fishery, so no impacts on revenues in this fishery would be expected as a result of either of these alternatives. However, an IOY of 165,000 mt was rejected by the Council because it was too high in light of social and economic concerns relating to TALFF. The specification of TALFF would have limited the opportunities for the domestic fishery to expand, and therefore would have resulted in negative social and economic impacts to both U.S. harvesters and processors.

For *Illex*, one alternative considered would have set Max OY, ABC, IOY, DAH, and DAP at 30,000 mt. This alternative would allow harvest far in excess of recent landings in this fishery. Therefore, there would be no constraints and, thus, no revenue reductions, associated with that alternative. However, the Council considered this alternative unacceptable because an ABC specification of 30,000 mt may not prevent overfishing in years of moderate to low abundance of *Illex* squid.

For butterfish, one alternative considered would have set IOY at 5,900 mt, while another would have set it at 9,131 mt. Both of these amounts exceed the landings of this species in recent years. Therefore, neither alternative would represent a constraint on vessels in this fishery or would reduce revenues in the fishery. However, both of these alternatives were rejected by the Council because they would likely result in overfishing and the additional depletion of the spawning stock biomass of butterfish.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule, or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of permits issued for the Atlantic mackerel, squid and butterfish fisheries. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator (see **ADDRESSES**) and may be found at the following Web site: *http://www.nero.noaa.gov*.

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

Dated: February 24, 2006.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 06–1963 Filed 3–1–06; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 050921244–6049–02; I.D. 091305A]

RIN 0648–AP38

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Limited Entry Fixed Gear Sablefish Fishery Permit Stacking Program

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

ACTION: Final rule.

SUMMARY: NMFS is implementing portions of Amendment 14 to the Pacific Coast Groundfish Fishery Management Plan (FMP) for 2007 and beyond. Amendment 14, approved by NOAA in August 2001, created a permit stacking program for limited entry permits with sablefish endorsements. Amendment 14 was intended to provide greater season flexibility for sablefish fishery participants and to improve safety in the primary sablefish fishery.

DATES: Effective April 3, 2006.

ADDRESSES: Copies of Amendment 14 and its Environmental Assessment/Regulatory Impact Review (EA/RIR) are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council (Council), 7700 NE Ambassador Place, Portland, OR 97220, phone: 866–806–7204. Copies of the Finding of No Significant Impact (FONSI), Supplemental Initial Regulatory Flexibility Analysis (IRFA), Supplemental Final Regulatory Flexibility Analysis (FRFA), and the Small Entity Compliance Guide (SECG) are available from D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, phone: 206–526–6150.

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 D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, and by e-mail to *DavidRostker@omb.eop.gov*, or by fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Jamie Goen or Kevin Ford (Northwest Region, NMFS), phone: 206–526–4646 or 206–526–6115; fax: 206–526–6736 and; e-mail: *jamie.goen@noaa.gov* or *kevin.ford@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: *www.gpoaccess.gov/fr/index.html*.

Background

Amendment 14 introduced a permit stacking program to the limited entry, fixed gear primary sablefish fishery. Under this permit stacking program, a vessel owner may register up to three sablefish-endorsed permits for use with their vessel to harvest each of the primary season sablefish cumulative limits associated with the stacked permits. Amendment 14 also allows a season up to 7 months long, from April 1 through October 31, which allows an ample period for vessels to pursue their primary season sablefish cumulative limits.

This final rule is based on recommendations of the Council, under the authority of the Pacific Coast Groundfish FMP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The portions of Amendment 14 that were implemented for the 2001 primary sablefish season allowed individual fishery participants to more fully use their existing vessel capacity, reduced overall capacity in the primary fixed gear sablefish fishery, and significantly increased safety in the fishery. This rule does not change any of those benefits, but further completes the implementation of Amendment 14 by preventing excessive fleet consolidation, ensuring processor access to sablefish landings from the primary season, and maintaining the character of the fleet through owner-on-board requirements. The background and rationale for the Council's recommendations, as well as an explanation of why NMFS will not be implementing the Council's recommendation for a hail-in requirement and some modifications to the permit stacking program that the Council is considering for future implementation are summarized in the

proposed rule (70 FR 59296, October 12, 2005).

Further detail appears in the EA/RIR prepared by the Council for Amendment 14 and in the proposed and final rule to implement Amendment 14 for the 2001 primary sablefish season. The proposed rule for the 2001 season was published on June 8, 2001 (66 FR 30869), the final rule was published on August 7, 2001 (66 FR 41152), and a correction to the final rule was published on August 30, 2001 (66 FR 45786). In addition, an advanced notice of proposed rulemaking announcing the control date was published on April 3, 2001 (66 FR 17681), and the notice of availability for Amendment 14 was published on May 9, 2001 (66 FR 23660). NMFS approved Amendment 14 to the Groundfish FMP on July 30, 2001. The proposed rule to implement the additional Amendment 14 provisions in this final rule was published on October 12, 2005 (70 FR 59296). NMFS requested public comment on the proposed rule through December 12, 2005. See the preamble to the proposed rule for additional background information on the fishery and on this rule.

In the final rule implementing the initial permit stacking provisions (66 FR 41152, August 7, 2001), the following provisions were implemented: (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.

Beginning in 2002, NMFS implemented the full April 1 through October 31 season via the Pacific Coast groundfish final specifications and management measures published on March 7, 2002 (67 FR 10490).

In its June 8, 2001, proposed rule, NMFS announced its intention to divide Amendment 14 implementation into two separate regulatory processes. Implementation of this second portion of Amendment 14 required NMFS to return to the Council for further clarification. On February 14, 2002, NMFS notified fixed gear permit holders by letter to let them know the agency would be requesting further clarification from the Council. NMFS received further clarification at the Council's April 2002 meeting.

This final rule implements further permit stacking regulations that include the following provisions: (1) permit owners and permit holders would be required to document their ownership interests in their permits to ensure that no person holds or has ownership interest in more than three permits; (2) an owner-on-board requirement for permit owners who did not own sablefish-endorsed permits as of November 1, 2000; (3) an opportunity for permit owners to add a spouse as co-owner; (4) vessels that do not meet minimum frozen sablefish historic landing requirements would not be allowed to process sablefish at sea; (5) permit transferors would be required to certify sablefish landings during mid-season transfers; and, (6) a definition of the term ''base permit.''

In the future, NMFS expects to propose another rule to implement additional provisions of Amendment 14 as explained in the preamble to the proposed rule dated October 12, 2005 (70 FR 59296). Such provisions may include the following: (1) adding a declaration system for enforcement purposes that would require all sablefish endorsed permit owners, including those exempt from the owner-on-board requirement, to call into a phone-in system and declare which permit(s) they will be fishing; and (2) implementing a permit stacking program fee system in accordance with Magnuson-Stevens Act requirements at 304(d)(2). The Council has also discussed, but has not prioritized analysis or development of provisions to: (1) allow a person who had 30% or greater ownership interest in a partnership or corporation that was a first generation owner to be exempt from the owner-on-board provision if he/she wishes to own a permit under his/her own name, even if he/she did not own a permit under his/her own name as of November 1, 2000; and (2) revise the accumulation cap on the total permits a person, partnership or corporation could hold through leasing.

Finally, as described in more detail in the proposed rule, NMFS decided not to propose a hail-in requirement as initially recommended by the Council. The hail-in requirement would have required fishers to provide 6 hours advance notice to NMFS Enforcement when making a sablefish landing in the primary sablefish season. Fishers were to provide landings times, hail weights, and landings locations as part of the hail-in procedure. The Council, its Enforcement Consultants and its Groundfish Advisory Subpanel, concurred with NMFS determination that this hail-in requirement would be unnecessarily burdensome for fishers.

Comments and Responses

NMFS received seven letters of comment on the proposed rule to implement portions of Amendment 14 for 2007 and beyond: two letters were received from state governments, one letter was received from an industry organization, and four letters were received from members of the public. These comments are addressed here:

Comment 1: The Washington Department of Fish and Wildlife (WDFW) is in the process of a comprehensive, agency-wide review of potential changes to their state fish ticket system. In the interim, to respond to new regulations for the primary sablefish fishery, beginning in 2007, WDFW will require the Federal permit number to be entered into the state fish ticket field currently reserved for dealer's use. This information, along with appropriate identifiers, would be captured separately from WDFW's routine state fish ticket data entry, and subsequently, entered into Pacific Fisheries Information Network (PacFIN). WDFW will also require a separate state fish ticket to be filled out for sablefish catch attributed to each permit.

The Oregon Department of Fish and Wildlife (ODFW) will record Federal permit numbers on state fish tickets, but is not able to modify their data system to enter and transfer that data into PacFIN at this time.

Response: As stated in the proposed rule (70 FR 59296, October 12, 2005), WDFW, ODFW and California Department of Fish and Game (CDFG) should require that Federal sablefish-endorsed permit numbers be written somewhere on the state fish ticket, as appropriate. It is beneficial to have these Federal limited entry sablefish-endorsed permit numbers entered into the PacFIN database so that enforcement agents could query a given Federal permit number and their associated state fish ticket landings. However, until such time, having the Federal sablefish-endorsed permit number on the paper state fish ticket would allow hand searching by enforcement agents of

paper state fish tickets for investigations.

NMFS is requesting this change to aid in enforcement of the owner-on-board provision and mid-season transfers. Adding a Federal sablefish-endorsed permit number to the state fish ticket is expected to aid enforcement agents by creating a record of which sablefish permit was being fished on a given fishing trip. Thus, if enforcement agents boarded a vessel at sea, they could record which owners were on board the vessel. At a later time, they could then verify which permit the sablefish landings were credited to on the state fish ticket and double-check that the owner of that permit was on board if the owner was not exempt from the owner-on-board provisions. For mid-season transfers, a mid-season certification is required on the permit office form for enforcement purposes, because it is a means to associate specific amounts of landings to date with an aggregate amount reported on state fish tickets for a particular permit owner. If during a post-season audit of landings associated with a permit, the landings exceed the amount available to be landed on the permit, NMFS may begin enforcement proceedings against any party that had an ownership interest in the permit during the calendar year, including the vessel owner or operator. Adding a Federal sablefish-endorsed permit number to the state fish ticket is expected to aid enforcement agents by creating a record of which sablefish permit is attributed to which state fish ticket. This system will allow enforcement agents to attribute overages of sablefish landings to the appropriate party.

Currently, only the CDFG has added a line for Federal permit information on their state fish tickets and enters that information into the PacFIN database. In the proposed rule, NMFS provided alternative ways to implement the owner-on-board and mid-season transfer provisions depending on whether or not WDFW and ODFW would require the Federal sablefish-endorsed permit number to be written on the state fish ticket and whether that information would be entered into PacFIN.

NMFS understands that system and funding constraints make it difficult to change the state fish ticket system to provide information to PacFIN and to reprint the state fish tickets with a line for the Federal permit number. While the ability to pull state fish ticket data and permit information directly from PacFIN is ideal, it is not necessary to implement the owner-on-board requirement or mid-season transfers. As long as the Federal sablefish-endorsed permit number is required to be written somewhere on the state fish ticket, NMFS enforcement can audit state fish tickets, as needed, to determine whether the appropriate permit owner was on board the vessel or to determine a particular permit's catch. NMFS appreciates that WDFW and CDFG will provide Federal permit information into the PacFIN database.

Because CDFG already requires the Federal permit number on the state fish ticket and because WDFW and ODFW will require it beginning in 2007, NMFS will implement the provisions of the sablefish permit stacking program that allows for mid-season transfers and requires only the owner of the sablefish endorsed permit being fished to be onboard the vessel while that permit is being fished. NMFS acknowledges that WDFW and ODFW will continue to work towards an improved state fish ticket system to meet the growing needs of fisheries management and enforcement.

Comment 2: ODFW needs to be able to validate Federal permit numbers listed on state fish tickets with real-time access to the NOAA Federal permit database. ODFW stated that ODFW, WDFW, and CDFG cannot verify Federal permit numbers on state fish tickets with existing systems.

Response: Federal permit information is available on our website at *www.nwr.noaa.gov* and is updated weekly. Click on ''Groundfish & Halibut,'' then click on ''Federal Permits,'' then click on ''Groundfish Limited Entry Permits,'' and click on ''List of Current Permits.'' In addition, while the state's ability to validate Federal permit numbers listed on state fish tickets may be ideal, it is not necessary to implement the owner-on-board requirement or mid-season transfers. NMFS enforcement agents can check state fish tickets and compare the Federal permit numbers listed on the tickets with those listed in the NMFS Permit Office database, as needed. NMFS will not hold the states responsible for validating Federal permit information. If the states are concerned with validating Federal permit number, they can request that the Federal permit onboard the vessel be shown at the time the state fish ticket is filled out. Also, it is in the fisherman's best interest to ensure that the correct permit number is recorded on the state fish ticket in order to maintain their permit catch history.

Comment 3: One commenter wrote to support the owner-on-board requirement, citing its implementation in other fisheries as being effective at: preventing harvesters from becoming sharecroppers for permit owners, and keeping the price of the cost of entry into the fishery within reach of fishermen. Another commenter wrote in opposition to the owner-on-board requirement, stating that it would be: confusing to fishery participants, and should not be required of individuals who had fished their permits for a certain period of time (maybe 7–10 years.)

Response: NMFS continues to support the owner-on-board requirement. As NMFS stated in its final rule implementing the initial provisions of Amendment 14, ''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.'' (66 FR 41152, August 7, 2001). The Council carefully crafted Amendment 14's provisions to maintain a sablefish fleet populated by vessel owner-operators. Eliminating the owner-on-board requirement would be contrary to the Council's intent to maintain the small business character of this fishery.

NMFS notes that while the owner-on-board requirement may make regulations more complex than the existing reguylatory regime, they are necessary to ensure the owner-operator character of the fleet is maintained. This provision was initially included in Amendment 14 because it had been developed and supported by permit owners.

NMFS disagrees with the commenter's suggestion that permit owners should be able to earn the right to be exempt from the owner-on-board requirement after fishing for a period of time. As stated above, the intent of the owner-on-board requirement is to maintain the owner-operator character of the fleet. Creating additional exemptions to the requirement would be contrary to Amendment 14.

Comment 4: Two commenters suggested that anyone who had owned at least 30 percent of a permit prior to November 1, 2000, should not be subject to the owner-on-board requirement (known colloquially as being ''grandfathered'' from the requirement.) One of these commenters has part ownership in a permit that was purchased prior to November 1, 2000, and sole ownership of a permit

purchased after that date. Amendment 14 had exempted entities that had purchased permits prior to November 1, 2000, from being subject to the owner-on-board requirement. However, Amendment 14 had specifically not exempted particular persons who were part owners of permits but not sole owners of permits from the owner-on-board provision. This commenter believes that he is being unfairly excluded from the exemption to the owner-on-board requirement. In his letter, he cites the particular challenge of owning two permits, wishing to fish those permits from two different vessels, and not being able to be on two vessels simultaneously.

Response: As stated above in the response to Comment 3, the intent of the owner-on-board requirement is to maintain the owner-operator character of the fleet. Amendment 14 provided an exemption to this requirement to permit owning entities that had owned a permit prior to November 1, 2000. Amendment 14 also specifically did not exempt a person who had some percentage of interest in an exempted partnership or corporation, but who did not individually own a permit prior to the cutoff date, from the owner-on-board requirement. This and other restrictions on the exemption to the owner-on-board requirement were intended to transition the fleet to an owner-on-board fleet.

Subsequent to its adoption of Amendment 14, the Council considered whether to exempt permit owners who had partial ownership in a permit prior to November 1, 2000, from the owner-on-board requirement. While the Council expressed some support for this notion, it has declined to further discuss or analyze a revision to the original owner-on-board requirements and exemptions from Amendment 14.

Comment 5: One commenter wrote in support of the limit on the number of permits that may be owned or leased by an individual, and in support of requirements for documentation of permit ownership interests. Another commenter wrote in opposition to the limit on the number of permits that may leased. This second commenter suggested that permit holders who had participated in the fishery prior to November 1, 2000, should be allowed to own up to three permits, and lease up to an additional three permits per vessel owned prior to November 1, 2000.

Response: Federal regulations at § 660.334(d)(4)(ii) state, ''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 three permits with sablefish endorsements as of November 1, 2000.'' This regulation has been in place since August 2001 and the proposed rule for the action implemented via this final rule did not propose to revise this provision. NMFS appreciates the first commenter's support of the action the agency did propose, which was to require documentation of ownership interest in order to facilitate more thorough agency enforcement of this requirement.

The proposed rule (October 12, 2005; 70 FR 59296) stated that the issue of whether to increase the number of permits that can be held was discussed by the Council and the Groundfish Advisory Panel (GAP) in 2002. At that time, the Council requested that the GAP look into alternatives that would revise the accumulation cap on the total permits an individual person, partnership or corporation could hold through leasing and report back to the Council at a later meeting. This issue has not yet been revisited and would require further analysis and a rulemaking before it could be implemented by NMFS. Therefore, a change in the number of permits that can be held is not being considered in this final rule.

Comment 6: The commenter understands the need for designating a base permit associated with the vessel length in order to maintain the characteristics of the fleet. However, the commenter suggests relaxing the restriction that the permit be within 5 ft (1.52 m) of the vessel length to within 10 ft (3 m). The commenter feels this would allow fishermen to make slight modifications to their vessel while still maintaining the character of the fleet, not changing the amount of blackcod they could catch, and allowing vessels to make modifications to participate in other fisheries. In addition, relaxing the length would make it somewhat easier to buy and sell permits to match a vessel.

Response: The requirement that the vessel length be within 5 ft (1.52 m) of the length marked on the permit is currently in regulation at 50 CFR 660.334(c)(2)(i) and is not part of this rulemaking. 50 CFR 660.334(c)(2)(i) states that, ''A limited entry permit endorsed only for gear other than trawl gear may be registered for use with a vessel up to 5 ft (1.52 m) longer than, the same length as, or any length shorter than, the size endorsed on the existing permit without requiring a combination of permits under § 660.335 (b) or a change in the size endorsement.'' NMFS agrees that relaxing the limitations on the length (size) endorsement on the permit would increase flexibility. NMFS suggests that the commenter request that the Council analyze and revisit vessel size endorsements for the fixed gear fleet and consider making a recommendation to NMFS. If NMFS considers changes to the size endorsement requirement, it would do so through a separate rulemaking.

Comment 7: One commenter wrote in support of the restriction of opportunities to process sablefish at-sea as a mechanism for ensuring that shore-based processing plants have access to sablefish landings from the primary sablefish season. A second commenter wrote to express his concern that the prohibition on processing sablefish at-sea could constrain his practice of processing on-shore the sablefish that he catches. A third commenter wrote to ask for an exemption to the prohibition on processing sablefish at-sea for fishery participants who have purchased at-sea processing equipment since the November 1, 2000, cutoff date. This third commenter also complained that the fleet had not received adequate notice of this potential restriction prior to the publication of the proposed rule for this action.

Response: This final rule includes a prohibition on processing sablefish taken in the primary sablefish season at-sea unless the vessel has a sablefish at-sea processing exemption. In accordance with Amendment 14, exemptions to this prohibition will be provided to vessel owners who meet the qualification requirement of evidence of having processed: at least 2,000 lb (907.2 mt) round weight of frozen sablefish landed by the applicant vessel in any one calendar year in either 1998 or 1999, or between January 1, 2000 and November 1, 2000. As stated by the first commenter, the Council included this provision in Amendment 14 in order to maintain the character of the fishery, which included having the bulk of primary season sablefish being processed on shore.

NMFS agrees that this prohibition encourages shoreside processing. As stated in the Environmental Assessment for the sablefish permit stacking program (Pacific Council, March 2001), 'If the fishing season is extended and permits can be stacked, the extended and more flexible fishing opportunities may increase the probability that at-sea processing activity will occur (or expand). Processor vessels may be typical harvesting vessels using the harvesting crew as processor labor or they may be larger processors (catcher-processors and motherships) drawing their workers from noncoastal and coastal communities. This may result in

the relocation of processing jobs and income from coastal communities and shore-based processors to the processor vessels and the offloading ports. Such relocation of activities could have an adverse effect on coastal communities dependent on fisheries. Prohibition of at-sea processing would reduce the potential for relocation of processing jobs and income away from fishery dependent coastal communities and limit on-shore/off-shore allocation disputes. However, if at-sea freezing is the most efficient way to harvest and process sablefish, the provision would also result in the loss of some economic benefit to the nation. The Pacific Council viewed the benefits of preventing negative impacts on coastal communities and the equity and simplification that would result from establishing a clear line between processors and catcher vessels as outweighing potential efficiency concerns that may result.' NMFS agrees with the Pacific Council's cost/benefit analysis and is implementing the Pacific Council's recommendation to facilitate shoreside processing, thus assisting coastal fishing communities.

The second commenter wishes to continue processing his sablefish on shore. This regulation does not address shore-based processing of sablefish; therefore, his shore-based processing activities would not be affected by this regulation. Amendment 14 did not address limiting which shore-based processors would be permitted to process sablefish.

NMFS disagrees with the third commenter's statement that adequate notice of this restriction was not provided to the public. The prohibition on at-sea processing was discussed in 2001 as slated for future implementation in the advanced notice of proposed rulemaking (66 FR 17681, April 3, 2001) and in the proposed and final rules (66 FR 30869, June 8, 2001, and 66 FR 41152, August 7, 2001, respectively) implementing the initial portions of Amendment 14. In addition, implementation of the prohibition on at-sea processing of sablefish and the corresponding qualifying criteria was discussed in the Pacific Fishery Management Council's Spring 2001 (Volume 25, Number 1) and Summer 2001 (Volume 25, Number 2) newsletters.

Changes From the Proposed Rule

A definition for the term ''Grandfathered'' was added to the regulations in § 660.302, Definitions. Grandfathered or first generation, when referring to a limited entry sablefish-endorsed permit owner, means those permit owners who owned a sablefish-endorsed limited entry permit prior to November 1, 2000, and are, therefore, exempt from certain requirements of the sablefish permit stacking program within the parameters of the regulations at §§ 660.334 through 660.341 and § 660.372.

In § 660.334, Limited Entry Permits-endorsements, paragraph (d)(4)(vii) has been added to complement the same requirements listed at § 660.372, Fixed gear sablefish fishery management, paragraph (b)(4)(i). This requirement allows a person, partnership, or corporation that is exempt from the owner-on-board requirement to sell all of their permits, buy another sablefish-endorsed permit within up to a year from the date the last permit was approved for transfer, and retain their exemption from the owner-on-board requirements.

Classification

NMFS has determined that the final rule is consistent with the Pacific Coast Groundfish FMP and with the Magnuson-Stevens Act and other applicable laws.

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

NMFS prepared a final regulatory flexibility analysis (FRFA). The FRFA incorporates the IRFA, the supplemental IRFA (prepared by NMFS as a supplement to the IRFA prepared by the Council as part of the EA), a summary of the significant issues raised by the public comments in response to the supplemental IRFA, and NMFS responses to those comments, and a summary of the analyses completed to support the action. A copy of this analysis is available from the NMFS (see ADDRESSES). A summary of the analysis follows.

This rule affects only the owners of the 164 limited entry permits with sablefish endorsements. These permit holders use longline or pot gear to participate in the limited entry, primary sablefish fishery. All of the permit owners and vessels in the Pacific Coast, limited entry, fixed gear fleet are considered small entities under Small Business Administration (SBA) standards.

NMFS and the SBA have already considered whether Amendment 14 would significantly affect the small entities involved in the limited entry, fixed gear sablefish fishery. The agencies concluded that while Amendment 14 would have significant effects on the limited entry, fixed gear sablefish fleet, those effects would be positive improvements in the safety of the fishing season, and in business planning flexibility. These conclusions were described in the final rule to implement Amendment 14 for the 2001 fishing season (August 7, 2001, 66 FR 41152) and in the Final Regulatory Flexibility Analysis prepared for that rule (July 19, 2001).

The regulatory changes implemented in this final rule follow out of the regulations implementing Amendment 14 (August 7, 2001, final rule) for 2007 and beyond. The regulatory changes in the August 7, 2001, final rule brought 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. It allowed participants with greater harvest capacity to better match their sablefish cumulative limits with individual vessel capacity, it reduced overall primary fishery capacity, and it allowed the fishermen to use the longer season to fish more selectively and to increase their incomes by improving the quality of their ex-vessel product.

The regulatory changes implemented in this rule require permit owners and permit holders to document their ownership interests in sablefish-endorsed limited entry permits and are expected to have no effect on permit owners and permit holders beyond the time required to complete that documentation. The owner-on-board requirement will not affect the fishing behavior of persons who owned sablefish-endorsed permits before November 1, 2000, and will only affect those who consider purchasing permits after that time in that persons who do not wish to participate in fishing activities aboard a vessel may not wish to purchase sablefish-endorsed permits. Prohibiting vessels from processing sablefish at sea, if they do not meet minimum frozen sablefish historic landing requirements, is expected to simply maintain current sablefish landing and processing practices for both fishers and processors. This prohibition should, therefore, ensure that shore-based processors will continue to receive business from sablefish harvesters. Certification of current sablefish landings on a permit when conducting a mid-season permit transfer to another person is not expected to have any effect on permit owners or holders beyond the time required to complete the documentation. Defining the term ''base permit'' consistent with the FMP is not expected to have any effect on any participant in the groundfish fishery because it is only an administrative change. This final rule is also not

expected to have any effect on the 66 limited entry, fixed gear permit holders without sablefish endorsements because this program only applies to sablefish fishery participants with sablefish endorsements (i.e., primary sablefish fishery participants).

The criteria used to evaluate whether this final rule imposes ''significant economic impacts'' are disproportionality and profitability. Disproportionality means that the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities. Profitability means that the regulation significantly reduces profit for a substantial number of small entities. These criteria relate to the basic purpose of the RFA, i.e., to consider the effect of regulations on small businesses and other small entities. This final rule will not impose disproportionate effects between small and large business entities because all limited entry fixed gear vessels, including the sablefish endorsed vessels affected by this rule, are small business entities. As described in the above paragraph, Amendment 14 to the FMP and implementing regulations, including the August 7, 2001, final rule, increased business planning flexibility and profitability overall for the affected small businesses. This final rule further implements provisions of Amendment 14, making the regulations more enforceable and maintaining the small business character of the fleet. Therefore, this final rule is not expected to change the overall increased profitability of the fleet gained through the August 7, 2001, final rule. However, the owner-on-board requirement may decrease the overall profitability gained from implementation of the initial permit stacking provisions from Amendment 14. An economic analysis of the owner-on-board provision from the supplemental IRFA (see **ADDRESSES**) shows that the owner-on-board requirement may cost second generation permit owners approximately $40,400 per person per year or approximately $15 million in lost income for all second generation permit owners, collectively discounted over a 20–year period. In addition, the permit value may decrease over time due to the reduced flexibility associated with use of the permit. Overall, when considering all of the provisions associated with Amendment 14, those implemented with the August 7, 2001, final rule and those implemented through this rulemaking, profitability is still expected to increase over the previous sablefish 3–tier management system.

The actions being implemented in this document are not expected to have significant impacts on small entities. Seven public comments were received on the proposed rule. None of these comments specifically addressed the IRFA. Comments 3, 4, and 7 in the preamble pertain to the economic impacts which were analyzed in the IRFA and FRFA. Responses to these comments were provided earlier in the preamble to this final rule.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a public notice that also serves as small entity compliance guide (the guide) was prepared. The guide and final rule will be sent to all holders of permits for the limited entry fixed gear sablefish fishery. Copies of this final rule and the guide are available from the NMFS Northwest Regional Office (see **ADDRESSES**) and are available on our website at *www.nwr.noaa.gov* (Click on ''Groundfish & Halibut,'' then on ''Public Notices'').

The Council prepared an EA for Amendment 14 and the Assistant Administrator (AA) concluded that there will be no significant impact on the human environment as a result of this final rule. A copy of the EA is available from the Council (see **ADDRESSES**). In the EA/RIR prepared by the Council for this action, two main alternatives were considered, a no action alternative and a permit stacking regime alternative. The topics considered under each of these alternatives were permit stacking, accumulation, season length, at-sea processing, permit ownership/owner-on-board, and foreign control. Under the no action alternative, the primary limited entry, fixed gear sablefish fishery would continue under the 3–tier management program, with one permit associated with each participating vessel. In addition, permit stacking would not be allowed, the number of permits owned would not be limited, the season length would be 9–10 days and would likely shorten over time, vessels without sablefish endorsements would not be allowed to fish during the primary season, at-sea processing would be permitted, permit owners would not be required to be onboard their vessel during fishing operations, and any legal entity allowed to own a U.S. fishing vessel may own a permit.

Under the permit stacking regime alternative, 12 provisions, many of which include suboptions, were considered for the topics (permit stacking, accumulation, season length, etc.). Thus, the permit stacking regime alternative consists of many sub-alternatives, depending on the combination of provisions and suboptions adopted by the Council. Provisions 1 (allow a basic permit stacking program), 2 (gear usage), 4 (unstacking permits), and 8 (stacking non-sablefish limits and sablefish daily trip limits) address permit stacking. Provision 3 (accumulation limits) addresses accumulation. Provisions 5 (season duration), 9 (opportunities for unendorsed vessels), 11 (advanced notice of landings), and 12 (stacking deadline) address season length. Provision 6 (processing prohibition and freezer vessel length) addresses at-sea processing. Provision 7 (individual ownership only and owner-on-board requirement) addresses permit ownership/owner-on-board. Provision 10 (U.S. citizenship requirement) addresses foreign control. As mentioned previously, the final rule for Amendment 14 implemented most of these provisions. This final rule would implement parts of the following provisions: 2, 6, and 7. The preferred alternative recommended by the Council and implemented by NMFS was the permit stacking regime alternative with only certain options within each provisions being adopted as preferred.

The preferred alternative was selected because it best met the objectives of the action, which for the provisions implemented through this action (i.e., provisions 2, 6, and 7) included directing benefits towards fishing communities and preventing excessive concentration of harvest privileges. The EA/RIR for this action reviewed alternatives for their economic impacts. Of the provisions that would be implemented by this action, only provisions 6 and 7 may have economic effects. Provision 6 may prevent economic efficiencies from developing by restricting at-sea processing to vessels that had processed at-sea prior to November 1, 2000, and may limit a rise in permit prices from what they would have been if at-sea processing were allowed. Provision 7 may reduce flexibility, which may in turn reduce efficiency and limit the rise in permit prices compared to a regime where owner-on-board were not required and

permits were not limited to ownership by individuals.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA,) which has been approved by the Office of Management and Budget (OMB) under control number 0648–0203. Public reporting burden to determine ownership interests is estimated to average 0.5 hour 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, or approximately $8.51 per respondent for the respondent's time. Public reporting burden for the provision to add a not-listed spouse as permit co-owner is estimated to average 0.33 hour 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, or approximately $5.62 per respondent for the respondent's time. Public reporting burden for mid-season transfers of sablefish-endorsed permits is estimated to average 0.5 hour 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, or approximately $8.51 per respondent for the respondent's time. Public reporting burden for the sablefish at-sea processing exemption is estimated to average 0.5 hour 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, or approximately $8.51 per respondent for the respondent's time. 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 e-mail to *David_Rostker@omb.eop.gov,* or fax to 202–395–7285.

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

List of Subjects in 50 CFR Part 660

Fishing, Fisheries, and Indian fisheries.

Dated: February 24, 2006.

John Oliver,

Deputy Assistant Administrator for Operations, 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, the definition for ''Permit holder'' is revised, and new definitions for ''Base permit,'' ''Change in partnership or corporation,'' ''Corporation,'' ''Grandfathered,'' ''Partnership,'' ''Spouse,'' and ''Stacking'' are added in alphabetical order to read as follows:

§ 660.302 Definitions.

* * * * *

Base permit, with respect to a limited entry permit stacking program, means a limited entry permit described at § 660.333(a) registered for use with a vessel that meets the permit length endorsement requirements appropriate to that vessel, as described at § 660.334(c).

* * * * *

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

* * * * *

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

* * * * *

Grandfathered or first generation, when referring to a limited entry sablefish-endorsed permit owner, means those permit owners who owned a sablefish-endorsed limited entry permit prior to November 1, 2000, and are, therefore, exempt from certain requirements of the sablefish permit stacking program within the parameters of the regulations at §§ 660.334 through 660.341 and § 660.372.

* * * * *

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

* * * * *

Permit holder means a vessel owner as identified on the United States Coast Guard form 1270 or state motor vehicle licensing document.

* * * * *

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

* * * * *

Stacking is the practice of registering more than one limited entry permit for use with a single vessel (See § 660.335(c)).

* * * * *

■ 3. In § 660.303, paragraph (c) is revised to read as follows:

§ 660.303 Reporting and recordkeeping.

* * * * *

(c) Any person landing groundfish must retain on board the vessel from which groundfish is landed, and provide to an authorized officer upon request, copies of any and all reports of groundfish landings containing all data, and in the exact manner, required by the applicable state law throughout the cumulative limit period during which a landing occurred and for 15 days thereafter. For participants in the primary sablefish season (detailed at § 660.372(b)), the cumulative limit period to which this requirement applies is April 1 through October 31.

* * * * *

■ 4. In § 660.306, paragraph (b)(3) is added and paragraphs (e) and (g)(2) are revised to read as follows:

§ 660.306 Prohibitions.

* * * * *

(b) * * *

(3) Fail to retain on board a vessel from which sablefish caught in the primary sablefish season is landed, and provide to an authorized officer upon request, copies of any and all reports of sablefish landings against the sablefish endorsed permit's tier limit, or receipts

containing all data, and made in the exact manner required by the applicable state law throughout the primary sablefish season during which such landings occurred and for 15 days thereafter.

* * * * *

(e) *Fixed gear sablefish fisheries.* (1) Take, retain, possess or land sablefish under the cumulative limits provided for the primary limited entry, fixed gear sablefish season, described in § 660.372(b), from a vessel that is not registered to a limited entry permit with a sablefish endorsement.

(2) Beginning January 1, 2007, take, retain, possess or land sablefish in the primary sablefish season described at § 660.372(b) unless the owner of the limited entry permit registered for use with that vessel and authorizing the vessel to participate in the primary sablefish season is on board that vessel. Exceptions to this prohibition are provided at § 660.372(b)(4)(i) and (ii).

(3) Beginning January 1, 2007, process sablefish taken at-sea in the limited entry primary sablefish fishery defined at § 660.372(b), from a vessel that does not have a sablefish at-sea processing exemption, defined at § 660.334(e).

* * * * *

(g) * * *

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

* * * * *

■ 5. In § 660.334, paragraph (e) is redesignated as paragraph (f), and is revised; paragraphs (c)(3), (d)(4)(ii) and (iii) are revised; and paragraphs (d)(4)(iv) through (vii) and new paragraph (e) are added to read as follows:

§ 660.334 Limited entry permits endorsements.

* * * * *

(c) * * *

(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), at least one of the permits must meet the size requirements of those sections. The permit that meets the size requirements of those sections is considered the vessel's ''base'' permit, as defined in § 660.302. Beginning in the Fall of 2006 with the limited entry permit renewal process (§ 660.335(a)), if more than one permit registered for use with the vessel has an appropriate length endorsement for that vessel, NMFS SFD will designate a base permit by selecting the permit that has been registered to the vessel for the longest time. If the permit owner objects to NMFS's selection of the base permit, the permit owner may send a letter to NMFS SFD requesting the change and the reasons for the request. If the permit requested to be changed to the base permit is appropriate for the length of the vessel as provided for in paragraph (c)(2)(i) of this section, NMFS SFD will reissue the permit with the new base permit. Any additional permits that are stacked for use with a vessel participating in the limited entry primary fixed gear sablefish fishery may be registered for use with a vessel even if the vessel is more than 5 ft (1.5 m) longer or shorter than the size endorsed on the permit.

* * * * *

(d) * * *

(4) * * *

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

(iii) A partnership or corporation will lose the exemptions provided in paragraphs (d)(4)(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 is defined at § 660.302. A change in the partnership or corporation must be reported to SFD within 15 calendar days of the addition of a new shareholder or partner.

(iv) During 2006 when a permit's ownership interest is requested for the first time, NMFS anticipates sending a form to legally recognized corporations and partnerships (i.e., permit owners or holders that do not include only individual's names) that currently own or hold sablefish-endorsed permits that requests a listing of the names of all shareholders or partners as of November 1, 2000, and a listing of that same information as of the current date in 2006. Applicants will be provided at least 60 calendar days to submit completed applications. If a corporation or partnership fails to return the completed form by the deadline date of July 1, 2006, NMFS will send a second written notice to delinquent entities requesting the completed form by a revised deadline date of August 1, 2006. If the permit owning or holding entity fails to return the completed form by that second date, August 1, 2006, NMFS will void their existing permit(s) and reissue the permit(s) with a vessel registration given as ''unidentified'' until such time that the completed form is provided to NMFS. For the 2007 fishing year and beyond, any partnership or corporation with any ownership interest in or that holds a limited entry permit with a sablefish endorsement shall document the extent of that ownership interest or the individuals that hold the permit with the SFD via the Identification of Ownership Interest Form sent to the permit owner through the annual permit renewal process defined at § 660.335(a) and whenever a change in permit owner, permit holder, and/or vessel registration occurs as defined at § 660.335(d) and (e). SFD will not renew a sablefish-endorsed limited entry permit through the annual renewal process described at § 660.335(a) or approve a change in permit owner, permit holder, and/or vessel registration unless the Identification of Ownership Interest Form has been completed. Further, if SFD discovers through review of the Identification of Ownership Interest Form that an individual person, partnership, or corporation owns or holds more than 3 permits and is not authorized to do so under paragraph (d)(4)(ii) of this section, the individual person, partnership or corporation will be notified and the permits owned or held by that individual person, partnership, or corporation will be void and reissued with the vessel status as ''unidentified'' until the permit owner owns and/or holds a quantity of permits appropriate

to the restrictions and requirements described in paragraph (d)(4)(ii) of this section. If SFD discovers through review of the Identification of Ownership Interest Form that a partnership or corporation has had a change in membership since November 1, 2000, as described in paragraph (d)(4)(iii) of this section, the partnership or corporation will be notified, SFD will void any existing permits, and reissue any permits owned and/or held by that partnership or corporation in ''unidentified'' status with respect to vessel registration until the partnership or corporation is able to transfer those permits to persons authorized under this section to own sablefish-endorsed limited entry permits.

(v) For permit owners with one individual listed and who were married as of November 1, 2000, and who wish to add their spouse as co-owner on their permit(s), NMFS will accept corrections to NMFS' permit ownership records. Permit owners may add a not-listed spouse as a co-owner without losing their exemption from the owner-on-board requirements (i.e., grandfathered status). Their new grandfathered status will be as a partnership, as defined at § 660.302 which includes married couples. Individual permit owners will lose their individual grandfathered status when they add their not-listed spouse unless they also owned at least one permit as an individual and did not retroactively add a spouse as co-owner on that permit. In cases where married couples are listed as co-owners of the same permit, both individuals will be counted as owning one permit each and will have grandfathered status as a partnership. An individual within the married couple will not, however, be able to retain their exemption from owner-on-board requirements if they choose to buy another permit as an individual and did not own a permit as an individual as of the control date in NMFS ''corrected'' records (i.e., NMFS records after allowing a not-listed spouse to be added as co-owner). Members of partnerships and corporations will not be allowed to add their spouses to the corporate ownership listing as of November 1, 2000, for purposes of exempting them from the owner-on-board requirements. NMFS will send a form to permit owners with one individual listed on the permit as of November 1, 2000, to allow married individuals who wish to declare their spouses as having permit ownership interest as of November 1, 2000. Applicants will be required to submit a copy of their marriage certificate as evidence of marriage. Applicants will be provided at least 60 calendar days to submit an application to add a spouse as co-owner. Failure to return the completed form to NMFS SFD by July 1, 2006, will result in the individual listed on the permit in SFD records as of November 1, 2000, remaining on the permit. SFD will not accept any declarations to add a spouse as co-owner for couples married as of November 1, 2000, postmarked after the July 1, 2006, deadline.

(vi) For an individual person, partnership, or corporation that qualified for the owner-on-board exemption, but later divested their interest in a permit or permits, they may retain rights to an owner-on-board exemption as long as that individual person, partnership, or corporation obtains another permit by March 2, 2007. An individual person, partnership or corporation could only obtain a permit if it has not added or changed individuals since November 1, 2000, excluding individuals that have left the partnership or corporation or that have died. NMFS will send out a letter to all individuals, partnerships or corporations who owned a permit as of November 1, 2000, and who no longer own a permit to notify them that they would qualify as a grandfathered permit owner if they choose to buy a permit by March 2, 2007.

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

(e) *Sablefish at-sea processing prohibition and exemption*—(1) *General.* Beginning January 1, 2007, vessels are prohibited from processing sablefish at sea that were caught in the primary sablefish fishery without sablefish at-sea processing exemptions at § 660.306(e)(3). A permit and/or vessel owner may get an exemption to this prohibition if his/her vessel meets the exemption qualifying criteria provided in paragraph (e)(2) of this section. The sablefish at-sea processing exemption is issued to a particular vessel and the permit and/or vessel owner who requested the exemption. The exemption is not part of the limited entry permit. The exemption is not transferable to any other vessel, vessel owner, or permit owner for any reason. The sablefish at-sea processing exemption will expire upon transfer of the vessel to a new owner or if the vessel is totally lost, as defined at § 660.302.

(2) *Qualifying criteria.* A sablefish at-sea processing exemption will be issued to any vessel registered for use with a sablefish-endorsed limited entry permit that meets the sablefish at-sea processing exemption qualifying criteria and for which the owner submits a timely application. The qualifying criteria for a sablefish at-sea processing exemption are: at least 2,000 lb (907.2 mt), round weight, of frozen sablefish landed by the applicant vessel during any one calendar year in either 1998 or 1999, or between January 1 and November 1, 2000. The best evidence of a vessel having met these qualifying criteria will be receipts from frozen product buyers or exporters, accompanied by the state fish tickets or landings receipts appropriate to the frozen product. Documentation showing investment in freezer equipment without also showing evidence of how poundage qualifications have been met is not sufficient evidence to qualify a vessel for a sablefish at-sea processing exemption. All landings of sablefish must have occurred during the regular and/or mop-up seasons and must have been harvested in waters managed under this part. Sablefish taken in tribal set aside fisheries or taken outside of the fishery management area, as defined at § 660.302, does not meet the qualifying criteria.

(3) *Issuance process for sablefish at-sea processing exemptions.*

(i) The SFD will mail sablefish at-sea processing exemption applications to all limited entry permit owners with sablefish endorsements and/or fixed gear vessel owners and will make those applications available online at *www.nwr.noaa.gov/Groundfish-Halibut/Fisheries-Permits/index.cfm*. Permit and/or vessel owners will have at least 60 calendar days to submit applications. A permit and/or vessel owner who believes that their vessel may qualify for the sablefish at-sea processing exemption will have until July 1, 2006, to submit evidence showing how their vessel has met the qualifying criteria described in this section at paragraph (e)(2) of this section. Paragraph (e)(4) of this section sets out the relevant evidentiary standards and burden of proof. SFD will not accept applications for the sablefish at-sea processing exemption postmarked after July 1, 2006.

(ii) Within 30 calendar days of the deadline or after receipt of a complete application, the SFD will notify applicants by letter of determination whether their vessel qualifies for the sablefish at-sea processing exemption. A person who has been notified by the SFD that their vessel qualifies for a sablefish at-sea processing exemption will be issued an exemption letter by SFD that must be onboard the vessel at all times. After the deadline for the receipt of applications has expired and all applications processed, SFD will publish a list of vessels that qualified for the sablefish at-sea processing exemption in the **Federal Register**.

(iii) If a permit and/or vessel owner chooses to file an appeal of the determination under paragraph (e)(3)(ii) of this section, the appeal must be filed with the Regional Administrator within 30 calendar days of the issuance of the letter of determination. The appeal must be in writing and must allege facts or circumstances, and include credible evidence demonstrating why the vessel qualifies for a sablefish at-sea processing exemption. The appeal of a denial of an application for a sablefish at-sea processing exemption will not be referred to the Council for a recommendation, nor will any appeals be accepted by SFD after September 1, 2006.

(iv) Absent good cause for further delay, the Regional Administrator will issue a written decision on the appeal within 30 calendar days of receipt of the appeal. The Regional Administrator's decision is the final administrative decision of the Department of Commerce as of the date of the decision.

(4) *Evidence and burden of proof.* A permit and/or vessel owner applying for issuance of a sablefish at-sea processing exemption has the burden to submit evidence to prove that qualification requirements are met. The following evidentiary standards apply:

(i) A certified copy of the current vessel document (USCG or state) is the best evidence of vessel ownership and LOA.

(ii) A certified copy of a state fish receiving ticket is the best evidence of a landing, and of the type of gear used.

(iii) A copy of a written receipt indicating the name of their buyer, the date, and a description of the product form and the amount of sablefish landed is the best evidence of the commercial transfer of frozen sablefish product.

(iv) Such other relevant, credible evidence as the applicant may submit, or the SFD or the Regional Administrator request or acquire, may also be considered.

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

* * * * *

■ 6. In § 660.335, paragraphs (g)(2) through (g)(6) are redesignated as paragraphs (g)(3) through (g)(7); paragraphs (c), (d)(1), (e)(1), and (e)(3) are revised; and new paragraphs (a)(4), (e)(4), and (g)(2) are added to read as follows:

§ 660.335 Limited entry permits renewal, combination, stacking, change of permit owner or holder, and transfer.

(a) * * *

(4) Limited entry permits with sablefish endorsements, as described at § 660.334(d), will not be renewed until SFD has received complete documentation of permit ownership as required under § 660.334(d)(4)(iv).

* * * * *

(c) *Stacking limited entry permits.* ''Stacking'' limited entry permits, as defined at § 660.302, 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 3 limited entry permits with sablefish endorsements may be registered for use with a single vessel during the primary sablefish season described at § 660.372. Privileges, responsibilities, and restrictions associated with stacking permits to participate in the primary sablefish fishery are described at § 660.372 and at § 660.334(d).

(d) * * *

(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)(4). Change in permit owner and/or permit holder applications must be submitted to SFD with the appropriate documentation described at § 660.335(g).

* * * * *

(3) *Sablefish-endorsed permits.* Beginning January 1, 2007, if a permit owner submits an application to transfer a sablefish-endorsed limited entry permit to a new permit owner or holder (transferee) during the primary sablefish season described at § 660.372(b) (generally April 1 through October 31), the initial permit owner (transferor) must certify on the application form the cumulative quantity, in round weight, of primary season sablefish landed against that permit as of the application signature date for the then current primary season. The transferee must sign the application form acknowledging the amount of landings to date given by the transferor. This certified amount should match the total amount of primary season sablefish landings reported on state fish tickets. As required at § 660.303(c), any person landing sablefish must retain on board the vessel from which sablefish is landed, and provide to an authorized officer upon request, copies of any and all reports of sablefish landings from the primary season containing all data, and in the exact manner, required by the applicable state law throughout the primary sablefish season during which a landing occurred and for 15 days thereafter.

* * * * *

(e) * * *

(1) *General.* A permit may not be used with any vessel other than the vessel registered to that permit. For purposes of this section, a permit transfer occurs when, through SFD, a permit owner registers a limited entry permit for use with a new vessel. Permit transfer applications must be submitted to SFD with the appropriate documentation described at § 660.335(g). Upon receipt of a complete application, and following review and approval of the application, the SFD will reissue the permit registered to the new vessel. Applications to transfer limited entry permits with sablefish endorsements, as described at § 660.334(d), will not be approved until SFD has received complete documentation of permit ownership as required under § 660.334(d)(4)(iv).

* * * * *

(3) *Effective date.* Changes in vessel registration on permits will take effect no sooner than the first day of the next major limited entry cumulative limit period following the date that SFD receives the signed permit transfer form and the original limited entry permit. No transfer is effective until the limited entry permit has been reissued as registered with the new vessel.

(4) *Sablefish-endorsed permits.* Beginning January 1, 2007, if a permit owner submits an application to register a sablefish-endorsed limited entry

permit to a new vessel during the primary sablefish season described at § 660.372(b) (generally April 1 through October 31), the initial permit owner (transferor) must certify on the application form the cumulative quantity, in round weight, of primary season sablefish landed against that permit as of the application signature date for the then current primary season. The new permit owner or holder (transferee) associated with the new vessel must sign the application form acknowledging the amount of landings to date given by the transferor. This certified amount should match the total amount of primary season sablefish landings reported on state fish tickets. As required at § 660.303(c)), any person landing sablefish must retain on board the vessel from which sablefish is landed, and provide to an authorized officer upon request, copies of any and all reports of sablefish landings from the primary season containing all data, and in the exact manner, required by the applicable state law throughout the primary sablefish season during which a landing occurred and for 15 days thereafter.

* * * * *

(g) *Application and supplemental documentation.* * * *

(2) For a request to change a vessel registration and/or change in permit ownership or permit holder for sablefish-endorsed permits with a tier assignment for which a corporation or partnership is listed as permit owner and/or holder, an Identification of Ownership Interest Form must be completed and included with the application form.

* * * * *

■ 7. In § 660.372, paragraph (b)(1) is revised and paragraph (b)(4) is added to read as follows:

§ 660.372 Fixed gear sablefish fishery management.

* * * * *

(b) * * *

(1) *Season dates.* North of 36E N. lat., the primary sablefish season for the limited entry, fixed gear, sablefish-endorsed vessels begins at 12 noon l.t. on April 1 and ends at 12 noon l.t. on October 31, unless otherwise announced by the Regional Administrator through the routine management measures process described at § 660.370(c).

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(4) *Owner-on-board Requirement.* Beginning January 1, 2007, any person who owns or has ownership interest in a limited entry permit with a sablefish endorsement, as described at § 660.334(d), must be on board the vessel registered for use with that permit at any time that the vessel has sablefish on board the vessel that count toward that permit's cumulative sablefish landing limit. This person must carry government issued photo identification while aboard the vessel. A permit owner is not obligated to be on board the vessel registered for use with the sablefish-endorsed limited entry permit during the primary sablefish season if:

(i) The person, partnership or corporation had ownership interest in a limited entry permit with a sablefish endorsement prior to November 1, 2000. A person who has ownership interest in a partnership or corporation that owned a sablefish-endorsed permit as of November 1, 2000, but who did not individually own a sablefish-endorsed limited entry permit as of November 1, 2000, is not exempt from the owner-on-board requirement when he/she leaves the partnership or corporation and purchases another permit individually. A person, partnership, or corporation that is exempt from the owner-on-board requirement may sell all of their permits, buy another sablefish-endorsed permit within up to a year from the date the last permit was approved for transfer, and retain their exemption from the owner-on-board requirements. Additionally, a person, partnership, or corporation that qualified for the owner-on-board exemption, but later divested their interest in a permit or permits, may retain rights to an owner-on-board exemption as long as that person, partnership, or corporation purchases another permit by March 2, 2007. A person, partnership or corporation could only purchase a permit if it has not added or changed individuals since November 1, 2000, excluding individuals that have left the partnership or corporation, or that have died.

(ii) The person who owns or who has ownership interest in a sablefish-endorsed limited entry permit is prevented from being on board a fishing vessel because the person died, is ill, or is injured. The person requesting the exemption must send a letter to NMFS requesting an exemption from the owner-on-board requirements, with appropriate evidence as described at § 660.372(b)(4)(ii)(A) or (B). All emergency exemptions for death, injury, or illness will be evaluated by NMFS and a decision will be made in writing to the permit owner within 60 calendar days of receipt of the original exemption request.

(A) Evidence of death of the permit owner shall be provided to NMFS in the form of a copy of a death certificate. In the interim before the estate is settled, if the deceased permit owner was subject to the owner-on-board requirements, the estate of the deceased permit owner may send a letter to NMFS with a copy of the death certificate, requesting an exemption from the owner-on-board requirements. An exemption due to death of the permit owner will be effective only until such time that the estate of the deceased permit owner has transferred the deceased permit owner's permit to a beneficiary or up to three years after the date of death as proven by a death certificate, whichever is earlier. An exemption from the owner-on-board requirements will be conveyed in a letter from NMFS to the estate of the permit owner and is required to be on the vessel during fishing operations.

(B) Evidence of illness or injury that prevents the permit owner from participating in the fishery shall be provided to NMFS in the form of a letter from a certified medical practitioner. This letter must detail the relevant medical conditions of the permit owner and how those conditions prevent the permit owner from being onboard a fishing vessel during the primary season. An exemption due to injury or illness will be effective only for the calendar year of the request for exemption, and will not be granted for more than three consecutive or total years. NMFS will consider any exemption granted for less than 12 months in a year to count as one year against the 3–year cap. In order to extend an emergency medical exemption for a succeeding year, the permit owner must submit a new request and provide documentation from a certified medical practitioner detailing why the permit owner is still unable to be onboard a fishing vessel. An emergency exemption will be conveyed in a letter from NMFS to the permit owner and is required to be on the vessel during fishing operations.

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