

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 660**

[Docket No. 010108006-1136-02; I.D. 050101D]

RIN 0648-AO97

**Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 14**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes a rule to implement portions of Amendment 14 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 14 would create a permit stacking program for limited entry permits with sablefish endorsements. This permit stacking program would lengthen the duration of the limited entry, fixed gear primary sablefish fishery. It is intended to increase safety in that fishery and provide flexibility to participants. Amendment 14 would allow a single vessel to carry up to three permits and fish the sablefish cumulative limits with those permits during the primary sablefish fishery.

**DATES:** Comments must be submitted in writing by July 9, 2001.

**ADDRESSES:** Comments on Amendment 14 or supporting documents should be sent to Donna Darm, Acting Administrator, Northwest Region, NMFS, Sand Point Way NE., Seattle, WA 98115-0070; or to Rebecca Lent, Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213. Copies of Amendment 14 and the environmental assessment/regulatory impact review (EA/RIR) are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council (Council), 2130 SW Fifth Ave., Suite 224, Portland, OR 97201.

**FOR FURTHER INFORMATION CONTACT:** Yvonne deReynier or Becky Renko (Northwest Region, NMFS), phone: 206-526-6140; fax: 206-526-6736 and; e-mail: [yvonne.dereynier@noaa.gov](mailto:yvonne.dereynier@noaa.gov), [becky.renko@noaa.gov](mailto:becky.renko@noaa.gov) or Svein Fougner (Southwest Region, NMFS) phone: 562-980-4000; fax: 562-980-4047 and; e-mail: [svein.fougner@noaa.gov](mailto:svein.fougner@noaa.gov).

**SUPPLEMENTARY INFORMATION:****Electronic Access**

This **Federal Register** document is also accessible via the Internet at the website of the Office of the Federal Register: <http://www.access.gpo.gov/su-docs/aces/aces140.html>.

NMFS is proposing this rule to implement Amendment 14 to the FMP, a permit stacking program for limited entry permits with sablefish endorsements. These regulations would lengthen the duration of the major limited entry, fixed gear season for sablefish and provide participation requirements for that season. This proposed rule is based on recommendations of the Council, under the authority of the Pacific Coast Groundfish FMP and the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Implementing Amendment 14 would significantly increase safety in the fishery, allow individual fishery participants to more fully use their existing vessel capacity, and reduce overall capacity in the primary fixed gear sablefish fishery. The background and rationale for the Council's recommendations are summarized here. Further detail appears in the EA/RIR prepared by the Council for Amendment 14.

**Background**

For many years, sablefish harvested by the limited entry, fixed gear fleet has been separated into a small, year-round daily trip limit fishery and a two-part "primary" fishery. Annually, about 85 percent of the limited entry fixed gear sablefish allocation is taken in the primary fishery. The two parts of the primary fishery have been the "regular" season, which was a derby fishery until 1997, and the "mop-up" season to take any primary season sablefish not taken in the regular season. Prior to 1997, the Council managed harvest in the regular season by setting the season length short enough to ensure that the fishery would not exceed its quota. During the regular season, there were no cumulative sablefish limits for participating vessels. The mop-up season was commonly 2 weeks in duration, with each participant allowed to fish against a small, vessel-specific cumulative limit. Over time, sablefish fleet capitalization increased and the Council needed to set ever shorter regular seasons to control catch levels. By 1996, the regular season was just 5 days long.

Concern for the safety of participants in the sablefish derby led the Council to develop Amendment 9 to the FMP, a sablefish endorsement program for limited entry permit holders.

Amendment 9, implemented in 1997, limited the number of vessels allowed to participate in the primary (regular + mop-up) fixed gear sablefish fishery. Limited entry permit holders with at least 16,000 lb (7,257 kg) of sablefish landed in any one year from 1984 through 1994 received sablefish endorsements. This program was intended to restrict primary fishery participation to those permit holders with historical participation in and dependence upon the sablefish fishery. Today, 164 limited entry permit holders have sablefish endorsements.

The Council saw the sablefish endorsement as a first step in improving management of the limited entry, fixed gear primary sablefish fishery. In 1998, NMFS implemented the Council's next step, which was to manage the season with a three-tiered cumulative limit regime (63 FR 38101, July 15, 1998.) For the three-tier system, the Council divided sablefish endorsement holders into three tiers based on historical landings associated with their permits. During the limited entry fixed gear regular season, a participant has been allowed to land an amount of sablefish up to the cumulative limit associated with his/her permit's tier.

To qualify for the highest tier, Tier 1, a permit had to be associated with at least 898,000 lb (407.33 mt) of sablefish landings made from 1984 through 1994. To qualify for the middle tier, Tier 2, a permit had to be associated with between 380,000 lb (172.36 mt) and 897,999 lb (407.33 mt) of sablefish landings made from 1984 through 1994. Permits with sablefish endorsements that were associated with less than 380,000 lb (172.36 mt) of sablefish landings from 1984 through 1994 qualified for the lowest tier, Tier 3. The three-tier system also set a between-tier ratio to describe the relationship between the cumulative limits that would be available to each tier during the regular season. That ratio is 1 (Tier 3): 1.75 (Tier 2): 3.85 (Tier 1). For example, if Tier 3 had a cumulative limit of 10,000 lb (4,536 kg), Tier 2 would have a corresponding cumulative limit of 17,500 lb (7,938 kg), and Tier 1 would have a corresponding cumulative limit of 38,500 lb (17,463 kg).

The three-tier system has been in place since the 1998 season and has somewhat slowed the pace of the fishery and the rate of capitalization in the fishery. Vessels owners no longer have an incentive to increase their fishing speed because they are limited in how much sablefish they can catch by the tiered cumulative limits. Even under the three-tier system, however, the Council continued to constrain regular season

harvest by setting a short duration season, followed by the longer mop-up season. Three-tier system regulations set the regular fishery at no more than 10 days in duration.

A fishery where all participants have the opportunity to catch a cumulative limit and are all able to catch that limit is an Individual Fishing Quota (IFQ) fishery as defined by the Magnuson-Stevens Act. The Magnuson-Stevens Act includes a moratorium on the implementation of new IFQ programs. To avoid having its three-tier management program classified as an IFQ program, the Council set short season lengths intended to prevent all participants from catching their cumulative limits. Cumulative limits were also set high, to ensure that some participants would not attain those limits during the short season. To provide a resource conservation buffer against the possibility that more vessels than expected would meet their cumulative limits in the regular season, the Council set season lengths and cumulative limits to take 80–87 percent of the primary season quota. Any quota not taken in the regular season as a result of this buffer was available during the mop-up season as an equal cumulative limit for all participating vessels. This conservative management provision successfully kept the primary season within its quota for the 1998–2000 three-tier seasons.

The moratorium on new IFQ programs has been extended to October 1, 2002 (Pub. L. 106-553.) However, Congress exempted from the moratorium a Pacific Council IFQ program for the fixed gear sablefish fishery that: (1) allows the use of more than one limited entry groundfish permit per vessel; and/or (2) sets cumulative trip limit periods, up to 12 months in any calendar year, that allow fishing vessels a reasonable opportunity to harvest the full amount of the associated trip limits. At its November 2000 meeting, the Council recommended a permit stacking program that met the moratorium exemption requirements.

#### *Permit Stacking and Amendment 14*

Amendment 14 to the FMP, which the Council adopted at its November 2000 meeting, would introduce a permit stacking program to the limited entry, fixed gear primary season. Under this permit stacking program, a vessel owner would be allowed to register more than one sablefish-endorsement permit for use with his/her vessel to harvest the cumulative limits associated with each of the stacked permits. This is referred to as stacking permits. Current

groundfish regulations associate cumulative limits with vessels, so that no vessel may take more than one cumulative limit of a particular species during a single cumulative limit period. Amendment 14 would associate the sablefish cumulative limits of the three-tier system with permits. A vessel carrying more than one permit could harvest more than one sablefish cumulative limit per cumulative limit period.

By exempting the Pacific Coast fixed gear permit stacking program from the IFQ moratorium, Congress removed the need to set short seasons designed to prevent participants from catching their full cumulative limits. The initial season recommendation is for an April through October season, which would allow participants ample time to catch their full sablefish cumulative limits. In 2001, the season would run from August 15 through October 31, a significant improvement over the brief seasons of past years. Under Amendment 14, the primary season would no longer be separated into regular and mop-up sub-seasons because the Council would simply divide the overall quota available to the fishery among the participants with the expectation that each vessel would be able to take its cumulative limits. With this increased harvest control, the Council would not need to use the traditional buffer of a mop-up season to prevent over-harvest in a regular season. Amendment 14 would also eliminate the need for the pre- and post-season closure periods that the Council used to control regular season sablefish harvest rates. The 48-hour pre-season closure requires that all participating vessels keep their gear out of the water, to prevent vessels from fishing in advance of the start time. The 36-hour post-season closure allows vessels to fish up until the last minute of the season end time, and then unload their catch during the closure period without penalty.

Beyond the basic provisions of allowing vessels to harvest more than one sablefish cumulative limit during the season and lengthening the season, Amendment 14 includes numerous provisions for managing the permit stacking program. There is not enough time to implement all of these provisions for the 2001 season. The provisions not included in this proposed rule will be implemented for the 2002 season by another rule.

#### *Gear Endorsements*

Each limited entry permit has a gear endorsement for trawl, longline, or pot. Most permits have only one gear endorsement, although there are a few

with more than one gear endorsement. A permit's gear endorsement indicates the gear that a vessel registered to the permit may use to participate in the limited entry fishery. Of the 164 permits with sablefish endorsements, 131 permits have longline endorsements, 1 has both a longline and trawl endorsement, 27 have pot endorsements, 1 has both a pot and trawl endorsement, and 4 have both longline and pot endorsements. The relatively small number of pot permits limits the permit market for vessels that fish with pot gear. In developing Amendment 14, the Council decided that it wanted to provide flexibility for vessel owners wishing to stack permits, regardless of whether they use longline or pot gear.

Amendment 14 would allow a vessel owner to stack permits with different gear endorsements together, allowing the vessel to fish for sablefish with any of the fixed gears endorsed on at least one of the stacked permits. For example, a pot vessel could own a pot permit with a sablefish endorsement and a longline permit with a sablefish endorsement, and then fish against the cumulative limits associated with each permit using pot gear. A vessel could not participate in the primary sablefish fishery using any gear other than the fixed gear indicated on at least one of the permits associated with that vessel. If one of the permits registered for use with a vessel includes a trawl endorsement in addition to the required fixed gear endorsement, and if that permit's length endorsement is equal to or greater than that of the base permit, the vessel may continue to use trawl gear, but not in the fixed gear fishery. In such a case, if the permit is registered for use with a vessel more than 5 ft (1.52 m) shorter than the length endorsement on the trawl endorsed permit, the trawl endorsed permit would not be subject to trawl permit size reduction requirements at § 660.333 (h)(2). These provisions would be implemented for the 2001 fishery via this action.

#### *Separating and "Unstacking" Permits*

Under Amendment 14, a permit owner who has stacked multiple permits on a single vessel may separate, or "unstack," those permits from each other and transfer those permits individually to another vessel. That is, once two or more permits have been stacked together, they are not required to remain permanently stacked. The Council supported this provision because it will allow permit holders flexibility for moving permits within the fleet. If Amendment 14 had required stacked permits to remain permanently

stacked, it would have been more effective at permanently removing effort from the sablefish fishery. However, Council members felt that a requirement for permanent stacking would have been a disincentive to stack permits, particularly because there is uncertainty whether permits will include other species endorsements or IFQs in the future. Thus, this provision of Amendment 14 is intended to provide an incentive for vessels to stack permits to decrease the number of vessels in the fishery, while allowing permit holders flexibility for the future.

As discussed earlier, the permit stacking program would associate sablefish cumulative limits in the primary fishery with permits rather than with vessels. This means that if a vessel owner unstacks and transfers a permit associated with his/her vessel during the primary season, the next vessel using that permit would only have access to that portion of the sablefish cumulative limit not caught by the first vessel. Provisions to allow unstacking and to require association of cumulative limits with permits for purposes of transferring permits with sablefish endorsements would be implemented for the 2001 season via this action.

#### *Ownership Controls*

One of the Council's concerns in developing Amendment 14 was that, without controls, a permit stacking program could allow a few permit owners to control most of the sablefish catch and landings in the primary fishery. In IFQ programs where percentage of ownership has not been restricted, like the Atlantic surf clam fishery, a few large corporations own most of the access privileges for the fishery. The Council wanted to maintain the traditional character of the primary sablefish fishery, which has historically consisted of small business owners operating vessels throughout the length of the West Coast.

In 2000, approximately 139 vessels participated in the primary fishery. During the 2000 primary season, 136 people owned sablefish endorsed permits, which meant that some persons owned more than one of the 164 sablefish endorsed permits. As of November 1, 2000, 2 people owned 5 permits, 3 people owned 3 permits, and 14 people owned 2 permits. The Council included several provisions in Amendment 14 intended to prevent a small number of permit owners from controlling access to the primary sablefish fishery.

First, Amendment 14 would allow permit holders to stack no more than three permits on any one vessel. As

there are 164 permits with sablefish endorsements, the restriction to no more than three permits per vessel would make the minimum fleet size 55 vessels. Permit transfers must be made through the NMFS Northwest Region Fisheries Permits Office, so the agency will be able to track the number of permits registered for use with each vessel participating in the fishery. This provision would be implemented for the 2001 season through this proposed action.

Second, no person would be allowed to have ownership interest in more than three permits with sablefish endorsements. Both persons owning a whole permit outright and persons owning a portion of a corporation or partnership where the corporation or partnership is the permit-owning entity would be subject to this provision. When the Council finalized Amendment 14, there were some permit owners who already owned more than three permits. People (including partnerships and corporations) who had an ownership interest in more than three permits with sablefish endorsements on November 1, 2000, would not be allowed to accumulate more permits, but neither would they be required to sell their excess permits. NMFS announced this restriction in an Advance Notice of Proposed Rulemaking on April 3, 2001 (66 FR 17681). This "grandfathering" of the privilege to own more than three permits would last only for as long as a permit holder owns the particular permits that he/she owned as of November 1, 2000. This provision would be implemented for the 2001 season in that the Fisheries Permits Office will monitor ownership levels with information that it can obtain from public records. NMFS will collect ownership information on permit-owning partnerships and corporations during the 2002 season.

Third, only individual (human) persons would be allowed to own limited entry permits with sablefish endorsements. Corporations and partnerships that owned permits with sablefish endorsements as of November 1, 2000, could continue to own the permits as corporations and partnerships. Exemptions for a particular corporation or partnership that owned permits on November 1, 2000, would cease with a change in the identity of that corporation or partnership. Amendment 14 requires that permits be owned by individuals to increase the probability that harvest privileges would remain under the ownership of fishers within local fishing communities. Requiring that permits be owned by an individual would not

restrict other aspects of the business operation from being organized as a partnership, corporation or other type of legal entity. This provision would be implemented for the 2001 season in that the Fisheries Permits Office would not transfer a permit to a partnership or corporation that did not own a permit as of November 1, 2000. This provision will be fully implemented for the 2002 season by another rule.

Fourth, Amendment 14 would require that permit owners be on board the vessel when the vessel is participating in the primary sablefish fishery. Persons, partnerships or corporations who were owners of permits with sablefish endorsements as of November 1, 2000, would again have the grandfathered privilege to be exempt from this requirement. During the primary fishery, grandfathered permit owners would not have to be on board the vessel during the primary fishery. However, permit owners acquiring permits after November 1, 2000, would be required to be on board the vessel while participating in the primary fishery. This provision is intended to ensure that permits are owned by persons within the fishing community who will fish their permits, rather than leasing them out to others. Like the requirement that permit owners be individual human persons, the owner-on-board requirement is designed to retain the character of the fishery as one populated by small businessmen who work their own vessels, rather than allow absentee owners to control the fishery. Amendment 14 allows NMFS to grant exemptions from the owner-on-board requirement for medical and personal emergencies beyond the control of the permit owner. NMFS does not have time to implement the owner-on-board requirement for the 2001 season. This requirement will be implemented for the 2002 season by another rule.

#### *Cumulative Limits for Groundfish Fisheries Outside of the Primary Sablefish Fishery*

Under Amendment 14, only the tiered sablefish cumulative limits for the primary fishery would be associated with permits rather than with vessels. This means that a vessel with more than one permit will still be allowed only one cumulative limit per cumulative limit period of any species except sablefish taken in the primary fishery. Vessels participating in the daily trip limit fishery for sablefish will also be subject to a single daily trip limit and a single monthly or two-month cumulative limit per vessel. These provisions are intended to allow the

permit stacking program to consolidate some of the effort in the groundfish fishery. A vessel owner who wishes to carry more than one permit on his/her vessel will have to buy or lease a permit from another vessel owner. The vessel owner who sells or leases his permit would be removing his/her vessel from the entire groundfish fishery while the recipient vessel owner will only be able to harvest multiple cumulative limits in the primary sablefish fishery. Thus, permit stacking will result in fewer limited entry vessels participating in groundfish fisheries for species other than sablefish. This provision would be implemented for the 2001 season.

#### *Daily Trip Limit Fishery for Sablefish*

Under Amendment 9 to the FMP, the limited entry sablefish daily trip limit fishery may not occur during either the regular or mop-up seasons that make up the limited entry, fixed gear primary sablefish fishery. This provision was essentially an enforcement measure intended to prevent permit holders without sablefish endorsements from trying to access the larger sablefish cumulative limits associated with the regular and mop-up fisheries. However, the effect of that provision has mainly been to eliminate some of the confusion of having multiple unendorsed vessels on the water during the rapid pace derby. Most enforcement activities occur after the fact, when investigators check landings records and processor receipts to ensure that vessels are landing amounts appropriate to their permits. At-dock enforcement efforts would include checking permits for sablefish endorsements and any suspected forgery would be investigated after the landing.

Restricting unendorsed vessels to participating in the daily trip limit fishery only outside of the regular and mop-up seasons is not overly burdensome when those fisheries together take up 3–4 weeks per year. Under Amendment 14, however, the primary season would be 3 months duration in 2001 and 6 months duration in 2002 and beyond. To ensure that the limited entry daily trip limit fishery could continue throughout the longer primary season, Amendment 14 removed the Amendment 9 prohibition. This change is not expected to significantly affect enforcement practices and will relieve a burden for permit holders wishing to participate in the daily trip limit fishery. This provision would be implemented for the 2001 season.

#### *Processing Sablefish At Sea*

Amendment 14 would prohibit participants in the primary sablefish fishery from processing their sablefish at sea. A longer sablefish season would give vessels the opportunity to slow their fishing operations and have more time to dress their catch. Many sablefish fishers dress their catch at sea, removing the head and entrails from the sablefish before landing it at processing plants. Most West Coast sablefish is sold frozen in headed-and-gutted form to Japanese markets. Processing a sablefish involves either receiving a whole fish and heading and gutting it or receiving a headed-and-gutted fish, and then further cleaning and bleeding the headed-and-gutted fish. These headed-and-gutted, cleaned fish are glazed with an ice-water wash and then frozen for market. Although processing sablefish that is already headed-and-gutted is not as demanding as processing species that require filleting, processors ensure that West Coast marketed sablefish meets the high standards of Japanese fish buyers.

In prohibiting primary fishery participants from landing processed sablefish, the Council wished to ensure that allowing a longer sablefish primary season would not deprive processing plants of a traditional income opportunity. The Council also wanted to discourage the large longlining catcher-processors that operate off Alaska from entering into the West Coast sablefish fishery. In addition to changing the character of the fishery and eliminating an income opportunity for shore-based processors, allowing at-sea processing could complicate efforts to monitor sablefish landings. A vessel that processes its catch at sea could also sell that fish at sea, which could make enforcement of individual vessel quotas difficult. This prohibition would not preclude a primary fishery participant from processing his/her sablefish catch once that catch has been landed on shore, and then marketing that catch without the aid of a processing plant.

In past primary fisheries, very few vessels have landed fully processed sablefish. Because there are some permit owners that have done so, however, the Council wished to also provide grandfathering privileges to exempt those permit owners from the prohibition on at-sea sablefish processing. Amendment 14 would allow permit owners who can prove that they landed at least 2,000 lb (907 kg) of frozen sablefish in one year of 1998, 1999, or 2000 to continue to land processed or frozen sablefish in future primary fisheries. NMFS does not have enough time to determine a permit

owner's qualification for the grandfathered privilege to land frozen sablefish for the 2001 season. Thus, for 2001, primary fishery vessels would not be prohibited from processing their sablefish catch at sea. This prohibition and the associated grandfathering allowance will be implemented for the 2002 season by another rule.

#### *Fees*

NMFS is required under Section 304(d)(2) of the Magnuson-Stevens Act to collect fees from participants in an IFQ program to recover the actual costs directly related to the management and enforcement of the program. These fees shall not exceed 3 percent of the ex-vessel value of sablefish harvested under this IFQ program, to be collected as landings fees. NMFS has not yet analyzed the cost of managing and enforcing this program and will be better able to predict this cost with data from the 2001 primary season. This required fee system will be implemented for the 2002 season by another rule.

#### **Classification**

At this time, NMFS has not determined whether Amendment 14, which this proposed rule would implement, is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an initial regulatory flexibility analysis that describes the effect this proposed rule, if adopted, would have on small entities as follows:

This proposed rule would primarily affect the owners of the 164 limited entry permits with sablefish endorsements, with some minor positive effects on the 66 permit holders without sablefish endorsements. These permit holders use longline or pot gear to participate in the limited entry, primary sablefish fishery. Most sablefish endorsed longline vessels are under 50 ft (15.24 m) in length while most sablefish endorsed pot vessels are over 50 ft (15.24 m) in length. While there is a statistical relationship between size of vessel and amount of sablefish harvest, there are smaller sablefish vessels (under 40 ft) (12.192 m) that catch as much and more than larger vessels each year. All of the permit owners and vessels in the Pacific Coast, limited entry, fixed gear fleet are considered

small entities under Small Business Administration (SBA) standards.

Amendment 14 would significantly improve the safety of the primary fishery for participating vessels. Under the current management system, the primary fishery is less than 10 days long—a brief and intense fishery. This proposed rule would lengthen the fishery to 3 months duration in 2001 and a rule to be implemented in 2002 would extend the season to 6 months duration for the future. Participants would have the opportunity to fish against their tiered cumulative limits at a more safe and rational pace than in past years. Changes to expenses associated with participating in the fishery could be both positive and negative. Vessel owners would likely hire fewer crew members if they do not have to fish in the same rapid-pace manner. Similarly, participants would have fewer gear costs, because they would not be trying to maximize catch over a brief period. However, if these vessel owners catch their cumulative limits over a longer period of time, they may take more trips to do so and thereby use more fuel to catch the same amount of fish. The major financial benefit to fishery participants would be that they would have more flexibility in deciding where and how to distribute operating expenses.

Permit owners who decide to purchase additional permits to have access to more sablefish within the primary season will have to contend with the initial cost of those additional permits. Some of the permit owners who have not participated in the primary season in past years may decide to sell their permits and will receive compensation for leaving the fishery.

In the past, limited entry permit holders without sablefish endorsements have been prohibited from participating in the daily trip limit fishery during the primary (regular + mop-up) season. Amendment 14 would revise the FMP to allow the daily trip limit fishery to occur during the primary season. This change would relieve a burden for limited entry permit holders without sablefish endorsements and allow them to schedule their sablefish fishing at their convenience.

On the whole, Amendment 14 is expected to bring greater operational safety and more business planning flexibility to the participants in both the primary sablefish fishery and the daily trip limit fishery for sablefish. A copy of the RFA analysis for this action is available from the Council (see ADDRESSES).

## List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: June 4, 2001.

**William T. Hogarth,**

*Acting Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

## PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

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

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

2. In § 660.302, a new definition for “Ownership interest” is added to read as follows:

### § 660.302 Definitions.

\* \* \* \* \*

*Ownership interest, with respect to a sablefish endorsed permit, means participation in ownership of a corporation, partnership or other entity that owns a sablefish endorsed permit. Participation in ownership does not mean owning stock in a publicly owned corporation.*

\* \* \* \* \*

3. In § 660.306, paragraphs (s) and (t) are revised to read as follows:

### § 660.306 Prohibitions.

\* \* \* \* \*

(s) Take, retain, possess or land sablefish under the cumulative limits provided for the “primary” limited entry, fixed gear sablefish season, described in § 660.323(a)(2), from a vessel that is not registered to a limited entry permit with a sablefish endorsement.

(t) 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 under § 660.323 (a)(2)(i) to participate in that season, as described at § 660.323(a)(2)(ii)(C).

\* \* \* \* \*

4. In § 660.323, paragraph (a)(2) is revised to read as follows:

### § 660.323 Catch restrictions.

(a) \* \* \*

(2) *Fixed gear sablefish.* This paragraph (a)(2) applies to the primary

season for the fixed gear limited entry sablefish fishery north of 36° N. lat., except for paragraph (a)(2)(iii) of this section, which also applies to the open access fishery north of 36° N. lat. Limited entry and open access fixed gear sablefish fishing south of 36° N. lat. is governed by routine management measures imposed under paragraph (b) of this section.

(i) *Sablefish endorsement.* A vessel may not participate in the primary season for the fixed gear limited entry fishery, unless the vessel's owner holds (by ownership or otherwise) at least one limited entry permit for that vessel, affixed with both a gear endorsement for longline or trap (or pot) gear, and a sablefish endorsement. Permits with sablefish endorsements are assigned to one of three tiers, as described at § 660.336.

(ii) *Primary season—limited entry, fixed gear sablefish fishery.* (A) *Season dates.* North of 36° N. lat., the primary sablefish season for limited entry, fixed gear vessels will begin on August 1 and end on October 31. Unless otherwise announced, the primary season will begin and end at 12 noon, l.t.

(B) *Gear type.* During the primary season and when fishing against primary season cumulative limits, each vessel authorized to participate in that season under paragraph (a)(2)(i) 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.

(C) *Cumulative limits.* (1) 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. The Regional Administrator will 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: and Tier 1, respectively. The size of the cumulative trip limits will vary depending on the amount of sablefish available for the primary fishery. The size of the cumulative trip limits for the three tiers in the primary fishery will be announced in the **Federal Register** each year before the fishery opens.

(2) During the primary season, each vessel authorized to participate in that season under paragraph (a)(2)(i) 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. 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 the **Federal Register** for the tiers for those permits, except as limited by paragraph (a)(2)(ii)(c)(3) 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 paragraph (a)(2)(iii) of this section.

(3) 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 is 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.

(4) 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.

(iii) *Limited entry daily trip limit fishery.* (A) Before the start of the primary season, all sablefish landings made by a vessel authorized under paragraph (a)(2)(i) of this section to participate in the primary season will be subject to the restrictions and limits of the limited entry daily trip limit fishery for sablefish, which is governed by routine management measures imposed under paragraph (b) of this section.

(B) Following the start of the primary season, all landings made by a vessel authorized under paragraph (a)(2)(i) of this section to participate in the primary season will count against the primary season cumulative limit(s) associated with the permit(s) registered for use with that vessel. Once a vessel has reached its total cumulative allowable sablefish landings for the primary season under paragraph (a)(2)(ii)(C) of this section, any subsequent sablefish landings by that vessel will be subject to the restrictions and limits of the limited entry daily trip limit fishery for sablefish for the remainder of the calendar year.

(C) Vessels registered for use with a limited entry, fixed gear permit that does not have a sablefish endorsement may participate in the limited entry, daily trip limit fishery for as long as that fishery is open during the year, subject

to routine management measures imposed under paragraph (b) of this section.

(D) Open access vessels may participate in the limited entry, daily trip limit fishery for as long as that fishery is open during the year, subject to the routine management measures imposed under paragraph (b) of this section.

(iv) *Trip limits.* Trip and/or frequency limits may be imposed in the limited entry fishery on vessels that are not participating in the primary season, under paragraph (b) of this section. 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 paragraph (b) of this section. Trip limits may be imposed in the open-access fishery at any time under paragraph (b) of this section.

\* \* \* \* \*

5. In § 660.333, paragraphs (a), (f)(1), and (h)(1)(i) are revised, and new paragraphs (h)(3) and (j) are added to read as follows:

**§ 660.333 Limited entry fishery—general.**

(a) *General.* Participation in the limited entry fishery requires that the owner of a vessel hold (by ownership or otherwise) a limited entry permit affixed with a gear endorsement registered for use with that vessel for the gear being fished. A sablefish endorsement is also required for a vessel to participate in the primary seasons for the nontrawl, limited entry sablefish fishery, north of 36° N. lat. There are three types of gear endorsements: trawl, longline, and pot (or trap.) More than one type of gear endorsement may be affixed to a limited entry permit. While participating in the limited entry fishery, the vessel registered to the limited entry permit is authorized to fish the gear(s) endorsed on the permit. While participating in the limited entry, primary fixed gear fishery for sablefish described at § 660.323(a)(2), 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 § 660.323(a)(2)(ii)(C) may not fish for sablefish with open access gear.

\* \* \* \* \*

(f) *Transfers.* \* \* \*

(1) The permit owner may convey (by sale, assignment, lease, bequest, intestate succession, barter, trade, gift, or other form of conveyance) 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 limited entry permits with sablefish endorsements that does not meet the ownership requirements for those permits described at § 660.336(e).

\* \* \* \* \*

(h) *Vessel size endorsements—(1)*

*General.* (i) If the permit is registered for use with a trawl vessel that is more than 5 ft (1.52 m) shorter than the size for which the permit is endorsed, it will be endorsed for the size of the smaller vessel. This requirement does not apply to a permit with a sablefish endorsement that is endorsed for both trawl and either longline or pot gear and which is registered for use with a longline or pot gear vessel for purposes of participating in the limited entry primary fixed gear sablefish fishery described at § 660.323(a)(2).

\* \* \* \* \*

(3) *Size endorsement requirements for sablefish endorsed permits.*

Notwithstanding paragraphs (h)(1) and (2) of this section, when multiple permits are “stacked” on a vessel as described in paragraph (j) of this section, only one of the permits must meet the size requirements of those sections. Any additional permits that are stacked for use with a vessel participating in the limited entry primary fixed gear sablefish fishery may be registered for use with a vessel more than 5 ft (1.52 m) longer or shorter than the size endorsed on the permit.

\* \* \* \* \*

(j) *“Stacking” Limited Entry Permits.* “Stacking” limited entry permits, refers to registering more than one permit for use with a single vessel. Only limited entry permits with sablefish endorsements may be “stacked.” Up to three limited entry permits with sablefish endorsements may be registered for use with a single vessel during the primary sablefish season described at § 660.323(a)(2)(ii). Privileges, responsibilities, and restrictions associated with stacking permits to participate in the primary sablefish fishery are described at § 660.323(a)(2) and at § 660.336(e).

6. In § 660.336, paragraphs (a) and (e) are revised to read as follows:

**§ 660.336 Limited entry permits—sablefish endorsement and tier assignment.**

(a) *General.* Participation in the limited entry fixed gear sablefish fishery during the primary season described in

§ 660.323 (a)(2) north of 36° N. lat., 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.

\* \* \* \* \*

(e) *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 person, partnership, or corporation may have ownership interest in more than three permits with sablefish endorsements, except for persons, 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 same permits that were owned on November 1, 2000. Persons, partnerships or corporations that had ownership interest in more than 3 permits with sablefish endorsements as of November 1, 2000, may not acquire additional permits beyond those owned on November 1, 2000, until they own fewer than 3 permits; at that time they may not exceed the ownership cap of 3 permits.

(3) A partnership or corporation will lose the exemptions provided in paragraphs (e)(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 means a change in the corporate or partnership membership, except a change caused by the death of a member providing the death did not result in any new members. A change in membership is not considered to have occurred if a member 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.

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