

Assistant Secretary's findings and/or order, and there are no other pending objections, the Assistant Secretary's findings and/or order will become the final order of the Secretary. If the ARB approves a request to withdraw a petition for review of an ALJ decision, and there are no other pending petitions for review of that decision, the ALJ's decision will become the final order of the Secretary. If objections or a petition for review are withdrawn because of settlement, the settlement must be submitted for approval in accordance with paragraph (d) of this section.

(d)(1) *Investigative settlements.* At any time after the filing of a complaint, and before the findings and/or order are objected to or become a final order by operation of law, the case may be settled if OSHA, the complainant, and the respondent agree to a settlement. OSHA's approval of a settlement reached by the respondent and the complainant demonstrates OSHA's consent and achieves the consent of all three parties.

(2) *Adjudicatory settlements.* At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the ALJ if the case is before the ALJ, or by the ARB if the ARB has accepted the case for review. A copy of the settlement will be filed with the ALJ or the ARB, as the case may be.

(e) Any settlement approved by OSHA, the ALJ, or the ARB will constitute the final order of the Secretary and may be enforced in United States district court pursuant to § 1982.113.

#### § 1982.112 Judicial review.

(a) Within 60 days after the issuance of a final order under §§ 1982.109 and 1982.110, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

(b) A final order is not subject to judicial review in any criminal or other civil proceeding.

(c) If a timely petition for review is filed, the record of a case, including the record of proceedings before the ALJ, will be transmitted by the ARB or the ALJ, as the case may be, to the appropriate court pursuant to the Federal Rules of Appellate Procedure and the local rules of such court.

#### § 1982.113 Judicial enforcement.

(a) Whenever any person has failed to comply with a preliminary order of reinstatement, or a final order, including one approving a settlement agreement, issued under NTSSA, the Secretary may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to have occurred. Whenever any person has failed to comply with a preliminary order of reinstatement, or a final order, including one approving a settlement agreement, issued under NTSSA, a person on whose behalf the order was issued may file a civil action seeking enforcement of the order in the appropriate United States district court.

(b) Whenever a person has failed to comply with a preliminary order of reinstatement, or a final order, including one approving a settlement agreement, issued under FRSA, the Secretary may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to have occurred.

#### § 1982.114 District court jurisdiction of retaliation complaints.

(a) If there is no final order of the Secretary, 210 days have passed since the filing of the complaint, and there is no showing that there has been delay due to the bad faith of the complainant, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States, which will have jurisdiction over such an action without regard to the amount in controversy. At the request of either party, the action shall be tried by the court with a jury.

(b) A proceeding under paragraph (a) of this section shall be governed by the same legal burdens of proof specified in § 1982.109. An employee prevailing in a proceeding under paragraph (a) shall be entitled to all relief necessary to make the employee whole, including, where appropriate: Reinstatement with the same seniority status that the employee would have had, but for the retaliation; any back pay with interest; and payment of compensatory damages, including compensation for any special damages sustained as a result of the retaliation, including litigation costs, expert witness fees, and reasonable attorney fees. The court may also order punitive damages in an amount not to exceed \$250,000.

(c) Within 7 days after filing a complaint in federal court, a complainant must file with the Assistant Secretary, the ALJ, or the ARB, depending upon where the proceeding is pending, a copy of the file-stamped complaint. In all cases, a copy of the

complaint must also be served on the OSHA official who issued the findings and/or preliminary order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

#### § 1982.115 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of these rules, or for good cause shown, the ALJ or the ARB on review may, upon application, after three-days notice to all parties, waive any rule or issue such orders that justice or the administration of NTSSA or FRSA requires.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 150721634-5999-02]

RIN 0648-BF11

#### Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Process for Divestiture of Excess Quota Shares in the Individual Fishing Quota Fishery

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

**ACTION:** Final rule.

**SUMMARY:** In January 2011, NMFS implemented the trawl rationalization program (a catch share program) for the Pacific coast groundfish limited entry trawl fishery. The program was implemented through Amendment 20 to the Pacific Coast Groundfish Fishery Management Plan (FMP) and the corresponding implementing regulations. Amendment 20 established the trawl rationalization program, which includes an Individual Fishing Quota program for limited entry trawl participants. Under current regulations, quota share permit owners must divest quota share holdings that exceed accumulation limits by November 30, 2015. This final rule makes narrow procedural additions to regulations to clarify how divestiture and revocation of excess quota share will occur in November 2015, and establishes procedures for the future if divestiture becomes necessary.

**DATES:** Effective November 4, 2015.

**ADDRESSES:** NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is summarized in the Classification section of this final rule. NMFS also prepared an Initial Regulatory Flexibility Analysis (IRFA) for the proposed rule. Copies of the IRFA, FRFA and the Small Entity Compliance Guide are available from William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070; or by phone at 206-526-6150. Copies of the Small Entity Compliance Guide are available on the West Coast Region's Web site at <http://www.westcoast.fisheries.noaa.gov/>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to the West Coast Region and by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to (202) 395-7285.

**FOR FURTHER INFORMATION CONTACT:** Sarah Towne, 206-526-4140, [sarah.towne@noaa.gov](mailto:sarah.towne@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

NMFS implemented a trawl rationalization program in 2011 for the Pacific coast groundfish limited entry trawl fishery. Amendment 20 to the FMP established the program and was approved in 2010 and implemented through two rulemakings: the first published on October 1, 2010 (75 FR 60868) and implemented the initial quota share allocations; the second published December 15, 2010 (75 FR 78344).

The shorebased trawl sector is managed under an individual fishing quota (IFQ) program where quota share (QS) permit owners hold QS and individual bycatch quota (IBQ) shares for up to 30 IFQ species. Current regulations set accumulation limits on the amount of QS or IBQ that a person, individually or collectively, may own or control in the shorebased IFQ program. There are individual control limits for each of the 30 IFQ species, as well as an aggregate nonwhiting control limit across species. Consistent with the trawl rationalization program, some QS permit owners were initially allocated an amount of QS and/or IBQ that exceeded one or more of the control limits, based on their catch history during the qualifying years. The regulations provide these QS permit owners an adjustment period to hold the excess shares, but they must completely divest of any excess QS or IBQ by

November 30, 2015. For any QS permit owner who does not divest of his excess shares by the deadline, the regulations specify that NMFS will revoke his excess QS or IBQ and redistribute it to other QS permit owners in proportion to their current QS or IBQ holdings, up to the control limits.

This action adds the revocation protocols for cases where QS permit owners do not voluntarily divest of QS holdings in excess of the control limits by the divestiture deadline, adds an option where QS permit owners who exceed the aggregate nonwhiting control limit can abandon excess QS to NMFS, and establishes procedures if divestiture becomes necessary in 2016 and beyond.

NMFS published a proposed rule for this action on September 2, 2015 (80 FR 53088). The preamble to the proposed rule provides more background and information on accumulation limits and divestiture, and describes the method for revoking and redistributing QS in excess of the accumulation limits after the divestiture deadline, as well as the method and deadline for abandonment, which are not repeated here.

**Response to Comments**

The comment period on the proposed rule ended on October 2, 2015. NMFS received two comment letters, one from a processors' association and one from a harvester/processor company. The first letter addressed the proposed abandonment procedure. The second letter opposed the process for proportional revocation and redistribution of excess QS and requested that NMFS retract and reevaluate the aggregate control limit that was adopted in 2010 as part of Amendment 20. Comments from both letters are addressed below.

*Comment 1:* The commenter supported the proposed QS abandonment option for permit owners over the aggregate nonwhiting control limit, but requested that NMFS add an abandonment option for those cases where a permit owner exceeds one or more individual species control limits across multiple permits. The commenter noted that such an option would be simpler and provide more flexibility than the proportional reduction method described in the proposed rule, and would create less work for NMFS while still meeting the objective of ownership caps.

*Response:* Under the existing regulations, QS permit owners who exceed an individual species control limit across multiple permits have the ability to divest themselves of individual species shares presently, and if they do not divest by the deadline,

NMFS will only revoke excess shares of that species. Thus there is no need to provide an option for abandonment at the individual species level. On the other hand, if a QS permit owner who exceeds the aggregate nonwhiting control limit does not divest by the deadline, NMFS will revoke some shares of each non-widow species contributing to the aggregate calculation, up to 27 species (revocation of widow species will not occur until widow reallocation is complete). NMFS agrees with the Pacific Fishery Management Council (Council) that an abandonment option for the aggregate nonwhiting control limit is appropriate because proportional reduction of 27 species would be cumbersome, and could result in high value species being automatically revoked, while divestiture of an individual species, whether across multiple QS permits or not, does not necessitate an abandonment option.

*Comment 2:* The commenter supported the proposed notification process for QS permit owners who may exceed an accumulation limit in 2016 and beyond, but asked NMFS to consider a deadline longer than 60 days.

*Response:* NMFS agrees and has modified the final rule to implement a 90-day deadline for divestiture if NMFS determines that a QS permit owner exceeds an accumulation limit in 2016 or beyond (instead of the 60-day deadline in the proposed rule). In addition, if a QS permit owner was found to exceed the control limit for aggregate nonwhiting holdings in 2016 or beyond, the QS permit owner may abandon QS to NMFS within 60 days of notification by NMFS (instead of the 30-day deadline in the proposed rule).

*Comment 3:* The commenter asked NMFS to reconsider the proportional revocation of QS at the individual species level and across multiple QS permits because it is unfair, inefficient, and unaligned with conservation goals. The commenter also opposed proportional revocation for the aggregate nonwhiting control limit. The commenter asserted that proportional revocation is inconsistent with the Magnuson-Stevens Act (MSA) and the Administrative Procedure Act (APA).

*Response:* Revocation of QS or IBQ in excess of the accumulation limits was approved and implemented under Amendment 20 and is beyond the scope of this rulemaking. This rulemaking adds specifics for revocation when a QS permit owner exceeds a control limit across multiple permits or exceeds the aggregate nonwhiting control limit. If a QS permit owner exceeds an individual species control limit in just one QS permit, NMFS will revoke excess QS or

IBQ at the species level. There will be no proportional method necessary, just a simple revocation of the excess amount. However, if a QS permit owner exceeds an individual species control limit across multiple permits after the divestiture deadline, under this rulemaking NMFS will revoke QS or IBQ for that species from each permit contributing to the overage, in proportion to the amount the QS percentage from each permit contributes to the total QS percentage owned. If a QS permit owner exceeds the aggregate nonwhiting control limit after the divestiture deadline, under this rulemaking NMFS will revoke QS at the species level in proportion to the amount of the aggregate overage divided by the aggregate total owned.

Proportional revocation will only be used in cases where QS permit owners do not voluntarily divest of their excess QS or IBQ by the divestiture deadline, whether across multiple permits or at the aggregate nonwhiting control limit level. The choice is completely in the hands of participants: Sell or trade or otherwise divest by the deadline, or excess QS or IBQ across multiple permits or above the aggregate nonwhiting control limit will be revoked proportionally.

By the November 30, 2015 divestiture deadline, QS permit owners initially allocated excess shares could have held excess QS or IBQ for nearly 5 years (the IFQ program began on January 11, 2011) and will have had nearly 2 years to divest of excess shares (QS trading began on January 1, 2014). NMFS agrees with the Council that proportional revocation is a fair method to revoke QS or IBQ after the divestiture deadline, whether across multiple permits or if someone exceeds the aggregate nonwhiting control limit.

*Comment 4:* The commenter asserted that the proportional redistribution of abandoned or revoked QS to all other QS permit owners is economically inefficient, harmful to conservation goals, and reduces the fishery's ability to harvest the optimum yield. They also state that NMFS should have considered how proportional redistribution satisfies the objectives of MSA, the Fishery Ecosystem Plan (FEP), and Amendments 20 and 21 to the Pacific Coast Groundfish FMP. In addition, they suggest that NMFS should auction abandoned or revoked QS.

*Response:* Proportional redistribution was approved and implemented under Amendment 20 and is beyond the scope of this rulemaking. If excess QS is abandoned to NMFS by the abandonment deadline (in the case of QS in excess of the aggregate

nonwhiting control limit), or if QS or IBQ is revoked by NMFS after the divestiture deadline, NMFS will redistribute the abandoned or revoked QS or IBQ to all other QS permit owners in proportion to their current share holdings. Proportional redistribution of abandoned or revoked QS or IBQ will only be used in cases where QS permit owners choose to abandon QS or do not voluntarily divest of their excess QS or IBQ by the divestiture deadline. The choice is completely in the hands of participants to sell or trade or otherwise divest excess QS or IBQ prior to the divestiture deadline, abandon excess QS to NMFS for species of their choosing if they are over the aggregate nonwhiting control limit, and/or have excess QS or IBQ revoked by NMFS if they do not divest by the divestiture deadline. NMFS agrees with the Council that proportional redistribution of abandoned or revoked excess QS or IBQ to current QS permit owners is a fair outcome.

The implementation of an auction for abandoned or revoked QS is also outside of the scope of this rulemaking. This is an administrative rule to add to existing procedures for the revocation and redistribution of excess QS after the divestiture deadline. While NMFS agrees that an auction for revocation and redistribution of QS or IBQ in 2016 or beyond may be worthy of consideration, this proposal needs to make its way through the Council process. The commenter can choose to participate in the 5-year review to pursue this issue. (The response to Comment 6 provides more information about how to participate in the 5-year review.)

*Comment 5:* The commenter asserted that NMFS' decision to proceed with the existing divestiture deadline of November 30, 2015, instead of delaying divestiture until after the widow rockfish reallocation, is unreasonable and violates the MSA and the APA because NMFS did not address that decision in the proposed rule.

*Response:* NMFS brought this issue with several alternatives to the Council for consideration in November 2014 and April 2015 (see the November 2014 Agenda Item J.2.b NMFS Report; the November 2014 Agenda Item J.2.b Supplemental NMFS Report 2; and the April 2015 Agenda Item E.6.a NMFS Report). After much Council-level discussion of the alternatives for delaying both the individual and aggregate control limits until after the widow reallocation, the Council did not modify its original decision and the divestiture requirement and deadline remain in place, with widow rockfish excluded until reallocation is complete.

All participants have been on notice about the divestiture requirement since 2010, and many have been planning how to divest or have already divested down to the control limits. Because the reallocation of widow rockfish will only affect one IFQ species, it is not overly complicated to exclude widow rockfish from the divestiture deadline and address divestiture of that species as part of the widow reallocation process.

*Comment 6:* The commenter asserted that the aggregate control limit of 2.7% for the nonwhiting, shorebased groundfish fishery established under Amendment 20 in 2010 violates the APA, MSA and the National Environmental Policy Act (NEPA) and requested that NMFS retract and properly evaluate the aggregate nonwhiting control limit in a manner consistent with all laws.

*Response:* The aggregate control limit of 2.7% for the nonwhiting, shorebased groundfish fishery was approved by NMFS in 2010 and is beyond the scope of this rulemaking, which addresses final implementation aspects of the control limits. Further, NMFS does not agree that the 2.7% nonwhiting control limit violates applicable law and should be retracted. The MSA requires specification of maximum shares, expressed as a percentage of the total limited access privileges, which a limited access privilege holder is permitted to hold, acquire, or use, such that no privilege holder may acquire an excessive share of the total privileges in the program. This requirement is similar to National Standard 4, which requires fair and equitable allocations that are reasonably calculated to promote conservation and carried out so no individual or entity acquires an excessive share of the privileges. The Council, including its advisory committees, considered over several years various options and analyses in developing the control limits that were ultimately approved by NMFS in 2010. The accumulation limits were developed based on a review of past participation in the fishery, available policy guidance on excessive shares and market control, and the concept of distributing quota and fishing activity among more participants in order to address concerns such as community impacts and the program's potential effects on new entrants. The choice of the control limits represents a balance between these sometimes competing interests.

No comments specific to the aggregate control limit of 2.7% for the nonwhiting, shorebased groundfish fishery were submitted to NMFS during the 2010 rulemaking to implement the

program. As discussed above, all participants have been aware of the control limits and the requirement to divest since 2010. One of the significant issues for the Council and NMFS was whether, once the required accumulation limits were adopted, there should be an adjustment period for participants who owned or controlled excess QS. The Council adopted and NMFS approved a divestiture period to occur during years 3 and 4 of the program, after considerable discussion and public comment. The divestiture period was extended due to unrelated litigation that resulted in reconsideration of the initial allocation of Pacific whiting because the agency and Council determined that no transfers of Pacific whiting shares should occur until resolution of the initial allocation. Thus, participants have had nearly 5 years to prepare for this divestiture requirement.

The Council and NMFS have initiated a 5-year review of the trawl rationalization program. If the commenter wishes that this program review include an examination of the impacts and appropriateness of the nonwhiting aggregate control limit, the commenter should participate in the program review. The 5-year review is next scheduled for discussion at the Council level at the June 23–28, 2016, meeting in Tacoma, WA. The commenter may submit a comment for the 5-year program review to the open comment section of the briefing book for any Council meeting prior to June 2016, or may submit a comment to the briefing book under the trawl rationalization program five-year review agenda item for the June 2016 Council meeting.

#### Changes From the Proposed Rule

In response to comments, NMFS changed the deadline to divest in 2016 or beyond from 60 days from the date of notification by NMFS to 90 days from the date of notification by NMFS. Linked with this deadline change, NMFS also changed the deadline to abandon QS in excess of the aggregate nonwhiting control limit from 30 days from the date of notification by NMFS to 60 days from the date of notification by NMFS, to provide more time for QS permit owners to determine if they would like to use the abandonment option.

#### Classification

Pursuant to sections 304(b)(1)(a) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Pacific Coast

Groundfish FMP, the Magnuson-Stevens Act, and other applicable law.

The need to implement these measures in a timely manner constitutes good cause under authority contained in 5 U.S.C. 553(d)(3) to waive the thirty day waiting period and make the rule effective immediately upon filing for public inspection by the Office of the Federal Register. It would be impractical to have to wait thirty days before the rule is effective because all QS permit owners must be made aware of the clarified divestiture protocols in this final rule prior to the November 30, 2015 divestiture deadline. There is also a public interest need to implement this action immediately to allow QS permit owners who exceed the aggregate nonwhiting control limit the ability and flexibility to abandon excess QS of the species of their choosing to NMFS by the November 15, 2015 deadline. Otherwise NMFS will revoke excess QS for these permit owners according to the procedures established in this rule. Finally, the final rule only makes minor procedural modifications to clarify existing divestiture and revocation regulations.

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

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS responses to those comments, and a summary of the analyses completed to support the action are addressed below. NMFS also prepared a Regulatory Impact Review (RIR) for this action. A copy of the RIR/FRFA is available from NMFS (see **ADDRESSES**). A summary of the FRFA, per the requirements of 5 U.S.C. 604(a) follows:

NMFS, pursuant to section 604 of the Regulatory Flexibility Act, has prepared a FRFA. The FRFA incorporates the initial regulatory flexibility analysis (IRFA) prepared for the proposed rule and proposed specifications. The analysis in the IRFA is not repeated here in its entirety. A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUPPLEMENTARY INFORMATION** Background section of the preamble and in the preamble of the proposed rule.

NMFS did not receive any comments on the IRFA. This final rule will affect small entities. There are 138 quota shareholders potentially directly affected by the aggregate species limits as reductions of excess shares will be

taken from the quota share percentages listed on the permit. At the first level of ownership and based on affiliations, there are 96 unique businesses. Even if some first-level owners are persons, they are considered businesses for purposes for determining the effects on small businesses. These QS holders must direct quota pounds to various vessel accounts so that quota pounds can be fished. Quite frequently they also own limited entry permits, the vessels attached to these permits, or processing facilities. As compared to secondary owners or investors, first-level quota shareholders are active participants in the fishery, and thus are businesses for purposes of this rule. Also, when renewing their quota share permits, all quota shareholders must respond to questions of whether they consider themselves a large or small business. All 138 quota shareholders are businesses. Of these businesses, 15 are large. There are nine entities affected by the control limit for one or more individual species. These entities are affected only in the sense that NMFS is showing how it will calculate excess shares across multiple permits. There are three or less affected entities by the aggregate species limit divestiture rules. When combined, there are nine unique entities affected by this rule—seven small and two large.

Recordkeeping and reporting requirements are being modified by this final rule. NMFS is amending the supporting statement for the Pacific Coast groundfish trawl rationalization program permit and license information collection Office of Management and Business (OMB) Paperwork Reduction Act (PRA) requirements (number 0648–0620) to reflect the abandonment protocols described in the preamble to this final rule. NMFS requests any comments on the PRA abandonment protocol, including whether those minor paperwork protocols described above would unnecessarily burden any QS owners.

There are no significant alternatives to the rule that accomplish the stated objectives of applicable statutes and that minimize any of the significant economic impact of the proposed rule on small entities. Inclusion of the abandonment process and the extension of divestiture and abandonment deadlines should aid small businesses in meeting the other divestiture requirements. There are no relevant Federal rules that may duplicate, overlap, or conflict with this action.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0620.

Public reporting burden for QS permit owners who exceed the aggregate nonwhiting control limit and wish to abandon QS to NMFS is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by email to *OIRA\_Submission@omb.eop.gov*, or fax to 202-395-7285.

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

Pursuant to Executive Order 13175, this rule was developed after meaningful collaboration with tribal officials from the area covered by the Pacific Coast Groundfish FMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. The regulations do not require the tribes to change from their current practices.

**List of Subjects in 50 CFR Part 660**

Fisheries, Fishing, and Indian fisheries.

Dated: November 3, 2015.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons stated in the preamble, 50 CFR part 660 is amended as follows:

**PART 660—FISHERIES OFF WEST COAST STATES**

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

**Authority:** 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.140, revise paragraph (d)(4)(v) to read as follows:

**§ 660.140 Shorebased IFQ Program.**

\* \* \* \* \*

(d) \* \* \*

(4) \* \* \*

(v) *Divestiture.* Accumulation limits will be calculated by first calculating the aggregate non-whiting QS limit and

then the individual species QS or IBQ control limits. For QS permit owners (including any person who has ownership interest in the owner named on the permit) that are found to exceed the accumulation limits during the initial issuance of QS permits, an adjustment period will be provided during which they will have to completely divest their QS or IBQ in excess of the accumulation limits. QS or IBQ will be issued for amounts in excess of accumulation limits only for owners of limited entry permits as of November 8, 2008, if such ownership has been registered with NMFS by November 30, 2008. The owner of any permit acquired after November 8, 2008, or if acquired earlier, not registered with NMFS by November 30, 2008, will only be eligible to receive an initial allocation for that permit of those QS or IBQ that are within the accumulation limits; any QS or IBQ in excess of the accumulation limits will be redistributed to the remainder of the initial recipients of QS or IBQ in proportion to each recipient's initial allocation of QS or IBQ for each species. Any person that qualifies for an initial allocation of QS or IBQ in excess of the accumulation limits will be allowed to receive that allocation, but must divest themselves of the QS (except for widow rockfish QS) or IBQ in excess of the accumulation limits by November 30, 2015, according to the procedure provided under paragraph (d)(4)(v)(A) of this section. If NMFS identifies that a QS permit owner exceeds the accumulation limits in 2016 or beyond, the QS permit owner must divest of the QS or IBQ in excess of the accumulation limits according to the procedure provided under paragraph (d)(4)(v)(B) of this section. Owners of QS or IBQ in excess of the control limits may receive and use the QP or IBQ pounds associated with that excess, up to the time their divestiture is completed.

(A) *Divestiture and redistribution process in 2015.* QS permit owners in excess of the control limit for aggregate nonwhiting QS holdings may abandon QS to NMFS by November 15, 2015 using the procedure provided under paragraph (d)(4)(v)(C) of this section. QS permit owners must divest themselves of any QS or IBQ in excess of the accumulation limits by November 30, 2015, except for widow rockfish QS, which cannot be transferred as described in paragraph (d)(3)(ii)(B)(2) of this section. After the November 30, 2015 divestiture deadline, NMFS will revoke all QS or IBQ held by a person (including any person who has ownership interest in the owner names

on the permit) in excess of the accumulation limits following the procedures specified under paragraphs (d)(4)(v)(D) through (G) of this section. All abandoned or revoked shares will be redistributed to all other QS permit owners in proportion to their QS or IBQ holdings on or about January 1, 2016, based on current ownership records, except that no person will be allocated an amount of QS or IBQ that would put that person over an accumulation limit.

(B) *Divestiture and redistribution process in 2016 and beyond.* Any person owning or controlling QS or IBQ must comply with the accumulation limits, even if that control is not reflected in the ownership records available to NMFS as specified under paragraphs (d)(4)(i) and (iii) of this section. If NMFS identifies that a QS permit owner exceeds an accumulation limit in 2016 or beyond, NMFS will notify the QS permit owner that he or she has 90 days to divest of the excess QS or IBQ. In the case that a QS permit owner exceeds the control limit for aggregate nonwhiting QS holdings, the QS permit owner may abandon QS to NMFS within 60 days of the notification by NMFS, using the procedure provided under paragraph (d)(4)(v)(C) of this section. After the 90-day divestiture period, NMFS will revoke all QS or IBQ held by a person (including any person who has ownership interest in the owner names on the permit) in excess of the accumulation limits following the procedures specified under paragraphs (d)(4)(v)(D) through (G) of this section. All abandoned or revoked shares will be redistributed to all other QS permit owners in proportion to their QS or IBQ holdings on or about January 1 of the following calendar year, based on current ownership records, except that no person will be allocated an amount of QS or IBQ that would put that person over an accumulation limit.

(C) *Abandonment of QS.* QS permit owners that are over the control limit for aggregate nonwhiting QS holdings may voluntarily abandon QS if they notify NMFS in writing by the applicable deadline specified under paragraph (d)(4)(v)(A) or (B) of this section. The written abandonment request must include the following information: QS permit number, IFQ species, and the QS percentage to be abandoned. Either the QS permit owner or an authorized representative of the QS permit owner must sign the request. QS permit owners choosing to utilize the abandonment option will permanently relinquish to NMFS any right to the abandoned QS, and the QS will be redistributed as described under paragraph (d)(4)(v)(A)

or (B) of this section. No compensation will be due for any abandoned shares.  
 (D) *Revocation*. NMFS will revoke QS from any QS permit owner who exceeds

an accumulation limit after the divestiture deadline specified under paragraph (d)(4)(v)(A) or (B) of this section. NMFS will follow the

revocation approach summarized in the following table and explained under paragraphs (d)(4)(v)(E) through (G) of this section:

<i>If, after the divestiture deadline, a QS permit owner exceeds . . .</i>	<i>Then . . .</i>
An individual species control limit (non-widow until reallocation is complete) in <i>one</i> QS permit.	NMFS will revoke excess QS at the species level.
An individual species control limit (non-widow until reallocation is complete) across <i>multiple</i> QS permits.	NMFS will revoke QS at the species level in proportion to the amount the QS percentage from each permit contributes to the total QS percentage owned.
The control limit for aggregate nonwhiting QS holdings .....	NMFS will revoke QS at the species level in proportion to the amount of the aggregate overage divided by the aggregate total owned. Until widow reallocation is complete, the proportion will be adjusted to hold widow QS at a constant level while bringing the aggregate percentage owned to 2.700%, using normal rounding rules.

(E) *Revocation of excess QS or IBQ from one QS permit*. In cases where a person has not divested to the control limits for individual species (non-widow until reallocation is complete) in one QS permit by the deadline specified under paragraph (d)(4)(v)(A) or (B) of this section, NMFS will revoke excess QS at the species level in order to get that person to the limits. NMFS will redistribute the revoked QS following the process specified in paragraph (d)(4)(v)(A) or (B) of this section. No compensation will be due for any revoked shares.

(F) *Revocation of excess QS or IBQ from multiple QS permits*. In cases where a person has not divested to the control limits for individual species (non-widow QS until reallocation is

complete) across QS permits by the deadline specified under paragraph (d)(4)(v)(A) or (B) of this section, NMFS will revoke QS at the species level in proportion to the amount the QS percentage from each permit contributes to the total QS percentage owned. NMFS will redistribute the revoked QS following the process specified in paragraph (d)(4)(v)(A) or (B) of this section. No compensation will be due for any revoked shares.

(G) *Revocation of QS in excess of the control limit for aggregate nonwhiting QS holdings*. In cases where a QS permit owner has not divested to the control limit for aggregate nonwhiting QS holdings by the deadline specified under paragraph (d)(4)(v)(A) or (B) of this section, NMFS will revoke QS at

the species level in proportion to the amount of the aggregate overage divided by the aggregate total owned. Until widow reallocation is complete and transfer of widow is allowed, widow will continue to be included in the aggregate calculation, but the proportion will be adjusted to hold widow QS at a constant level while bringing the aggregate percentage owned to 2.700%, using normal rounding rules. NMFS will redistribute the revoked QS following the process in paragraph (d)(4)(v)(A) or (B) of this section. No compensation will be due for any revoked shares.

\* \* \* \* \*

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