

process to set the annual commercial quota and the percent allocated to each state are described in § 648.160.

The initial total commercial quota for bluefish for the 2001 calendar year was set equal to 9,583,010 lb (4,348,008 kg) (66 FR 23625, May 9, 2001). The resulting quota for North Carolina was 3,072,386 lb (1,394,005 kg), for Maryland was 287,662 (130,518 kg), for Virginia was 1,138,412 lb (516,521 kg), and for Florida was 964,021 lb (437,396 kg). The commercial quota for North Carolina was attained and the fishery closed on May 15, 2001 (66 FR 27043).

The final rule implementing Amendment 1 to the FMP was published on July 26, 2000 (65 FR 45844), and allows two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), to transfer or combine part or all of their annual commercial quota. The Regional Administrator must consider the criteria set forth in § 648.160 (f)(1) in the evaluation of requests for quota transfers or combinations.

Maryland, Virginia, and Florida have agreed to transfer 100,000 lb (45,359 kg), 300,000 lb (136,116 kg), and 300,000 lb (136,116 kg) of their respective 2001 commercial quotas to North Carolina. The Regional Administrator has determined that the criteria set forth in § 648.160(f)(1) have been met, and publishes this notification of quota transfer. The revised quotas for the calendar year 2001 are: Maryland, 187,662 lb (85,122 kg); Virginia, 838,412 lb (380,405 kg); Florida, 664,021 (301,195 kg); and North Carolina, 3,772,386 lb (1,711,126 kg). NMFS also announces the reopening of the commercial bluefish fishery in North Carolina.

This action does not alter any of the conclusions reached in the environmental impact statement prepared for Amendment 1 to the FMP regarding the effects of bluefish fishing activity on the human environment. Amendment 1 established procedures for setting an annual coastwide commercial quota for bluefish and a formula for determining the commercial quota for each state. Amendment 1 also established the quota transfer provision. This is a routine administrative action that reallocates commercial quota within the scope of previously published environmental analyses.

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: August 1, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 01-19770 Filed 8-2-01; 4:29 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 010108006-1198-03; I.D. 050101D]

RIN 0648-A097

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: Final rule; announcement of approval of an amendment to a fishery management plan.

SUMMARY: NMFS announces the approval of Amendment 14 to the Pacific Coast Groundfish Fishery Management Plan (FMP) and issues a final rule to implement portions of it. Amendment 14 creates a permit stacking program for limited entry permits with sablefish endorsements. This permit stacking program will lengthen the duration of the limited entry, fixed gear primary sablefish fishery. It is intended to increase safety in that fishery, to provide flexibility to participants, and to reduce capacity in the limited entry fixed gear fishery.

DATES: Effective August 2, 2001.

ADDRESSES: Copies of Amendment 14 to Pacific Coast Groundfish FMP and the environmental assessment/regulatory impact review (EA/RIR) are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier or Becky Renko at: phone, 206-526-6140; fax, 206-526-6736, and email, yvonne.dereynier@noaa.gov, becky.renko@noaa.gov, or Svein Fougner at: phone, 562-980-4000; fax, 562-980-4047; and email, 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>.

Background

The notice of availability for Amendment 14 was published on May 9, 2001 (66 FR 23660), and NMFS requested public comments on Amendment 14 through July 9, 2001. A proposed rule to implement portions of Amendment 14 was published on June 8, 2001 (66 FR 30869). NMFS requested public comment on the proposed rule through July 9, 2001. During the comment periods on the notice of availability and on the proposed rule, NMFS received 3 letters of comment, which are addressed later in this preamble. See the preamble to the proposed rule for additional background information on the fishery and on this rule.

NMFS approved Amendment 14 on July 30, 2001. Amendment 14 introduces a permit stacking program in the limited entry, fixed gear primary sablefish season. Under Amendment 14, a vessel owner is allowed to "stack" up to three sablefish endorsed permits on his/her vessel in order to harvest the cumulative sablefish limits associated with each of the stacked permits. Permit stacking allows fleet participants with greater harvest capacity to better match their sablefish cumulative limits with individual vessel capacity by stacking multiple permits. For each stacked permit, a vessel will be removed from the fishery, reducing overall limited entry fixed gear fishery capacity. Amendment 14 will allow longer fishing seasons. Beyond the safety benefits of a longer season, fishers will be able to use the time to fish more selectively and to increase their incomes by improving the quality of their ex-vessel product.

The Pacific Fishery Management Council (Council) adopted Amendment 14 in November 2000. Amendment 14 is complex, with many provisions that will be time-consuming to implement. However, some of the Amendment 14 provisions most desired by the fleet can be and with this final rule, are being implemented for the 2001 season, including a longer primary sablefish season and allowing up to three limited entry permits to be registered with a single vessel. The fixed gear sablefish fleet has been in favor of a longer duration primary sablefish season for several years, wishing to end the derby-style fishery and to move to a slower paced and safer season. For this reason, NMFS decided to split implementation of Amendment 14 into two rulemakings with the first one implementing the less complex provisions in time for the 2001

season, and the second to follow later in time for the 2002 season and beyond.

Under this final rule: (1) up to three sablefish endorsed permits may be registered for use with a single vessel; (2) the limited entry, fixed gear primary sablefish season opens on August 15 and ends on October 31, 2001; (3) a vessel may fish for sablefish during the primary season with any of the gears specified on at least one of the limited entry sablefish endorsed permits registered for use with that vessel; (4) no person may hold (own or lease) more than three sablefish endorsed limited entry permits unless that person owned more than three permits as of November 1, 2000; (5) no partnership or corporation may own a sablefish endorsed limited entry permit unless that partnership or corporation owned a permit as of November 1, 2000; (6) cumulative limits for species other than sablefish and for the sablefish daily trip limit fishery remain per vessel limits and are not affected by permit stacking; and (7) the limited entry daily trip limit fishery for sablefish will be open during the primary season for vessels not participating in the primary season.

NMFS expects that the proposed rule to implement the additional provisions of Amendment 14 for 2002 and beyond will propose the following: (1) holding the limited entry, fixed gear primary sablefish season from April 1 through October 31; (2) requiring persons, partnerships, and corporations owning sablefish endorsed limited entry permits to document the ownership interests in those permits to ensure that no person holds more than three permits; (3) prohibiting vessels that do not meet minimum frozen sablefish historic landing requirements to process sablefish at sea; (4) requiring persons who own sablefish endorsed limited entry permits who did not own sablefish endorsed permits on November 1, 2000, to be on board their vessels while those vessels are participating in the primary sablefish fishery; (5) requiring vessels landing sablefish against their primary season cumulative limits to report to enforcement officers before making any sablefish landings; and (6) charging participants a fee to cover the management costs of this program.

Comments and Responses

During the comment period for Amendment 14, NMFS received three letters of comment: one letter was written by an association of seafood processors; one letter was written by an association of vessel owners and an association of fishing crew members; and one letter was written by the United States Coast Guard (USCG). Comments

received address both Amendment 14 and the proposed rule to implement Amendment 14.

Comment 1: Amendment 14 is consistent with National Standard 10 because it improves the safety in this fishery. The longer fishing season will also give vessel owners the flexibility to fish their sablefish tier limits at times when sablefish prices are high, rather than only during a short opening.

Response: NMFS agrees. National Standard 10 requires that conservation measures, to the extent practicable, promote the safety of human life at sea. For the past several years, overcapitalization and competition in the fixed gear sablefish fleet have resulted in an intense derby-style fishery. The rule increases the duration of the fishery from 9 days in 2000 to 2.5 months in 2001. Participants in past limited entry fixed gear sablefish fisheries often complained that fishing during the derby meant working for several days at a time without sleep. The rule allows holders of sablefish endorsed limited entry permits to harvest their sablefish tier limits at a reasonable pace and during optimal weather and ocean conditions.

NMFS also agrees that Amendment 14 and this final rule will give permit holders more flexibility to fish for sablefish under optimal marketing conditions. In past years, the short derby season prevented permit holders from taking advantage of changes in the sablefish market, and the sablefish produced from the derby would briefly flood the market. Most West Coast sablefish is exported to Japan, where consumers pay higher prices for carefully handled fish. Amendment 14 will give fishers a chance to slow down their operations so that they have a better product to offer to the market and will allow them to choose their fishing time to coincide with higher market prices.

Comment 2: This permit stacking program limits the number of permits that may be stacked and held by a single individual. This provision will limit social disruptions in the fishery while also allowing a reasonable concentration of capital.

Response: NMFS agrees. While the Council intended Amendment 14 to reduce overall fleet capacity, the Council also wished to ensure that the fleet would remain a locally owned, owner operated fleet. Thus, Amendment 14 allows no more than three permits per vessel, and no more than three permits per person, partnership, or corporation, unless that person, partnership, or corporation held more than three permits as of the Council's

November 1, 2000, decision date on Amendment 14. By allowing up to three permits per vessel, Amendment 14 could reduce the number of vessels participating in the fishery by as much as two-thirds. The Council has expressed a goal of reducing fleet capacity in West Coast groundfish fisheries, and Amendment 14 is a step in that direction.

Comment 3: Amendment 14 sets an accumulation limit of three permits, prohibiting a person, partnership or corporation from holding more than three permits. The amendment also allows an exception to this accumulation limit for persons, partnerships, or corporations that owned more than three permits as of November 1, 2000. A permit accumulation limit is contrary to the Council's goal of reducing capacity in the groundfish fishery. Further, an exception to the permit accumulation limit creates an elite class of permit holders and allows those meeting the exception an excessive share of fishing privileges. Both the accumulation limit and the exception to that limit should be disapproved.

Response: NMFS disagrees. In October 2000, the Council completed a Strategic Plan, which discussed the Council's goals for the future of the groundfish fishery. One goal is to reduce vessel overcapacity, with the objective of reducing the size of the groundfish fleet by one-half. As stated in the response to Comment 2, Amendment 14 could reduce the size of the affected segment of the groundfish fleet by up to two-thirds. Amendment 14 allows some consolidation, but no unlimited consolidation, because it could cause excessive concentration of control over this segment of the fleet. Thus, the primary sablefish fishery is expected to become more efficient without dramatically changing the character of the fleet.

The commenter is correct in saying that Amendment 14 allows persons, partnerships, or corporations who owned more than three permits as of November 1, 2000, to continue to own those same permits. If, however, one of these initial permit holders were to sell one of his/her originally owned permits, the maximum number of permits that person could own would be reduced. As of November 1, 2000, it appears that only four persons had ownership interest in more than three permits, and none of those persons owned more than 5 permits. (Since NMFS does not currently have complete ownership information, this number may be low). NMFS does not believe that this small number of excepted permit owners

creates an "elite class," particularly given that the number of exempted permit owners is expected to decrease over time. Amendment 14 could have required persons owning in excess of three permits to sell those excess permits, but the Council did not wish to unnecessarily disrupt existing fishing businesses, but rather wanted to guide future developments.

Comment 4: Under Amendment 14, a vessel owner who stacks more than one permit on his/her vessel would not be required to permanently combine those permits. Stacked permits could be "unstacked" and freely traded. Allowing permit unstacking is contrary to the Council's goal of capacity reduction. The Amendment 14 provision to allow unstacking should be disapproved because it will prevent the program from reducing the number of vessels in the sablefish fishery or in other non-sablefish groundfish fisheries.

Response: NMFS agrees that permanent capacity reduction could have been achieved if Amendment 14 had not allowed permit owners to separate and unstack their permits. However, permit owners would likely be more reluctant to stack and consolidate their permits if they could not again separate those permits, particularly considering the uncertainty in how other segments of the fishery will be managed in the future. For example, Council advisory groups have discussed establishing rockfish endorsements, similar to sablefish endorsements, and/or adopting an individual quota (IQ) program. Without a resolution of these issues, permit holders might be reluctant to permanently stack permits. In 2004–2005, NMFS will review this provision and the state of groundfish management to see how well this provision works and whether there have been changes in the fishery that provide incentives to stack permits even if they cannot later be unstacked.

The Council's Strategic Plan emphasized voluntary methods of fleet reduction over mandatory methods. Allowing unstacking is in keeping with the Council's general practice of allowing some permit owner flexibility in how an owner uses his/her permits. NMFS also notes that limited entry program regulations prohibit permit owners from transferring their permits more than once per calendar year (50 CFR 660.335 (e)). This prohibition should ensure that stacked permits remain unused outside the primary sablefish season for up to a year per permit.

Comment 5: Amendment 14 requires permit owners to be on board the

permitted vessel while that vessel is fishing for sablefish, unless the permit owner owned a limited entry sablefish endorsed permit on November 1, 2000. This owner-on-board requirement will preserve the basic character of the fleet, the majority of which are vessel owners operating their own boats.

Response: NMFS agrees. Amendment 14 is essentially an IQ program. An often-expressed concern about IQ programs is that, if fishing privileges are for sale, persons who do not fish could buy those privileges. Allowing persons who do not fish to own fishing privileges and then rent those privileges out to fishers is often referred to as "share-cropping" the fishing privileges. Members of the West Coast sablefish fleet were concerned that without an owner-on-board provision, permit ownership could flow out of fishing communities and into the hands of speculative non-fishing buyers. To ensure that only fishers could buy into the sablefish fleet, the Council included an owner-on-board provision in Amendment 14.

Comment 6: The owner-on-board provision could result in increased sablefish discards because a vessel operator who encounters sablefish when the owner is not on board would be forced to discard that sablefish. The exception to this requirement for permit owners who owned permits on November 1, 2000, is discriminatory and provides an excessive advantage to one group over another. Both the owner-on-board provision and the exception to that provision should be disapproved.

Response: At its June 2001 meeting, the Council addressed the concern that an owner-on-board provision could result in discard. The Council clarified its intent that Amendment 14 implementation require that the owner be on board from the start of the sablefish primary season until that vessel's primary season limits have been reached and that all sablefish harvested during this period count toward that vessel's primary sablefish season limits. Therefore, there will not be a period during which a vessel would have the ability to harvest rockfish or other groundfish and be required to discard sablefish because the owner was not on board.

As stated by the commenter, permit owners who owned permits on November 1, 2000, will be exempt from the owner-on-board requirement. This provision does provide an advantage to initial permit owners over permit owners who buy into the fleet. Amendment 14 provides a grandfathered exemption to this rule for initial permit owners to minimize

disruption to the fleet while guiding future development of the fishery. As discussed above in the response to Comment 5, the owner-on-board requirement is intended to ensure that only fishers may buy into the fleet. Approximately 75 to 80 percent of the fleet is already owner-operated vessels; thus even most initial permit owners are expected to continue fishing their sablefish-endorsed permits.

NMFS supports the intention of the owner-on-board provision; however, the agency also believes that the permit stacking program could benefit from future analysis of the effects of this provision on the fishery. In 2004–2005, NMFS will analyze how this provision and the exemption to the owner-on-board requirement have affected participation in the fishery. At that time, the agency will consider whether an owner-on-board requirement is beneficial, considering all of the effects on the fishery and, if it is, whether it should also be applied to persons who owned permits as of November 1, 2000. NMFS believes that the fishery will need a few years of operating under Amendment 14 to test the effect of this provision.

Comment 7: Amendment 14 restricts permit ownership to individual human beings, unless a permit is owned by a partnership or corporation that owned that permit before November 1, 2000. This provision precludes efficiencies that might result from corporate or partnership ownership. When viewed in connection with the owner-on-board provision, restricting permit ownership to individuals also imposes a burden on small business owners. In a partnership or corporation belonging to a married couple, only one of the two could own the permit and would have to be on board when the permit is fished. If the permit owner suffers a medical emergency, Amendment 14's exemption to the owner-on-board requirement might not be approved in time to allow the couple to use the permit. As with other provisions, the exception to this provision allows an elite group to operate freely while restricting the actions of others. For these reasons, the restriction on partnership or corporations should be disapproved.

Response: NMFS agrees that this provision prevents persons who buy into the fleet from enjoying the efficiencies of partnership or corporate ownership of a permit. However, the Council intended this restriction to have the same effect as the owner-on-board provision. As with the owner-on-board provision, initial owners are exempted to ensure that they transition smoothly into the permit stacking program.

Persons buying into the fleet are required to be "individual human" persons both to ensure the owner-operator quality of the fleet and to implement the owner-on-board requirement.

NMFS supports the intention of the requirement that only individual humans may own permits; however, the agency also believes that the permit stacking program could benefit from future analysis of the effects of this provision on the fishery. In 2004–2005, NMFS will analyze how this provision and the exemption to the provision have affected participation in the fishery. At that time, the agency will consider whether this requirement is necessary and, if it is necessary, whether it should also be applied to persons who owned permits as of November 1, 2000. NMFS believes that the fishery will need a few years of operating under Amendment 14 to test the efficacy of this provision.

The commenter also mentions the medical exemption to the owner-on-board requirement. NMFS will process emergency applications swiftly. In addition, the fishery under Amendment 14 will be 2.5 months in duration. With the longer season, there is less need for swift action than there is during the current 8- to 9-day fishery.

Comment 8: The economic analysis of the effects of Amendment 14 on coastal communities and seafood processors is woefully inadequate. This is particularly problematic given that most of the provisions of Amendment 14 are based on the economics of the fishery, rather than on biology or conservation.

Response: NMFS disagrees. The effects of Amendment 14 on coastal communities and seafood processors are discussed throughout the EA/RIR/Initial Regulatory Flexibility Analysis (IRFA) for Amendment 14. NMFS also notes that several Amendment 14 provisions, like the owner-on-board requirement, reflect social values, rather than economic values.

Comment 9: The USCG supports Amendment 14 for its expected improvement to safety in the sablefish fishery. Safety improvements that NMFS expects to result from Amendment 14 are discussed in the response to Comment 1.

Response: The comment is noted.

Changes From the Proposed Rule

This final rule includes four significant changes to the regulatory text from the proposed rule. The first change is a result of June 2001 Council discussions on Amendment 14, held within the comment period on the proposed rule for this action. The Amendment 14 EA/RIR/IRFA included

some ambiguous language within the provision that limited permit ownership to no more than three permits per person, with an exception for those persons who held more than three permits as of November 1, 2001. A "permit owner" is "a person who owns a limited entry permit" (50 CFR 660.302). A "permit holder" is "a permit owner or a permit lessee" (50 CFR 660.302). The Council confirmed that it had not intended Amendment 14 to allow a person to own three permits and then lease any number of additional permits. Nor had the Council intended to provide exemptions to the three-permit limit for persons who held more than three permits, but who did not own more than three permits as of November 1, 2000. Rather, the Council's intent had been to allow a person to hold no more than three permits, regardless of whether those permits are owned or leased. Further, exceptions to the limit of three permits will only be allowed for persons who owned more than three permits as of November 1, 2000. These clarifications are reflected in the regulations at 50 CFR 660.334 (d)(3)(ii). NMFS checked its permits records and concluded that, based on current information, all of the persons who held more than three permits as of November 1, 2000, were owners of those permits.

The second change is technical and is the result of NMFS having published two proposed rules in quick succession. On May 30, 2001 (66 FR 29276), NMFS published a proposed rule to revise the timing and frequency of limited entry permit transfers and to clarify and update overall limited entry program regulations. This rule proposed amending the then current regulatory text in 50 CFR 660.333–340. On June 8, 2001 (66 FR 30869), NMFS published the proposed rule to implement Amendment 14, which proposed amending the then current regulatory text in 50 CFR 660.333 and 660.336. On August 1, 2001, NMFS filed the final rule revising limited entry program regulations with the **Federal Register**, which was effective on filing. Thus, this final rule revises the new regulations that were filed on August 1, 2001. Renumbering the limited entry program regulations did not result in any substantive changes to the Amendment 14 regulatory language. Although this trail of regulatory changes is somewhat confusing, NMFS believes that the resultant new regulatory text for the limited entry program regulations is more logically arranged and easier to understand.

The third change is to add a temporary provision at 50 CFR 660.335(e)(3)(ii), which allows limited

entry permit holders with sablefish endorsements who transfer their permits between August 1 and August 14, 2001, to have the permit's registration with the new vessel effective August 15, 2001. Without this change, permit transfers made in the first part of August would be effective on the first day of the next major cumulative limit period, September 1, 2001. If all permit transfer activities for sablefish endorsed permits are effective for the start date of the primary sablefish fishery, participating vessels will have the opportunity to begin fishing at the same time.

The final change from the proposed rule is to change the start date of the primary sablefish fishery from August 1, 2001, to August 15, 2001. This later start date will allow permit holders to make arrangements for stacking or transferring their permits once this rule is effective, yet before the start of the season.

2001 Primary Sablefish Season and NMFS Actions

In addition to implementing Amendment 14, this final rule announces the season dates and cumulative landings limits for the 2001 limited entry, fixed gear, primary sablefish fishery. For the reasons stated here, NMFS announces the following changes to the 2001 annual specifications and management measures at 66 FR 2338, January 11, 2001, as amended at 66 FR 10211 (February 14, 2001), at 66 FR 18409 (April 9, 2001), at 66 FR 22467 (May 4, 2001), at 66 FR 28676 (May 24, 2001), at 66 FR 35388 (July 5, 2001), and at 66 FR 38162 (July 23, 2001) to read as follows:

(1) In Section IV, under B. *Limited Entry Fishery*, paragraph (2)(b)(i) is revised to read as follows:

IV. NMFS Actions

B. Limited Entry Fishery

* * * * *

(2) *Sablefish* * * *

(b) Nontrawl trip and size limits * * *

(i) *Primary season.* The primary season begins at 12 noon l.t. on August 15, 2001, and ends at 12 noon on October 31, 2001. There will be no pre-season or post-season closures in 2001. During the primary season, each vessel with at least one limited entry permit with a sablefish endorsement that is registered for use with that vessel may land up to the cumulative trip limit for each of the sablefish-endorsed limited entry permits registered for use with that vessel, for the tier(s) to which the permit(s) are assigned. For 2001, the following tier limits are in effect: Tier 1,

57,000 lb (25,855 kg); Tier 2, 26,000 lb (11,793 kg); Tier 3, 15,000 lb (6,804 kg). All limits are in round weight.

* * * * *

Classification

The Administrator, Northwest Region, NMFS, determined that Amendment 14 to the FMP is necessary for the conservation and management of the West Coast groundfish fishery, and that it is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

This rule implements a permit stacking program in a limited entry primary sablefish fishery. Because it relieves a restriction, under 5 U.S.C. 553 (d)(1) it is not subject to a 30-day delay in effectiveness.

A delay in effectiveness of this rule could unnecessarily restrict permit transfer and stacking activities and cause financial harm to sablefish fishery participants. In some parts of the West Coast, difficult autumn ocean conditions arise in September. Thus, a delay in effectiveness of this rule could also prevent permit holders from participating in the sablefish season during the more favorable August weather. For these reasons, the Assistant Administrator for Fisheries, NOAA, finds for good cause under 553 (d)(3) that delaying the effectiveness of this rule for 30 days would be contrary to the public interest.

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

NMFS prepared a final regulatory flexibility analysis (FRFA) describing the impact of this action on small entities. The IRFA was summarized in the proposed rule published on June 8, 2001 (66 FR 30869). The following is the summary of the FRFA.

Amendment 14 primarily affects the holders of the 164 limited entry permits with sablefish endorsements, with some minor positive effects on the 66 permit holders without sablefish endorsements. All of the permit owners and vessels in the Pacific Coast, limited entry, fixed gear fleet are considered small entities under Small Business Administration standards.

The fixed gear fleet includes vessels that fish with longline and pot gear, varying in length between approximately 40-60 feet. All 36 limited entry pot vessels have sablefish endorsements. Of the 202 limited entry longline vessels, 136 have sablefish endorsements. The primary sablefish fishery is managed as a cumulative limit fishery, with participating vessels organized into three separate tiers based on permit catch history. Permits with

the highest sablefish catch history are in Tier 1, while those with the lowest catch history are in Tier 3. Most of the sablefish endorsed pot vessels qualified for Tier 1, whereas most of the sablefish endorsed longline vessels qualified for Tier 3. Most vessels in the fleet are owner-operated.

There were two major alternatives considered under Amendment 14, with numerous possible combinations of alternatives for the 11 different provisions considered in the Amendment 14 EA/RIR. Continuing status quo, a derby fishery of less than 10 days in duration, would have continued the fishery's historically intense and unsafe management program. Continuing status quo would have also allowed only one permit per vessel, which would have been inefficient with the currently overcapitalized fleet. Permit stacking will allow vessel owners who wish to exit the fishery to sell or lease their permits to others who wish to continue in the fishery.

Amendment 14 is expected to have generally positive economic effects on small entities and to provide more choices and flexibility for fishery participants. Amendment 14 will 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 final rule will lengthen the fishery to 2.5 months duration in 2001 and a rule to be proposed for 2002 and beyond would extend the season to 6-7 months duration. 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, but would spend more of their own time on the water. Participants may also have fewer gear expenses because the more-reasonably paced fishery would reduce chances of vessels losing gear. 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 gas 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 relieves 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. Permit stacking will allow fleet participants with greater harvest capacity to better match their sablefish cumulative limits with individual vessel capacity by stacking multiple permits. For each stacked permit, a vessel will be removed from the fishery, reducing overall primary fishery capacity. The Council will also be able to set longer, and therefore safer, fishing seasons. Beyond the safety benefits of a longer season, fishers will be able to use the time to fish more selectively and to increase their incomes by improving the quality of their ex-vessel product. It was for these reasons that NMFS and the Council have selected the alternative adopted by the final rule. A copy of this analysis is available from NMFS (see **ADDRESSES**).

The Small Business Regulatory Enforcement Act of 1996 requires a plain language guide to assist small entities in complying with this rule. NMFS has produced a public notice for the 2001 season that includes frequently asked questions on Amendment 14 and the new sablefish season. Contact NMFS to request a copy of this public notice (see **ADDRESSES**) or see the NMFS Northwest Region's groundfish website at <http://www.nwr.noaa.gov/1sustfish/gdfsh01.htm>.

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: August 1, 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 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).

* * * * *

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 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 § 660.334(d).

(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 begins at 12 noon l.t. on August 15 and ends at 12 noon l.t. on October 31.

(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: 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 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 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.

(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 and open access daily trip limit fisheries.* (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 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 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, paragraph (a) is revised to read as follows:

§ 660.333 Limited entry fishery—general.

(a) *General.* In order for a vessel to participate in the limited entry fishery, the vessel owner must hold (by ownership or lease) a limited entry permit and, through SFD, must register that permit for use with his/her vessel. 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. There are three types of gear endorsements: trawl, longline, and pot (or trap). A sablefish endorsement is also required for a vessel to participate in the primary season for the limited entry fixed gear sablefish fishery, north of 36° N. lat. A limited entry permit confers a privilege of participating in the Pacific Coast limited entry groundfish fishery in accordance with Federal regulations in 50 CFR part 660.

* * * * *

6. In § 660.334, paragraphs (b), (c)(1)(i), and (d)(1) are revised, and (c)(3) and (d)(3) are added to read as follows:

§ 660.334 Limited entry permits—endorsements.

* * * * *

(b) *Gear Endorsements.* There are three types of gear endorsements: trawl, longline and pot (trap). When limited entry 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 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 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 with open access gear against those limits.

* * * * *

(c) * * *

(1) * * *

(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 (c)(1) and (2) of this section, when multiple permits are “stacked” on a vessel as described in § 660.335 (c), 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 even if the vessel is more than 5 feet longer or shorter than the size endorsed on the permit.

(d) * * *

(1) *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.

* * * * *

(3) *Ownership Requirements and Limitations.*

(i) 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.

(ii) No person, partnership, or corporation may have ownership interest in or hold 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 particular permits that were owned on November 1, 2000. Persons, partnerships or corporations that had ownership interest 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, until they own fewer than 3 permits; at that time they may not exceed the ownership cap of 3 permits.

(iii) A partnership or corporation will lose the exemptions provided in paragraphs (d)(3)(i) and (ii) 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.

* * * * *

7. In § 660.335, the section heading is revised, paragraphs (c) through (h) are designated as (d) through (i), respectively, a new paragraph (c) is added, and the newly redesignated paragraphs (d)(1) and (e)(3) are revised to read as follows:

§ 660.335 Limited entry permits—renewal, combination, stacking, change of permit ownership or permit holdership, and transfer.

* * * * *

(c) *“Stacking” Limited Entry Permits.* “Stacking” limited entry permits refers to the practice of 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 § 660.334 (d).

(d) *Changes in permit ownership and permit holder*—(1) *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 limited entry permits with sablefish endorsements that does not meet the ownership requirements for those permits described at § 660.334 (d)(3).

* * * * *

(e) * * *

(3) *Effective date*. (i) 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. Transfers of permits designated as participating in the "B" platoon will become effective no sooner than the first day of the next "B" platoon 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.

(ii) Notwithstanding paragraph (i) of this section, if SFD receives the original sablefish endorsed permit, and a complete transfer application by August 14, 2001, the resultant change in vessel registration will be effective August 15, 2001, or as soon thereafter as the transfer has been approved. Transfer applications received after August 14, 2001, would be subject to the restrictions in paragraph (i) of this section.

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