine Thornyhead	
N. of 34°27′	6.0
COWCOD	17.7
DARKBLOTCHED	4.5
YELLOWEYE	5.7
Minor Rockfish North	
Shelf Species	5.0
Slope Species	5.0
Minor Rockfish South	
Shelf Species	9.0
Slope Species	6.0
Dover sole	2.6
English Sole	5.0
Petrale Sole	3.0
Arrowtooth Flounder	10.0
Starry Flounder	10.0
Other Flatfish	10.0
Other Fish	5.0
Pacific Halibut	5.4

(ii) *Ownership—individual and collective rule.* The QS that counts toward a person's accumulation limit will include:

(A) The QS owned by that person, and

(B) A portion of the QS owned by an entity in which that person has an interest, where the person's share of interest in that entity will determine the portion of that entity's QS that counts toward the person's limit.

(iii) *Control.* Control means, but is not limited to, the following:

(A) The person has the right to direct, or does direct, in whole or in part, the business of the entity to which the QS are registered;

(B) The person has the right to limit the actions of or replace, or does limit the actions of or replace, the chief executive officer, a majority of the board of directors, any general partner, or any person serving in a management capacity of the entity to which the QS are registered;

(C) The person has the right to direct, or does direct, the transfer of QS, or the resulting QP;

(D) The person, through loan covenants or any other means, has the right to restrict, or does restrict, the day to day business activities and management policies of the entity to which the QS are registered;

(E) The person, through loan covenants or any other means, has the right to restrict, or does restrict, use of QS, or the resulting QP, or disposition of fish harvested under the resulting QP;

(F) The person has the right to control, or does control, the management of, or to be a controlling factor in, the entity to which the QS, or the resulting QP, are registered;

(G) The person has the right to cause, or does cause, the sale, lease or other disposition of QS, or the resulting QP; and

(H) The person has the ability through any means whatsoever to control the entity to which QS is registered.

(iv) *Trawl identification of ownership interest form.* Any person that owns a limited entry trawl permit and is applying for a QS permit shall document those individuals that have greater than or equal to 2 percent ownership interest in the permit. This ownership interest must be documented with the SFD via the Trawl Identification of Ownership Interest Form sent to the permit owner with their application. SFD will not issue a QS Permit unless the Trawl Identification of Ownership Interest Form has been completed. Further, if SFD discovers through review of the Trawl Identification of Ownership Interest Form that a person owns or controls more than the accumulation limits and is not authorized to do so under paragraph (d)(4)(v) of this section, the person will be notified and the QS Permit will be issued up to the accumulation limit specified in the QS Control Limit table from paragraph (d)(4)(i) of this section.

(v) *Divestiture.* For QS permit owners that are found to exceed the accumulation limits during the initial issuance of QS permits, an adjustment period will be provided after which they will have to divest of QS in excess of the accumulation limits. QS will be issued for amounts in excess of accumulation limits only for owners of limited entry permits transferred to them by November 8, 2008, if such transfers of ownership have been registered with NMFS by November 30, 2008. The owner of any permit transferred after November 8, 2008 or not registered with NMFS by November 30, 2008 will only be eligible to receive an initial allocation for that permit of those QS that are within the accumulation limits; any QS in excess of the accumulation limits will be redistributed to the remainder of the initial recipients of QS in proportion to each recipient's initial allocation of QS for each species. Any person that qualifies for an initial allocation of QS in excess of the accumulation limits will be allowed to receive that allocation but must divest themselves of the excess QS during years three and four of the IFQ program. Holders of QS in excess of the control limits may receive and use the QP associated with that excess, up to the time their divestiture is completed. At the end of year 4 of the IFQ program, any QS held by a person in excess of the accumulation limits will be revoked and redistributed to the remainder of the QS holders in proportion to the QS holdings in year 5. No compensation will be due for any revoked shares.

(5) *Appeals.* [Reserved]

(6) *Fees.* The Regional Administrator is authorized to charge fees for administrative costs associated with the issuance of a QS permit consistent with the provisions given at § 660.25(f), subpart C.

(7) [Reserved]

(8) *Application requirements and initial issuance for QS permit and QS*—(i) *Additional definitions.* The following definitions are applicable to paragraph (d)(8) of this section and apply to terms used for the purposes of application requirements and initial issuance of QS Permits and QS:

(A) *non-whiting trip* means a fishing trip where less than 50 percent by weight of all fish reported on the state landing receipt is whiting.

(B) *PacFIN* means the Pacific Fisheries Information Network of the Pacific States Marine Fisheries Commission.

(C) *Relative history* means the landings history of a permit for a species, year, and area subdivision, divided by the total fleet history of the sector for that species, year, and area subdivision, as appropriate. Relative history is expressed as a percent.

(D) *Shoreside processor* means an operation, working on US soil, that takes delivery of trawl caught groundfish that has not been processed; and that thereafter engages that fish in shoreside processing. Entities that received fish that have not undergone at-sea processing or shoreside processing and sell that fish directly to consumers shall not be considered a processor for purposes of QS allocations. Shoreside processing is defined as either of the following:

(*1*) Any activity that takes place shoreside; and that involves: Cutting groundfish into smaller portions; or freezing, cooking, smoking, drying groundfish; or packaging that groundfish for resale into 100 pound units or smaller for sale or distribution into a wholesale or retail market.

(*2*) The purchase and redistribution into a wholesale or retail market of live groundfish from a harvesting vessel.

(E) *Whiting trip* means a fishing trip where greater than or equal to 50 percent by weight of all fish reported on the state landing receipt is whiting.

(ii) *Eligibility criteria for QS permit and QS.* Only the following persons are eligible to receive a QS permit or QS:

(A) The owner of a valid trawl limited entry permit is eligible to receive a QS permit and its associated QS amount. Any past landings history associated with the current limited entry trawl permit accrues to the current permit owner. NMFS will not recognize any person as the limited entry permit owner other than the person listed as limited entry permit owner in NMFS permit database. If a limited entry permit has history on state landing receipts and has been combined with a permit that has received or will receive a C/P endorsement, the trawl limited entry permit does not qualify for QS.

(B) Shoreside processors that meet the recent participation requirement of having received deliveries of 1 mt or more of whiting from whiting trips in each of any two years from 1998 through 2004 are eligible for an initial issuance of whiting QS. NMFS will initially identify shoreside processors by reference to Pacific whiting shoreside first receivers recorded on fish tickets in the dataset extracted from PacFIN by NMFS on July 1, 2010, subject to correction as described in paragraph (d)(8)(iv)(G) of this section.

(iii) *Steps for QS allocation formula.* The QS allocation formula is applied in the following steps:

(A) First, for each limited entry trawl permit owner, NMFS will determine a preliminary QS allocation for non-whiting trips.

(B) Second, for each limited entry trawl permit owner, NMFS will determine a preliminary QS allocation for whiting trips.

(C) Third, for each limited entry trawl permit owner, NMFS will combine the amounts resulting from paragraphs (d)(8)(iii)(A) and (B) of this section.

(D) Fourth, NMFS will reduce the results for limited entry trawl permit owners by 10 percent of non-whiting species as a set aside for Adaptive Management Program (AMP) and by 20 percent of whiting for the initial issuance of QS allocated to qualifying shoreside processors.

(E) Fifth, NMFS will determine the whiting QS allocation for qualifying shoreside processors from the 20 percent of whiting QS allocated to qualifying shoreside processors at initial issuance of QS.

(F) Sixth, for each limited entry trawl permit owner, NMFS will determine the Pacific halibut IBQ allocation.

(iv) *Allocation formula for specific QS amounts*—(A) *Allocation formula rules.* Unless otherwise specified, the following rules will be applied to data for the purpose of calculating an initial allocation of QS:

(*1*) For limited entry trawl permit owners, a permit will be assigned catch history or relative history based on the

landing history of the vessel(s) associated with the permit at the time the landings were made.

(*2*) The extracted PacFIN data includes species compositions based on port sampled data and applied to data at the vessel level. For species that do not match IFQ species categories after applying standard PacFIN species composition algorithms, NMFS will assign species to an IFQ species category based on other information from state landing receipts or logbook information in PacFIN.

(*3*) Only landings of IFQ species which are caught in the exclusive economic zone or adjacent state waters off Washington, Oregon and California will be used for calculation of allocation formulas. For the purpose of allocation of IFQ species for which the QS will be subdivided by area, catch areas have been assigned to landings of IFQ species reported on state landing receipts based on port of landing.

(*4*) History from limited entry permits that have been combined with a permit that may qualify for a C/P endorsement and which has shorebased permit history will not be included in the preliminary QS allocation formula, other than in the determination of fleet history used in the calculation of relative history for permits that do not have a C/P endorsement.

(*5*) History of illegal landings and landings made under non-whiting EFPs that are in excess of the cumulative limits in place for the non-EFP fishery will not count toward the allocation of QS.

(*6*) The limited entry permit's landings history includes the landings history of permits that have been previously combined with that permit.

(*7*) If two or more limited entry trawl permits have been simultaneously registered to the same vessel, NMFS will split the landing history evenly between all limited entry trawl-endorsed permits during the time they were simultaneously registered to the vessel.

(*8*) Unless otherwise noted, the calculation for QS allocation under paragraph (d)(8) of this section will be based on state landing receipts (fish tickets) as recorded in the dataset that was extracted from PacFIN by NMFS on July 1, 2010.

(*9*) For limited entry trawl permits, landings under provisional "A" permits that did not become "A" permits and "B" permits will not count toward the allocation of QS, other than in the determination of fleet history used in the calculation of relative history for permits that do not have a C/P endorsement.

(*10*) For limited entry trawl permits, NMFS will calculate initial issuance of QS separately based on whiting trips and non-whiting trips, and will weigh each calculation according to initial issuance allocations between whiting trips and non-whiting trips, which are one-time allocations necessary for the formulas used during the initial issuance of QS to create a single shorebased IFQ program. The initial issuance allocations between whiting and non-whiting trips for canary rockfish, bocaccio, cowcod, yelloweye rockfish, minor shelf rockfish N. of 40°10′, minor shelf rockfish S. of 40°10′, and minor slope rockfish S. of 40°10′ will be determined through the biennial specifications process. The short-term allocations for the remaining IFQ species are as follows:

Species	Initial issuance allocation 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. lat.	98.2%	1.8%
Sablefish S. of 36° N. lat.	100.0%	0.0%
PACIFIC OCEAN PERCH	remaining	17% or 30 mt, whichever is greater, to shorebased + at-sea whiting. If under rebuilding, 52% to shorebased + at-sea whiting.
WIDOW	remaining	If stock rebuilt, 10% or 500 mt, whichever is greater, to shorebased + at-sea whiting.
Chilipepper S. of 40°10′ N. lat.	100.0%	0.0%
Splitnose S. of 40°10′ N. lat.	100.0%	0.0%
Yellowtail N. of 40°10′ N. lat.	remaining	300 mt
Shortspine N. of 34°27′ N. lat.	99.9%	0.1%
Shortspine S. of 34°27′ N. lat.	100.0%	0.0%
Longspine N. of 34°27′ N. lat.	100.0%	0.0%
DARKBLOTCHED	remaining	9% or 25 mt, whichever is greater, to shorebased + at-sea whiting.
Minor Slope Rockfish N. of 40°10′ N. lat.	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%

(B) *Preliminary QS allocation for non-whiting trips.* NMFS will calculate the non-whiting preliminary QS allocation differently for different species groups, Groups 1 through 3.

(*1*) *Allocation formula species groups.* For the purposes of preliminary QS allocation, IFQ species will be grouped as follows:

(*i*) Group 1 includes lingcod, Pacific cod, Pacific whiting, sablefish north of 36° N. lat., sablefish south of 36° N. lat., Dover sole, English sole, petrale sole, arrowtooth flounder, starry flounder, other flatfish stock complex, chilipepper rockfish, splitnose rockfish, yellowtail rockfish, shortspine thornyhead north of 34° 27′ N. lat., shortspine thornyhead south of 34° 27′ N. lat., longspine thornyhead north of 34° 27′ N. lat., minor rockfish north slope species complex, minor rockfish south slope species complex, minor rockfish north

shelf species complex, and minor rockfish south shelf species complex.

(*ii*) Group 2 includes bocaccio, cowcod, darkblotched rockfish, Pacific ocean perch, widow rockfish, and yelloweye rockfish.

(*iii*) Group 3 includes canary rockfish.

(*2*) *Group 1 species:* The preliminary QS allocation process indicated in paragraph (d)(8)(iii)(A) of this section for Group 1 species follows a two step process, one to allocate a pool of QS equally among all eligible limited entry permits and the other to allocate the remainder of the preliminary QS based on permit history. Through these two processes, preliminary QS totaling 100% for each Group 1 species will be allocated. In later steps this amount will be adjusted and reduced as indicated in paragraph (d)(8)(iii)(C) and (D), to determine the QS allocation.

(*i*) *QS to be allocated equally.* The pool of QS for equal allocation will be determined using the landings history from Federal limited entry groundfish permits that were retired through the Federal buyback program (i.e., buyback permit) (70 FR 45695, August 8, 2005). The QS pool associated with the buyback permits will be the buyback permit history as a percent of the total fleet history for the allocation period. The calculation will be based on total absolute pounds with no dropped years and no other adjustments. The QS pool will be divided equally among qualifying limited entry permits for all QS species/species groups and areas in Group 1.

(*ii*) *QS to be allocated based on each permit's history.* The pool for QS allocation based on limited entry trawl permit history will be the QS remaining after subtracting out the QS allocated equally. This pool will be allocated to each qualifying limited entry trawl permit based on the permit's relative history from 1994 through 2003. For each limited entry trawl permit, NMFS will calculate a set of relative histories using the following methodology. First, NMFS will sum the permit's landings by each year for each Group 1 species/species group and area subdivision. Second, NMFS will divide each permit's annual sum for a particular species/species group and area subdivision by the shoreside limited entry trawl fleet's annual sum for the same species/species group and area subdivision. NMFS will then calculate a total relative history for each permit by species/species group and area subdivision by adding all relative histories for the permit together and subtracting the three years with the lowest relative history for the permit. The result for each permit by species/species group and areas subdivision will be divided by the aggregate sum of all total relative histories of all qualifying limited entry trawl permits for that species/species group and area subdivision. NMFS will then multiply the result from this calculation by the amount of QS in the pool to be allocated based on each permit's history.

(*3*) *Group 2 species:* The preliminary QS allocation step indicated in paragraph (d)(8)(iii)(A) of this section will be calculated for each limited entry trawl permit using a formula based on QS allocations for each limited entry trawl permit for 11 target species, areas of distribution of fishing effort as determined from 2003–2006 target species catch data from the PacFIN Coastwide Trawl Logbook Database, average bycatch ratios for each area as derived from West Coast Groundfish Observer Program (WCGOP) data from 2003 through 2006, and the non-whiting initial issuance allocation of the limited entry trawl allocation amounts for 2011 for each of the 11 target species. These data are used in a series of sequential steps to estimate the allocation of Group 2 species to each limited entry trawl permit. Steps (*iii*) to (*vi*) estimate the permit's total 2003–2006 target species by area. Steps (*vii*) to (*xii*) project Group 2 species bycatch amounts using 2003–2006 WCGOP observer ratios and the initial issuance allocation applied to the 2011 limited entry trawl allocation. Steps (*xiv*) to (*xvii*) convert these amounts into QS. As with Group 1 species, preliminary QS totaling 100% for each Group 2 species unit will be allocated and the amount of the allocations will be adjusted and reduced as indicated in paragraph (d)(8)(iii)(C) and (D) of this section to determine the QS allocation.

(*i*) The 11 target species are arrowtooth flounder, starry flounder, other flatfish, Dover sole, English sole, petrale sole, minor slope rockfish, shortspine thornyheads, longspine thornyheads, sablefish, and Pacific cod.

(*ii*) The 8 areas of distribution of fishing effort are defined latitudinally and by depth. The latitudinal areas are (a) north of 47°40 N. lat.; (b) between 47°40 N. lat. and 43°55′ N. lat.; (c) 43°55′ N. lat. and 40°10′ N. lat.; and (d) south of 40°10′ N. lat. Each latitudinal area is further divided by depth into areas shoreward and seaward of the trawl Rockfish Conservation Area as defined at § 660.130(e)(4) of this subpart.

(*iii*) For each limited entry trawl permit, NMFS will review the Permit Logbook data for that permit and sum target species catch recorded for the years 2003–2006, resulting in total target species catch in each area for each permit for the years 2003 through 2006 for all 11 target species in aggregate.

(*iv*) For each limited entry trawl permit, NMFS will also sum target species catch by area into total coastwide target species catch for each permit for the years 2003 through 2006 for all 11 target species in aggregate.

(*v*) For each limited entry trawl permit, NMFS will divide logbook aggregate target species catch in each area (step (*iii*)) by the permit's total coastwide target species catch (step (*iv*)) to create a set of 8 area catch ratios for each permit. (Note: The sum of all area catch ratios equals 1 for each permit).

(*vi*) For limited entry trawl permits where the vessel registered to the permit did not submit logbooks showing any catch of the 11 target species for any of the years 2003 through 2006, NMFS will use the following formula to calculate area target catch ratios: (a) NMFS will sum by area all limited entry trawl permits' total logbook area target catches from step (*iii*), (b) NMFS will sum coastwide all limited entry trawl permits' total logbook target catches across all areas from step (*iv*), and (c) NMFS will divide these sums (i.e., a/b) to create average permit logbook area target catch ratios.

(*vii*) NMFS will calculate the 2011 non-whiting short term allocation amount for each of the 11 target species by multiplying the limited entry trawl allocation amounts for 2011 for each by the corresponding short term allocation for the non-whiting sector given in paragraph (d)(8)(iii)(A)(*10*) of this section or determined through the biennial specifications process, as applicable.

(*viii*) For each limited entry trawl permit, NMFS will obtain the percentage of the limited entry trawl permit initial QS allocation for each of the 11 target species resulting from paragraph (d)(8)(iv)(B)(*2*) of this section.

(*ix*) NMFS will calculate each limited entry trawl permit's projected non-whiting sector quota pounds for 2011 by multiplying the 2011 non-whiting sector short term allocation amounts for each of the 11 target species from step (*vii*) by each permit's target species QS allocation percentage from step (*viii*).

(*x*) For each limited entry trawl permit, NMFS will sum the projected quota pounds for the 11 target species from step (*ix*) to get a total projected weight of all 11 target species for the limited entry trawl permit.

(*xi*) For each limited entry trawl permit, NMFS will estimate the permit's total incidental catch of Group 2 species by area by multiplying the projected 2011 total weight of all 11 target species by the applicable area catch ratio for

each area as calculated in either step (*v*) (permits with logbook data) or step (*vi*) (permits without logbook data).

(*xii*) NMFS will apply WCGOP average bycatch ratios for each Group 2 species (observed Group 2 species catch/total target species catch) by area. The WCGOP average bycatch ratios are as follows:

BOCACCIO

Area	Shoreward	Seaward
N. of 47°40′ N. lat.	.....	.....
43°55′ N. lat. to 47°40′ N. lat.	.....	.....
40°10′ N. lat. to 43°55′ N. lat.	.....	.....
S. of 40°10′ N. lat.	0.01114773	0.00120015

COWCOD

Area	Shoreward	Seaward
N. of 47°40′ N. lat.	.....	.....
43°55′ N. lat. to 47°40′ N. lat.	.....	.....
40°10′ N. lat. to 43°55′ N. lat.	.....	.....
S. of 40°10′ N. lat.	0.00088891	0.00001074

DARKBLOTCHED

Area	Shoreward	Seaward
N. of 47°40′ N. lat.	0.00122003	0.00860467
43°55′ N. lat. to 47°40′ N. lat.	0.00185020	0.01836550
40°10′ N. lat. to 43°55′ N. lat.	0.00253201	0.01476165
S. of 40°10′ N. lat.	0.00000255	0.00480063

PACIFIC OCEAN PERCH

Area	Shoreward	Seaward
N. of 47°40′ N. lat.	0.00088011	0.01766360
43°55′ N. lat. to 47°40′ N. lat.	0.00015827	0.01529318
40°10′ N. lat. to 43°55′ N. lat.	0.00014424	0.00114965
S. of 40°10′ N. lat.	.....	0.00021813

WIDOW

Area	Shoreward	Seaward
N. of 47°40′ N. lat.	0.00001142	0.00005472
43°55′ N. lat. to 47°40′ N. lat.	0.00033788	0.00049695
40°10′ N. lat. to 43°55′ N. lat.	0.00015165	0.00000766
S. of 40°10′ N. lat.	0.00003513	0.00009855

YELLOWEYE

Area	Shoreward	Seaward
N. of 47°40′ N. lat.	0.00017625	0.00000160
43°55′ N. lat. to 47°40′ N. lat.	0.00004802	0.00000893
40°10′ N. lat. to 43°55′ N. lat.	0.00005309	0.00000556
S. of 40°10′ N. lat.	0.00007739	.....

(*xiii*) For each limited entry trawl permit, NMFS will calculate projected Group 2 species amounts by area by multiplying the limited entry trawl permit's projected 2011 total weight of all target species by area from step (*xi*) by the applicable average bycatch ratio for each Group 2 species and corresponding area of step (*xii*).

(*xiv*) For each limited entry trawl permit, NMFS will sum all area amounts for each Group 2 species from step (*xiii*) to calculate the total projected amounts of each Group 2 species for each limited entry trawl permit.

(*xv*) NMFS will sum all limited entry trawl permits' projected Group 2 species amounts from step (*xiv*) to calculate coastwide total projected amounts for each Group 2 species.

(*xvi*) NMFS will estimate preliminary QS for each limited entry trawl permit for each Group 2 species by dividing each limited entry trawl permit's total projected amount of each Group 2 species from step (*xiv*) by the coastwide total projected amount for that species from step (*xv*).

(*4*) *Group 3 Species:* (*i*) The preliminary QS allocation step indicated in paragraph (d)(8)(iii)(A) of this section will be performed in two calculations that result in the division of preliminary QS allocation into two pools, one to allocate QS equally among all eligible limited entry permits, using the approach identified for Group 1 species in paragraph (d)(8)(iv)(B)(*2*)(*i*) of this section, and the other to allocate QS using a formula based on QS allocations for target species and areas fished, using the approach identified for Group 2 species in paragraph (d)(8)(iv)(B)(*3*) of this section, using the following WCGOP average bycatch rates:

CANARY

Area	Shoreward	Seaward
N. of 47°40′ N. lat.	0.00613838	0.00001714
43°55′ N. lat. to 47°40′ N. lat.	0.00186217	0.00006486
40°10′ N. lat. to 43°55′ N. lat.	0.00485013	0.00001435
S. of 40°10′ N. lat.	0.00050248	0.00000245

(*ii*) Through these two processes, preliminary QS totaling 100% for each species will be allocated. In later steps, this amount will be adjusted and reduced as indicated in paragraphs (d)(8)(iii)(C) and (D) of this section to determine the QS allocation. In combining the two QS pools for each permit, the equal allocation portion is weighted according to the process in paragraph (d)(8)(iv)(B)(*2*)(*i*) of this section, and the portion calculated based on allocations for target species and areas fished is weighted according to the process in (d)(8)(iv)(B)(*2*)(*ii*) of this section.

(C) *Preliminary QS allocation for whiting trips.* The preliminary QS allocation based on whiting trips as indicated in paragraph (d)(8)(iii)(B) of this section for limited entry trawl permits follows a two-step process, one to allocate a pool of QS equally among all eligible limited entry permits and the other to allocate the remainder of the preliminary QS based on permit history. Through these two processes, preliminary QS totaling 100% for each species will be allocated. In later steps, this amount will be adjusted and reduced, as indicated in paragraphs (d)(8)(iii)(C) and (D) of this section, to determine the QS allocation.

(*1*) *QS to be allocated equally.* The pool of QS for equal allocation will be determined using the whiting trip landings history from Federal limited entry groundfish permits that were retired through the Federal buyback program (i.e., buyback permit) (70 FR 45695, August 8, 2005). For each species, the whiting trip QS pool associated with the buyback permits will be the buyback permit history as a percent of the total fleet history for the allocation period. The calculation will be based on total absolute pounds with no dropped years and no other adjustments. The whiting trip QS pool associated with the buyback permits will be divided equally among all qualifying limited entry permits for each species.

(*2*) *QS to be allocated based on each permit's history.* The pool for QS allocation based on each limited entry trawl permit's history will be the QS remaining after subtracting out the QS associated with the buyback permits allocated equally.

(*i*) *Whiting QS allocated based on each permit's history.* Whiting QS based on each limited entry trawl permit's history will be allocated based on the permit's relative history from 1994 through 2003. For each limited entry trawl permit, NMFS will calculate a whiting relative history for each qualifying year, as follows. First, NMFS will sum the permit's history of landings of whiting from whiting trips for each year. Second, NMFS will divide each permit's annual sum of whiting from whiting trips by the shoreside limited entry trawl fleet's annual sum of whiting. NMFS will then calculate a total relative history for each permit by adding all relative histories for the permit together and subtracting the two years with the lowest relative history. NMFS will then divide the result for each permit by the total relative history for whiting of all qualifying limited entry trawl permits. The result from this calculation will then be multiplied by the amount of whiting QS in the pool to be allocated based on each permit's history.

(*ii*) *Other incidentally caught species QS allocation for eligible limited entry trawl permit owners.* Other incidentally caught species from the QS remaining after subtracting out the QS associated with the buyback permits will be allocated pro-rata based on each limited entry trawl permit's whiting QS from whiting trips. Pro-rata means a percent that is equal to the percent of whiting QS.

(D) *QS from limited entry permits calculated separately for non-whiting trips and whiting trips.* NMFS will calculate the portion of QS for each species which a permit receives based on non-whiting trips and whiting trips separately and will weight each preliminary QS in proportion to the short term allocation between and whiting trips and non-whiting trips for that species in paragraph (d)(8)(iv)(A)(*10*) of this section or determined through the biennial specifications process, as applicable.

(*1*) *non-whiting trips.* To determine the amount of QS of each species for non-whiting trips for each limited entry trawl permit, NMFS will multiply the preliminary QS for the permit from paragraph (d)(8)(iii)(A) of this section for each species by the short term allocation for that species for non-whiting trips.

(*2*) *Whiting trips.* To determine the amount of QS of each species for whiting trips for each limited entry trawl permit, NMFS will multiply the preliminary QS from paragraph (d)(8)(iii)(B) of this section for each species by the short term allocation for that species for whiting trips.

(E) *QS for each limited entry trawl permit.* For each limited entry trawl permit, NMFS will add the results for the permit from paragraphs (d)(8)(iv)(D)(*1*) and (D)(*2*) of this section in order to determine the total QS for each species on that permit.

(F) *Adjustment for AMP set-aside and shoreside processor initial issuance allocations.* NMFS will reduce the non-whiting QS allocation to each limited entry trawl permit by 10 percent, for a QS set-aside to AMP. NMFS will reduce the whiting QS allocation to each limited entry trawl permit by 20 percent for the initial QS allocation to shoreside processors.

(G) *Allocation of initial issuance of whiting QS for shoreside processors.* NMFS will calculate the amount of whiting QS available to *shoreside processors* from the 20 percent adjustment of whiting QS allocations in paragraph (d)(8)(iv)(F) of this section. For each eligible *shoreside processor,*

whiting QS will be allocated based on the eligible *shoreside processor's* relative history from 1998 through 2004. Only the deliveries for which the shoreside processor is the first processor of the fish will be used in the calculation of whiting relative history.

(*1*) For each *shoreside processor* which has received deliveries of at least 1 mt of whiting from whiting trips in each of any two years from 1998 through 2004, NMFS will calculate a whiting relative history for each qualifying year, as follows. First, NMFS will sum the *shoreside processor's* receipts of whiting for each year. Second, NMFS will calculate the relative history for each year by dividing each *shoreside processor's* annual sum of whiting receipts by the aggregate annual sum of whiting received by all *shoreside processor*s in that year. NMFS will then calculate a total relative history for each *shoreside processor* by adding all relative histories for the *shoreside processor* together and subtracting the two years with the lowest relative history. NMFS will then divide the result for each *shoreside processor* by the aggregate sum of all total relative histories for whiting by all qualifying *shoreside processors.* The result from this calculation will then be multiplied by 20% to determine the *shoreside processor's* whiting QS.

(*2*) For purposes of making an initial issuance of whiting QS to a shoreside processor, NMFS will attribute landing history to the Pacific whiting shoreside first receiver reported on the landing receipt (the entity responsible for filling out the state landing receipt) as recorded in the dataset that was extracted from PacFIN by NMFS on July 1, 2010. History may be reassigned to a shoreside processor not on the state landings receipt as described at paragraph (d)(8)(vi)(B) of this section.

(H) *Allocation of Pacific halibut IBQ for each limited entry trawl permit.* For each eligible limited entry trawl permit owner, NMFS will calculate Pacific halibut individual bycatch quota (IBQ) for the area north of 40°10′ N. lat. using a formula based on (a) QS allocations for each limited entry trawl permit for two target species, (b) areas of distribution of fishing effort as determined from 2003–2006 target species catch data from the PacFIN Coastwide Trawl Logbook Database, (c) average bycatch ratios for each area as derived from WCGOP data from 2003 through 2006, and (d) the non-whiting initial issuance allocation of the limited entry trawl allocation amounts for 2011 for arrowtooth and petrale sole. These data are used in a series of sequential steps to determine the allocation of IBQ to each limited entry trawl permit. Steps (*3*) to (*6*) estimate the permit's total 2003–2006 target species by area. Steps (*7*) to (*13*) project Pacific halibut bycatch amounts using 2003–2006 WCGOP observer ratios and the 2011 non-whiting initial issuance allocation of the limited entry trawl allocation amounts. Steps (*14*) to (*16*) convert these amounts into QS.

(*1*) The target species are arrowtooth flounder and petrale sole.

(*2*) The four bycatch areas are defined latitudinally and by depth. The latitudinal areas are (a) north of 47°30′ N. lat., and (b) between 40°10′ N. lat. and 47°30′ N. lat. Each latitudinal area is further divided by depth into areas shoreward and seaward of the trawl Rockfish Conservation Area as defined at § 660.130(e)(4), subpart D.

(*3*) For each limited entry trawl permit, NMFS will review the Permit Logbook data for that permit and sum target species catch recorded for the years 2003–2006, resulting in total target species catch in each of the four areas for each permit for the years 2003 through 2006 for both target species in aggregate. For practicability, seaward or shoreward of the RCA as identified in the logbook data is defined as being deeper than or shallower than 115 fathoms, respectively.

(*4*) For each limited entry trawl permit, NMFS will also sum the target species catch by area into total aggregate target species catch for each permit for the years 2003 through 2006.

(*5*) For each limited entry trawl permit, NMFS will divide logbook aggregate target species catch in each area (step (*3*)) the by the sum of the permit's catch of each target species in all four bycatch areas (step (*4*)) to create a set of area catch ratios for each permit. (Note: The sum of all four area catch ratios in aggregate equals 1 for each permit).

(*6*) For limited entry trawl permits where the vessel registered to the permit did not submit logbooks showing any catch of either of the two target species for any of the years 2003 through 2006, NMFS will use the following formula to calculate area target catch ratios: NMFS will sum by area all limited entry trawl permits' total logbook area target catches from step (*3*), and sum all limited entry trawl permits' total logbook target catches across all four areas from step (*4*); and divide these sums to create average permit logbook area target catch ratios.

(*7*) NMFS will calculate the 2011 non-whiting short term allocation amount for each of the two target species by multiplying the limited entry trawl allocation amounts for 2011 for each by the corresponding short term allocation for the non-whiting sector given in paragraph (d)(8)(iv)(A)(*10*) of this section.

(*8*) For each limited entry trawl permit, NMFS will obtain the non-whiting portion of each limited entry trawl permit's initial QS allocations for each of the two target species resulting from paragraph (d)(8)(iv)(B)(*2*) of this section.

(*9*) NMFS will calculate each limited entry trawl permit's projected non-whiting sector quota pounds for the two target species for 2011 by multiplying the 2011 non-whiting sector short term allocation amounts for each of the target species by the permit's QS allocation percentage for the species from step (*8*).

(*10*) For each limited entry trawl permit, NMFS will sum the projected quota pounds for the two target species from step (*9*) to get a total projected weight of the two target species for the limited entry trawl permit.

(*11*) For each limited entry trawl permit, NMFS will multiply the projected 2011 total weight of the two target species by the applicable area catch ratio for each area as calculated in either step (*5*) (permits with logbook data) or step (*6*) (permits without logbook data).

(*12*) NMFS will apply WCGOP average halibut bycatch ratios (observed halibut catch/total of two target species catch) by area. The WCGOP average halibut bycatch ratios are as follows:

PACIFIC HALIBUT

Area	Shoreward	Seaward
N. of 47°30′ N. lat.	0.117	0.061
40°10′ N. lat. to 47°30′ N. lat.	0.07	0.03

(*13*) For each limited entry trawl permit, NMFS will calculate projected Pacific halibut amounts by area by multiplying the limited entry trawl permit's projected 2011 total weight of the two target species by area from step (*11*) by the average bycatch ratio for the corresponding area of step (*12*).

(*14*) For each limited entry trawl permit, NMFS will sum all area amounts from step (*13*) to calculate the total projected Pacific halibut amount for each limited entry trawl permit.

(*15*) NMFS will sum all limited entry trawl permits' projected Pacific halibut amounts from step (*14*) to calculate aggregate total amounts of Pacific halibut.

(*16*) NMFS will estimate preliminary Pacific halibut IBQ for each limited entry trawl permit by dividing each limited entry trawl permit's total projected Pacific halibut amount from step (*14*) by the aggregate total amounts of Pacific halibut from step (*15*).

(v) *QS application.* Persons may apply for an initial issuance of QS and a QS permit in one of two ways: Complete and submit a prequalified application received from NMFS, or complete and submit an application package.

(A) *Prequalified application.* A "prequalified application" is a partially pre-filled application where NMFS has preliminarily determined the landings history that may qualify the applicant for an initial issuance of QS. The application package will include a prequalified application (with landings history), a Trawl Identification of Ownership Interest form, and any other documents NMFS believes are necessary to aid the limited entry permit owner in completing the QS application.

(*1*) For current trawl limited entry permit owners, NMFS will mail a prequalified application to all owners, as listed in the NMFS permit database at the time applications are mailed, that NMFS determines may qualify for QS. NMFS will mail the application by certified mail to the current address of record in the NMFS permit database. The application will contain the basis of NMFS' calculation of the permit owner's QS for each species/species group or area.

(*2*) For shoreside processors, NMFS will mail a prequalified application to those Pacific whiting shoreside first receivers with receipts of 1 mt or more of whiting from whiting trips in each of any two years from 1998 through 2004, as documented on fish tickets in the dataset extracted from PacFIN by NMFS on July 1, 2010. NMFS will mail the prequalified application by certified mail to the current address of record given by the state in which the entity is registered. For all qualified entities who meet the eligibility requirement at paragraph (d)(8)(ii)(B) of this section, the application will provide the basis of NMFS' calculation of the initial issuance of Pacific whiting QS.

(B) *Request for an application.* An owner of a current limited entry trawl permit or a Pacific whiting first receiver or shoreside processor that believes it is qualified for an initial issuance of QS and does not receive a prequalified application, must complete an application package and submit the completed application to NMFS by the application deadline. The completed application must either be post-marked or hand-delivered within normal business hours no later than [*date 60 calendar days after publication of the final rule in the* ***Federal Register***]. Application packages are available on NMFS' Web site (*http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Permits/index.cfm*) or by contacting SFD. An application must include valid PacFIN data or other credible information that substantiates the applicant's qualification for an initial issuance of QS. If an applicant fails to submit a completed application by the deadline date, they forgo the opportunity to receive consideration for an initial issuance of QS.

(vi) *Corrections to the application.* If an applicant does not accept NMFS' calculation in the prequalified application either in part or whole, the applicant must identify in writing to NMFS which parts the applicant believes to be inaccurate, and must provide specific credible information to substantiate any requested corrections. The completed application and specific credible information must be provided to NMFS in writing by the application deadline. Written communication must either be post-marked or hand-delivered within normal business hours no later than [*date 60 calendar days after publication of the final rule in the* ***Federal Register***]. Requests for corrections may only be granted for the following reasons:

(A) Errors in NMFS' extraction, aggregation, or expansion of data, including:

(*1*) Errors in NMFS' extraction of landings data from PacFIN;

(*2*) Errors in NMFS' extraction of state logbook data from PacFIN;

(*3*) Errors in NMFS' application of the QS allocation formula;

(*4*) Errors in identification of the permit owner, permit combinations, or vessel registration as listed in NMFS permit database;

(*5*) Errors in identification of or ownership information for the first receiver or the processor that first processed the fish.

(B) *Reassignment of Pacific whiting landings history for shoreside processors.* For shoreside processors, the landing history may be reassigned from the Pacific whiting shoreside first receiver identified in the PacFIN database to a shoreside processor that was in fact the first processor of the fish. In order for an applicant to request that landing history be reassigned, an authorized representative for the Pacific whiting shoreside first receiver identified on the state landing receipt must submit, by the application deadline date specified in paragraph (d)(8)(vii)(B) of this section for initial issuance of QS, a written request that the whiting landings history from the qualifying years be conveyed to a shoreside processor. The letter must be signed and dated by the authorized representative of the Pacific whiting shoreside first receiver named on the state landing receipt and signed and dated by the authorized representative of the shoreside processor to which the Pacific whiting landing history is requested to be reassigned. The letter must identify the dates of the landings history and the associated amounts that are requested to be reassigned, and include the legal name of the shoreside processor to which the Pacific whiting landing history is requested to be reassigned, their date of birth or tax identification number, business address, business phone number, fax number, and e-mail address. If any document exists that demonstrates that the shoreside processor to which the Pacific whiting landing history is requested to be reassigned was in fact the first processor of the fish, such documentation must be provided to NMFS. NMFS will review the information submitted and will make a determination as part of the IAD.

(vii) *Submission of the application and application deadline.* (A) *Submission of the application.* Submission of the complete, certified application includes, but is not limited to, the following:

(*1*) The applicant is required to sign and date the application and have the document notarized by a licensed Notary Public.

(*2*) The applicant must certify that they qualify to own QS.

(*3*) The applicant must indicate they accept NMFS' calculation of initial issuance of QS provided in the prequalified application, or provide credible information that demonstrates their qualification for QS.

(*4*) The applicant is required to provide a complete Trawl Identification

of Ownership Interest Form as specified at paragraph (d)(4)(iv) of this section.

(*5*) Business entities may be required to submit a corporate resolution or other credible documentation as proof that the representative of the entity is authorized to act on behalf of the entity; and

(*6*) NMFS may request additional information of the applicant as necessary to make an IAD on initial QS issuance.

(B) *Application deadline.* A complete, certified application must be mailed or hand-delivered to NMFS, Northwest Region, Permits Office, Bldg. 1, 7600 Sand Point Way NE., Seattle, WA 98115, and postmarked no later than [*date 60 calendar days after publication of the final rule in the* ***Federal Register***]. NMFS will not accept or review any applications received or postmarked after the application deadline. There are no hardship exemptions for this deadline.

(viii) *Permit transfer during application period.* NMFS will not review or approve any request for a change in limited entry trawl permit owner at any time after [*DATE FINAL RULE PUBLISHED IN* ***Federal Register***] until a final decision is made by the Regional Administrator on behalf of the Secretary of Commerce regarding the QS to be issued for that permit.

(ix) *Initial Administrative Determination (IAD).* NMFS will issue an IAD for all complete, certified applications received by the application deadline date. If NMFS approves an application for initial issuance of QS, the applicant will receive a QS Permit specifying the amounts of QS for which the applicant has qualified and the applicant will be registered to a QS Account. If NMFS disapproves or partially disapproves an application, the IAD will provide the reasons NMFS did not approve the application. As part of the IAD, NMFS will indicate whether the QS Permit owner qualifies for QS in amounts that exceed the accumulation limits and are subject to divestiture provisions given at paragraph (d)(4)(v) of this section, or whether the QS permit owner qualifies for QS that exceed the accumulation limits and does not qualify to receive the excess under paragraph (d)(4)(v) of this section. If the applicant does not appeal the IAD within 30 calendar days of the date on the IAD, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(x) *Appeals.* For QS permits and QS issued under this section, the appeals process and timelines are specified at § 660.25(g), subpart C. For the initial issuance of QS and the QS permits, the bases for appeal are described in paragraph (d)(8)(vi) of this section. An additional basis for appeal for whiting QS based on shoreside processing is an allegation that the shoreside processor or Pacific whiting shoreside first receiver to which a QS Permit and QS have been assigned was not in fact the first processor of the fish included in the qualifying landings history. The appellant must submit credible information supporting the allegation that they were in fact the first shoreside processor for the fish in question. Items not subject to appeal include, but are not limited to, the accuracy of permit landings data or Pacific whiting shoreside first receiver landings data in the dataset extracted from PacFIN by NMFS on July 1, 2010.

(e) *Vessel accounts.* [Reserved]

(f) *First Receiver Site License.* [Reserved]

(g) *Retention requirements (whiting and non-whiting vessels).* [Reserved]

(h) *Observer Requirements.* [Reserved]

(i) [Reserved]

(j) *Shoreside Catch Monitor requirements for IFQ first receivers.* [Reserved]

(k) *Catch weighing requirements.* [Reserved]

(l) *Gear Switching.* [Reserved]

(m) *Adaptive Management Program.* [Reserved]

§ 660.150 Mothership (MS) Coop program.

(a) *General.* The MS Coop Program requirements in this section will be effective beginning January 1, 2011, except for paragraphs (f)(3), (f)(5), (f)(6), (g)(3), (g)(5), and (g)(6) which are effectively immediately. The MS Coop Program is a limited access program that applies to eligible harvesters and processors in the mothership sector of the Pacific whiting at-sea trawl fishery. Eligible harvesters and processors, including coop and non-coop fishery participants, must meet the requirements set forth in this section of the Pacific Coast groundfish regulations. In addition to the requirements of this section, the MS coop program is subject to the following groundfish regulations of subparts C and D:

(1) Pacific whiting seasons § 660.131(b), subpart D.

(2) Area restrictions specified for midwater trawl gear used to harvest Pacific whiting fishery specified at § 660.131(c), Subpart D for GCAs, RCAs, Salmon Conservation Zones, BRAs, and EFHCAs.

(3) Regulations set out in the following sections of subpart C: § 660.11 Definitions, § 660.12 Prohibitions, § 660.13 Recordkeeping and reporting, § 660.14 VMS requirements, § 660.15 Equipment requirements, § 660.16 Groundfish Observer Program, § 660.20 Vessel and gear identification, § 660.25 Permits, § 660.26 Pacific whiting vessel licenses, § 660.55 Allocations, § 660.60 Specifications and management measures, § 660.65 Groundfish harvest specifications, and §§ 660.70 through 660.79 Closed areas.

(4) Regulations set out in the following sections of subpart D: § 660.111 Trawl fishery definitions, § 660.112 Trawl fishery prohibitions, § 660.113 Trawl fishery recordkeeping and reporting, § 660.116 Trawl fishery observer requirements, § 660.120 Trawl fishery crossover provisions, § 660.130 Trawl fishery management measures, and § 660.131 Pacific whiting fishery management measures.

(5) The MS Coop Program may be restricted or closed as a result of projected overages within the MS Coop Program, the C/P Coop Program, or the Shorebased IFQ Program. As determined necessary by the Regional Administrator, area restrictions, season closures, or other measures will be used to prevent the trawl sectors in aggregate or the individual trawl sector (Shorebased IFQ, MS Coop, or C/P Coop) from exceeding an OY, or formal allocation specified in the PCGFMP or regulation at § 660.55, subpart C, or §§ 660.140, 660.150, or 660.160, subpart D.

(b) *Participation requirements.* [Reserved]

(1) *Mothership vessels.* [Reserved]

(2) *Mothership catcher vessels.* [Reserved]

(3) *MS Coop formation and failure.* [Reserved]

(c) *Inter-coop agreement.* [Reserved]

(d) *MS coop program species and allocations*—(1) *MS coop program species.* MS Coop Program Species are as follows:

(i) Species with formal allocations to the MS Program are Pacific whiting, canary rockfish, darkblotched rockfish, Pacific Ocean perch, and widow rockfish;

(ii) Species with set-asides for the MS and C/P Programs combined, as described in Tables 1d and 2d, subpart C.

(2) *Annual mothership sector sub-allocations.* [Reserved]

(i) *Mothership catcher vessel catch history assignments.* [Reserved]

(ii) *Annual coop allocations.* [Reserved]

(iii) *Annual non-coop allocation.* [Reserved]

(3) *Reaching an allocation or sub-allocation.* [Reserved]

(4) *Non-whiting groundfish species reapportionment.* [Reserved]

(5) *Announcements.* [Reserved]

(6) *Redistribution of annual allocation.* [Reserved]

(7) *Processor obligation.* [Reserved]

(8) *Allocation accumulation limits.* [Reserved]

(e) *MS coop permit and agreement.* [Reserved]

(f) *Mothership (MS) permit.*

(1) *General.* Any vessel that processes or receives deliveries as a mothership processor in the Pacific whiting fishery mothership sector must be registered to an MS permit. A vessel registered to an MS permit may receive fish from a vessel that fishes in an MS coop and/or may receive fish from a vessel that fishes in the non-coop fishery at the same time or during the same year.

(i) *Eligibility to own or hold an MS permit.* To acquire an MS permit a person must be eligible to own and control a U.S. fishing vessel with a fishery endorsement pursuant to 46 U.S.C. 12113 (general fishery endorsement requirements and 75 percent citizenship requirement for entities) and must be: A United States citizen; a permanent resident alien; or a corporation, partnership or other entity established under the laws of the United States or any State.

(ii) *Vessel size endorsement.* An MS permit does not have a vessel size endorsement. The endorsement provisions at § 660.25(b)(3)(iii), subpart C, do not apply to a MS permit.

(iii) *Restriction on C/P vessels operating as motherships.* Restrictions on a vessel registered to a limited entry permit with a C/P endorsement operating as a mothership are specified at § 660.160, subpart D.

(2) *Renewal, change of permit ownership, or vessel registration.* [Reserved]

(3) *Accumulation limits.*

(i) *MS permit usage limit.* [Reserved]

(ii) *Ownership—individual and collective rule.* The ownership that counts toward a person's accumulation limit will include:

(A) Any MS permit owned by that person, and

(B) A portion of any MS permit owned by an entity in which that person has an interest, where the person's share of interest in that entity will determine the portion of that entity's ownership that counts toward the person's limit.

(iii) [Reserved].

(iv) *Trawl identification of ownership interest form.* Any person that is applying for an MS permit shall document those individuals that have greater than or equal to 2 percent ownership interest in the permit. This ownership interest must be documented with the SFD via the Trawl Identification of Ownership Interest Form sent to the permit owner with their application. SFD will not issue an MS Permit unless the Trawl Identification of Ownership Interest Form has been completed.

(4) *Appeals.* [Reserved].

(5) *Fees.* The Regional Administrator is authorized to charge fees for administrative costs associated with the issuance of an MS permit consistent with the provisions given at § 660.25(f), Subpart C.

(6) *Application requirements and initial issuance for MS permit*—(i) *Eligibility criteria for MS permit.* Only the current owner of a vessel that processed Pacific whiting in the mothership sector in the qualifying years is eligible to receive initial issuance of an MS permit, except that in the case of bareboat charterers, the charterer of the bareboat may receive an MS permit instead of the vessel owner. As used in this section, "bareboat charterer" means a vessel charterer operating under a bareboat charter, defined as a complete transfer of possession, command, and navigation of a vessel from the vessel owner to the charterer for the limited time of the charter agreement.

(ii) *Qualifying criteria for MS permit.* To qualify for initial issuance of an MS permit, a person must own, or operate under a bareboat charter, a vessel on which at least 1,000 mt of Pacific whiting was processed in the mothership sector in each year for at least two years between 1997 and 2003 inclusive.

(iii) *MS permit application.* Persons may apply for initial issuance of an MS permit in one of two ways: Complete and submit a prequalified application received from NMFS, or complete and submit an application package.

(A) *Prequalified application.* A "prequalified application" is a partially pre-filled application where NMFS has preliminarily determined the processing history that may qualify the applicant for an initial issuance of an MS permit. NMFS will mail prequalified application packages to the owners of the vessel or charterer of the bareboat which NMFS determines may qualify for an MS permit. NMFS will mail the application by certified mail to the current address of record in the NMFS permit database. The application will contain the basis of NMFS' calculation. The application package will include, but is not limited to: A prequalified application (with processing history), a Trawl Identification of Ownership Interest form, and any other documents NMFS believes are necessary to aid the owners of the vessel or charterer of the bareboat to complete the MS permit application.

(B) *Request for an application.* Any current owner or bareboat charterer of a vessel that the owner or bareboat charterer believes qualifies for initial issuance of an MS permit that does not receive a prequalified application must complete an application package and submit the completed application to NMFS by the application deadline. The completed application must be either post-marked or hand-delivered within normal business hours no later than [*date 60 days after publication of the final rule in the* ***Federal Register***]. Application packages are available on NMFS' Web site (*http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Permits/index.cfm*) or by contacting SFD. An application must include valid NORPAC data or other credible information that substantiates the applicant's qualification for initial issuance of an MS permit. If an applicant fails to submit a completed application by the deadline date, they forgo the opportunity to receive consideration for initial issuance of an MS permit.

(iv) *Corrections to the application.* If the applicant does not accept NMFS' calculation in the prequalified application either in part or whole, in order for NMFS to reconsider NMFS' calculation, the applicant must identify in writing to NMFS which parts of the prequalified application that the applicant contends to be inaccurate, and must provide specific credible information to substantiate any requested corrections. The completed application and specific credible information must be provided to NMFS in writing by the application deadline. Written communication must be either post-marked or hand-delivered within normal business hours no later than [*date 60 days after publication of the final rule in the* ***Federal Register***]. Requests for corrections may only be granted for errors in NMFS' extraction, aggregation, or expansion of data, including:

(A) Errors in NMFS' extraction of data from NORPAC;

(B) Errors in NMFS' calculations; and

(C) Errors in the vessel registration as listed in the NMFS permit database, or in the identification of the mothership owner or bareboat charterer.

(v) *Submission of the application and application deadline*—(A) *Submission of the Application.* Submission of the complete, certified application includes, but is not limited to, the following:

(*1*) The applicant is required to sign and date the application and have the

document notarized by a licensed Notary Public.

(*2*) The applicant must certify that they qualify to own an MS permit.

(*3*) The applicant must indicate they accept NMFS' calculation in the prequalified application, or provide credible information that demonstrates their qualification for an MS permit.

(*4*) The applicant is required to provide a complete Trawl Identification of Ownership Interest Form as specified at paragraph (f)(3)(iv) of this section.

(*5*) Business entities may be required to submit a corporate resolution or other credible documentation as proof that the representative of the entity is authorized to act on behalf of the entity;

(*6*) A bareboat charterer must provide credible evidence that demonstrates it was chartering the mothership vessel under a private contract during the qualifying years; and

(*7*) NMFS may request additional information of the applicant as necessary to make an IAD on initial issuance of an MS permit.

(B) *Application deadline.* A complete, certified application must be mailed or hand-delivered to NMFS, Northwest Region, Permits Office, Bldg. 1, 7600 Sand Point Way NE., Seattle, WA 98115, and postmarked no later than [*date 60 days after publication of the final rule in the* ***Federal Register***]. NMFS will not accept or review any applications received or postmarked after the application deadline. There are no hardship provisions for this deadline.

(vi) *Initial Administrative Determination (IAD).* NMFS will issue an IAD for all complete, certified applications received by the application deadline date. If NMFS approves an application for initial issuance of an MS permit, the applicant will receive an MS Permit. If NMFS disapproves an application, the IAD will provide the reasons NMFS did not approve the application. If the applicant does not appeal the IAD within 30 calendar days of the date on the IAD, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(vii) *Appeals.* For MS permits issued under this section, the appeals process and timelines are specified at § 660.25(g), subpart C. For the initial issuance of an MS permit, the bases for appeal are described in paragraph (f)(6)(iv) of this section. Items not subject to appeal include, but are not limited to, the accuracy of data in the dataset extracted from NORPAC by NMFS on July 1, 2010.

(g) *Mothership catcher vessel (MS/CV) endorsed permit*—(1) *General.* Any vessel that delivers whiting to a mothership processor in the Pacific whiting fishery mothership sector must be registered to an MS/CV-endorsed permit, except that a vessel registered to limited entry trawl permit without an MS/CV or C/P endorsement may fish for a coop with permission from a coop. Within the MS Coop Program, an MS/CV endorsed permit may participate in an MS coop or in the non-coop fishery.

(i) *Catch history assignment.* NMFS will assign a catch history assignment to each MS/CV endorsed permit. The catch history assignment is based on the catch history in the Pacific whiting mothership sector during the qualifying years of 1994 through 2003. The catch history assignment is expressed as a percentage of Pacific whiting of the total mothership sector allocation as described at paragraph (d)(2)(i) of this section. Catch history assignments will be issued to the nearest whole pound using standard rounding rules (i.e. decimal amounts from 0 up to 0.5 round down and 0.5 and above round up).

(ii) *Pacific whiting Mothership Sector Allocation.* The catch history allocation accrues to the coop to which the MS/CV permit is tied through private agreement, or will be assigned to the non-coop fishery if the MS/CV-endorsed permit does not participate in the coop fishery.

(iii) *Non-severable.* The MS/CV endorsement and its catch history assignment are not severable from the limited entry trawl permit. An MS/CV endorsement and its catch history assignment are permanently affixed to the original qualifying limited entry permit, and cannot be transferred separately from the original qualifying limited entry permit.

(iv) *Renewal.* [Reserved]

(v) *Restrictions on processing by MS/CV endorsed permit.* A vessel registered to an MS/CV-endorsed permit in a given year shall not engage in processing of Pacific whiting during that year.

(2) *Change of Permit owner, vessel registration, vessel owner, or combination.* [Reserved]

(3) *Accumulation limits*—(i) *MS/CV-endorsed permit ownership limit.* No person shall own MS/CV-endorsed permits for which the collective Pacific whiting allocation total is greater than 20 percent of the total mothership sector allocation. For purposes of determining accumulation limits, NMFS requires that permit owners submit a complete trawl ownership interest form for the permit owner as part of annual renewal of an MS/CV-endorsed permit. An ownership interest form will also be required whenever a new permit owner obtains an MS/CV-endorsed permit as part of a permit transfer request. Accumulation limits will be determined by calculating the percentage of ownership interest a person has in any MS/CV-endorsed permit and the amount of the Pacific whiting catch history assignment given on the permit. Determination of ownership interest will be subject to the individual and collective rule.

(A) *Ownership—Individual and collective rule.* The Pacific whiting catch history assignment that applies to a person's accumulation limit will include:

(*1*) The catch history assignment owned by that person, and

(*2*) A portion of the catch history assignment owned by an entity in which that person has an interest, where the person's share of interest in that entity will determine the portion of that entity's catch history assignment that counts toward the person's limit.

(B) [Reserved].

(C) *Trawl identification of ownership interest form.* Any person that owns a limited entry trawl permit and is applying for an MS/CV endorsement shall document those individuals that have greater than or equal to 2 percent ownership interest in the permit. This ownership interest must be documented with the SFD via the Trawl Identification of Ownership Interest Form sent to the permit owner with their application. SFD will not issue an MS/CV endorsement unless the Trawl Identification of Ownership Interest Form has been completed. Further, if SFD discovers through review of the Trawl Identification of Ownership Interest Form that a person owns or controls more than the accumulation limits, the person will subject to divestiture provisions specified in paragraph (g)(3)(i)(D) of this section.

(D) *Divestiture.* If NMFS determines that an applicant exceeds the MS/CV-endorsed permit ownership limit, NMFS will notify the applicant. The applicant must comply with the MS/CV-endorsed permit ownership limit requirement prior to issuance of the MS/CV endorsement.

(ii) [Reserved].

(4) *Appeals.* [Reserved]

(5) *Fees.* The Regional Administrator is authorized to charge a fee for administrative costs associated with the issuance of an MS/CV endorsed permit, as provided at § 660.25(f), Subpart C.

(6) *Application requirements and initial issuance for MS/CV endorsement*—(i) *Eligibility criteria for MS/CV endorsement.* Only a current trawl limited entry permit with a qualifying history of Pacific whiting deliveries in the MS Pacific whiting sector is eligible to receive an MS/CV

endorsement. Any past catch history associated with the current limited entry trawl permit accrues to the permit. If a trawl limited entry permit is eligible to receive both a C/P endorsement and an MS/CV endorsement, the permit owner must choose which endorsement to apply for (i.e., the owner of such a permit may not receive both a C/P and an MS/CV endorsement). NMFS will not recognize any other person as permit owner other than the person listed as permit owner in NMFS permit database.

(ii) *Qualifying criteria for MS/CV endorsement.* In order to qualify for an MS/CV endorsement, a qualifying trawl endorsed limited entry permit must have been registered to a vessel or vessels that caught and delivered a cumulative amount of at least 500 mt of Pacific whiting to motherships between 1994 through 2003. The calculation will be based on the following:

(A) To determine a permit's qualifying catch history, NMFS will use documented deliveries to a mothership in Pacific whiting observer data as recorded in the dataset that was extracted from NORPAC by NMFS on July 1, 2010.

(B) The qualifying catch history will include any deliveries of Pacific whiting to motherships by vessels registered to limited entry trawl endorsed permits that were subsequently combined to generate the current permit.

(C) If two or more limited entry trawl permits have been simultaneously registered to the same vessel, NMFS will divide the qualifying catch history evenly between all permits.

(D) History of illegal deliveries will not be included in the qualifying catch history.

(E) Deliveries made from Federal limited entry groundfish permits that were retired through the Federal buyback program will not be included in the qualifying catch history.

(F) Deliveries made under provisional "A" permits that did not become "A" permits and "B" permits will not be included in the qualifying catch history.

(iii) *Qualifying criteria for catch history assignment.* A catch history assignment will be specified as a percent on the MS/CV endorsed permit. The calculation will be based on the following:

(A) For determination of a permit's catch history, NMFS will use documented deliveries to a mothership in Pacific whiting observer data as recorded in the dataset that was extracted from NORPAC by NMFS on July 1, 2010.

(B) NMFS will use relative history, which means the catch history of a permit for a year divided by the total fleet history for that year, expressed as a percent. NMFS will calculate relative history for each year in the qualifying period from 1994 through 2003 by dividing the total deliveries of Pacific whiting to motherships for the vessel(s) registered to the permit for each year by the sum of the total catch of Pacific whiting delivered to mothership vessel(s) for that year.

(C) NMFS will select the eight years with the highest relative history of Pacific whiting, unless the applicant requests a different set of eight years during the initial issuance and appeals process, and will add the relative histories for these years to generate the permit's total relative history. NMFS will then divide the permit's total relative history by the sum of all qualifying permits' total relative histories to determine the permit's catch history assignment, expressed as a percent.

(D) The total relative history will include any deliveries of Pacific whiting to motherships by vessels registered to limited entry trawl endorsed permits that were subsequently combined to generate the current permit.

(E) If two or more limited entry trawl permits have been simultaneously registered to the same vessel, NMFS will split the catch history evenly between all permits.

(F) History of illegal deliveries will not be included in the calculation of a permit's catch history assignment or in the calculation of relative history for individual years.

(G) Deliveries made from Federal limited entry groundfish permits that were retired through the Federal buyback program will not be included in the calculation of a permit's catch history assignment other than for the purpose of calculating relative history for individual years.

(H) Deliveries made under provisional "A" permits that did not become "A" permits and "B" permits will not be included in the calculation of a permit's catch history assignment other than for the purpose of calculating relative history for individual years.

(iv) *MS/CV endorsement and catch history assignment application.* Persons may apply for an initial issuance of an MS/CV endorsement on a limited entry trawl permit and its associated catch history assignment in one of two ways: Complete and submit a prequalified application received from NMFS, or complete and submit an application package.

(A) *Prequalified application.* A "prequalified application" is a partially pre-filled application where NMFS has preliminarily determined the catch history that may qualify the applicant for an initial issuance of an MS/CV endorsement and associated catch history assignment. NMFS will mail prequalified application packages to the owners of current limited entry trawl permits, as listed in the NMFS permit database at the time applications are mailed, which NMFS determines may qualify for an MS/CV endorsement and associated catch history assignment. NMFS will mail the application by certified mail to the current address of record in the NMFS permit database. The application will contain the basis of NMFS' calculation. The application package will include, but is not limited to: A prequalified application (with landings history), a Trawl Identification of Ownership Interest form, and any other documents NMFS believes are necessary to aid the limited entry permit owner in completing the application.

(B) *Request for an application.* Any owner of a current limited entry trawl permit that does not receive a prequalified application that believes the permit qualifies for an initial issuance of an MS/CV endorsement and associated catch history assignment must complete an application package and submit the completed application to NMFS by the application deadline. The completed application must be either post-marked or hand-delivered within normal business hours no later than [*date 60 days after publication of the final rule in the* ***Federal Register***]. Application packages are available on the NMFS Web site (*http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Permits/index.cfm*) or by contacting SFD. An application must include valid NORPAC data, copies of NMFS observer data forms, or other credible information that substantiates the applicant's qualification for an initial issuance of an MS/CV endorsement and associated catch history assignment. If an applicant fails to submit a completed application by the deadline date, they forgo the opportunity to receive consideration for an initial issuance of a MS/CV endorsement and associated catch history assignment.

(v) *Corrections to the application.* If the applicant does not accept NMFS' calculation in the prequalified application either in part or whole, in order for NMFS to reconsider NMFS' calculation, the applicant must identify in writing to NMFS which parts of the application that the applicant contends to be inaccurate, and must provide specific credible information to substantiate any requested corrections. The completed application and specific credible information must be provided

to NMFS in writing by the application deadline. Written communication must be either post-marked or hand-delivered within normal business hours no later than [*date 60 days after publication of the final rule in the* ***Federal Register***]. Requests for corrections may only be granted for changes to the selection of the eight years with the highest relative history of whiting and errors in NMFS' extraction, aggregation, or expansion of data, including:

(A) Errors in NMFS' extraction of data from NORPAC;

(B) Errors in NMFS' calculations; and

(C) Errors in the identification of the permit owner, permit combinations, or vessel registration as listed in the NMFS permit database.

(vi) *Submission of the application and application deadline*—(A) *Submission of the application.* Submission of the complete, certified application includes, but is not limited to, the following:

(*1*) The applicant is required to sign and date the application and have the document notarized by a licensed Notary Public.

(*2*) The applicant must certify that they qualify to own an MS/CV-endorsed permit and associated catch history assignment.

(*3*) The applicant must indicate they accept NMFS' calculation of initial issuance of an MS/CV-endorsed permit and associated catch history assignment provided in the prequalified application, or provide credible information that demonstrates their qualification for an MS/CV-endorsed permit and associated catch history assignment.

(*4*) The applicant is required to provide a complete Trawl Identification of Ownership Interest Form as specified at paragraph (g)(3)(i)(C) of this section.

(*5*) Business entities may be required to submit a corporate resolution or other credible documentation as proof that the representative of the entity is authorized to act on behalf of the entity; and

(*6*) NMFS may request additional information of the applicant as necessary to make an IAD on initial issuance of an MS/CV-endorsed permit and associated catch history assignment.

(B) *Application deadline.* A complete, certified application must be mailed or hand-delivered to NMFS, Northwest Region, Permits Office, Bldg. 1, 7600 Sand Point Way, NE., Seattle, WA 98115, and postmarked no later than [*date 60 days after publication of the final rule in the* ***Federal Register***]. NMFS will not accept or review any applications received or postmarked after the application deadline. There are no hardship provisions for this deadline.

(vii) *Permit transfer during application period.* NMFS will not review or approve any request for a change in limited entry trawl permit owner at any time after [*Date final rule will publish in the* ***Federal Register***] until a final decision is made by the Regional Administrator on behalf of the Secretary of Commerce on that permit.

(viii) *Initial Administrative Determination (IAD).* NMFS will issue an IAD for all complete, certified applications received by the application deadline date. If NMFS approves an application for initial issuance of an MS/CV-endorsed permit and associated catch history assignment, the applicant will receive an MS/CV endorsement on a limited entry trawl permit specifying the amounts of catch history assignment for which the applicant has qualified. If NMFS disapproves an application, the IAD will provide the reasons NMFS did not approve the application. If known at the time of the IAD, NMFS will indicate if the owner of the MS/CV-endorsed permit has ownership interest in catch history assignments that exceed the accumulation limits and are subject to divestiture provisions given at paragraph (g)(3)(i)(D) of this section. If the applicant does not appeal the IAD within 30 calendar days of the date on the IAD, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(ix) *Appeals.* For an MS/CV-endorsed permit and associated catch history assignment issued under this section, the appeals process and timelines are specified at § 660.25(g), subpart C. For the initial issuance of an MS/CV-endorsed permit and associated catch history assignment, the bases for appeal are described in paragraph (g)(6)(v) of this section. Items not subject to appeal include, but are not limited to, the accuracy of data in the dataset extracted from NORPAC by NMFS on July 1, 2010.

(h) *Non-coop Fishery.* [Reserved]

(i) *Retention Requirements.* [Reserved]

(j) *Observer Requirements.* [Reserved]

(k) *Catch Weighing Requirements.* [Reserved]

(l) [Reserved]

§ 660.160 Catcher/processor (C/P) coop program.

(a) *General.* The C/P Coop Program requirements in § 660.160 will be effective beginning January 1, 2011, except for paragraphs (d)(5) and (d)(7) of this section, which are effective immediately. The C/P Coop Program is a limited access program that applies to vessels in the C/P sector of the Pacific whiting at-sea trawl fishery and is a single voluntary coop. Eligible harvesters and processors must meet the requirements set forth in this section of the Pacific Coast groundfish regulations. In addition to the requirements of this section, the C/P Coop Program is subject to the following groundfish regulations:

(1) Pacific whiting seasons § 660.131(b), subpart D.

(2) Area restrictions specified for midwater trawl gear used to harvest Pacific whiting fishery specified at § 660.131(c), subpart D for GCAs, RCAs, Salmon Conservation Zones, BRAs, and EFHCAs.

(3) Regulations set out in the following sections of subpart C: § 660.11 Definitions, § 660.12 Prohibitions, § 660.13 Recordkeeping and reporting, § 660.14 VMS requirements, § 660.15 Equipment requirements, § 660.16 Groundfish Observer Program, § 660.20 Vessel and gear identification, § 660.25 Permits, § 660.26 Pacific whiting vessel licenses, § 660.55 Allocations, § 660.60 Specifications and management measures, § 660.65 Groundfish harvest specifications, and §§ 660.70 through 660.79 Closed areas.

(4) Regulations set out in the following sections of subpart D: § 660.111 Trawl fishery definitions, § 660.112 Trawl fishery prohibitions, § 660.113 Trawl fishery recordkeeping and reporting, § 660.116 Trawl fishery observer requirements, § 660.120 Trawl fishery crossover provisions, § 660.130 Trawl fishery management measures, and § 660.131 Pacific whiting fishery management measures.

(5) The C/P Coop Program may be restricted or closed as a result of projected overages within the MS Coop Program, the C/P Coop Program, or the Shorebased IFQ Program. As determined necessary by the Regional Administrator, area restrictions, season closures, or other measures will be used to prevent the trawl sectors in aggregate or the individual trawl sector (Shorebased IFQ, MS Coop, or C/P Coop) from exceeding an OY, or formal allocation specified in the PCGFMP or regulation at § 660.55, subpart C, or §§ 660.140, 660.150, or 660.160, subpart D.

(b) *C/P Coop program species and allocations*—(1) *C/P coop program species.* C/P Coop Program species are as follows:

(i) Species with formal allocations to the C/P Coop Program are Pacific whiting, canary rockfish, darkblotched rockfish, Pacific Ocean perch, widow rockfish;

(ii) Species with set-asides for the MS and C/P Programs combined, as described in Table 1d and 2d, subpart C.

(2) [Reserved].

(c) *C/P Coop Permit and Agreement.* [Reserved]

(d) *C/P–Endorsed Permit*—(1) *General.* Any vessel participating in the C/P sector of the non-tribal primary Pacific whiting fishery during the season described at § 660.131(b) of this subpart must be registered to a valid limited entry permit with a C/P endorsement.

(i) *Non-severable.* A C/P endorsement is not severable from the limited entry trawl permit, and therefore, the endorsement may not be transferred separately from the limited entry trawl permit.

(ii) *Restriction on C/P vessel operating as a catcher vessel in the mothership sector.* A vessel registered to a C/P-endorsed permit cannot operate as a catcher vessel delivering unprocessed Pacific whiting to a mothership processor during the same calendar year it participates in the C/P sector.

(iii) *Restriction on C/P vessel operating as mothership.* A vessel registered to a C/P-endorsed permit cannot operate as a mothership during the same calendar year it participates in the C/P sector.

(2) *Eligibility and renewal for C/P endorsed permit.* [Reserved.]

(3) *Change in permit ownership, vessel registration, vessel owner, transfer or combination.* [Reserved]

(4) *Appeals.* [Reserved]

(5) *Fees.* The Regional Administrator is authorized to charge fees for the administrative costs associated with review and issuance of a C/P endorsement consistent with the provisions at § 660.25(f), subpart C.

(6) [Reserved].

(7) *Application requirements and initial issuance for C/P endorsement*—(i) *Eligibility criteria for C/P endorsement.* Only current owners of a current limited entry trawl permit that has been registered to a vessel that participated in the C/P fishery during the qualifying period are eligible to receive a C/P endorsement. Any past catch history associated with the current limited entry trawl permit accrues to the current permit owner. NMFS will not recognize any other person as the limited entry permit owner other than the person listed as the limited entry permit owner in the NMFS permit database.

(ii) *Qualifying criteria for C/P endorsement.* In order to qualify for a C/P endorsement, a vessel registered to a valid trawl endorsed limited entry permit must have caught and processed any amount of Pacific whiting during a primary catcher/processor season between 1997 through 2003. The calculation will be based on the following:

(A) Pacific Whiting Observer data recorded in the dataset that was extracted from NORPAC by NMFS on July 1, 2010, and NMFS permit data on limited entry trawl endorsed permits will be used to determine whether a permit meets the qualifying criteria for a C/P endorsement.

(B) Only Pacific whiting regulated by this subpart that was taken with midwater (or pelagic) trawl gear will be considered for the C/P endorsement.

(C) Permit catch and processing history includes only the catch/processing history of Pacific whiting for a vessel when it was registered to that particular permit during the qualifying years.

(D) History of illegal landings will not count.

(E) Landings history from Federal limited entry groundfish permits that were retired through the Federal buyback program will not count.

(F) Landings under provisional "A" permits that did not become "A" permits and "B" permits will not count toward the allocation of QS.

(iii) *C/P endorsement application.* Persons may apply for an initial issuance of a C/P endorsement in one of two ways: complete and submit a prequalified application received from NMFS, or complete and submit an application package.

(A) *Prequalified application.* A "prequalified application" is a partially pre-filled application where NMFS has preliminarily determined the catch history that may qualify the applicant for an initial issuance of a C/P endorsement. NMFS will mail a prequalified application to all owners of current trawl limited entry permits, as listed in NMFS permit database at the time applications are mailed, which NMFS determines may qualify for a C/P endorsement. NMFS will mail the application by certified mail to the current address of record in the NMFS permit database. The application will contain the basis of NMFS' calculation. The application package will include, but is not limited to: A prequalified application (with catch history) and any other documents NMFS believes are necessary to aid the limited entry permit owner in completing the application.

(B) *Request for an application.* Any owner of a current limited entry trawl permit that does not receive a prequalified application that believes the permit qualifies for an initial issuance of a C/P endorsement must complete an application package and submit the completed application to NMFS by the application deadline. The completed application must be either post-marked or hand-delivered within normal business hours no later than [*date 60 days after publication of the final rule in the* ***Federal Register***]. Application packages are available on the NMFS Web site (*http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Permits/index.cfm*) or by contacting SFD. An application must include valid NORPAC data, copies of NMFS observer data forms, or other credible information that substantiates the applicant's qualification for initial issuance of a C/P endorsement. If an applicant fails to submit a completed application by the deadline date, they forgo the opportunity to receive consideration for initial issuance of a C/P endorsement.

(iv) *Corrections to the application.* If the applicant does not accept NMFS' calculation in the prequalified application either in part or whole, in order for NMFS to reconsider NMFS' calculation, the applicant must identify in writing to NMFS which parts of the application the applicant contends to be inaccurate, and must provide specific credible information to substantiate any requested corrections. The completed application and specific credible information must be provided to NMFS in writing by the application deadline. Written communication must be either post-marked or hand-delivered within normal business hours no later than [*date 60 days after publication of the final rule in the* ***Federal Register***]. Requests for corrections may only be granted for errors in NMFS' extraction, aggregation, or expansion of data, including:

(A) Errors in NMFS' extraction of data from NORPAC;

(B) Errors in NMFS' calculations; and

(C) Errors in the identification of the permit owner, permit combinations, or vessel registration as listed in the NMFS permit database.

(v) *Submission of the application and application deadline*—(A) *Submission of the Application.* Submission of the complete, certified application includes, but is not limited to, the following:

(*1*) The applicant is required to sign and date the application and have the document notarized by a licensed Notary Public.

(*2*) The applicant must certify that they qualify to own a C/P endorsed permit.

(*3*) The applicant must indicate they accept NMFS' calculation of initial issuance of C/P endorsement provided in the prequalified application, or provide credible information that demonstrates their qualification for a C/P endorsement.

(*4*) Business entities may be required to submit a corporate resolution or other credible documentation as proof that the representative of the entity is authorized to act on behalf of the entity; and

(*5*) NMFS may request additional information of the applicant as necessary to make an IAD on initial issuance of a C/P endorsement.

(B) *Application deadline.* A complete, certified application must be mailed or hand-delivered to NMFS, Northwest Region, Permits Office, Bldg. 1, 7600 Sand Point Way NE., Seattle, WA 98115, and postmarked no later than [*date 60 days after publication of the final rule in the* ***Federal Register***]. NMFS will not accept or review any applications received or postmarked after the application deadline. There are no hardship provisions for this deadline.

(vi) *Permit transfer during application period.* NMFS will not review or approve any request for a change in limited entry trawl permit owner at any time after [*date final rule publishes in* ***Federal Register***] until a final decision is made by the Regional Administrator on behalf of the Secretary of Commerce.

(vii) *Initial Administrative Determination (IAD).* NMFS will issue an IAD for all complete, certified applications received by the application deadline date. If NMFS approves an application, the applicant will receive a C/P endorsement on a limited entry trawl permit. If NMFS disapproves an application, the IAD will provide the reasons NMFS did not approve the application. If the applicant does not appeal the IAD within 30 calendar days of the date on the IAD, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(viii) *Appeal.* For a C/P endorsed permit issued under this section, the appeals process and timelines are specified at § 660.25(g), subpart C. For the initial issuance of a C/P endorsed permit, the bases for appeal are described in paragraph (d)(7)(iv) of this section. Items not subject to appeal include, but are not limited to, the accuracy of data in the dataset extracted from NORPAC by NMFS on July 1, 2010.

(e) *Retention Requirements.* [Reserved]

(f) *Observers Requirements.* [Reserved]

(g) [Reserved]

(h) *Catch Weighting Requirements.* [Reserved]

Subpart E—West Coast Groundfish—Limited Entry Fixed Gear Fisheries

§ 660.210 Purpose and scope.

This subpart covers the Pacific Coast Groundfish limited entry fixed gear fishery.

§ 660.211 Fixed gear fishery—definitions.

These definitions are specific to the limited entry fixed gear fisheries covered in this subpart. General groundfish definitions are found at § 660.11, subpart C.

Daily Trip Limit (DTL) Fishery means a sablefish fishery that occurs both north and south of 36° N. lat. that is subject to trip limit restrictions including daily and/or weekly and/or bimonthly trip limits.

Limited entry fixed gear fishery means the fishery composed of vessels registered to limited entry permits with longline and pot/trap endorsements.

Sablefish primary fishery or sablefish tier limit fishery means, for the limited entry fixed gear sablefish fishery north of 36° N. lat, the fishery where vessels registered to at least one limited entry permit with both a gear endorsement for longline or trap (or pot) gear and a sablefish endorsement fish up to a specified tier limit and when they are not eligible to fish in the DTL fishery.

Sablefish primary season means, for the limited entry fixed gear sablefish fishery north of 36° N. lat, the period when vessels registered to at least one limited entry permit with both a gear endorsement for longline or trap (or pot) gear and a sablefish endorsement, are allowed to fish in the sablefish tier limit fishery described at § 660.231 of this subpart.

Tier limit means a specified amount of sablefish that may be harvested by a vessel registered to a limited entry fixed gear permit(s) with a Tier 1, Tier 2, and/or Tier 3 designation; a gear endorsement for longline or trap (or pot) gear; and a sablefish endorsement.

§ 660.212 Fixed gear fishery—prohibitions.

These prohibitions are specific to the limited entry fixed gear fisheries. General groundfish prohibitions are found at § 660.12, subpart C. In addition to the general groundfish prohibitions specified in § 660.12, subpart C, it is unlawful for any person to:

(a) *General*—(1) Possess, deploy, haul, or carry onboard a fishing vessel subject to Subparts C and E a set net, trap or pot, longline, or commercial vertical hook-and-line as defined at § 660.11, subpart C, that is not in compliance with the gear restrictions in § 660.230, subpart E, unless such gear is the gear of another vessel that has been retrieved at sea and made inoperable or stowed in a manner not capable of being fished. The disposal at sea of such gear is prohibited by Annex V of the International Convention for the Prevention of Pollution From Ships, 1973 (Annex V of MARPOL 73/78).

(2) Take, retain, possess, or land more than a single cumulative limit of a particular species, per vessel, per applicable cumulative limit period, except for sablefish taken in the limited entry, fixed gear sablefish primary season from a vessel authorized to fish in that season, as described at § 660.231, subpart E.

(b) *Recordkeeping and reporting*—Fail to retain on board a vessel from which sablefish caught in the sablefish primary season is landed, and provide to an authorized officer upon request, copies of any and all reports of sablefish landings against the sablefish endorsed permit's tier limit, or receipts containing all data, and made in the exact manner required by the applicable state law throughout the sablefish primary season during which such landings occurred and for 15 days thereafter.

(c) *Fishing in conservation areas*—(1) Operate a vessel registered to a limited entry permit with a longline or trap (pot) endorsement and longline and/or trap gear onboard in an applicable GCA (as defined at § 660.230(d)), except for purposes of continuous transiting, with all groundfish longline and/or trap gear stowed in accordance with § 660.212(a) or except as authorized in the groundfish management measures at § 660.230.

(2) Fish with bottom contact gear (as defined in § 660.11, subpart C) within the EEZ in the following areas (defined in §§ 660.78 and 660.79, subpart C): Thompson Seamount, President Jackson Seamount, Cordell Bank (50-fm (91-m) isobath), Harris Point, Richardson Rock, Scorpion, Painted Cave, Anacapa Island, Carrington Point, Judith Rock, Skunk Point, Footprint, Gull Island, South Point, and Santa Barbara.

(3) Fish with bottom contact gear (as defined in § 660.11, subpart C), or any other gear that is deployed deeper than 500-fm (914-m), within the Davidson Seamount area (defined in § 660.75, subpart C).

(d) *Sablefish fisheries*—(1) Take, retain, possess or land sablefish under the tier limits provided for the limited entry, fixed gear sablefish primary season, described in § 660.231(b), subpart E, from a vessel that is not registered to a limited entry permit with a sablefish endorsement.

(2) Take, retain, possess or land sablefish in the sablefish primary season, described at § 660.231(b),

subpart E, unless the owner of the limited entry permit registered for use with that vessel and authorizing the vessel to fish in the sablefish primary season is on board that vessel. Exceptions to this prohibition are provided at § 660.231(b)(4)(i) and (ii).

(3) Process sablefish taken at-sea in the limited entry fixed gear sablefish primary fishery defined at § 660.231, subpart E, from a vessel that does not have a sablefish at-sea processing exemption, defined at § 660.25(b)(3)(iv)(D), subpart C.

§ 660.213 Fixed gear fishery—recordkeeping and reporting.

(a) *General.* General reporting requirements specified at § 660.13 (a) through (c), subpart C, apply to limited entry fixed gear fishery vessels.

(b) *Declaration reports for limited entry fixed gear fishery vessels.* Declaration reporting requirements for limited entry fixed gear fishery vessels are specified at § 660.13 (d), subpart C.

(c) *VMS requirements for limited entry fixed gear fishery vessels.* VMS requirements for limited entry fixed gear fishery vessels are specified at § 660.14, subpart C.

(d) *Retention of records*—(1) Any person landing groundfish must retain on board the vessel from which groundfish are landed, and provide to an authorized officer upon request, copies of any and all reports of groundfish landings containing all data, and in the exact manner, required by the applicable state law throughout the cumulative limit period during which a landing occurred and for 15 days thereafter.

(2) For participants in the sablefish primary season, the cumulative limit period to which this requirement applies is April 1 through October 31 or, for an individual permit holder, when that permit holder's tier limit is attained, whichever is earlier.

§ 660.216 Fixed gear fishery—observer requirements.

(a) *Observer coverage requirements.* When NMFS notifies the owner, operator, permit holder, or the manager of a catcher vessel, specified at § 660.16(c), subpart C, of any requirement to carry an observer, the catcher vessel may not be used to fish for groundfish without carrying an observer.

(b) *Notice of departure basic rule.* At least 24 hours (but not more than 36 hours) before departing on a fishing trip, a vessel that has been notified by NMFS that it is required to carry an observer, or that is operating in an active sampling unit, must notify NMFS (or its designated agent) of the vessel's intended time of departure. Notice will be given in a form to be specified by NMFS.

(1) *Optional notice—weather delays.* A vessel that anticipates a delayed departure due to weather or sea conditions may advise NMFS of the anticipated delay when providing the basic notice described in paragraph (b) of this section. If departure is delayed beyond 36 hours from the time the original notice is given, the vessel must provide an additional notice of departure not less than 4 hours prior to departure, in order to enable NMFS to place an observer.

(2) *Optional notice—back-to-back fishing trips.* A vessel that intends to make back-to-back fishing trips (i.e., trips with less than 24 hours between offloading from one trip and beginning another), may provide the basic notice described in paragraph (b) of this section for both trips, prior to making the first trip. A vessel that has given such notice is not required to give additional notice of the second trip.

(c) *Cease fishing report.* Within 24 hours of ceasing the taking and retaining of groundfish, vessel owners, operators, or managers must notify NMFS or its designated agent that fishing has ceased. This requirement applies to any vessel that is required to carry an observer, or that is operating in a segment of the fleet that NMFS has identified as an active sampling unit.

(d) *Waiver.* The Northwest Regional Administrator may provide written notification to the vessel owner stating that a determination has been made to temporarily waive coverage requirements because of circumstances that are deemed to be beyond the vessel's control.

(e) *Vessel responsibilities*—(1) *Accommodations and food.* An operator of a vessel required to carry one or more observer(s) must provide accommodations and food that are equivalent to those provided to the crew.

(2) *Safe conditions.* Maintain safe conditions on the vessel for the protection of observer(s) including adherence to all USCG and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel, and provisions at §§ 600.725 and 600.746 of this chapter.

(3) *Observer communications.* Facilitate observer communications by:

(i) *Observer use of equipment.* Allowing observer(s) to use the vessel's communication equipment and personnel, on request, for the entry, transmission, and receipt of work-related messages, at no cost to the observer(s) or the U.S. or designated agent.

(ii) *Functional equipment.* Ensuring that the vessel's communications equipment, used by observers to enter and transmit data, is fully functional and operational.

(4) *Vessel position.* Allow observer(s) access to, and the use of, the vessel's navigation equipment and personnel, on request, to determine the vessel's position.

(5) *Access.* Allow observer(s) free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(6) *Prior notification.* Notify observer(s) at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer, unless the observer specifically requests not to be notified.

(7) *Records.* Allow observer(s) to inspect and copy any state or Federal logbook maintained voluntarily or as required by regulation.

(8) *Assistance.* Provide all other reasonable assistance to enable observer(s) to carry out their duties, including, but not limited to:

(i) Measuring decks, codends, and holding bins.

(ii) Providing the observer(s) with a safe work area.

(iii) Collecting bycatch when requested by the observer(s).

(iv) Collecting and carrying baskets of fish when requested by the observer(s).

(v) Allowing the observer(s) to collect biological data and samples.

(vi) Providing adequate space for storage of biological samples.

(f) *Sample station*—(1) *Observer sampling station.* This paragraph contains the requirements for observer sampling stations. The vessel owner must provide an observer sampling station that complies with this section so that the observer can carry out required duties.

(i) *Accessibility.* The observer sampling station must be available to the observer at all times.

(ii) *Location.* The observer sampling station must be located within 4 m of the location from which the observer samples unsorted catch. Unobstructed passage must be provided between the observer sampling station and the location where the observer collects sample catch.

(2) [Reserved]

§ 660.219 Fixed gear identification and marking.

(a) *Gear identification*—(1) Limited entry fixed gear (longline, trap or pot) must be marked at the surface and at each terminal end, with a pole, flag, light, radar reflector, and a buoy.

(2) A buoy used to mark fixed gear must be marked with a number clearly identifying the owner or operator of the vessel. The number may be either:

(i) If required by applicable state law, the vessel's number, the commercial fishing license number, or buoy brand number; or

(ii) The vessel documentation number issued by the USCG, or, for an undocumented vessel, the vessel registration number issued by the state.

(b) [Reserved].

§ 660.220 Fixed gear fishery—crossover provisions.

(a) *Operating in both limited entry and open access fisheries.* See provisions at § 660.60(h)(7), subpart C.

(b) *Operating in north-south management areas with different trip limits.* NMFS uses different types of management areas for West Coast groundfish management. One type of management area is the north-south management area, a large ocean area with northern and southern boundary lines wherein trip limits, seasons, and conservation areas follow a single theme. Within each north-south management area, there may be one or more conservation areas, detailed in §§ 660.60(h)(7) and 660.70 through 660.74, subpart C. The provisions within this paragraph apply to vessels operating in different north-south management areas. Trip limits for a species or a species group may differ in different north-south management areas along the coast. The following "crossover" provisions apply to vessels operating in different geographical areas that have different cumulative or "per trip" trip limits for the same species or species group. Such crossover provisions do not apply to species that are subject only to daily trip limits, or to the trip limits for black rockfish off Washington (see § 660.230(d)).

(1) Going from a more restrictive to a more liberal area. If a vessel takes and retains any groundfish species or species group of groundfish in an area where a more restrictive trip limit applies before fishing in an area where a more liberal trip limit (or no trip limit) applies, then that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(2) Going from a more liberal to a more restrictive area. If a vessel takes and retains a groundfish species or species group in an area where a higher trip limit or no trip limit applies, and takes and retains, possesses or lands the same species or species group in an area where a more restrictive trip limit applies, that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(3) Operating in two different areas where a species or species group is managed with different types of trip limits. During the fishing year, NMFS may implement management measures for a species or species group that set different types of trip limits (for example, per trip limits versus cumulative trip limits) for different areas. If a vessel fishes for a species or species group that is managed with different types of trip limits in two different areas within the same cumulative limit period, then that vessel is subject to the most restrictive overall cumulative limit for that species, regardless of where fishing occurs.

(4) Minor rockfish. Several rockfish species are designated with species-specific limits on one side of the 40°10′ N. lat. management line, and are included as part of a minor rockfish complex on the other side of the line. A vessel that takes and retains fish from a minor rockfish complex (nearshore, shelf, or slope) on both sides of a management line during a single cumulative limit period is subject to the more restrictive cumulative limit for that minor rockfish complex during that period.

(i) If a vessel takes and retains minor slope rockfish north of 40°10′ N. lat., that vessel is also permitted to take and retain, possess or land splitnose rockfish up to its cumulative limit south of 40°10′ N. lat., even if splitnose rockfish were a part of the landings from minor slope rockfish taken and retained north of 40°10′ N. lat.

(ii) If a vessel takes and retains minor slope rockfish south of 40°10′ N. lat., that vessel is also permitted to take and retain, possess or land POP up to its cumulative limit north of 40°10′ N. lat., even if POP were a part of the landings from minor slope rockfish taken and retained south of 40°10′ N. lat.

§ 660.230 Fixed gear fishery—management measures.

(a) *General.* Most species taken in limited entry fixed gear (longline and pot/trap) fisheries will be managed with cumulative trip limits (see trip limits in Tables 2 (North) and 2 (South) of this subpart), size limits (see § 660.60(h)(5)), seasons (see trip limits in Tables 2 (North) and 2 (South) of this subpart and sablefish primary season details in § 660.231), gear restrictions (see paragraph (b) of this section), and closed areas (see paragraph (d) of this section and §§ 660.70 through 660.79, subpart C). Cowcod retention is prohibited in all fisheries, and groundfish vessels operating south of Point Conception must adhere to CCA restrictions (see paragraph (d)(10) of this section and § 660.70, subpart C). Yelloweye rockfish and canary rockfish retention is prohibited in the limited entry fixed gear fisheries. Regulations governing and tier limits for the limited entry, fixed gear sablefish primary season north of 36° N. lat. are found in § 660.231, subpart E. Vessels not participating in the sablefish primary season are subject to daily or weekly sablefish limits in addition to cumulative limits for each cumulative limit period. Only one sablefish landing per week may be made in excess of the daily trip limit and, if the vessel chooses to make a landing in excess of that daily trip limit, then that is the only sablefish landing permitted for that week. The trip limit for black rockfish caught with hook-and-line gear also applies, see § 660.230(d). The trip limits in Table 2 (North) and Table 2 (South) of this subpart apply to vessels participating in the limited entry groundfish fixed gear fishery and may not be exceeded. Federal commercial groundfish regulations are not intended to supersede any more restrictive state commercial groundfish regulations relating to federally-managed groundfish.

(b) *Gear restrictions*—(1) Longline and pot or trap gear are authorized in the limited entry fixed gear fishery, providing the gear is in compliance with the restrictions set forth in this section, and gear marking requirements described in § 660.219 of this subpart.

(2) Vessels participating in the limited entry fixed gear fishery may also fish with open access gear subject to the gear restrictions at § 660.330(b), subpart F, but will be subject to the most restrictive trip limits for the gear used as specified at § 660.60(h)(7), subpart C.

(3) Limited entry fixed gear (longline, trap or pot gear) must be attended at least once every 7 days.

(4) Traps or pots must have biodegradable escape panels constructed with 21 or smaller untreated cotton twine in such a manner that an opening at least 8 inches (20.3 cm) in diameter results when the twine deteriorates.

(c) *Sorting Requirements*—(1) Under § 660.12(a)(8), subpart C, it is unlawful for any person to "fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, scientific sorting designation, quota, harvest guideline, or OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, scientific sorting designation, quota, harvest guideline, or OY applied." The States of Washington, Oregon, and California may also require that vessels record their landings as sorted on their state landing receipts.

(2) For limited entry fixed gear, the following species must be sorted:

(i) Coastwide—widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, shortbelly rockfish, black rockfish, blue rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, shortspine and longspine thornyhead, Dover sole, arrowtooth flounder, petrale sole, starry flounder, English sole, other flatfish, lingcod, sablefish, Pacific cod, spiny dogfish, other fish, longnose skate, and Pacific whiting;

(ii) North of 40°10′ N. lat.—POP, yellowtail rockfish;

(iii) South of 40°10′ N. lat.—minor shallow nearshore rockfish, minor deeper nearshore rockfish, California scorpionfish, chilipepper rockfish, bocaccio rockfish, splitnose rockfish, Pacific sanddabs, cowcod, bronzespotted rockfish and cabezon.

(d) *Groundfish conservation areas applicable to limited entry fixed gear vessels.* A GCA, a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude. The latitude and longitude coordinates of the GCA boundaries are specified at §§ 660.70 through 660.74, subpart C. A vessel that is authorized by this paragraph to fish within a GCA (e.g. fishing for "other flatfish" using no more than 12 hooks, "Number 2" or smaller), may not simultaneously have other gear on board the vessel that is unlawful to use for fishing within the GCA. The following GCAs apply to vessels participating in the limited entry fixed gear fishery.

(1) *North coast recreational yelloweye rockfish conservation area.* The latitude and longitude coordinates of the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA) boundaries are specified at § 660.70, subpart C. The North Coast Recreational YRCA is designated as an area to be avoided (a voluntary closure) by commercial fixed gear fishers.

(2) *North coast commercial yelloweye rockfish conservation area.* The latitude and longitude coordinates of the North Coast Commercial Yelloweye Rockfish Conservation Area (YRCA) boundaries are specified at § 660.70, subpart C. Fishing with limited entry fixed gear is prohibited within the North Coast Commercial YRCA. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the North Coast Commercial YRCA. Limited entry fixed gear vessels may transit through the North Coast Commercial YRCA with or without groundfish on board.

(3) *South coast recreational yelloweye rockfish conservation area.* The latitude and longitude coordinates of the South Coast Recreational Yelloweye Rockfish Conservation Area (YRCA) boundaries are specified at § 660.70, subpart C. The South Coast Recreational YRCA is designated as an area to be avoided (a voluntary closure) by commercial fixed gear fishers.

(4) *Westport offshore recreational YRCA.* The latitude and longitude coordinates that define the Westport Offshore Recreational YRCA boundaries are specified at § 660.70, subpart C. The Westport Offshore Recreational YRCA is designated as an area to be avoided (a voluntary closure) by commercial fixed gear fishers.

(5) *Point St. George YRCA.* The latitude and longitude coordinates of the Point St. George YRCA boundaries are specified at § 660.70, Subpart C. Fishing with limited entry fixed gear is prohibited within the Point St. George YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the Point St. George YRCA, on dates when the closure is in effect. The closure is not in effect at this time, and commercial fishing for groundfish is open within the Point St. George YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment. Limited entry fixed gear vessels may transit through the Point St. George YRCA, at any time, with or without groundfish on board.

(6) *South Reef YRCA.* The latitude and longitude coordinates of the South Reef YRCA boundaries are specified at § 660.70, subpart C. Fishing with limited entry fixed gear is prohibited within the South Reef YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the South Reef YRCA, on dates when the closure is in effect. The closure is not in effect at this time, and commercial fishing for groundfish is open within the South Reef YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment. Limited entry fixed gear vessels may transit through the South Reef YRCA, at any time, with or without groundfish on board.

(7) *Reading Rock YRCA.* The latitude and longitude coordinates of the Reading Rock YRCA boundaries are specified at § 660.70, subpart C. Fishing with limited entry fixed gear is prohibited within the Reading Rock YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the Reading Rock YRCA, on dates when the closure is in effect. The closure is not in effect at this time, and commercial fishing for groundfish is open within the Reading Rock YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment. Limited entry fixed gear vessels may transit through the Reading Rock YRCA, at any time, with or without groundfish on board.

(8) *Point Delgada (North) YRCA.* The latitude and longitude coordinates of the Point Delgada (North) YRCA boundaries are specified at § 660.70, subpart C. Fishing with limited entry fixed gear is prohibited within the Point Delgada (North) YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the Point Delgada (North) YRCA, on dates when the closure is in effect. The closure is not in effect at this time, and commercial fishing for groundfish is open within the Point Delgada (North) YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment. Limited entry fixed gear vessels may transit through the Point Delgada (North) YRCA, at any time, with or without groundfish on board.

(9) *Point Delgada (South) YRCA.* The latitude and longitude coordinates of the Point Delgada (South) YRCA boundaries are specified at § 660.70, subpart C. Fishing with limited entry fixed gear is prohibited within the Point Delgada (South) YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the Point Delgada (South) YRCA, on dates when the closure is in effect. The closure is not in effect at this time, and commercial fishing for groundfish is open within the Point Delgada (South) YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment. Limited entry

fixed gear vessels may transit through the Point Delgada (South) YRCA, at any time, with or without groundfish on board.

(10) *Cowcod Conservation Areas.* The latitude and longitude coordinates of the Cowcod Conservation Areas (CCAs) boundaries are specified at § 660.70, subpart C. It is unlawful to take and retain, possess, or land groundfish within the CCAs, except for species authorized in this paragraph caught according to gear requirements in this paragraph, when those waters are open to fishing. Commercial fishing vessels may transit through the Western CCA with their gear stowed and groundfish on board only in a corridor through the Western CCA bounded on the north by the latitude line at 33°00.50′ N. lat., and bounded on the south by the latitude line at 32°59.50′ N. lat. Fishing with limited entry fixed gear is prohibited within the CCAs, except as follows:

(i) Fishing for "other flatfish" is permitted within the CCAs under the following conditions: when using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1-lb (0.45 kg) weights per line; and provided a valid declaration report as required at § 660.13(d), subpart C, has been filed with NMFS OLE.

(ii) Fishing for rockfish and lingcod is permitted shoreward of the 20 fm (37 m) depth contour within the CCAs when trip limits authorize such fishing, and provided a valid declaration report as required at § 660.13(d), subpart C, has been filed with NMFS OLE.

(11) *Nontrawl Rockfish Conservation Areas (RCA).* The nontrawl RCAs are closed areas, defined by specific latitude and longitude coordinates (specified at §§ 660.70 through 660.74, subpart C) designed to approximate specific depth contours, where fishing for groundfish with nontrawl gear is prohibited. Boundaries for the nontrawl RCA throughout the year are provided in the header to Table 2 (North) and Table 2 (South) of this subpart and may be modified by NMFS inseason pursuant to § 660.60(c), subpart C.

(i) It is unlawful to operate a vessel with limited entry nontrawl gear in the nontrawl RCA, except for the purpose of continuous transit, or when the use of limited entry nontrawl gear is authorized in this section. It is unlawful to take and retain, possess, or land groundfish taken with limited entry nontrawl gear within the nontrawl RCA, unless otherwise authorized in this section.

(ii) Limited entry nontrawl vessels may transit through the nontrawl RCA, with or without groundfish on board, provided all groundfish nontrawl gear is stowed either: below deck; or if the gear cannot readily be moved, in a secured and covered manner, detached from all lines, so that it is rendered unusable for fishing.

(iii) The nontrawl RCA restrictions in this section apply to vessels registered to limited entry fixed gear permits fishing for species other than groundfish with nontrawl gear on trips where groundfish species are retained. Unless otherwise authorized in this section, a vessel may not retain any groundfish taken on a fishing trip for species other than groundfish that occurs within the nontrawl RCA. If a vessel fishes in a non-groundfish fishery in the nontrawl RCA, it may not participate in any fishing for groundfish on that trip that is prohibited within the nontrawl RCA. [For example, if a vessel fishes in the salmon troll fishery within the RCA, the vessel cannot on the same trip fish in the sablefish fishery outside of the RCA.]

(iv) It is lawful to fish within the nontrawl RCA with limited entry fixed gear only under the following conditions: when fishing for "other flatfish" off California (between 42° N. lat. south to the U.S./Mexico border) using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1-lb (0.91 kg) weights per line when trip limits authorize such fishing, provided a valid declaration report as required at § 660.13(d), subpart C, has been filed with NMFS OLE.

(12) *Farallon Islands.* Under California law, commercial fishing for all groundfish is prohibited between the shoreline and the 10 fm (18 m) depth contour around the Farallon Islands. An exception to this prohibition is that commercial fishing for "other flatfish" is permitted around the Farallon Islands using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1-lb (0.45-kg) weights per line. (See Table 2 (South) of this subpart.) For a definition of the Farallon Islands, see § 660.70, subpart C.

(13) *Cordell Banks.* Commercial fishing for groundfish is prohibited in waters of depths less than 100 fm (183 m) around Cordell Banks, as defined by specific latitude and longitude coordinates at § 660.70, subpart C. An exception to this prohibition is that commercial fishing for "other flatfish" is permitted around Cordell Banks using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1-lb (0.45-kg) weights per line.

(14) *Essential Fish Habitat Conservation Areas (EFHCA).* An EFHCA, a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude at §§ 660.75 through 660.79, Subpart C, where specified types of fishing are prohibited in accordance with § 660.12, Subpart C. EFHCAs apply to vessels using "bottom contact gear," which is defined at § 660.11, Subpart C to include limited entry fixed gear (longline and pot/trap,) among other gear types. Fishing with all bottom contact gear, including longline and pot/trap gear, is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at §§ 660.75 through 660.79, Subpart C: Thompson Seamount, President Jackson Seamount, Cordell Bank (50 fm (91 m) isobath), Harris Point, Richardson Rock, Scorpion, Painted Cave, Anacapa Island, Carrington Point, Judith Rock, Skunk Point, Footprint, Gull Island, South Point, and Santa Barbara. Fishing with bottom contact gear is also prohibited within the Davidson Seamount EFH Area, which is defined by specific latitude and longitude coordinates at § 660.75, subpart C.

(e) *Black rockfish fishery management.* The trip limit for black rockfish (*Sebastes melanops*) for commercial fishing vessels using hook-and-line gear between the U.S.-Canada border and Cape Alava (48°09.50′ N. lat.), and between Destruction Island (47°40′ N. lat.) and Leadbetter Point (46°38.17′ N. lat.), is 100-lbs (45 kg) or 30 percent, by weight of all fish on board, whichever is greater, per vessel per fishing trip. These per trip limits apply to limited entry and open access fisheries, in conjunction with the cumulative trip limits and other management measures in § 660.230, subpart E, and § 660.330, subpart F. The crossover provisions in § 660.60(h)(7), subpart C, do not apply to the black rockfish per-trip limits.

§ 660.231 Limited entry fixed gear sablefish primary fishery.

This section applies to the sablefish primary season for the limited entry fixed gear fishery north of 36° N. lat. Limited entry and open access fixed gear sablefish fishing outside of the sablefish primary season north of 36° N. lat. is governed by routine management measures imposed under §§ 660.230 and 660.232, subpart E.

(a) *Sablefish endorsement.* A vessel may not fish in the sablefish primary season for the limited entry fixed gear fishery, unless at least one limited entry permit with both a gear endorsement for

longline or trap (or pot) gear and a sablefish endorsement is registered for use with that vessel. Permits with sablefish endorsements are assigned to one of three tiers, as described at § 660.25(b)(3)(iv), subpart C.

(b) *Sablefish primary season for the limited entry fixed gear fishery*—(1) *Season Dates.* North of 36° N. lat., the sablefish primary season for the limited entry, fixed gear, sablefish-endorsed vessels begins at 12 noon local time on April 1 and ends at 12 noon local time on October 31, or for an individual permit holder when that permit holder's tier limit has been reached, whichever is earlier, unless otherwise announced by the Regional Administrator through the routine management measures process described at § 660.60, subpart C.

(2) *Gear type.* During the season primary and when fishing against primary season cumulative limits, each vessel authorized to fish in that season under paragraph (a) of this section may fish for sablefish with any of the gear types, except trawl gear, endorsed on at least one of the permits registered for use with that vessel.

(3) *Cumulative limits*—(i) A vessel participating in the primary season will be constrained by the sablefish cumulative limit associated with each of the permits registered for use with that vessel. During the primary season, each vessel authorized to fish in that season under paragraph (a) of this section may take, retain, possess, and land sablefish, up to the cumulative limits for each of the permits registered for use with that vessel (i.e., stacked permits). If multiple limited entry permits with sablefish endorsements are registered for use with a single vessel, that vessel may land up to the total of all cumulative limits announced in this paragraph for the tiers for those permits, except as limited by paragraph (b)(3)(ii) of this section. Up to 3 permits may be registered for use with a single vessel during the primary season; thus, a single vessel may not take and retain, possess or land more than 3 primary season sablefish cumulative limits in any one year. A vessel registered for use with multiple limited entry permits is subject to per vessel limits for species other than sablefish, and to per vessel limits when participating in the daily trip limit fishery for sablefish under § 660.232, subpart E. In 2009, the following annual limits are in effect: Tier 1 at 61,296-lb (27,803 kg), Tier 2 at 27,862-lb (12,638 kg), and Tier 3 at 15,921-lb (7,221 kg). For 2010 and beyond, the following annual limits are in effect: Tier 1 at 56,081-lb (25,437 kg), Tier 2 at 25,492-lb (11,562 kg), and Tier 3 at 14,567-lb (6,648 kg).

(ii) If a permit is registered to more than one vessel during the primary season in a single year, the second vessel may only take the portion of the cumulative limit for that permit that has not been harvested by the first vessel to which the permit was registered. The combined primary season sablefish landings for all vessels registered to that permit may not exceed the cumulative limit for the tier associated with that permit.

(iii) A cumulative trip limit is the maximum amount of sablefish that may be taken and retained, possessed, or landed per vessel in a specified period of time, with no limit on the number of landings or trips.

(iv) Incidental halibut retention north of Pt. Chehalis, WA (46°53.30′ N. lat.). [Reserved]

(4) *Owner-on-board requirement.* Any person who owns or has ownership interest in a limited entry permit with a sablefish endorsement, as described at § 660.25(b)(3), subpart C, must be on board the vessel registered for use with that permit at any time that the vessel has sablefish on board the vessel that count toward that permit's cumulative sablefish landing limit. This person must carry government issued photo identification while aboard the vessel. A permit owner is not obligated to be on board the vessel registered for use with the sablefish-endorsed limited entry permit during the sablefish primary season if:

(i) The person, partnership or corporation had ownership interest in a limited entry permit with a sablefish endorsement prior to November 1, 2000. A person who has ownership interest in a partnership or corporation that owned a sablefish-endorsed permit as of November 1, 2000, but who did not individually own a sablefish-endorsed limited entry permit as of November 1, 2000, is not exempt from the owner-on-board requirement when he/she leaves the partnership or corporation and purchases another permit individually. A person, partnership, or corporation that is exempt from the owner-on-board requirement may sell all of their permits, buy another sablefish-endorsed permit within up to a year from the date the last permit was approved for transfer, and retain their exemption from the owner-on-board requirements. Additionally, a person, partnership, or corporation that qualified for the owner-on-board exemption, but later divested their interest in a permit or permits, may retain rights to an owner-on-board exemption as long as that person, partnership, or corporation purchases another permit by March 2, 2007. A person, partnership or corporation could only purchase a permit if it has not added or changed individuals since November 1, 2000, excluding individuals that have left the partnership or corporation, or that have died.

(ii) The person who owns or who has ownership interest in a sablefish-endorsed limited entry permit is prevented from being on board a fishing vessel because the person died, is ill, or is injured. The person requesting the exemption must send a letter to NMFS requesting an exemption from the owner-on-board requirements, with appropriate evidence as described at paragraph (b)(4)(ii)(A) or (B) of this section. All emergency exemptions for death, injury, or illness will be evaluated by NMFS and a decision will be made in writing to the permit owner within 60 calendar days of receipt of the original exemption request.

(A) Evidence of death of the permit owner shall be provided to NMFS in the form of a copy of a death certificate. In the interim before the estate is settled, if the deceased permit owner was subject to the owner-on-board requirements, the estate of the deceased permit owner may send a letter to NMFS with a copy of the death certificate, requesting an exemption from the owner-on-board requirements. An exemption due to death of the permit owner will be effective only until such time that the estate of the deceased permit owner has transferred the deceased permit owner's permit to a beneficiary or up to three years after the date of death as proven by a death certificate, whichever is earlier. An exemption from the owner-on-board requirements will be conveyed in a letter from NMFS to the estate of the permit owner and is required to be on the vessel during fishing operations.

(B) Evidence of illness or injury that prevents the permit owner from participating in the fishery shall be provided to NMFS in the form of a letter from a certified medical practitioner. This letter must detail the relevant medical conditions of the permit owner and how those conditions prevent the permit owner from being onboard a fishing vessel during the primary season. An exemption due to injury or illness will be effective only for the fishing year of the request for exemption, and will not be granted for more than three consecutive or total years. NMFS will consider any exemption granted for less than 12 months in a year to count as one year against the 3-year cap. In order to extend an emergency medical exemption for a succeeding year, the permit owner must submit a new

request and provide documentation from a certified medical practitioner detailing why the permit owner is still unable to be onboard a fishing vessel. An emergency exemption will be conveyed in a letter from NMFS to the permit owner and is required to be on the vessel during fishing operations.

§ 660.232 Limited entry daily trip limit (DTL) fishery for sablefish.

(a) *Limited entry DTL fisheries both north and south of 36° N. lat.*—(1) Before the start of the primary season for the sablefish tier limit fishery, all sablefish landings made by a vessel authorized by § 660.231(a) to fish in the primary season will be subject to the restrictions and limits of the limited entry daily and/or weekly trip limit (DTL) fishery for sablefish specified in this section and which is governed by routine management measures imposed under § 660.60(c), subpart C.

(2) Following the start of the primary season, all landings made by a vessel authorized by § 660.231(a) of this subpart to fish in the primary season will count against the primary season cumulative limit(s) associated with the permit(s) registered for use with that vessel. A vessel that is eligible to fish in the sablefish primary season may fish in the DTL fishery for sablefish once that vessels' primary season sablefish limit(s) have been taken, or after the end of the primary season, whichever occurs earlier. Any subsequent sablefish landings by that vessel will be subject to the restrictions and limits of the limited entry DTL fishery for sablefish for the remainder of the fishing year.

(3) No vessel may land sablefish against both its primary season cumulative sablefish limits and against the DTL fishery limits within the same 24 hour period of 0001 hours local time to 2400 hours local time. If a vessel has taken all of its tier limit except for an amount that is smaller than the DTL amount, that vessel's subsequent sablefish landings are automatically subject to DTL limits.

(4) Vessels registered for use with a limited entry, fixed gear permit that does not have a sablefish endorsement may fish in the limited entry, DTL fishery for as long as that fishery is open during the fishing year, subject to routine management measures imposed under § 660.60(c), Subpart C. DTL limits for the limited entry fishery north and south of 36° N. lat. are provided in Tables 2 (North) and 2 (South) of this subpart.

(b) [Reserved]

Subpart F—West Coast Groundfish—Open Access Fisheries

§ 660.310 Purpose and scope.

This subpart covers the Pacific Coast Groundfish open access fishery. The open access fishery, as defined at § 660.11, Subpart C, is the fishery composed of commercial vessels using open access gear fished pursuant to the harvest guidelines, quotas, and other management measures specified for the harvest of open access allocations or governing the fishing activities of open access vessels.

§ 660.311 Open access fishery—definitions.

General definitions for the Pacific Coast groundfish fisheries are defined at § 660.11, subpart C. The definitions in this subpart are specific to the open access fishery covered in this subpart and are in addition to those specified at § 660.11, subpart C.

Closely tended for the purposes of this subpart means that a vessel is within visual sighting distance or within 0.25 nm (463 m) of the gear as determined by electronic navigational equipment.

§ 660.312 Open access fishery—prohibitions.

General groundfish prohibitions for the Pacific Coast groundfish fisheries are defined at § 660.12, subpart C. In addition to the general groundfish prohibitions, it is unlawful for any person to:

(a) *General*—(1) Take and retain, possess, or land groundfish in excess of the landing limit for the open access fishery without having a valid limited entry permit for the vessel affixed with a gear endorsement for the gear used to catch the fish.

(2) *Black rockfish fisheries.* Have onboard a commercial hook-and-line fishing vessel (other than a vessel operated by persons under § 660.60 (c)(1)(ii), subpart C), more than the amount of the trip limit set for black rockfish by § 660.330(e) while that vessel is fishing between the U.S.-Canada border and Cape Alava (48°09′30″ N. lat.), or between Destruction Island (47°40′00″ N. lat.) and Leadbetter Point (46°38′10″ N. lat.).

(b) *Gear*—(1) Possess, deploy, haul, or carry onboard a fishing vessel subject to this subpart a set net, trap or pot, longline, or commercial vertical hook-and-line that is not in compliance with the gear restrictions in § 660.330(b), subpart F, unless such gear is the gear of another vessel that has been retrieved at sea and made inoperable or stowed in a manner not capable of being fished. The disposal at sea of such gear is prohibited by Annex V of the International Convention for the Prevention of Pollution From Ships, 1973 (Annex V of MARPOL 73/78).

(2) Fish with dredge gear (defined in § 660.11) anywhere within EFH within the EEZ, as defined by latitude/longitude coordinates at § 660.75.

(3) Fish with beam trawl gear (defined in § 660.11) anywhere within EFH within the EEZ, as defined by latitude/longitude coordinates at § 660.75.

(4) Fish with bottom trawl gear with a footrope diameter greater than 19 inches (48 cm) (including rollers, bobbins, or other material encircling or tied along the length of the footrope) anywhere in EFH within the EEZ, as defined by latitude/longitude coordinates at § 660.75.

(c) *Fishing in conservation areas with open access gears*—(1) Operate a vessel with non-groundfish trawl gear onboard in any applicable GCA (as defined at § 660.330(d)) except for purposes of continuous transiting, with all trawl gear stowed in accordance with § 660.330 (b), or except as authorized in the groundfish management measures published at § 660.330.

(2) Operate a vessel in an applicable GCA (as defined at § 660.330(d) that has nontrawl gear onboard and is not registered to a limited entry permit on a trip in which the vessel is used to take and retain or possess groundfish in the EEZ, possess or land groundfish taken in the EEZ, except for purposes of continuous transiting, with all groundfish nontrawl gear stowed in accordance with § 660.330(b), or except as authorized in the groundfish management measures published at § 660.330.

(3) Fish with bottom contact gear (as defined in § 660.11, subpart C) within the EEZ in the following areas (defined in §§ 660.78 and 660.79): Thompson Seamount, President Jackson Seamount, Cordell Bank (50-fm (91-m) isobath), Harris Point, Richardson Rock, Scorpion, Painted Cave, Anacapa Island, Carrington Point, Judith Rock, Skunk Point, Footprint, Gull Island, South Point, and Santa Barbara.

(4) Fish with bottom contact gear (as defined in § 660.11, subpart C), or any other gear that is deployed deeper than 500-fm (914-m), within the Davidson Seamount area (defined in § 660.75).

§ 660.313 Open access fishery—recordkeeping and reporting.

(a) *General.* General reporting requirements specified at § 660.13 (a) through (c) of subpart C apply to open access fisheries.

(b) *Declaration reports for vessels using nontrawl gear.* Declaration

reporting requirements for open access vessels using nontrawl gear (all types of open access gear other than non-groundfish trawl gear) are specified at § 660.13(d).

(c) *Declaration reports for vessels using non-groundfish trawl gear.* Declaration reporting requirements for open access vessels using non-groundfish trawl gear are specified at § 660.13(d).

(d) *VMS requirements for open access fishery vessels.* VMS requirements for open access fishery vessels are specified at § 660.14, subpart C.

(e) *Retention of records.* Any person landing groundfish must retain on board the vessel from which groundfish is landed, and provide to an authorized officer upon request, copies of any and all reports of groundfish landings containing all data, and in the exact manner, required by the applicable state law throughout the cumulative limit period during which a landing occurred and for 15 days thereafter.

§ 660.316 Open access fishery—observer requirements.

(a) *Observer coverage requirements.* When NMFS notifies the owner, operator, permit holder, or the manager of a catcher vessel, specified at § 660.16 (c), subpart C, of any requirement to carry an observer, the catcher vessel may not be used to fish for groundfish without carrying an observer.

(b) *Notice of departure—basic rule.* At least 24 hours (but not more than 36 hours) before departing on a fishing trip, a vessel that has been notified by NMFS that it is required to carry an observer, or that is operating in an active sampling unit, must notify NMFS (or its designated agent) of the vessel's intended time of departure. Notice will be given in a form to be specified by NMFS.

(1) *Optional notice—weather delays.* A vessel that anticipates a delayed departure due to weather or sea conditions may advise NMFS of the anticipated delay when providing the basic notice described in paragraph (b) of this section. If departure is delayed beyond 36 hours from the time the original notice is given, the vessel must provide an additional notice of departure not less than 4 hours prior to departure, in order to enable NMFS to place an observer.

(2) *Optional notice—back-to-back fishing trips.* A vessel that intends to make back-to-back fishing trips (i.e., trips with less than 24 hours between offloading from one trip and beginning another), may provide the basic notice described in paragraph (b) of this section for both trips, prior to making the first trip. A vessel that has given such notice is not required to give additional notice of the second trip.

(c) *Cease fishing report.* Within 24 hours of ceasing the taking and retaining of groundfish, vessel owners, operators, or managers must notify NMFS or its designated agent that fishing has ceased. This requirement applies to any vessel that is required to carry an observer, or that is operating in a segment of the fleet that NMFS has identified as an active sampling unit.

(d) *Waiver.* The Northwest Regional Administrator may provide written notification to the vessel owner stating that a determination has been made to temporarily waive coverage requirements because of circumstances that are deemed to be beyond the vessel's control.

(e) *Vessel responsibilities*—(1) *Accommodations and food.* An operator of a vessel required to carry one or more observer(s) must provide accommodations and food that are equivalent to those provided to the crew.

(2) *Safe conditions.* Maintain safe conditions on the vessel for the protection of observer(s) including adherence to all USCG and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel, and provisions at §§ 600.725 and 600.746 of this chapter.

(3) *Observer communications.* Facilitate observer communications by:

(i) *Observer use of equipment.* Allowing observer(s) to use the vessel's communication equipment and personnel, on request, for the entry, transmission, and receipt of work-related messages, at no cost to the observer(s) or the U.S. or designated agent.

(ii) *Functional equipment.* Ensuring that the vessel's communications equipment, used by observers to enter and transmit data, is fully functional and operational.

(4) *Vessel position.* Allow observer(s) access to, and the use of, the vessel's navigation equipment and personnel, on request, to determine the vessel's position.

(5) *Access.* Allow observer(s) free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(6) *Prior notification.* Notify observer(s) at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer, unless the observer specifically requests not to be notified.

(7) *Records.* Allow observer(s) to inspect and copy any state or Federal logbook maintained voluntarily or as required by regulation.

(8) *Assistance.* Provide all other reasonable assistance to enable observer(s) to carry out their duties, including, but not limited to:

(i) Measuring decks, codends, and holding bins.

(ii) Providing the observer(s) with a safe work area.

(iii) Collecting bycatch when requested by the observer(s).

(iv) Collecting and carrying baskets of fish when requested by the observer(s).

(v) Allowing the observer(s) to collect biological data and samples.

(vi) Providing adequate space for storage of biological samples.

(f) *Sample station*—(1) *Observer sampling station.* This paragraph contains the requirements for observer sampling stations. The vessel owner must provide an observer sampling station that complies with this section so that the observer can carry out required duties.

(i) *Accessibility.* The observer sampling station must be available to the observer at all times.

(ii) *Location.* The observer sampling station must be located within 4 m of the location from which the observer samples unsorted catch. Unobstructed passage must be provided between the observer sampling station and the location where the observer collects sample catch.

§ 660.319 Open access fishery gear identification and marking.

(a) *Gear identification*—(1) Open access fixed gear (longline, trap or pot, set net and stationary hook-and-line gear, including commercial vertical hook-and-line gear) must be marked at the surface and at each terminal end, with a pole, flag, light, radar reflector, and a buoy.

(2) Open access commercial vertical hook-and-line gear that is closely tended as defined at § 660.311 of this subpart, may be marked only with a single buoy of sufficient size to float the gear.

(3) A buoy used to mark fixed gear under paragraph (a)(1) or (a)(2) of this section must be marked with a number clearly identifying the owner or operator of the vessel. The number may be either:

(i) If required by applicable state law, the vessel's number, the commercial fishing license number, or buoy brand number; or

(ii) The vessel documentation number issued by the USCG, or, for an

undocumented vessel, the vessel registration number issued by the state.

(b) [Reserved]

§ 660.320 Open access fishery—crossover provisions.

(a) *Operating in both limited entry and open access fisheries.* See provisions at § 660.60, subpart C.

(b) *Operating in north-south management areas with different trip limits.* NMFS uses different types of management areas for West Coast groundfish management. One type of management area is the north-south management area, a large ocean area with northern and southern boundary lines wherein trip limits, seasons, and conservation areas follow a single theme. Within each north-south management area, there may be one or more conservation areas, detailed in §§ 660.11, subpart C, and 660.70, subpart C, through 660.74. The provisions within this paragraph apply to vessels operating in different north-south management areas. Trip limits for a species or a species group may differ in different north-south management areas along the coast. The following "crossover" provisions apply to vessels operating in different geographical areas that have different cumulative or "per trip" trip limits for the same species or species group. Such crossover provisions do not apply to species that are subject only to daily trip limits, or to the trip limits for black rockfish off Washington (see § 660.330(e)).

(1) *Going from a more restrictive to a more liberal area.* If a vessel takes and retains any groundfish species or species group of groundfish in an area where a more restrictive trip limit applies before fishing in an area where a more liberal trip limit (or no trip limit) applies, then that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(2) *Going from a more liberal to a more restrictive area.* If a vessel takes and retains a groundfish species or species group in an area where a higher trip limit or no trip limit applies, and takes and retains, possesses or lands the same species or species group in an area where a more restrictive trip limit applies, that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(3) *Operating in two different areas where a species or species group is managed with different types of trip limits.* During the fishing year, NMFS may implement management measures for a species or species group that set different types of trip limits (for example, per trip limits versus cumulative trip limits) for different areas. If a vessel fishes for a species or species group that is managed with different types of trip limits in two different areas within the same cumulative limit period, then that vessel is subject to the most restrictive overall cumulative limit for that species, regardless of where fishing occurs.

(4) Minor rockfish. Several rockfish species are designated with species-specific limits on one side of the 40°10′ N. lat. management line, and are included as part of a minor rockfish complex on the other side of the line. A vessel that takes and retains fish from a minor rockfish complex (nearshore, shelf, or slope) on both sides of a management line during a single cumulative limit period is subject to the more restrictive cumulative limit for that minor rockfish complex during that period.

(i) If a vessel takes and retains minor slope rockfish north of 40°10′ N. lat., that vessel is also permitted to take and retain, possess or land splitnose rockfish up to its cumulative limit south of 40°10′ N. lat., even if splitnose rockfish were a part of the landings from minor slope rockfish taken and retained north of 40°10′ N. lat.

(ii) If a vessel takes and retains minor slope rockfish south of 40°10′ N. lat., that vessel is also permitted to take and retain, possess or land POP up to its cumulative limit north of 40°10′ N. lat., even if POP were a part of the landings from minor slope rockfish taken and retained south of 40°10′ N. lat.

(v) "DTS complex." There are often differential trawl trip limits for the "DTS complex" north and south of latitudinal management lines. Vessels operating in the limited entry trawl fishery are subject to the crossover provisions in this paragraph when making landings that include any one of the four species in the "DTS complex."

§ 660.330 Open access fishery—management measures.

(a) *General.* Groundfish species taken in open access fisheries will be managed with cumulative trip limits (see trip limits in Tables 3 (North) and 3 (South) of this subpart), size limits (see § 660.60(h)(5)), seasons (see seasons in Tables 3 (North) and 3 (South) of this subpart), gear restrictions (*see* paragraph (b) of this section), and closed areas (see paragraph (d) of this section and §§ 660.70 through 660.79, subpart C). Unless otherwise specified, a vessel operating in the open access fishery is subject to, and must not exceed any trip limit, frequency limit, and/or size limit for the open access fishery. Cowcod retention is prohibited in all fisheries and groundfish vessels operating south of Point Conception must adhere to CCA restrictions (see paragraph (d)(11) of this section and § 660.70, Subpart C). Retention of yelloweye rockfish and canary rockfish is prohibited in all open access fisheries. For information on the open access daily/weekly trip limit fishery for sablefish, see § 660.332 and the trip limits in Tables 3 (North) and 3 (South) of this subpart. Open access vessels are subject to daily or weekly sablefish limits in addition to cumulative limits for each cumulative limit period. Only one sablefish landing per week may be made in excess of the daily trip limit and, if the vessel chooses to make a landing in excess of that daily trip limit, then that is the only sablefish landing permitted for that week. The trip limit for black rockfish caught with hook-and-line gear also applies, see paragraph (e) of this section. Open access vessels that fish with non-groundfish trawl gear or in the salmon troll fishery north of 40° 10′ N. lat. are subject to the cumulative limits and closed areas (except the pink shrimp fishery which is not subject to RCA restrictions) listed in Tables 3 (North) and 3 (South) of this subpart. Federal commercial groundfish regulations are not intended to supersede any more restrictive state commercial groundfish regulations relating to federally managed groundfish.

(b) *Gear restrictions.* Open access gear includes longline, trap, pot, hook-and-line (fixed or mobile), setnet (anchored gillnet or trammel net, which are permissible south of 38° N. lat. only), spear and non-groundfish trawl gear (trawls used to target non-groundfish species: pink shrimp or ridgeback prawns, and, south of Pt. Arena, CA (38°57.50′ N. lat.), California halibut or sea cucumbers). Restrictions for gears used in the open access fisheries are as follows:

(1) *Non-groundfish trawl gear.* Non-groundfish trawl gear is generally trawl gear used to target pink shrimp, ridgeback prawn, California halibut and sea cucumber and is exempt from the limited entry trawl gear restrictions at § 660.130(b). The following gear restrictions apply to non-groundfish trawl gear:

(i) Bottom trawl gear with a footrope diameter greater than 19 inches (48 cm) (including rollers, bobbins, or other material encircling or tied along the length of the footrope) is prohibited anywhere in EFH within the EEZ, as defined by latitude/longitude coordinates at § 660.75 unless such gear

is the gear of another vessel that has been retrieved at sea and made inoperable or stowed in a manner not capable of being fished. The disposal at sea of such gear is prohibited by Annex V of the International Convention for the Prevention of Pollution From Ships, 1973 (Annex V of MARPOL 73/78).

(ii) [Reserved]

(2) *Fixed gear*—(i) Fixed gear (longline, trap or pot, set net and stationary hook-and-line gear, including commercial vertical hook-and-line gear) must be attended at least once every 7 days.

(ii) *Set nets.* Fishing for groundfish with set nets is prohibited in the fishery management area north of 38°00.00′ N. lat.

(iii) *Traps or pots.* Traps must have biodegradable escape panels constructed with 21 or smaller untreated cotton twine in such a manner that an opening at least 8 inches (20.3 cm) in diameter results when the twine deteriorates.

(iv) *Spears.* Spears may be propelled by hand or by mechanical means.

(c) *Sorting.* Under § 660.12(a)(8), subpart C, it is unlawful for any person to "fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, scientific sorting designation, quota, harvest guideline, or OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, scientific sorting designation, quota, harvest guideline, or OY applied." The States of Washington, Oregon, and California may also require that vessels record their landings as sorted on their state landing receipts. For open access vessels, the following species must be sorted:

(1) Coastwide—widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, shortbelly rockfish, black rockfish, blue rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, shortspine and longspine thornyhead, Dover sole, arrowtooth flounder, petrale sole, starry flounder, English sole, other flatfish, lingcod, sablefish, Pacific cod, spiny dogfish, longnose skate, other fish, Pacific whiting, and Pacific sanddabs;

(2) North of 40°10′ N. lat.—POP, yellowtail rockfish;

(3) South of 40°10′ N. lat.—minor shallow nearshore rockfish, minor deeper nearshore rockfish, chilipepper rockfish, bocaccio rockfish, splitnose rockfish, cowcod, bronzespotted rockfish and cabezon.

(d) *Groundfish conservation areas affecting open access vessels.* A GCA, a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude. A vessel that is authorized by this paragraph to fish within a GCA (e.g. fishing for "other flatfish" using no more than 12 hooks, "Number 2" or smaller), may not simultaneously have other gear on board the vessel that is unlawful to use for fishing within the GCA. The following GCAs apply to vessels participating in the open access groundfish fishery.

(1) *North coast recreational yelloweye rockfish conservation area.* The latitude and longitude coordinates of the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA) boundaries are specified at § 660.70, subpart C. The North Coast Recreational YRCA is designated as an area to be avoided (a voluntary closure) by commercial fixed gear fishers.

(2) *North coast commercial yelloweye rockfish conservation area.* The latitude and longitude coordinates of the North Coast Commercial Yelloweye Rockfish Conservation Area (YRCA) boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the North Coast Commercial YRCA. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the North Coast Commercial YRCA. Open access vessels may transit through the North Coast Commercial YRCA with or without groundfish on board.

(3) *South coast recreational yelloweye rockfish conservation area.* The latitude and longitude coordinates of the South Coast Recreational Yelloweye Rockfish Conservation Area (YRCA) boundaries are specified at § 660.70, subpart C. The South Coast Recreational YRCA is designated as an area to be avoided (a voluntary closure) by commercial fixed gear fishers.

(4) *Westport offshore recreational YRCA.* The latitude and longitude coordinates that define the Westport Offshore Recreational YRCA boundaries are specified at § 660.70, subpart C. The Westport Offshore Recreational YRCA is designated as an area to be avoided (a voluntary closure) by commercial fixed gear fishers.

(5) *Point St. George YRCA.* The latitude and longitude coordinates of the Point St. George YRCA boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the Point St. George YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the Point St. George YRCA, on dates when the closure is in effect. The closure is not in effect at this time, and commercial fishing for groundfish is open within the Point St. George YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment. Open access vessels may transit through the Point St. George YRCA, at any time, with or without groundfish on board.

(6) *South Reef YRCA.* The latitude and longitude coordinates of the South Reef YRCA boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the South Reef YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the South Reef YRCA, on dates when the closure is in effect. The closure is not in effect at this time, and commercial fishing for groundfish is open within the South Reef YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment. Open access gear vessels may transit through the South Reef YRCA, at any time, with or without groundfish on board.

(7) *Reading Rock YRCA.* The latitude and longitude coordinates of the Reading Rock YRCA boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the Reading Rock YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the Reading Rock YRCA, on dates when the closure is in effect. The closure is not in effect at this time, and commercial fishing for groundfish is open within the Reading Rock YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment. Open access gear vessels may transit through the Reading Rock YRCA, at any time, with or without groundfish on board.

(8) *Point Delgada (North) YRCA.* The latitude and longitude coordinates of the Point Delgada (North) YRCA boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the Point Delgada (North) YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the Point Delgada (North) YRCA, on dates when the closure is in effect. The closure is not in effect at this time, and commercial fishing for groundfish is open within the Point Delgada (North) YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment. Open access gear vessels may transit through the Point Delgada (North) YRCA, at any

time, with or without groundfish on board.

(9) *Point Delgada (South) YRCA.* The latitude and longitude coordinates of the Point Delgada (South) YRCA boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the Point Delgada (South) YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the Point Delgada (South) YRCA, on dates when the closure is in effect. The closure is not in effect at this time, and commercial fishing for groundfish is open within the Point Delgada (South) YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment. Open access gear vessels may transit through the Point Delgada (South) YRCA, at any time, with or without groundfish on board.

(10) *Salmon Troll Yelloweye Rockfish Conservation Area (YRCA).* The latitude and longitude coordinates of the Salmon Troll YRCA boundaries are specified in the groundfish regulations at § 660.70, subpart C, and in the salmon regulations at § 660.405. Fishing with salmon troll gear is prohibited within the Salmon Troll YRCA. It is unlawful for commercial salmon troll vessels to take and retain, possess, or land fish taken with salmon troll gear within the Salmon Troll YRCA. Open access vessels may transit through the Salmon Troll YRCA with or without fish on board.

(11) *Cowcod Conservation Areas (CCAs).* The latitude and longitude coordinates of the CCAs boundaries are specified at § 660.70, subpart C. It is unlawful to take and retain, possess, or land groundfish within the CCAs, except for species authorized in this paragraph caught according to gear requirements in this paragraph, when those waters are open to fishing. Commercial fishing vessels may transit through the Western CCA with their gear stowed and groundfish on board only in a corridor through the Western CCA bounded on the north by the latitude line at 33°00.50′ N. lat., and bounded on the south by the latitude line at 32°59.50′ N. lat. Fishing with open access gear is prohibited in the CCAs, except as follows:

(i) Fishing for "other flatfish" is permitted within the CCAs under the following conditions: When using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1-lb (0.45 kg) weights per line; and provided a valid declaration report as required at § 660.12(d), subpart C, has been filed with NMFS OLE.

(ii) Fishing for rockfish and lingcod is permitted shoreward of the 20 fm (37 m) depth contour within the CCAs when trip limits authorize such fishing, and provided a valid declaration report as required at § 660.12(d), subpart C, has been filed with NMFS OLE.

(12) *Nontrawl rockfish conservation areas for the open access fisheries.* The nontrawl RCAs are closed areas, defined by specific latitude and longitude coordinates (specified at §§ 660.70 through 660.74, subpart C) designed to approximate specific depth contours, where fishing for groundfish with nontrawl gear is prohibited. Boundaries for the nontrawl RCA throughout the year are provided in the open access trip limit tables, Table 3 (North) and Table 3 (South) of this subpart and may be modified by NMFS inseason pursuant to § 660.60(c).

(i) It is unlawful to operate a vessel in the nontrawl RCA that has nontrawl gear onboard and is not registered to a limited entry permit on a trip in which the vessel is used to take and retain or possess groundfish in the EEZ, or land groundfish taken in the EEZ, except for the purpose of continuous transiting, or when the use of nontrawl gear is authorized in part 660.

(ii) On any trip on which a groundfish species is taken with nontrawl open access gear and retained, the open access nontrawl vessel may transit through the nontrawl RCA only if all groundfish nontrawl gear is stowed either: Below deck; or if the gear cannot readily be moved, in a secured and covered manner, detached from all lines, so that it is rendered unusable for fishing.

(iii) The nontrawl RCA restrictions in this section apply to vessels taking and retaining or possessing groundfish in the EEZ, or landing groundfish taken in the EEZ. Unless otherwise authorized by part 660, a vessel may not retain any groundfish taken on a fishing trip for species other than groundfish that occurs within the nontrawl RCA. If a vessel fishes in a non-groundfish fishery in the nontrawl RCA, it may not participate in any fishing for groundfish on that trip that is prohibited within the nontrawl RCA. [For example, if a vessel fishes in the salmon troll fishery within the RCA, the vessel cannot on the same trip fish in the sablefish fishery outside of the RCA.]

(iv) Fishing for "other flatfish" off California (between 42° N. lat. south to the U.S./Mexico border) is permitted within the nontrawl RCA with fixed gear only under the following conditions: When using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1–lb (0.91 kg) weights per line when trip limits authorize such fishing; and provided a valid declaration report as required at § 660.12(d), subpart C, has been filed with NMFS OLE.

(13) *Non-groundfish trawl rockfish conservation areas for the open access non-groundfish trawl fisheries.* The non-groundfish trawl RCAs are closed areas, defined by specific latitude and longitude coordinates (specified at §§ 660.70 through 660.74, subpart C) designed to approximate specific depth contours, where fishing for groundfish with nontrawl gear is prohibited. Boundaries for the nontrawl RCA throughout the year are provided in the open access trip limit tables, Table 3 (North) and Table 3 (South) of this subpart and may be modified by NMFS inseason pursuant to § 660.60(c).

(i) It is unlawful to operate a vessel in the non-groundfish trawl RCA with non-groundfish trawl gear onboard, except for the purpose of continuous transiting, or when the use of trawl gear is authorized in part 660. It is unlawful to take and retain, possess, or land groundfish taken with non-groundfish trawl gear within the nontrawl RCA, unless otherwise authorized in part 660.

(ii) Non-groundfish trawl vessels may transit through the non-groundfish trawl RCA, with or without groundfish on board, provided all non-groundfish trawl gear is stowed either: Below deck; or if the gear cannot readily be moved, in a secured and covered manner, detached from all towing lines, so that it is rendered unusable for fishing; or remaining on deck uncovered if the trawl doors are hung from their stanchions and the net is disconnected from the doors.

(iii) The non-groundfish trawl RCA restrictions in this section apply to vessels taking and retaining or possessing groundfish in the EEZ, or landing groundfish taken in the EEZ. Unless otherwise authorized by Part 660, it is unlawful for a vessel to retain any groundfish taken on a fishing trip for species other than groundfish that occurs within the non-groundfish trawl RCA. If a vessel fishes in a non-groundfish fishery in the non-groundfish trawl RCA, it may not participate in any fishing on that trip that is prohibited within the non-groundfish trawl RCA. [For example, if a vessel fishes in the pink shrimp fishery within the RCA, the vessel cannot on the same trip fish in the DTS fishery seaward of the RCA.] Nothing in these Federal regulations supersedes any state regulations that may prohibit

trawling shoreward of the fishery management area (3–200 nm).

(iv) It is lawful to fish with non-groundfish trawl gear within the non-groundfish trawl RCA only under the following conditions:

(A) Pink shrimp trawling is permitted in the non-groundfish trawl RCA when a valid declaration report as required at § 660.12(d), subpart C, has been filed with NMFS OLE. Groundfish caught with pink shrimp trawl gear may be retained anywhere in the EEZ and are subject to the limits in Table 3 (North) and Table 3 (South) of this subpart.

(B) When the shoreward line of the trawl RCA is shallower than 100 fm (183 m), vessels using ridgeback prawn trawl gear south of 34°27.00′ N. lat. may operate out to the 100 fm (183 m) boundary line specified at § 660.73 when a valid declaration report as required at § 660.12(d), subpart C, has been filed with NMFS OLE. Groundfish caught with ridgeback prawn trawl gear are subject to the limits in Table 3 (North) and Table 3 (South) of this subpart.

(14) *Farallon Islands.* Under California law, commercial fishing for all groundfish is prohibited between the shoreline and the 10 fm (18 m) depth contour around the Farallon Islands. An exception to this prohibition is that commercial fishing for "other flatfish" is permitted around the Farallon Islands using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1-lb (0.45 kg) weights per line. (See Table 2 (South) of this subpart.) For a definition of the Farallon Islands, see § 660.70, subpart C.

(15) *Cordell banks.* Commercial fishing for groundfish is prohibited in waters of depths less than 100–fm (183–m) around Cordell Banks, as defined by specific latitude and longitude coordinates at § 660.70, subpart C. An exception to this prohibition is that commercial fishing for "other flatfish" is permitted around Cordell Banks using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1-lb (0.45 kg) weights per line.

(16) *Essential fish habitat conservation areas (EFHCA).* An EFHCA, a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude at §§ 660.76 through 660.79, where specified types of fishing are prohibited in accordance with § 660.12, subpart C. EFHCAs apply to vessels using bottom trawl gear and or vessels using "bottom contact gear," which is defined at § 660.11, subpart C, and 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.

(i) The following EFHCAs apply to vessels operating within the EEZ off the coasts of Washington, Oregon, and California with bottom trawl gear:

(A) Seaward of a boundary line approximating the 700-fm (1280-m) depth contour. Fishing with bottom trawl gear is prohibited in waters of depths greater than 700 fm (1280 m) within the EFH, as defined by specific latitude and longitude coordinates at §§ 660.75 and 660.76.

(B) Shoreward of a boundary line approximating the 100-fm (183-m) depth contour. Fishing with bottom trawl gear with a footrope diameter greater than 8 inches (20 cm) is prohibited in waters shoreward of a boundary line approximating the 100-fm (183-m) depth contour, as defined by specific latitude and longitude coordinates at § 660.73.

(C) EFHCAs for all bottom trawl gear. Fishing with all bottom trawl gear is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at §§ 660.77 through 660.78: Olympic 2, Biogenic 1, Biogenic 2, Grays Canyon, Biogenic 3, Astoria Canyon, Nehalem Bank/Shale Pile, Siletz Deepwater, Daisy Bank/Nelson Island, Newport Rockpile/Stonewall Bank, Heceta Bank, Deepwater off Coos Bay, Bandon High Spot, Rogue Canyon.

(D) EFHCAs for all bottom trawl gear, except demersal seine gear. Fishing with all bottom trawl gear except demersal seine gear (defined at § 660.11, subpart C) is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at § 660.79: Eel River Canyon, Blunts Reef, Mendocino Ridge, Delgada Canyon, Tolo Bank, Point Arena North, Point Arena South Biogenic Area, Cordell Bank/Biogenic Area, Farallon Islands/Fanny Shoal, Half Moon Bay, Monterey Bay/Canyon, Point Sur Deep, Big Sur Coast/Port San Luis, East San Lucia Bank, Point Conception, Hidden Reef/Kidney Bank (within Cowcod Conservation Area West), Catalina Island, Potato Bank (within Cowcod Conservation Area West), Cherry Bank (within Cowcod Conservation Area West), and Cowcod EFH Conservation Area East.

(E) EFHCAs for bottom contact gear, which includes bottom trawl gear. Fishing with bottom contact gear is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at §§ 660.398–.399: Thompson Seamount, President Jackson Seamount, Cordell Bank (50–fm (91–m) isobath), Harris Point, Richardson Rock, Scorpion, Painted Cave, Anacapa Island, Carrington Point, Judith Rock, Skunk Point, Footprint, Gull Island, South Point, and Santa Barbara. Fishing with bottom contact gear is also prohibited within the Davidson Seamount EFH Area, which is defined by specific latitude and longitude coordinates at § 660.75, subpart C.

(e) *Black rockfish fishery management.* The trip limit for black rockfish (*Sebastes melanops*) for commercial fishing vessels using hook-and-line gear between the U.S.-Canada border and Cape Alava (48°09.50′ N. lat.), and between Destruction Island (47°40′ N. lat.) and Leadbetter Point (46°38.17′ N. lat.), is 100-lbs (45 kg) or 30 percent, by weight of all fish on board, whichever is greater, per vessel per fishing trip. These per trip limits apply to limited entry and open access fisheries, in conjunction with the cumulative trip limits and other management measures in §§ 660.230 and 660.330. The crossover provisions in § 660.60(h)(7), subpart C, do not apply to the black rockfish per-trip limits.

§ 660.332 Open access daily trip limit (DTL) fishery for sablefish.

(a) *Open access DTL fisheries both north and south of 36° N. lat.* Open access vessels may fish in the open access, daily trip limit fishery for as long as that fishery is open during the year, subject to the routine management measures imposed under § 660.60, subpart C.

(b) *Trip limits*—(1) Daily and/or weekly trip limits for the open access fishery north and south of 36° N. lat. are provided in Tables 3 (North) and 3 (South) of this subpart.

(2) Trip and/or frequency limits may be imposed in the limited entry fishery on vessels that are not participating in the primary season under § 660.60, subpart C.

(3) Trip and/or size limits to protect juvenile sablefish in the limited entry or open-access fisheries also may be imposed at any time under § 660.60, subpart C.

(4) Trip limits may be imposed in the open access fishery at any time under § 660.60, subpart C.

§ 660.333 Open access non-groundfish trawl fishery—management measures.

(a) *General.* Groundfish taken with non-groundfish trawl gear by vessels engaged in fishing for pink shrimp, ridgeback prawns, California halibut, or

sea cucumbers. Trip limits for groundfish retained in the ridgeback prawn, California halibut, or sea cucumber fisheries are in the open access trip limit table, Table 3 (South) of this subpart. Trip limits for groundfish retained in the pink shrimp fishery are in Tables 3 (North) and 3 (South) of this subpart. The table also generally describes the RCAs for vessels participating in these fisheries.

(b) *Participation in the ridgeback prawn fishery.* A trawl vessel will be considered participating in the ridgeback prawn fishery if:

(1) It is not registered to a valid Federal limited entry groundfish permit issued under § 660.25(b) for trawl gear; and

(2) The landing includes ridgeback prawns taken in accordance with California Fish and Game Code, section 8595, which states: "Prawns or shrimp may be taken for commercial purposes with a trawl net, subject to Article 10 (commencing with Section 8830) of Chapter 3."

(c) *Participation in the California halibut fishery*—(1) A trawl vessel will be considered participating in the California halibut fishery if:

(i) It is not registered to a valid Federal limited entry groundfish permit issued under § 660. 25(b) for trawl gear;

(ii) All fishing on the trip takes place south of Pt. Arena, CA (38°57.50′ N. lat.); and

(iii) The landing includes California halibut of a size required by California Fish and Game Code section 8392, which states: "No California halibut may be taken, possessed or sold which measures less than 22 in (56 cm) in total length, unless it weighs 4-lb (1.8144 kg) or more in the round, 3 and one-half lbs (1.587 kg) or more dressed with the head on, or 3-lbs (1.3608 kg) or more dressed with the head off. Total length means the shortest distance between the tip of the jaw or snout, whichever extends farthest while the mouth is closed, and the tip of the longest lobe of the tail, measured while the halibut is lying flat in natural repose, without resort to any force other than the swinging or fanning of the tail."

(2) [Reserved]

(d) *Participation in the sea cucumber fishery.* A trawl vessel will be considered to be participating in the sea cucumber fishery if:

(1) It is not registered to a valid Federal limited entry groundfish permit issued under § 660. 25(b) for trawl gear;

(2) All fishing on the trip takes place south of Pt. Arena, CA (38°57.50′ N. lat.); and

(3) The landing includes sea cucumbers taken in accordance with California Fish and Game Code, section 8405, which requires a permit issued by the State of California.

(e) *Groundfish taken with non-groundfish trawl gear by vessels engaged in fishing for pink shrimp.* Notwithstanding § 660.60(h)(7), a vessel that takes and retains pink shrimp and also takes and retains groundfish in either the limited entry or another open access fishery during the same applicable cumulative limit period that it takes and retains pink shrimp (which may be 1 month or 2 months, depending on the fishery and the time of year), may retain the larger of the two limits, but only if the limit(s) for each gear or fishery are not exceeded when operating in that fishery or with that gear. The limits are not additive; the vessel may not retain a separate trip limit for each fishery.

5. Redesignate § 660.390 through § 660.399, subpart G as § 660.70 through § 660.79, subpart C, as follows:

Old section	New section
§ 660.390	§ 660.70.
§ 660.391	§ 660.71.
§ 660.392	§ 660.72.
§ 660.393	§ 660.73.
§ 660.394	§ 660.74.
§ 660.395	§ 660.75.
§ 660.396	§ 660.76.
§ 660.397	§ 660.77.
§ 660.398	§ 660.78.
§ 660.399	§ 660.79.

6. Redesignate Tables 1a through 2c to part 660, subpart G as Tables 1a through 2c to part 660, subpart C, as follows:

Old table	New table
Table 1a to part 660, subpart G.	Table 1a to part 660, subpart C.
Table 1b to part 660, subpart G.	Table 1b to part 660, subpart C.
Table 1c to part 660, subpart G.	Table 1c to part 660, subpart C.
Table 2a to part 660, subpart G.	Table 2a to part 660, subpart C.
Table 2b to part 660, subpart G.	Table 2b to part 660, subpart C.
Table 2c to part 660, subpart G.	Table 2c to part 660, subpart C.

7. Redesignate Table 3 (North) and Table 3 (South) to part 660, subpart G as Table 1 (North) through Table 1 (South) to part 660, subpart D, as follows:

Old table	New table
Table 3 (North) to part 660, subpart G.	Table 1 (North) to part 660, subpart D.
Table 3 (South) to part 660, subpart G.	Table 1 (South) to part 660, subpart D.

8. Redesignate Table 4 (North) and Table 4 (South) to part 660, subpart G as Table 1 (North) through Table 1 (South) to part 660, subpart E, as follows:

Old table	New table
Table 1 (North) to part 660, subpart G.	Table 1 (North) to part 660, subpart E.
Table 1 (South) to part 660, subpart G.	Table 1 (South) to part 660, subpart E.

9. Redesignate Table 5 (North) and Table 5 (South) to part 660, subpart G as Table 1 (North) through Table 1 (South) to part 660, subpart F, as follows:

Old table	New table
Table 1 (North) to part 660, subpart G.	Table 1 (North) to part 660, subpart F.
Table 1 (South) to part 660, subpart G.	Table 1 (South) to part 660, subpart F.

10. Redesignate Figure 1 to subpart G of part 660 as Figure 1 to subpart D of part 660.

11. Redesignate Table 2 to part 660 as Table 3 to part 660, subpart C.

12. Revise subpart G to part 660 to read as follows:

Subpart G—West Coast Groundfish—Recreational Fisheries

Sec.

Subpart G—West Coast Groundfish—Recreational Fisheries

§ 660.350 Purpose and scope.

This subpart covers the Pacific Coast Groundfish recreational fishery.

§ 660.351 Recreational fishery—definitions.

These definitions are specific to the recreational fisheries covered in this subpart. General groundfish definitions are defined at § 660.11, subpart C.

Bag limit means the number of fish available to an angler.

Boat limit means the number of fish available to for a vessel or boat.

Hook limit means a limit on the number of hooks on any given fishing line.

§ 660.352 Recreational fishery—prohibitions.

These prohibitions are specific to the recreational fisheries. General

groundfish prohibitions are found at § 660.12, subpart C. In addition to the general groundfish prohibitions specified in § 600.12, subpart C, of this chapter, it is unlawful for any person to:

(a) Sell, offer to sell, or purchase any groundfish taken in the course of recreational groundfish fishing.

(b) Use fishing gear other than hook-and-line or spear for recreational fishing.

§ 660.353 Recreational fishery—recordkeeping and reporting.

Recordkeeping and reporting requirements at § 660.13 (a) through (c), subpart C, apply to the recreational fishery.

§ 660.360 Recreational fishery—management measures.

(a) *General.* Federal recreational groundfish regulations are not intended to supersede any more restrictive state recreational groundfish regulations relating to federally-managed groundfish. The bag limits include fish taken in both state and Federal waters.

(b) *Gear restrictions.* The only types of fishing gear authorized for recreational fishing are hook-and-line and spear. Spears may be propelled by hand or by mechanical means. More fishery-specific gear restrictions may be required by state as noted in paragraph (c) of this section (e.g. California's recreational "other flatfish" fishery).

(c) *State-specific recreational fishery management measures.* Federal recreational groundfish regulations are not intended to supersede any more restrictive State recreational groundfish regulations relating to federally-managed groundfish. Off the coast of Washington, Oregon, and California, boat limits apply, whereby each fisher aboard a vessel may continue to use angling gear until the combined daily limits of groundfish for all licensed and juvenile anglers aboard has been attained (additional state restrictions on boat limits may apply).

(1) *Washington.* For each person engaged in recreational fishing off the coast of Washington, the groundfish bag limit is 15 groundfish per day, including rockfish and lingcod, and is open year-round (except for lingcod). In the Pacific halibut fisheries, retention of groundfish is governed in part by annual management measures for Pacific halibut fisheries, which are published in the **Federal Register**. South of Leadbetter Point, WA to the Washington/Oregon border, when Pacific halibut are onboard the vessel, no groundfish may be taken and retained, possessed or landed, except sablefish and Pacific cod. The following sublimits and closed areas apply:

(i) *Recreational Groundfish Conservation Areas off Washington*—(A) *North Coast Recreational Yelloweye Rockfish Conservation Area.* Recreational fishing for groundfish and halibut is prohibited within the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA). It is unlawful for recreational fishing vessels to take and retain, possess, or land groundfish taken with recreational gear within the North Coast Recreational YRCA. A vessel fishing in the North Coast Recreational YRCA may not be in possession of any groundfish. Recreational vessels may transit through the North Coast Recreational YRCA with or without groundfish on board. The North Coast Recreational YRCA is defined by latitude and longitude coordinates specified at § 660.70, subpart C.

(B) *South coast recreational yelloweye rockfish conservation area.* Recreational fishing for groundfish and halibut is prohibited within the South Coast Recreational YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land groundfish taken with recreational gear within the South Coast Recreational YRCA. A vessel fishing in the South Coast Recreational YRCA may not be in possession of any groundfish. Recreational vessels may transit through the South Coast Recreational YRCA with or without groundfish on board. The South Coast Recreational YRCA is defined by latitude and longitude coordinates specified at § 660.70, subpart C.

(C) *Westport offshore recreational yelloweye rockfish conservation area.* Recreational fishing for groundfish and halibut is prohibited within the Westport Offshore Recreational YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land groundfish taken with recreational gear within the Westport Offshore Recreational YRCA. A vessel fishing in the Westport Offshore Recreational YRCA may not be in possession of any groundfish. Recreational vessels may transit through the Westport Offshore Recreational YRCA with or without groundfish on board. The Westport Offshore Recreational YRCA is defined by latitude and longitude coordinates specified at § 660.70, subpart C.

(D) *Recreational rockfish conservation area.* Fishing for groundfish with recreational gear is prohibited within the recreational RCA. It is unlawful to take and retain, possess, or land groundfish taken with recreational gear within the recreational RCA. A vessel fishing in the recreational RCA may not be in possession of any groundfish. [For example, if a vessel fishes in the recreational salmon fishery within the RCA, the vessel cannot be in possession of groundfish while in the RCA. The vessel may, however, on the same trip fish for and retain groundfish shoreward of the RCA on the return trip to port.]

(*1*) Between the U.S. border with Canada and the Queets River, recreational fishing for groundfish is prohibited seaward of a boundary line approximating the 20-fm (37-m) depth contour from May 21 through September 30, except on days when the Pacific halibut fishery is open in this area. Days open to Pacific halibut recreational fishing off Washington are announced on the NMFS hotline at (206) 526–6667 or (800) 662–9825. Coordinates for the boundary line approximating the 20-fm (37-m) depth contour are listed in § 660.71, subpart C.

(*2*) Between the Queets River and Leadbetter Point, recreational fishing for groundfish is prohibited seaward of a boundary line approximating the 30-fm (55-m) depth contour from March 15 through June 15, except that recreational fishing for sablefish and Pacific cod is permitted within the recreational RCA from May 1 through June 15, and on days that the primary halibut fishery is open lingcod may be taken, retained and possessed seaward of the boundary line approximating the 30-fm (55-m) depth contour. Days open to Pacific halibut recreational fishing off Washington are announced on the NMFS hotline at (206) 526–6667 or (800) 662–9825. Retention of lingcod seaward of the boundary line approximating the 30-fm (55-m) depth contour south of 46°58′ N. lat. is prohibited on Fridays and Saturdays from July 1 through August 31. For additional regulations regarding the Washington recreational lingcod fishery, see paragraph (c)(1)(iii) of this section. Coordinates for the boundary line approximating the 30-fm (55-m) depth contour are listed in § 660.71.

(ii) *Rockfish.* In areas of the EEZ seaward of Washington that are open to recreational groundfish fishing, there is a 10 rockfish per day bag limit. Taking and retaining canary rockfish and yelloweye rockfish is prohibited.

(iii) *Lingcod.* In areas of the EEZ seaward of Washington that are open to recreational groundfish fishing and when the recreational season for lingcod is open, there is a bag limit of 2 lingcod per day, which may be no smaller than 22 in (56 cm) total length. The recreational fishing season for lingcod is open as follows:

(A) Between the U.S./Canada border to 48°10′ N. lat. (Cape Alava) (Washington Marine Area 4),

recreational fishing for lingcod is open, for 2009, from April 16 through October 15, and for 2010, from April 16 through October 15.

(B) Between 48°10′ N. lat. (Cape Alava) and 46°16′ N. lat. (Washington/Oregon border) (Washington Marine Areas 1–3), recreational fishing for lingcod is open for 2009, from March 14 through October 17, and for 2010, from March 13 through October 16.

(2) *Oregon* —(i) *Recreational Groundfish Conservation Areas off Oregon*—(A) *Stonewall Bank Yelloweye Rockfish Conservation Area.* Recreational fishing for groundfish and halibut is prohibited within the Stonewall Bank YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land groundfish taken with recreational gear within the Stonewall Bank YRCA.A vessel fishing in the Stonewall Bank YRCA may not be in possession of any groundfish. Recreational vessels may transit through the Stonewall Bank YRCA with or without groundfish on board. The Stonewall Bank YRCA is defined by latitude and longitude coordinates specified at § 660.70, subpart C.

(B) *Recreational rockfish conservation area.* Fishing for groundfish with recreational gear is prohibited within the recreational RCA, a type of closed area or GCA. It is unlawful to take and retain, possess, or land groundfish taken with recreational gear within the recreational RCA. A vessel fishing in the recreational RCA may not be in possession of any groundfish. [For example, if a vessel fishes in the recreational salmon fishery within the RCA, the vessel cannot be in possession of groundfish while in the RCA. The vessel may, however, on the same trip fish for and retain groundfish shoreward of the RCA on the return trip to port.] Off Oregon, from April 1 through September 30, recreational fishing for groundfish is prohibited seaward of a recreational RCA boundary line approximating the 40 fm (73 m) depth contour. Coordinates for the boundary line approximating the 40 fm (73 m) depth contour are listed at § 660.71.

(C) *Essential fish habitat conservation areas.* The Essential Fish Habitat Conservation Areas (EFHCAs) are closed areas, defined by specific latitude and longitude coordinates at §§ 660.76 through 660.79, where specified types of fishing are prohibited. Prohibitions applying to specific EFHCAs are found at § 660.12.

(ii) *Seasons.* Recreational fishing for groundfish is open from January 1 through December 31, subject to the closed areas described in paragraph (c) of this section.

(iii) *Bag limits, size limits.* The bag limits for each person engaged in recreational fishing in the EEZ seaward of Oregon are three lingcod per day, which may be no smaller than 22 in (56 cm) total length; and 10 marine fish per day, which excludes Pacific halibut, salmonids, tuna, perch species, sturgeon, sanddabs, flatfish, lingcod, striped bass, hybrid bass, offshore pelagic species and baitfish (herring, smelt, anchovies and sardines), but which includes rockfish, greenling, cabezon and other groundfish species. The bag limit for all flatfish is 25 fish per day, which excludes Pacific halibut, but which includes all soles, flounders and Pacific sanddabs. In the Pacific halibut fisheries, retention of groundfish is governed in part by annual management measures for Pacific halibut fisheries, which are published in the **Federal Register**. Between the Oregon border with Washington and Cape Falcon, when Pacific halibut are onboard the vessel, groundfish may not be taken and retained, possessed or landed, except sablefish and Pacific cod. Between Cape Falcon and Humbug Mountain, during days open to the Oregon Central Coast "all-depth" sport halibut fishery, when Pacific halibut are onboard the vessel, no groundfish may be taken and retained, possessed or landed, except sablefish and Pacific cod. "All-depth" season days are established in the annual management measures for Pacific halibut fisheries, which are published in the **Federal Register** and are announced on the NMFS halibut hotline, 1–800–662–9825. The minimum size limit for cabezon retained in the recreational fishery is 16-in (41-cm), and for greenling is 10-in (26-cm). Taking and retaining canary rockfish and yelloweye rockfish is prohibited at all times and in all areas.

(3) *California.* Seaward of California, California law provides that, in times and areas when the recreational fishery is open, there is a 20-fish bag limit for all species of finfish, within which no more than 10 fish of any one species may be taken or possessed by any one person. [**Note:** There are some exceptions to this rule. The following groundfish species are not subject to a bag limit: Petrale sole, Pacific sanddab and starry flounder.] For groundfish species not specifically mentioned in this paragraph, fishers are subject to the overall 20-fish bag limit for all species of finfish and the depth restrictions at paragraph (c)(3)(i) of this section. Recreational spearfishing for all federally-managed groundfish, except lingcod during January, February, March, and December, is exempt from closed areas and seasons, consistent with Title 14 of the California Code of Regulations. This exemption applies only to recreational vessels and divers provided no other fishing gear, except spearfishing gear, is on board the vessel. California state law may provide regulations similar to Federal regulations for the following state-managed species: Ocean whitefish, California sheephead, and all greenlings of the genus Hexagrammos. Kelp greenling is the only federally-managed greenling. Retention of cowcod, yelloweye rockfish, and canary rockfish is prohibited in the recreational fishery seaward of California all year in all areas. For each person engaged in recreational fishing in the EEZ seaward of California, the following closed areas, seasons, bag limits, and size limits apply:

(i) *Recreational groundfish conservation areas off California.* A Groundfish Conservation Area (GCA), a type of closed area, is a geographic area defined by coordinates expressed in degrees latitude and longitude. The following GCAs apply to participants in California's recreational fishery.

(A) *Recreational rockfish conservation areas.* The recreational RCAs are areas that are closed to recreational fishing for groundfish. Fishing for groundfish with recreational gear is prohibited within the recreational RCA, except that recreational fishing for "other flatfish" is permitted within the recreational RCA as specified in paragraph (c)(3)(iv) of this section. It is unlawful to take and retain, possess, or land groundfish taken with recreational gear within the recreational RCA, unless otherwise authorized in this section. A vessel fishing in the recreational RCA may not be in possession of any species prohibited by the restrictions that apply within the recreational RCA. [For example, if a vessel fishes in the recreational salmon fishery within the RCA, the vessel cannot be in possession of rockfish while in the RCA. The vessel may, however, on the same trip fish for and retain rockfish shoreward of the RCA on the return trip to port.]

(*1*) Between 42° N. lat. (California/Oregon border) and 40°10.00′ N. lat. (North Region), recreational fishing for all groundfish (except "other flatfish" as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of the 20-fm (37-m) depth contour along the mainland coast and along islands and offshore seamounts from May 15 through September 15; and is closed entirely from January 1 through May 14 and from September 16 through December 31 (i.e., prohibited seaward of the shoreline).

(*2*) Between 40°10′ N. lat. and 38°57.50′ N. lat. (North-Central North of Point Arena Region), recreational fishing for all groundfish (except "other flatfish" as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of the 20-fm (37-m) depth contour along the mainland coast and along islands and offshore seamounts from May 15 through August 15; and is closed entirely from January 1 through May 14 and from August 16 through December 31 (*i.e.,* prohibited seaward of the shoreline).

(*3*) Between 38°57.50′ N. lat. and 37°11′ N. lat. (North-Central South of Point Arena Region), recreational fishing for all groundfish (except "other flatfish" as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of the boundary line approximating the 30-fm (55-m) depth contour along the mainland coast and along islands and offshore seamounts from June 13 through October 31; and is closed entirely from January 1 through June 12 and from November 1 through December 31 (*i.e.,* prohibited seaward of the shoreline). Closures around the Farallon Islands (see paragraph (c)(3)(i)(C) of this section) and Cordell Banks (see paragraph (c)(3)(i)(D) of this section) also apply in this area. Coordinates for the boundary line approximating the 30-fm (55-m) depth contour are listed in § 660.71.

(*4*) Between 37°11′ N. lat. and 36° N. lat. (Monterey South-Central Region), recreational fishing for all groundfish (except "other flatfish" as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of a boundary line approximating the 40-fm (73-m) depth contour along the mainland coast and along islands and offshore seamounts from May 1 through November 15; and is closed entirely from January 1 through April 30 and from November 16 through December 31 (*i.e.,* prohibited seaward of the shoreline). Coordinates for the boundary line approximating the 40-fm (73-m) depth contour are specified in § 660.71.

(*5*) Between 36° N. lat. and 34°27′ N. lat. (Morro Bay South-Central Region), recreational fishing for all groundfish (except "other flatfish" as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of a boundary line approximating the 40-fm (73-m) depth contour along the mainland coast and along islands and offshore seamounts from May 1 through November 15; and is closed entirely from January 1 through April 30 and from November 16 through December 31 (i.e., prohibited seaward of the shoreline). Coordinates for the boundary line approximating the 40-fm (73-m) depth contour are specified in § 660.71.

(*6*) South of 34°27′ N. lat. (South Region), recreational fishing for all groundfish (except California scorpionfish as specified below in this paragraph and in paragraph (v) of this section and "other flatfish" as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of a boundary line approximating the 60-fm (110-m) depth contour from March 1 through December 31 along the mainland coast and along islands and offshore seamounts, except in the CCAs where fishing is prohibited seaward of the 20-fm (37-m) depth contour when the fishing season is open (see paragraph (c)(3)(i)(B) of this section). Recreational fishing for all groundfish (except California scorpionfish and "other flatfish") is closed entirely from January 1 through February 28 (i.e., prohibited seaward of the shoreline). Recreational fishing for California scorpionfish south of 34°27′ N. lat. is prohibited seaward of a boundary line approximating the 40-fm (73-m) depth contour from January 1 through February 28, and seaward of the 60-fm (110-m) depth contour from March 1 through December 31, except in the CCAs where fishing is prohibited seaward of the 20-fm (37-m) depth contour when the fishing season is open. Coordinates for the boundary line approximating the 40-fm (73-m) and 60-fm (110-m) depth contours are specified in §§ 660.71 and 660.72.

(B) *Cowcod conservation areas.* The latitude and longitude coordinates of the Cowcod Conservation Areas (CCAs) boundaries are specified at § 660.70, subpart C. In general, recreational fishing for all groundfish is prohibited within the CCAs, except that fishing for "other flatfish" is permitted within the CCAs as specified in paragraph (c)(3)(iv) of this section. However, recreational fishing for the following species is permitted shoreward of the 20 fm (37 m) depth contour when the season for those species is open south of 34°27′ N. lat.: Minor nearshore rockfish, cabezon, kelp greenling, lingcod, California scorpionfish, and "other flatfish" (subject to gear requirements at paragraph (c)(3)(iv) of this section during January–February). [**Note:** California state regulations also permit recreational fishing for California sheephead, ocean whitefish, and all greenlings of the genus Hexagrammos shoreward of the 20 fm (37 m) depth contour in the CCAs when the season for the RCG complex is open south of 34°27′ N. lat.] It is unlawful to take and retain, possess, or land groundfish within the CCAs, except for species authorized in this section.

(C) *Farallon islands.* Under California state law, recreational fishing for groundfish is prohibited between the shoreline and the 10–fm (18–m) depth contour around the Farallon Islands, except that recreational fishing for "other flatfish" is permitted around the Farallon Islands as specified in paragraph (c)(3)(iv) of this section. (**Note:** California state regulations also prohibit the retention of other greenlings of the genus Hexagrammos, California sheephead and ocean whitefish.) For a definition of the Farallon Islands, see § 660.70, subpart C.

(D) *Cordell banks.* Recreational fishing for groundfish is prohibited in waters less than 100 fm (183 m) around Cordell Banks as defined by specific latitude and longitude coordinates at § 660.70, subpart C, except that recreational fishing for "other flatfish" is permitted around Cordell Banks as specified in paragraph (c)(3)(iv) of this section. [Note: California state regulations also prohibit fishing for all greenlings of the genus Hexagrammos, California sheephead and ocean whitefish.]

(E) *Point St. George Yelloweye Rockfish Conservation Area (YRCA).* Recreational fishing for groundfish is prohibited within the Point St. George YRCA, as defined by latitude and longitude coordinates at § 660.70, subpart C, on dates when the closure is in effect. The closure is not in effect at this time, and recreational fishing for groundfish is open within the Point St. George YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment.

(F) *South Reef YRCA.* Recreational fishing for groundfish is prohibited within the South Reef YRCA, as defined by latitude and longitude coordinates at § 660.70, subpart C, on dates when the closure is in effect. The closure is not in effect at this time, and recreational fishing for groundfish is open within the South Reef YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment.

(G) *Reading Rock YRCA.* Recreational fishing for groundfish is prohibited within the Reading Rock YRCA, as defined by latitude and longitude coordinates at § 660.70, subpart C, on dates when the closure is in effect. The closure is not in effect at this time, and recreational fishing for groundfish is open within the Reading Rock YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment.

(H) *Point Delgada (North) YRCA.* Recreational fishing for groundfish is prohibited within the Point Delgada

(North) YRCA, as defined by latitude and longitude coordinates at § 660.70, subpart C, on dates when the closure is in effect. The closure is not in effect at this time, and recreational fishing for groundfish is open within the Point Delgada (North) YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment.

(I) *Point Delgada (South) YRCA.* Recreational fishing for groundfish is prohibited within the Point Delgada (South) YRCA, as defined by latitude and longitude coordinates at § 660.70, subpart C, on dates when the closure is in effect. The closure is not in effect at this time, and recreational fishing for groundfish is open within the Point Delgada (South) YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment.

(J) *Essential fish habitat conservation areas.* The Essential Fish Habitat Conservation Areas (EFHCAs) are closed areas, defined by specific latitude and longitude coordinates at §§ 660.76 through 660.79, subpart C where specified types of fishing are prohibited. Prohibitions applying to specific EFHCAs are found at § 660.12, subpart C.

(ii) *RCG complex.* The California rockfish, cabezon, greenling complex (RCG Complex), as defined in state regulations (Section 1.91, Title 14, California Code of Regulations), includes all rockfish, kelp greenling, rock greenling, and cabezon. This category does not include California scorpionfish, also known as "sculpin".

(A) *Seasons.* When recreational fishing for the RCG complex is open, it is permitted only outside of the recreational RCAs described in paragraph (c)(3)(i) of this section.

(*1*) Between 42° N. lat. (California/Oregon border) and 40°10′ N. lat. (North Region), recreational fishing for the RCG complex is open from May 15 through September 15 (*i.e.,* it's closed from January 1 through May 14 and from September 16 through December 31).

(*2*) Between 40°10′ N. lat. and 38°57.50′ N. lat. (North Central North of Point Arena Region), recreational fishing for the RCG Complex is open from May 15 through August 15 (*i.e.,* it's closed from January 1 through May 14 and May 16 through December 31).

(*3*) Between 38°57.50′ N. lat. and 37°11′ N. lat. (North Central South of Point Arena Region), recreational fishing for the RCG complex is open from June 13 through October 31 (*i.e.,* it's closed from January 1 through June 12 and November 1 through December 31).

(*4*) Between 37°11′ N. lat. and 36° N. lat. (Monterey South-Central Region), recreational fishing for the RCG complex is open from May 1 through November 15 (*i.e.,* it's closed from January 1 through April 30 and from November 16 through December 31).

(*5*) Between 36′ N. lat. and 34°27′ N. lat. (Morro Bay South-Central Region), recreational fishing for the RCG Complex is open from May 1 through November 15 (*i.e.,* it's closed from January 1 through April 30 and from November 16 through December 31).

(*6*) South of 34°27′ N. lat. (South Region), recreational fishing for the RCG Complex is open from March 1 through December 31 (*i.e.,* it's closed from January 1 through February 28).

(B) *Bag limits, hook limits.* In times and areas when the recreational season for the RCG Complex is open, there is a limit of 2 hooks and 1 line when fishing for rockfish. The bag limit is 10 RCG Complex fish per day coastwide. Retention of canary rockfish, yelloweye rockfish, bronzespotted and cowcod is prohibited. Within the 10 RCG Complex fish per day limit, no more than 2 may be bocaccio, no more than 2 may be greenling (kelp and/or other greenlings) and no more than 2 may be cabezon. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits.* The following size limits apply: bocaccio may be no smaller than 10 in (25 cm) total length; cabezon may be no smaller than 15 in (38 cm) total length; and kelp and other greenling may be no smaller than 12 in (30 cm) total length.

(D) *Dressing/filleting.* Cabezon, kelp greenling, and rock greenling taken in the recreational fishery may not be filleted at sea. Rockfish skin may not be removed when filleting or otherwise dressing rockfish taken in the recreational fishery. The following rockfish filet size limits apply: bocaccio filets may be no smaller than 5 in (12.8 cm) and brown-skinned rockfish fillets may be no smaller than 6.5 in (16.6 cm). "Brown-skinned" rockfish include the following species: brown, calico, copper, gopher, kelp, olive, speckled, squarespot, and yellowtail.

(iii) *Lingcod* —(A) *Seasons.* When recreational fishing for lingcod is open, it is permitted only outside of the recreational RCAs described in paragraph (c)(3)(i) of this section.

(*1*) Between 42° N. lat. (California/Oregon border) and 40°10.00′ N. lat. (North Region), recreational fishing for lingcod is open from May 15 through September 15 (*i.e.,* it's closed from January 1 through May 14 and from September 16 through December 31).

(*2*) Between 40°10′ N. lat. and 38°57.50′ N. lat. (North Central North of Point Arena Region), recreational fishing for lingcod is open from May 15 through August 15 (*i.e.,* it's closed from January 1 through May 14 and May 16 through December 31).

(*3*) Between 38°57.50′ N. lat. and 37°11′ N. lat. (North Central South of Point Arena Region), recreational fishing for lingcod is open from June 13 through October 31 (*i.e.,* it's closed from January 1 through June 12 and November 1 through December 31).

(*4*) Between 37°11′ N. lat. and 36° N. lat. (Monterey South-Central Region), recreational fishing for lingcod is open from May 1 through November 15 (*i.e.,* it's closed from January 1 through April 30 and from November 16 through December 31).

(*5*) Between 36′ N. lat. and 34°27′ N. lat. (Morro Bay South-Central Region), recreational fishing for lingcod is open from May 1 through November 15 (*i.e.,* it's closed from January 1 through April 30 and from November 16 through December 31).

(*6*) South of 34°27′ N. lat. (South Region), recreational fishing for lingcod is open from April 1 through November 30 (*i.e.,* it's closed from January 1 through March 31 and from December 1 through 31).

(B) *Bag limits, hook limits.* In times and areas when the recreational season for lingcod is open, there is a limit of 2 hooks and 1 line when fishing for lingcod. The bag limit is 2 lingcod per day. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits.* Lingcod may be no smaller than 24 in (61 cm) total length.

(D) *Dressing/filleting.* Lingcod filets may be no smaller than 16 in (41 cm) in length.

(iv) "*Other flatfish*". Coastwide off California, recreational fishing for "other flatfish" is permitted both shoreward of and within the closed areas described in paragraph (c)(3)(i) of this section. "Other flatfish" are defined at § 660.11, subpart C, and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole. Recreational fishing for "other flatfish" is permitted within the closed areas. "Other flatfish," except Pacific sanddab, are subject to the overall 20-fish bag limit for all species of finfish, of which there may be no more than 10 fish of any one species. There is no season restriction or size limit for "other flatfish;" however, it is prohibited to filet "other flatfish" at sea.

(v) *California scorpionfish.* California scorpionfish predominately occur south of 40°10′ N. lat.

(A) *Seasons.* When recreational fishing for California scorpionfish is open, it is permitted only outside of the recreational RCAs described in paragraph (c)(3)(i) of this section.

(*1*) Between 40°10′ N. lat. and 37°11′ N. lat. (North Central Region), recreational fishing for California scorpionfish is open from June 1 through November 30 (*i.e.,* it's closed from January 1 through May 31 and from December 1 through December 31).

(*2*) Between 37°11′ N. lat. and 36° N. lat. (Monterey South Central Region), recreational fishing for California scorpionfish is open from May 1 through November 30 (*i.e.,* it's closed from January 1 through April 30 and from December 1 through December 31).

(*3*) Between 36° N. lat. and 34°27′ N. lat. (Morro Bay South Central Region), recreational fishing for California scorpionfish is open from May 1 through November 30 (*i.e.,* it's closed from January 1 through April 30 and from December 1 through December 31).

(*4*) South of 34°27′ N. lat. (South Region), recreational fishing for California scorpionfish is open from January 1 through December 31.

(B) *Bag limits, hook limits.* South of 40°10.00′ N. lat., in times and areas where the recreational season for California scorpionfish is open, the bag limit is 5 California scorpionfish per day. California scorpionfish do not count against the 10 RCG Complex fish per day limit. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits.* California scorpionfish may be no smaller than 10 in (25 cm) total length.

(D) *Dressing/Filleting.* California scorpionfish filets may be no smaller than 5-in (12.8 cm) and must bear an intact 1-in (2.6 cm) square patch of skin.

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