

subject to penalty for failure to comply with, a collection-of-information requirement subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number. This final rule contains revisions to collection-of-information requirements subject to the PRA under OMB Control Numbers 0648-0601 and 0648-0212.

The requirements related to the limited access mackerel program have been approved under the MSB Amendment 10 Family of Forms (OMB Control No. 0648-0601). Under the approved limited access program, and pursuant to regulations at 50 CFR 648.4, vessel owners are required to submit to NMFS application materials to demonstrate their eligibility for a limited access permit. The public burden for the application requirement pertaining to the limited access program is estimated to average 45 minutes per application, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Only 410 vessels are expected to qualify and consequently renew their limited access mackerel permits via the renewal application each year. The renewal application is estimated to take 30 minutes on average to complete. Up to 30 applicants are expected to appeal the denial of their permit application. The appeals process is estimated to take an average of 2 hours to complete. Vessels that qualify for a Tier 1 or Tier 2 mackerel permit would be required to submit documentation of hold volume size. The Council estimated that 74 vessels would qualify for either a Tier 1 or Tier 2 limited access mackerel permit. Tier 1 and 2 vessel owners will experience a time burden due to this requirement in the form of travel time to/from a certified marine surveyor. It is not possible to estimate a time burden associated with obtaining a hold volume measurement, as vessels would have to travel varying distances to visit certified marine surveyors. Travel time to a marine surveyor is not an information collection burden, so is not considered a response.

Completing a replacement or upgrade application requires an estimated 3 hours per response. It is estimated that no more than 40 of 410 vessels possessing these permits will request a vessel replacement or upgrade annually. Completion of a CPH application requires an estimated 30 minutes per response. It is estimated that no more than 30 of the 410 vessels possessing

these limited access permits will request a CPH annually.

The regulations at 50 CFR 648.7 modify the VTR requirement for Tier 3 mackerel vessels. All mackerel vessels are currently required to submit VTRs on a monthly basis; this requirement is currently approved under the Northeast Region Logbook Family of Forms (OMB Control No. 0648-0212). Amendment 11 will require vessels issued a Tier 3 mackerel permit to submit VTRs on a weekly basis. A change request for this requirement has been approved by OMB. The public burden for the revised VTR requirement is expected to average 5 minutes for each additional VTR submission.

Send comments on these burden estimates or any other aspects of these collections-of-information, including suggestions for reducing the burden, by mail to the Northeast Regional Office (see **ADDRESSES**), by email to *OIRA_Submission@omb.eop.gov* or by fax to (202) 395-7285.

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

Dated: November 28, 2011.

Samuel D. Rauch III,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 110616336-1627-02]

RIN 0648-BB13

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Trawl Rationalization Program; Program Improvement and Enhancement; Amendment 21-1

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

ACTION: Final rule.

SUMMARY: This action implements revisions to the Pacific coast groundfish trawl rationalization program (program), a catch share program, and includes regulations that affect all commercial sectors (limited entry trawl, limited entry fixed gear, and open access) managed under the Pacific Coast Groundfish Fishery Management Plan (FMP). This action includes regulatory

amendments to further implement Amendments 20 and 21 to the FMP and an FMP amendment to further revise Amendment 21 (called Amendment 21-1). This action includes, but is not limited to: Revisions to the Pacific halibut trawl bycatch mortality limit; clarification that Amendment 21 supersedes limited entry/open access allocations for certain groundfish species; revisions to the observer coverage requirement while a vessel is in port and before the offload is complete; revisions to the electronic fish ticket reporting requirements; revisions to the first receiver site license requirement; further clarification on moving between limited entry and open access fisheries; a process for end-of-the-year vessel account reconciliation; and an exemption from processing at sea for qualified participants in the Shorebased Individual Fishing Quota (IFQ) Program.

DATES: This rule is effective January 1, 2012.

ADDRESSES: Background information and documents, including Amendment 21-1 and the Environmental Assessment (EA) for this action, are available at the Pacific Fishery Management Council's Web site at <http://www.pcouncil.org/>. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is summarized in the Classification section of this final rule. Copies of the FRFA and the Small Entity Compliance Guide are available from William W. Stelle, Jr., Regional Administrator, Northwest 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 also available on the Northwest Regional Office Web site at <http://www.nwr.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 William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE, Seattle, WA 98115-0070, and to OMB by email to *OIRA_Submission@omb.eop.gov*, or fax to (202) 395-7285.

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

SUPPLEMENTARY INFORMATION:

Background

In January 2011, NMFS implemented a trawl rationalization program, a catch share program, for the Pacific coast groundfish fishery's trawl fleet. The

program was adopted through Amendment 20 to the FMP and consists of an IFQ program for the shorebased trawl fleet (including whiting and non-whiting fisheries); and cooperative (coop) programs for the at-sea mothership (MS) and catcher/processor (C/P) trawl fleets (whiting only).

Allocations to the limited entry trawl fleet for certain species were developed through a parallel process with Amendment 21 to the FMP.

On May 12, 2010 (75 FR 26702), NMFS published a notice of availability of Amendments 20 and 21, and—consistent with requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA)—made its decision to partially approve the amendments on August 9, 2010. Because of the complexity of Amendments 20 and 21, NMFS implemented them through multiple rulemakings. Over 2010, NMFS published three rulemakings related to the trawl rationalization program. The first was a final rule to collect ownership information from all potential participants in the program and to notify them of the databases that would be used for initial issuance and the date by which to make any changes to those databases (75 FR 4684, January 29, 2010). The second was a final rule to restructure the Pacific coast groundfish regulations, establish the allocations set forth under Amendment 21, and establish procedures for the initial issuance of permits, endorsements, quota share, and catch history assignments under the IFQ and coop programs (75 FR 60868, October 1, 2010; correction published 75 FR 67032, November 1, 2010). The third was a final rule to establish several of the program components required for implementation of the rationalized trawl fishery in January 2011, including IFQ gear switching provisions, details of observer requirements and first receiver catch monitor programs, first receiver site licenses, equipment requirements, catch weighing requirements, retention requirements in the Shorebased IFQ Program, quota share (QS) accounts, vessel accounts for use of quota pounds, requirements for coop permits and coop agreements, further tracking and monitoring components, and economic data collection requirements (75 FR 78344, December 15, 2010).

The regulations implementing the program became effective January 1, 2011; however, necessary tracking systems to make the program operational did not become active until January 11, 2011, the date fishing began under the new program. Since that time, the Pacific Fishery Management Council

(Council) and NMFS have been addressing implementation issues as they arise, some of which are the subject of this rule. This rule also includes items that are further revisions and refinements to the program to further implement Amendments 20 and 21, and corrects errors or old regulatory language that need to be corrected, revised, or made consistent with other sections of the regulations. Additionally, this rule includes some trailing actions for the program that the Council took final action at its June 2011 meeting. The trailing actions include an FMP amendment (Amendment 21-1) stating that Amendment 21 trawl/non-trawl allocations supersede the limited entry and open access allocations originally established in Amendment 6 for species listed in Amendment 21; an FMP amendment (Amendment 21-1) to revise the calculation of the Pacific halibut trawl bycatch mortality limit; a regulatory amendment to provide an exemption from the prohibition on processing groundfish at-sea for qualified participants in the Shorebased IFQ Program; a regulatory amendment for the adaptive management program (AMP) to extend the “pass-through” of non-whiting quota pounds through 2014 or until an AMP quota pound allocation process is established, whichever is earlier; and a regulatory amendment to allow a change in registration of a mothership catcher vessel (MS/CV) endorsement and its associated catch history assignment from one limited entry trawl endorsed permit to another. These trailing actions are discussed in more detail in the preamble to the proposed rule (76 FR 54888, September 2, 2011). Some of the provisions in this rule may affect all sectors of the commercial groundfish fishery (limited entry trawl, limited entry fixed gear, and open access), some provisions apply to several or all of the trawl programs (i.e., Shorebased IFQ Program, MS Coop Program, C/P Coop Program), while other details only affect one program.

NMFS published a notice of availability of Amendments 21-1 on August 15, 2011 (76 FR 50449). Consistent with requirements of the MSA, NMFS made its decision to approve Amendment 21-1 on November 10, 2011.

In addition to this rule, on August 30, 2011, NMFS published a correction to regulations for the trawl program to update erroneous cross references, outdated terms, and duplicate regulatory entries (76 FR 53833).

Additional rulemakings would follow in the future and include other operational components of the catch

share program, such as the requirements for new observer provider certification and an adaptive management program. NMFS is also planning a future “cost recovery” rule based on recommendations from the Council and expected to be implemented for January 2013.

Comments and Responses

NMFS solicited public comment on Amendment 21-1 (76 FR 50449, August 15, 2011) and on the proposed rule (76 FR 54888, September 2, 2011). The comment period for these notices ended October 14, 2011. Because these notices are related, the responses to public comments in this section of the preamble address Amendment 21-1 and the proposed rule.

NMFS received four letters of comments on the proposed rule and amendment submitted by individuals or organizations. The comment period was open during the September 2011 Council meeting. Comments presented to the Council are part of the record and were considered by the Council during its deliberation. In reviewing the proposed rule and amendment, NMFS considered the record as a whole.

Comment 1. NMFS received one comment stating the proposed rule and amendment had been reviewed and they had no comment.

Response. NMFS acknowledges this comment.

Comment 2. NMFS received one comment expressing concern that measures were in place to protect habitat, such as kelp beds where fish lay eggs, from trawl fishing.

Response. While this comment is not within the scope of this action, NMFS notes that it has implemented habitat protection measures in the Pacific coast groundfish fishery. NMFS has implemented several types of closed areas along the west coast that vary by gear type or purpose. Closed areas to protect essential fish habitat for all life stages of groundfish were implemented in 2006. These closed areas are called essential fish habitat conservation areas (EFHCAs). In addition, along the west coast, geographic areas defined by coordinates expressed in degrees latitude and longitude are closed to fishing by certain gear types, including bottom trawl gear. These areas are called groundfish conservation areas (GCAs) and include large coastwide closed areas to protect overfished rockfish, called rockfish conservation areas (RCAs). During the primary whiting season, certain areas are closed to fishing with midwater gear to protect salmon, which is caught as bycatch in the whiting fishery. Other closed areas

include large coastwide closed areas to protect overfished rockfish, called rockfish conservation areas (RCAs). During the primary whiting season, certain areas are closed to fishing with midwater gear to protect salmon, which is caught as bycatch in the whiting fishery. Other closed areas

can be implemented seasonally to slow bycatch in the whiting fishery.

In addition to closed areas to protect habitat from trawl gear, the trawl rationalization program allows limited entry trawl permit holders to switch from trawl to fixed gears to fish their quotas, which, in turn, reduces trawl impacts. It also allows nontrawl vessels to harvest the allocation to the trawl sector if they acquire a trawl permit and quota. These facts lead to the conclusion that potential adverse impacts from trawl gear could be expected to be lower under the trawl rationalization program than under previous management.

Comment 3. One commenter, the International Pacific Halibut Commission (IPHC), noted that there is ambiguity in NMFS's use of terminology describing halibut in the trawl fishery, especially given that it is illegal to retain halibut of any size. The commenter noted that NMFS's use of the terms 'legal', 'legal-sized', and 'sublegal-sized' halibut for the trawl fishery may no longer be appropriate given changes in the use of these terms by the IPHC, the management body that sets the allowable harvest of Pacific halibut. The IPHC recently moved to using more accurate terms such as O32 for halibut over 32 inches in total length, or U26 for halibut under 26 inches in total length. When the IPHC calculates total removals to determine the available yield, it now accounts for all fish greater than 26 inches (all O26). Previously, this calculation was for all O32 fish. Removals and mortality of U26 fish are still accounted for through reductions in the harvest rate on the exploitable stock.

Response. NMFS appreciates the IPHC bringing these changes to NMFS's attention. While NMFS acknowledges that language in Amendment 21-1 and in the implementing regulations could be revised to reflect the terms used by the IPHC, NMFS does not believe it is necessary at this stage in the rulemaking and public process.

NMFS interprets the terms 'legal' and 'legal-sized' to refer to fish with a total length of 32 inches and above and interprets 'sublegal-sized' to refer to fish with a total length under 32 inches, consistent with the description in the environmental assessment for this action. Through NMFS's approval of Amendment 21-1, NMFS requested a footnote be added to the FMP to clarify the use of the terms "legal-sized" and "sublegal-sized" halibut in this context. With this final rule, NMFS has also amended regulations at § 660.55(m) to make the use of the terms "legal sized" and "sublegal sized" halibut more clear by defining as halibut with a total length of 32 inches and above, or O32, and

halibut under 32 inches in total length, or U32, respectively. Provided the FMP and regulations are clear that the calculation of the trawl bycatch mortality limit is for legal-sized fish (i.e., 32 inches and above) that are converted to an amount for all sizes of halibut and that the trawl fishery bycatch report provided by NMFS Northwest Fisheries Science Center continues to provide halibut data sufficient to determine the proportion of trawl bycatch mortality that is 32 inches and above total length, NMFS can calculate the halibut trawl bycatch mortality limit. This rule only applies to the calculation of the trawl bycatch mortality limit, and does not affect the IPHC's calculations of available yield.

Comment 4. The IPHC commented that it supports NMFS's process for calculating the carryover of surplus individual bycatch quota (IBQ) pounds for Pacific halibut in a vessel account after the end of the fishing year. The IPHC stated that limiting the potential surplus to a maximum of 10 percent is reasonable. The IPHC stated that it expects the amount of surplus carryover from one year to the next for halibut to be minimal because of incentives to maximize groundfish harvest within available IBQ pounds.

Response. NMFS appreciates the IPHC's support and insights. NMFS notes that the carryover limit amount of 10 percent is not affected by this rule, but was implemented through a previous rulemaking (75 FR 78344, December 15, 2010). NMFS would like to further highlight a description in the preamble to the proposed rule under "QS Permits and Vessel Accounts" (76 FR 54888, 54895; September 2, 2011) regarding end-of-the-year vessel account reconciliation. The proposed rule preamble described and regulations at § 660.140(e)(5)(i) in this final rule implement a process where issuance of carryover of surplus occurs later in the following year after data are available to calculate the amount of carryover surplus (expected in spring of the following year).

Comment 5. Two commenters provided comment on the implications of the carryover of surplus IBQ pounds on the calculation of the trawl bycatch mortality limit. The Council's comment described its understanding of the carryover of surplus pounds for Pacific halibut managed by the IPHC. The IPHC referenced the Council's comment letter and stated that the Council's understanding of the carryover of surplus IBQ pounds is correct.

Response. NMFS appreciates receiving these comments. In the proposed rule (76 FR 54888, 54890;

September 2, 2011), NMFS specifically requested comment on the effect the carryover provision in the Shorebased IFQ Program would have on calculation of the trawl bycatch mortality limit in a subsequent year, if any. The Council submitted comments describing its understanding that the surplus carryover provision does not affect calculation of the trawl bycatch mortality limit; the IPHC stated that the Council's understanding is correct. This carryover of surplus pounds for Pacific halibut and the halibut trawl bycatch mortality limit is also mentioned under the section of the preamble titled "Items NMFS Requested Comment on in the Proposed Rule."

Comment 6. A comment provided by the Council described its understanding of provisions allowing for the carryover of surplus pounds in the Shorebased IFQ Program from one year to the next.

Response. NMFS appreciates the Council's comment regarding the issuance of carryover of surplus pounds for groundfish managed under the MSA. In the proposed rule, NMFS proposed that surplus carryover pounds be issued after NMFS has completed an end-of-the-year account reconciliation process, which would result in surplus carryover pounds being issued later in the year once data are available. As stated in the FMP Appendix E, the carryover provision must be consistent with the conservation requirements of the MSA. The Council comment notes that sector allocations are set such that harvest of all sectors in total would not be expected to exceed annual catch limits ("ACLs") established in accordance with the MSA. NMFS will continue to work with the Council to assure consistency with ACLs when issuing surplus carryover pounds for the Shorebased IFQ Program. With this final rule and consistent with the language in the FMP regarding the carryover provision, NMFS clarifies that any issuance of surplus carryover pounds will be to the extent allowed by the conservation requirements of the MSA. This provision for the carryover of surplus pounds is also mentioned under the section of the preamble titled "Changes from the Proposed Rule."

Items NMFS Requested Comment on in the Proposed Rule

NMFS specifically requested comment on several items in the proposed rule. NMFS received comments on some (e.g., see comments 5 and 6 above in the preamble), but not all of those items. Below, NMFS identifies each issue where NMFS specifically requested public comments, and indicates whether comments were

received. In instances where NMFS made changes to the proposed rule as a result of comments on items where comments were specifically requested, NMFS identified these changes in the section entitled "Changes from the Proposed Rule."

- *Moving Between Limited Entry and Open Access Fisheries*

In the proposed rule, NMFS specifically requested comment on the proposed changes to provisions regarding vessels moving between limited entry and open access fisheries and other sections of the regulations which may need further revisions. No comments were received and no changes were made from the proposed rule.

- *Crossover Provisions*

In the proposed rule, NMFS specifically requested comment on the proposed revisions to the crossover provisions and any implications they may have, especially for dual-endorsed limited entry permits. No comments were received and no changes were made from the proposed rule.

- *Observer and Catch Monitor Coverage at Offload*

In the proposed rule, NMFS specifically requested comment on whether catch monitor providers would have to change their insurance coverage for catch monitors to allow them to maintain coverage of the vessel in lieu of the observer while the vessel is in port. NMFS solicited public comment on whether this change would require catch monitor providers to have the increased insurance coverage provided by Maritime Liability insurance to cover "seamen's" claims under the Merchant Marine Act (Jones Act) and General Maritime Law (\$1 million minimum). No comments were received and no changes were made from the proposed rule.

- *New Process for IFQ First Receivers and Catch Monitors To Address Trucking/Transport*

In the proposed rule, NMFS specifically requested comment on regulations to implement a new process for first receivers and catch monitors to address transport away from the offload site. NMFS especially requested public comment on the changes regarding the process and submittal requirements for dock tickets and e-tickets. No comments were received and no changes were made from the proposed rule.

- *Exemption From Prohibition on Processing at Sea*

In the proposed rule, NMFS specifically requested comment on two aspects of this exemption: (1) An appropriate cut-off date for qualification for the exemption, and (2) a conversion factor for freezing or glazing non-whiting groundfish species. The cut-off date is described below in the section titled "Changes from the Proposed Rule." For the conversion factor, the Council's motion from its June 2011 meeting included a statement that "Regulatory language should also include an appropriate conversion factor and/or an appropriate process for calculating a conversion factor for glazed groundfish." In a letter to the Council (Agenda Item E.6.b, ODFW Letter (excerpt), June 2011), ODFW recommended a weight conversion factor that included a variable weight conversion factor in certain circumstances. When NMFS implemented weight conversion factors for the Shorebased IFQ Program, NMFS stated that the weight conversion factors used on electronic fish tickets (a Federal reporting requirement) must be a consistent coastwide value. In the preamble to the proposed rule published on August 31, 2010 (75 FR 53380), NMFS stated the reasons why a consistent coastwide value was necessary, including providing consistency in catch estimates between states, preventing artificial influences on individual landings choices, and benefiting NMFS's ability to track landings values. NMFS based the Federal weight conversion factors on published values. ODFW's proposed conversion factor did not provide a consistent value by species and, potentially, would not be a consistent value within a species for different size grades or volumes of fish. Because the online IFQ system automatically applies the weight conversion factor depending on the species condition code reported on the electronic fish ticket, a variable conversion factor is not practical. In addition, NMFS is not aware of any published values for glazed groundfish species nor of any consistent coastwide value used by the states for glazed groundfish species. NMFS specifically requested comment on this issue and received none. NMFS did not propose and at this time is not implementing a Federal weight conversion factor for freezing or glazing non-whiting groundfish species. The weight reported on the electronic fish ticket for glazed non-whiting groundfish should be the actual scale weight with no conversion factor applied. The states may continue

to have a state weight conversion factor for freezing and glazing on their state fish ticket.

- *First Receiver Site License*

In the proposed rule, NMFS specifically requested comment on a reasonable timeframe between an application for a first receiver site license and NMFS's conduct of a site inspection. To reduce the costs of running the program, NMFS considered whether to adopt a policy of batching site inspections to only conduct inspections in a particular state once a month or within 60 days of receiving an application. NMFS did not receive any public comment on this issue. But, the Council's Groundfish Advisory Subpanel (GAP) did provide comment to the Council on this issue stating that the first receiver should not have to wait beyond 60 days from the date the application was submitted for a site inspection and, if approved, issuance of a first receiver site license. For efficiency, NMFS announces that it will strive to the best of its ability to conduct site inspections in a timely fashion, not to exceed 60 days from the date NMFS received the application for a first receiver site license. This policy is internal guidance only and thus it is not codified in the regulations.

Changes From the Proposed Rule

All Trawl Programs

- *Threshold Rules for Annual Issuance of Allocation*

In the proposed rule, NMFS specifically requested comment on an alternate approach to the threshold rules for annual issuance of allocation. NMFS is setting a threshold above which it would not need to continue to run iterations redistributing the allocation for QS permits in the Shorebased IFQ Program or to MS coops or the non-coop fishery in the MS Coop Program. The Council motion on this issue and the proposed rule stated that NMFS' annual allocations must be equal to or greater than 99.99 percent, but not to exceed 100 percent. In the proposed rule, NMFS solicited public comments on an alternate approach as follows, "Rounding rules may affect distribution of the entire shorebased trawl allocation [or allocations to the mothership coop or non-coop fisheries]; NMFS will distribute such allocations to the maximum extent practicable, not to exceed the total allocation." NMFS suggested this alternative language to account for circumstances where despite NMFS' best efforts, it is unable to distribute allocations equal to or greater than 99.99 percent but no more

than 100 percent. Such a circumstance may occur, for instance, for quota pound distributions of IFQ species that have a very small shorebased trawl allocation, especially since quota pound distributions must be made in one pound increments. Under the alternate language, NMFS would still endeavor to distribute as much of the allocation as possible. NMFS received no comment on the alternate language. Accordingly, upon further consideration of the concerns described above and in the absence of any comments objecting to the alternate language, NMFS will implement the alternate language at § 660.140(d)(1)(ii) for the Shorebased IFQ Program and at § 660.150(c)(2) for the MS Coop Program.

Shorebased IFQ Program

- QS Permits and Vessel Accounts

In the proposed rule, NMFS specifically requested comment on whether a prohibition against fraudulent use of QS accounts or vessel accounts is needed. NMFS received no comment on this issue. Upon further consideration, NMFS has determined that this prohibition is redundant with other statutory and regulatory provisions and is not necessary, thus NMFS has removed it from § 660.112(b)(1)(xvi).

- Exemption From Prohibition on Processing at Sea

In the proposed rule, NMFS specifically requested comment on two aspects of this exemption: (1) An appropriate cut-off date for qualification for the exemption, and (2) a conversion factor for freezing or glazing non-whiting groundfish species. The conversion factor is described above in the section titled “Items NMFS Requested Comment on in the Proposed Rule.” The Council recommended the date of July 20, 2010, as the cut-off date for qualification for the exemption on processing groundfish at-sea in the Shorebased IFQ Program to ensure that processing-prohibition exemptions would be provided only to individuals that had been processing at-sea without prior knowledge of the upcoming prohibition. Pursuant to the Council’s recommendation, NMFS proposed July 20, 2010 as the cut-off date in the proposed rule. However, NMFS informed the public that it was considering whether to adjust the cut-off date for qualification to August 31, 2010 in light of a proposed rule prohibiting processing at sea for the Shorebased IFQ Program that published in the **Federal Register** on August 31, 2010 (75 FR 53380). August 31, 2010 is the date the public was put on notice of the

prohibition on processing at-sea in the Shorebased IFQ Program. NMFS specifically requested comment on the implications of such a change from the Council motion. No comments were received on this issue. With this final rule, NMFS is implementing August 31, 2010 as the cut-off date for qualification for the exemption because August 31, 2010 is a more transparent and fair date to use as the cut-off date for qualification than July 20, 2010. Accordingly, upon further consideration and in the absence of any comments against such change, in this final rule NMFS is implementing August 31, 2010, as the cut-off date to qualify for the exemption from the prohibition on processing at sea as specified at § 660.25(b)(6)(ii)(A).

- Carryover

NMFS made some minor edits to the regulations to make terminology reflect changes due to Amendment 23 on annual catch limits and to include language from Amendment 20 on the trawl rationalization program. With this final rule, NMFS revised regulations at § 660.140(e)(5)(i) on the carryover of surplus quota pounds for vessel accounts to use the term “ACL” rather than optimum yield (OY), a term no longer applicable for this calculation. NMFS also added language from the FMP to this provision to state that NMFS will issue surplus carryover pounds to the extent allowed by the conservation requirements of the MSA.

- Halibut Trawl Bycatch Mortality Limit

In the proposed rule, NMFS specifically requested comment on the carryover provision in the Shorebased IFQ Program and the effect it would have on calculation of the trawl bycatch mortality limit in a subsequent year, if any. Two commenters commented on this issue (see comments 3–6 above in the preamble). The only change from the proposed rule based on these comments was to add clarifying language to regulations at § 660.55(m) to define the terms “legal sized” and “sublegal sized” halibut as halibut with a total length of 32 inches and above, or O32, and halibut under 32 inches in total length, or U32, respectively.

Classification

The Administrator, Northwest Region, NMFS, determined that FMP Amendment 21–1, as implemented through this final rule, is necessary for the conservation and management of the Pacific coast groundfish fishery and that it is consistent with the MSA and other applicable laws. To the extent that the

regulations in this final rule differ from what was deemed by the Council, NMFS invokes its independent authority under 16 U.S.C. 1855(d).

The Council prepared a final environmental impact statement (EIS) for Amendment 20 and Amendment 21 to the Pacific Coast Groundfish FMP; a notice of availability for each of these final EISs was published on June 25, 2010 (75 FR 36386). A Record of Decision (ROD) for each EIS was signed on August 9, 2010. An environmental assessment (EA) was prepared for the following trailing actions: (1) A revision the calculation of the Pacific halibut trawl bycatch mortality limit, and (2) an exemption from the prohibition on processing at sea for qualified participants in the Shorebased IFQ Program. The Amendment 20 and 21 EISs and the EA are available on the Council’s Web site at <http://www.pcouncil.org> or on NMFS’ Web site at <http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Trawl-Program/index.cfm>. The remaining regulatory changes in this rule either required no further analysis under the National Environmental Policy Act (NEPA) or were categorically excluded from the requirement to prepare a NEPA analysis.

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

The preamble to the proposed rule (76 FR 54888, September 2, 2011) included a detailed summary of the analyses contained in the IRFA. NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), prepared a FRFA in support of this rule. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS’s responses to those comments, and a summary of the analyses completed to support the action. A copy of the FRFA is available from NMFS (see **ADDRESSES**) and a summary of the FRFA, per the requirements of 5 U.S.C. 604(a), follows:

Under the authority of the Pacific Coast Groundfish FMP and the MSA, this rule implements revisions to the Pacific coast groundfish trawl rationalization program (program), a catch share program. This action includes regulations that affect all commercial sectors of the fishery. These sectors are the limited entry trawl, limited entry fixed gear, and open access fisheries. During the comment period on the proposed rule, NMFS received several letters of comment, but none of the comments received addressed the IRFA.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA includes a description of the action, why it is being considered, and the legal basis for this action. The IRFA provided the following information.

In January 2011, NMFS and the Council set up a new management program called the trawl rationalization program. This program significantly changes how the shorebased trawl fishery and the mothership whiting fishery work. Shorebased trawlers now fish under their own set of individual species quotas by vessel. In prior years, there were different rules for shore trawlers depending on their target catch. Non-whiting trawlers fished under common trip limits while whiting trawlers fished under a common quota without trip limits. In prior years, the mothership fishery consisted of independent at-sea processors each receiving catch from several trawlers. Now the mothership fishery works as a single coop where catcher-vessels and motherships work together collectively. The catcher-processor fleet continues as a single coop. A specific set of groundfish species and bycatch of Pacific halibut are managed under the trawl rationalization program.

Human observation and electronic reporting tools account for all catch of these species. Computer programs match the catch against individual species quotas (quota pounds or QP) or coop allocations. All vessels must carry observers who watch and measure the harvests and discards of these groundfish. All shore plants must have catch monitors to watch all vessel offloads and record the species and amounts landed. In the shorebased fishery, online accounting programs issue and track quota shares, quota pounds, and catch by species. Computer programs compare fish tickets to catch monitor reports and calculate the quota pounds landed by an individual vessel. Observer reports are used to account for the vessel's discards. An online "banking system" is used to debit landings and discards against the vessel's quota pounds. Quota pounds are deposited to a vessel's account based on a transfer from a quota share account or from another vessel account.

This rule revises the Pacific coast groundfish trawl rationalization program. These revisions affect limited entry trawl fisheries and other fisheries including the limited entry fixed gear and open access fisheries. Some

revisions address the movement between limited entry and open access fisheries. Other revisions concern vessels fishing in different management areas within one trip. This rule also revises the rules about permit ownership for clarity, and clarifies the relationship of Amendment 21 to previous amendments concerning how certain species are allocated between the limited entry and open access sectors. As a result, participants in the fishery will find the regulations easier to comply with and easier to understand resulting in less confusion as to how fish are allocated.

This rule establishes new or modified processes concerning how much fish can be allocated and harvested. A new process involving the use of interim allocations should the biennial management and specification process not be completed in a timely way is established based on the processes used by emergency rule making for 2011. As a result, the potential delay in the annual allocation of quota pounds is reduced. The carryover process has been modified so there is no need to close the fishery in December for end-of-the-year account reconciliation. The Adaptive Management pass-through of quota pounds process is being extended through 2014 or the implementation of the Adaptive Management Program details, whichever is earlier. These actions provide benefits as they avoid major shut downs of the fishery and they would facilitate multi-year planning. Offload monitoring procedures are revised.

This rule establishes new procedures associated with electronic fish ticket reporting when trawlers land fish at one site but the fish are trucked to another site for processing. These procedures also apply to instances when the fish ticket is completed at an office location other than the landing site. The electronic fish ticket format is revised to better match the state paper fish ticket requirements. These revised procedures and changes to the fish ticket format and completion process provide benefits by reducing the monitoring burden on fishermen and processors and providing flexibility to first receivers and fish buyers. They also aid adoption of the electronic fish ticket by the states and increase the potential that redundant data collection systems are reduced. Most importantly, they improve the timeliness and accuracy of the data reported.

This rule expands the list of exemptions to the prohibition on processing at sea. Fishermen who can show that they were legally processing non-whiting groundfish prior to the

implementation of Amendment 20 are able to apply for an exemption to continue processing at sea. This exemption addresses the Council intent not to negatively impact these operations. Revising the halibut trawl bycatch mortality limit formulas provides benefits to the trawl fishery as they provide slightly higher catch compared to the existing regulations while continuing to provide increased halibut opportunities for non-trawl fisheries. It is recognized that increased halibut mortality by trawlers results in less halibut for other commercial and recreational fisheries. However these revisions move the trawl fishery closer to the Council's original goal of 50 percent reduction of halibut mortality by the trawl fleet.

Under prior rule making, to participate in the mothership fishery, harvesting vessels now must have an endorsed permit. The endorsement has an associated catch history amount, called a catch history assignment. Vessels wishing to sell their catch history to a coop must sell both their limited entry trawl permit and MS/CV endorsement. This rule "severs" the MS/CV endorsement with its catch history assignment from the associated limited entry permit. Under this rule, fishermen can sell or assign their MS/CV endorsements and associated catch history assignments while keeping their permits so they can continue to fish in other limited entry fisheries. This change aids coop formation and may minimize the costs of joining a coop for fishermen.

The following provides some perspective on the economic dimensions of the fisheries. Over the years 2005–2009, the limited entry trawl fishery has averaged annual inflation adjusted revenues of about \$57 million and total landings of about 215,000 tons. Pacific whiting ex-vessel revenues have averaged about \$25 million. However, differences between years have varied greatly. Whiting trawlers harvested about 216,000 tons of whiting worth about \$51 million in ex-vessel revenues in 2008. Revenues were high because of high landings and high prices. Ex-vessel prices of \$235 per ton were the highest on record. In comparison, the 2007 fishery harvested about 214,000 tons worth \$29 million at an average ex-vessel price of about \$137 per ton. The 2009 fishery harvested about 99,000 tons worth about \$12 million at a price of \$120 per ton. While the Pacific whiting fishery has grown in importance in recent years, harvests in the non-whiting component of the limited entry trawl fishery have declined steadily since the 1980s. Non-

whiting trawl ex-vessel revenues in the fishery peaked in the mid-1990s at about \$40 million. Following the passage of the Sustainable Fisheries Act (1996) and the listing of several species as overfished, harvests became increasingly restricted and landings and revenues declined steadily until 2002. Over the years 2005 to 2009, non-whiting groundfish ex-vessel revenues have averaged \$27 million annually. These revenues have ranged from \$24 million (2005) to \$32 million (2008). The 2009 fishery earned \$30 million in ex-vessel revenues. Total shorebased revenues (whiting and non-whiting) have averaged about \$36 million annually over the last five years. (Note: Ex-vessel revenues are just one indicator of "revenue"; they understate the wholesale, export, and retail revenues earned from the fishery. Data on these other indicators is either incomplete or unavailable.)

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

counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

NMFS has reviewed analyses of fish ticket data and limited entry permit data, available employment data provided by processors, information on the charterboat and Tribal fleets, and available industry responses to a survey on ownership. NMFS makes the following estimates and conclusions. The non-trawl businesses are the following fleets: Limited entry fixed gear (approximately 150 companies), open access groundfish (1,100), charterboats (465), and the Tribal fleet (four Tribes with 66 vessels). Available information on average revenue per vessel suggests that all the entities in these fleets are small entities. This rule changes requirements associated with catch monitors and observers. The catch monitors and observers are being supplied to the fishery by five companies. Based on analysis done on observer issues by the NMFS Alaska Regional Office, these five companies are also small companies.

For the trawl sector, as of August 2011, there are 176 limited entry trawl permit owners and six mothership processor permits. Nine limited entry trawl permits are attached to catcher-processor vessels and are considered "large" companies. An additional permit is owned by a large catcher processor company but currently has no vessel attached to it for a total of 10 permits that have the endorsement for a catcher-processor. Of the remaining 167 limited entry permits, 25 limited entry trawl permits are either owned or closely associated with a "large" shorebased processing company or with a non-profit organization who considers itself a "large" organization. Nine other permit owners indicated that they were large "companies." Almost all of these companies are associated with the shorebased and mothership whiting fisheries. The remaining 133 limited entry trawl permits are projected to be held by "small" companies. Three of the six mothership processors are "large" companies. Within the 14 shorebased whiting first receivers/processors, there are four "large" companies. Including the shorebased whiting first receivers, in 2008, there were 75 first receivers that purchased limited entry trawl groundfish. There were 36 small purchasers (less than \$150,000); 26 medium purchasers (purchases greater than \$150,000 but less than \$1,000,000); and 13 large purchasers (purchases greater than \$1.0 million).

This action includes regulatory amendments to further implement Amendments 20 and 21 to the FMP and

an FMP amendment to further revise Amendment 21 (called Amendment 21-1). This action includes, but is not limited to: revisions to the Pacific halibut trawl mortality bycatch limit, clarification that Amendment 21 supersedes limited entry/open access allocations for certain groundfish species, revisions to the observer coverage requirement while a vessel is in port and before the offload is complete, revisions to the electronic fish ticket reporting requirements, revisions to the first receiver site license requirement, further clarification on moving between limited entry and open access fisheries, a process for end-of-the-year vessel account reconciliation, and an exemption from processing at sea for qualified participants in the Shorebased Individual Fishing Quota (IFQ) Program.

Alternatives are described and discussed in the following documents:

- Intersector Allocation and Trawl Rationalization Issue: Trailing Actions for the Pacific Coast Groundfish Trawl Rationalization Program, including (1) Pacific Halibut Trawl Bycatch Mortality Limit (Amendment 21-1) and (2) Exemption from the Prohibition on Processing At Sea in the Shorebased IFQ Program. Final Environmental Assessment; prepared by the Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220, (503) 820-2280, www.pfcouncil.org, October 2011.
- Trawl Rationalization issue: Severability of Whiting Mothership Catcher Vessel Endorsements/Catch History Council Decision Document; prepared by the Pacific Fishery Management Council 7700 NE Ambassador Place, Suite 101, Portland, OR 97220, (503) 820-2280, www.pfcouncil.org, May 2011.
- Intersector Allocation Issue: Recommended FMP and Regulatory Amendatory Language That Complies with the Council's Intent Regarding Superseding Amendment 6 Allocations with Amendment 21 Allocations. Council meeting briefing book, Agenda Item E.6.a, Attachment 2, June 2011.
- Trawl Rationalization: Adaptive Management Program Quota Pound Pass-Through, Council Decision Document. Council meeting briefing book, Agenda Item E.6.a, Attachment 6, June 2011.

Most of the issues in this rulemaking are changes to the regulations to make the program more efficient or more enforceable. They were either categorically excluded from NEPA or

required no further NEPA analysis. However, for the calculation of the halibut trawl bycatch mortality limit and for the exemption from the prohibition on processing at sea, the Council and NMFS did consider alternatives in an environmental assessment for this action (see references in the above paragraph or see **ADDRESSES** section). The issues in this rulemaking were developed and presented with public input through the Council process. Through the Council process, impacts and ways to reduce those impacts on small entities are often considered. Several of the changes in this rule are implemented to reduce impacts on industry, including small entities. For the exemption on at-sea processing, implementation of this provision will benefit small harvesting entities by increasing the value of their landed product. For the change to the first receiver site license application process, implementation will reduce the burden on industry by requiring less paperwork.

As indicated above, this rule is generally beneficial to the various sectors of the fishery. The only explicit cost impact is the expansion of the requirement that all fish buyers obtain a \$50 first receiver site license. Therefore, negative impacts to the industry, if any, appear to be minimal and do not favor large entities over small entities. No Federal rules have been identified that duplicate, overlap, or conflict with the alternatives. Public comment is hereby solicited, identifying such rules.

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 (the guide) was prepared. Copies of this final rule are available from the Northwest Regional Office and the guide will be sent to all permit owners for the fishery. The guide and this final rule will also be available on the Northwest Regional Office Web site (see **ADDRESSES**) and upon request.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) which have been approved by the Office of Management and Budget (OMB). OMB control number 0648–0611,

Rationalization of the Pacific Coast Groundfish Trawl Limited Entry Fishery, was revised to include an application for an exemption from the prohibition on processing non-whiting groundfish at sea in the Shorebased IFQ Program. Public reporting burden for the revised OMB control number 0648–0611 is estimated to average 3 hours per response (543 responses). OMB control number 0648–0619, Northwest Region Groundfish Trawl Fishery Monitoring and Catch Accounting Program, was revised to include the additional reporting requirements for IFQ first receivers on electronic fish tickets, updated hardware and software requirements for electronic fish tickets, and an updated process for first receivers and catch monitors to address offload and trucking issues. Public reporting burden for the revised OMB control number 0648–0619 is estimated to average 30 minutes per response (6,059 responses). OMB control number 0648–0620, Pacific Coast Groundfish Trawl Rationalization Program Permit and License Information Collection, was revised to include a form for changing the registration of MS/CV endorsements and associated catch history assignments from one limited entry trawl permit to another and changes to the first receiver site license application requirements. Public reporting burden for the revised OMB control number 0648–0620 are estimated to average 30 minutes per response (1,955 responses). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. No comments were received on the PRA during the proposed rule comment period. Send comments on these or any other aspects of the collection of information to NMFS, Northwest Region, at the **ADDRESSES** section above; and to OMB 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.

NMFS issued Biological Opinions under the ESA on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the Pacific Coast groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/

summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the FMP for the Pacific Coast groundfish fishery was not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS reinitiated a formal section 7 consultation under the ESA in 2005 for both the Pacific whiting midwater trawl fishery and the groundfish bottom trawl fishery. The December 19, 1999, Biological Opinion had defined an 11,000 Chinook incidental take threshold for the Pacific whiting fishery. During the 2005 Pacific whiting season, the 11,000 fish Chinook incidental take threshold was exceeded, triggering reinitiation. Also in 2005, new data from the West Coast Groundfish Observer Program became available, allowing NMFS to complete an analysis of salmon take in the bottom trawl fishery.

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

Since 1999, annual Chinook bycatch has averaged about 8,450 fish. The Chinook ESUs most likely affected by the whiting fishery has generally improved in status since the 1999 section 7 consultation. Although these species remain at risk, as indicated by their ESA listing, NMFS concluded that the higher observed bycatch in 2005 does not require a reconsideration of its prior “no jeopardy” conclusion with respect to the fishery. For the

groundfish bottom trawl fishery, NMFS concluded that incidental take in the groundfish fisheries is within the overall limits articulated in the Incidental Take Statement of the 1999 Biological Opinion. The groundfish bottom trawl limit from that opinion was 9,000 fish annually. NMFS will continue to monitor and collect data to analyze take levels. NMFS also reaffirmed its prior determination that implementation of the Groundfish FMP is not likely to jeopardize the continued existence of any of the affected ESUs.

Lower Columbia River coho (70 FR 37160, June 28, 2005) were recently listed and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead.

The Southern Distinct Population Segment (DPS) of green sturgeon was listed as threatened under the ESA (71 FR 17757, April 7, 2006). The southern DPS of Pacific eulachon was listed as threatened on March 18, 2010, under the ESA (75 FR 13012). NMFS has reinitiated consultation on the fishery, including impacts on green sturgeon, eulachon, marine mammals, and turtles.

After preliminarily reviewing the available information, NMFS understands that, consistent with Sections 7(a)(2) and 7(d) of the ESA, the action would not jeopardize any listed species, would not adversely modify any designated critical habitat, and would not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures. NMFS will finalize this conclusion before the decision is made on the FMP amendment.

Amendment 21–1 to the FMP and this final rule were developed after meaningful consultation and collaboration, through the Council process, with the tribal representative on the Council. The FMP Amendment and these regulations have no direct effect on the tribes; these regulations were deemed by the Council as “necessary or appropriate” to implement the FMP as amended.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: November 23, 2011.

Eric C. Schwaab,

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

For the reasons stated in the preamble, 50 CFR Chapter VI 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 § 660.11, add the definition for “Dock ticket” in alphabetical order to read as follows:

§ 660.11 General definitions.

* * * * *

Dock ticket means a form accepted by the state to record the landing, receipt, purchase, or transfer of fish.

* * * * *

■ 3. In § 660.12, revise paragraph (d)(2) to read as follows:

§ 660.12 General groundfish prohibitions.

* * * * *

(d) * * *

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

* * * * *

■ 4. In § 660.13, revise paragraph (d)(5)(iv)(A)(23) and add paragraph (d)(5)(iv)(A)(26) to read as follows:

§ 660.13 Recordkeeping and reporting.

* * * * *

(d) * * *

(5) * * *

(iv) * * *

(A) * * *

(23) Open access Coastal Pelagic Species net gear,

* * * * *

(26) Open access California gillnet complex gear.

* * * * *

■ 5. In § 660.14, revise paragraphs (d)(4)(iii) and (vii) to read as follows:

§ 660.14 Vessel Monitoring System (VMS) requirements.

* * * * *

(d) * * *

(4) * * *

(iii) *Permit exemption.* If the limited entry permit had a change in vessel registration so that it is no longer registered to the vessel (for the purposes of this section, this includes permits placed into “unidentified” status), the

vessel may be exempted from VMS requirements providing the vessel is not used to fish in state or Federal waters seaward of the baseline from which the territorial sea is measured off the States of Washington, Oregon or California (0–200 nm offshore) for the remainder of the fishing year. If the vessel is used to fish in this area for any species of fish at any time during the remaining portion of the fishing year without being registered to a limited entry permit, the vessel is required to have and use VMS.

* * * * *

(vii) *Valid exemption reports.* For an exemption report to be valid, it must be received by NMFS at least 2 hours and not more than 24 hours before the exempted activities defined at paragraphs (d)(4)(i) through (iv) of this section occur. An exemption report is valid until NMFS receives a report canceling the exemption. An exemption cancellation must be received at least 2 hours before the vessel re-enters the EEZ following an outside areas exemption; at least 2 hours before the vessel is placed back in the water following a haul out exemption; at least 2 hours before the vessel resumes fishing for any species of fish in state or Federal waters off the States of Washington, Oregon, or California after it has received a permit exemption; or at least 2 hours before a vessel resumes fishing in the open access fishery after a long-term departure exemption. If a vessel is required to submit an activation report under paragraph (d)(2)(i) of this section before returning to fish, that report may substitute for the exemption cancellation. Initial contact must be made with NMFS OLE not more than 24 hours after the time that an emergency situation occurred in which VMS transmissions were disrupted and followed by a written emergency exemption request within 72 hours from when the incident occurred. If the emergency situation upon which an emergency exemption is based is resolved before the exemption expires, an exemption cancellation must be received by NMFS at least 2 hours before the vessel resumes fishing.

* * * * *

■ 6. In § 660.15, revise paragraphs (b)(3), and (d)(1) through (3) to read as follows:

§ 660.15 Equipment requirements.

* * * * *

(b) * * *

(3) *Daily testing.* The vessel operator must ensure that the vessel crew test each required scale daily and ensure that each scale meets the maximum permissible error (MPE) requirements

described at paragraph (b)(4) of this section.

* * * * *

(d) *

(1) *Hardware and software requirements.* A personal computer system with the following minimum requirements:

(i) Processor: 500-megahertz (MHz) or higher processor;

(ii) Random Access Memory (RAM): 256 megabytes (MB) or higher;

(iii) Hard disk space:

(A) If already have MS Access 2007 or 2010, 200 MB available disk size.

(B) If loading the MS Access 2007 runtime, then 700 MB available disk size.

(iv) Monitor: 1024 × 768 or higher display resolution;

(v) Operating system: Microsoft Windows XP with Service Pack (SP) 2, Windows Server 2003 with SP1, or later operating system such as Windows Vista or Windows 2007;

(vi) Software: Microsoft Access 2007 or Microsoft Access 2010, or a runtime version provided by the Pacific States Marine Fisheries Commission.

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

(3) *Maintenance.* The IFQ first receiver is responsible for ensuring that all hardware and software required under this subsection are fully operational and functional whenever they receive, purchase, or take custody, control, or possession of an IFQ landing. “Functional” means that the software requirements and minimum hardware requirements described at paragraphs (d)(1) and (2) of this section are met and data transmissions to Pacific States Marine Fisheries Commission can be executed effectively by the equipment.

* * * * *

■ 7. In § 660.17, revise the section heading and paragraph (a), and remove paragraph (e)(14), to read as follows:

§ 660.17 Catch monitors and catch monitor service providers.

(a) *Catch monitor program training and certification.* Catch monitor certification authorizes an individual to fulfill duties as specified by NMFS while under the employ of a certified catch monitor provider.

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

(2) *Catch monitor program annual briefing.* Each catch monitor must attend an annual briefing prior to his or her first deployment within any calendar year subsequent to a year in which a training certification is obtained. To maintain certification, a catch monitor must successfully complete the annual briefing, as specified by the catch monitor program. All briefing attendance, performance, and conduct standards required by the catch monitor program must be met.

(3) *Maintaining the validity of a catch monitor certification.* After initial issuance, a catch monitor must keep their certification valid by meeting all of the following requirements specified below:

(i) Successfully perform their assigned duties as described in the Catch Monitor Manual or other written instructions from the catch monitor program.

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

(iii) Not disclose collected data and observations made on board the vessel or in the first receiver facility to any person except the owner or operator of the observed vessel, first receiver management or an authorized officer or NMFS.

(iv) Successfully complete NMFS-approved annual briefings as prescribed by the catch monitor program.

(v) Successful completion of a briefing by a catch monitor consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all

other briefing requirements established by the catch monitor program.

(vi) Successfully meet all expectations in all debriefings including reporting for assigned debriefings.

(vii) Submit all data and information required by the catch monitor program within the program’s stated guidelines.

* * * * *

■ 8. In § 660.18, revise paragraphs (c)(1)(i) through (iii) and (d)(1) through (3) to read as follows:

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

* * * * *

(c) *

(1) *

(i) Any ownership, mortgage holder, or other secured interest in a vessel, first receiver, shorebased or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish,

(ii) Any business involved with selling supplies or services to any vessel, first receiver, shorebased or floating stationary processing facility; or

(iii) Any business involved with purchasing raw or processed products from any vessel, first receiver, shorebased or floating stationary processing facilities.

* * * * *

(d) *

(1) Any ownership, mortgage holder, or other secured interest in a vessel, first receiver, shorebased or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish,

(2) Any business involved with selling supplies or services to any vessel, first receiver, shorebased or floating stationary processing facility; or

(3) Any business involved with purchasing raw or processed products from any vessel, first receiver, shorebased or floating stationary processing facilities.

* * * * *

■ 9. In § 660.25,

a. Remove paragraph (b)(3)(iv)(D);
 b. Revise paragraphs (b)(1)(iii) and (v), (b)(3)(i), (b)(3)(iv)(A)(1) and (2), (b)(3)(iv)(C)(4) and (5), (b)(3)(v), (b)(3)(vii), (b)(4)(ii)(B), (b)(4)(iv)(A) and (C), (b)(4)(v)(C) and (D), (b)(4)(vi)(B), (b)(4)(vii) introductory text, (b)(4)(vii)(F), (b)(4)(viii), (b)(4)(ix) and (f);

■ c. Add paragraphs (b)(4)(iv)(D) and (b)(6) to read as follows:

§ 660.25 Permits.

* * * * *

(b) *

* * *

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

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

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

* * * * *

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

* * * * *

(3) * * *

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

affixed to the limited entry permit. The limited entry permit with an “A” endorsement may be registered to another person (i.e., change in permit ownership), or to a different vessel (i.e., change in vessel registration) under paragraph (b)(4) of this section. An “A” endorsement expires on failure to renew the limited entry permit to which it is affixed. An MS permit is not considered a limited entry “A”-endorsed permit.

* * * * *

(iv) * * *

(A) * * *

(1) A sablefish endorsement with a tier assignment will be affixed to the permit and will remain valid when the permit is registered to another permit owner (i.e., change in permit ownership) or to another vessel (i.e., change in vessel registration).

(2) A sablefish endorsement and its associated tier assignment are not separable from the limited entry permit, and therefore, may not be registered to another permit owner (i.e., change in permit ownership) or to another vessel (i.e., change in vessel registration) separately from the limited entry permit.

* * * * *

(C) * * *

(4) Any partnership or corporation with any ownership interest in or that holds a limited entry permit with a sablefish endorsement shall document the extent of that ownership interest or the individuals that hold the permit with the SFD via the Identification of Ownership Interest Form sent to the permit owner through the annual permit renewal process and whenever a change in permit owner, permit holder, and/or vessel registration occurs as described at paragraph (b)(4)(iv) and (v) of this section. SFD will not renew a sablefish-endorsed limited entry permit through the annual renewal process described at paragraph (b)(4)(i) of this section, or approve a change in permit owner, permit holder, and/or vessel registration unless the Identification of Ownership Interest Form has been completed.

Further, if SFD discovers through review of the Identification of Ownership Interest Form that an individual person, partnership, or corporation owns or holds more than 3 permits and is not authorized to do so under paragraph (b)(3)(iv)(C)(2) of this section, the individual person, partnership or corporation will be notified and the permits owned or held by that individual person, partnership, or corporation will be void and reissued with the vessel status as “unidentified” until the permit owner owns and/or holds a quantity of permits appropriate

to the restrictions and requirements described in paragraph (b)(3)(iv)(C)(2) of this section. If SFD discovers through review of the Identification of Ownership Interest Form that a partnership or corporation has had a change in membership since November 1, 2000, as described in paragraph (b)(3)(iv)(C)(3) of this section, the partnership or corporation will be notified, SFD will void any existing permits, and reissue any permits owned and/or held by that partnership or corporation in “unidentified” status with respect to vessel registration until the partnership or corporation is able to register ownership of those permits to persons authorized under this section to own sablefish-endorsed limited entry permits.

(5) A person, partnership, or corporation that is exempt from the owner-on-board requirement may sell all of their permits, buy another sablefish-endorsed permit within one year of the date of approval of the last change in permit ownership, 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.

* * * * *

(v) *MS/CV endorsement.* An MS/CV endorsement on a trawl limited entry permit conveys a conditional privilege that allows a vessel registered to it to fish in either the coop or non-coop fishery in the MS Coop Program described at § 660.150. The provisions for the MS/CV-endorsed limited entry permit, including eligibility, renewal, change of permit ownership, vessel registration, combinations, accumulation limits, fees, and appeals are described at § 660.150. Each MS/CV endorsement has an associated catch history assignment (CHA) that is permanently linked as originally issued by NMFS and which cannot be divided or registered separately to another limited entry trawl permit. Regulations detailing this process and MS/CV-endorsed permit combinations are outlined in § 660.150(g)(2).

* * * * *

(vii) *Endorsement and exemption restrictions.* “A” endorsements, gear endorsements, sablefish endorsements and sablefish tier assignments, MS/CV endorsements, and C/P endorsements may not be registered to another permit owner (i.e., change in permit ownership) or to another vessel (i.e.,

change in vessel registration) separately from the limited entry permit. At-sea processing exemptions, specified at paragraph (b)(6) of this section, are associated with the vessel and not with the limited entry permit and may not be registered to another permit owner or to another vessel without losing the exemption.

* * * * *

(4) * * *

(ii) * * *

(B) *MS/CV-endorsed permit.* When an MS/CV-endorsed permit is combined with another MS/CV-endorsed permit or with another limited entry trawl permit with no MS/CV or C/P endorsement, the resulting permit will be MS/CV-endorsed with the associated CHA as specified at § 660.150(g)(2)(iv) and (v). If an MS/CV-endorsed permit is combined with a C/P-endorsed permit, the MS/CV endorsement and CHA will not be reissued on the combined permit.

* * * * *

(iv) * * *

(A) *General.* The permit owner may convey the limited entry permit to a different person. The new permit owner will not be authorized to use the permit until the change in permit ownership has been registered with and approved by the SFD. The SFD will not approve a change in permit ownership for a limited entry permit with a sablefish endorsement that does not meet the ownership requirements for such permit described at paragraph (b)(3)(iv)(C) of this section. The SFD will not approve a change in permit ownership for a limited entry permit with an MS/CV endorsement or an MS permit that does not meet the ownership requirements for such permit described at § 660.150(g)(3), and § 660.150(f)(3), respectively. Change in permit owner and/or permit holder applications must be submitted to SFD with the appropriate documentation described at paragraph (b)(4)(vii) of this section. NMFS considers the following as a change in permit ownership that would require registering with and approval by SFD, including but not limited to: Selling the permit to another individual or entity; adding an individual or entity to the legal name on the permit; or removing an individual or entity from the legal name on the permit.

* * * * *

(C) *Sablefish-endorsed permits.* If a permit owner submits an application to register a sablefish-endorsed limited entry permit to a new permit owner or holder during the primary sablefish season described at § 660.231 (generally April 1 through October 31), the initial permit owner 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 associated with the new vessel must sign the application form

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 must sign the application form acknowledging the amount of landings to date given by the initial permit owner. This certified amount should match the total amount of primary season sablefish landings reported on state landing receipts. As required at § 660.12(b), 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.

* * * * *

(D) *Change in MS/CV endorsement registration.* The requirements for a change in MS/CV endorsement registration between limited entry trawl permits are specified at § 660.150(g)(2)(iv).

* * * * *

(v) * * *

(C) *Effective date.* Changes in vessel registration on permits will take effect no sooner than the first day of the next major limited entry cumulative limit period following the date that SFD receives the signed permit change in vessel registration form and the original limited entry permit, except that changes in vessel registration on MS permits and C/P-endorsed permits will take effect immediately upon reissuance to the new vessel, and a change in vessel registration on MS/CV-endorsed permits will take effect immediately upon reissuance to the new vessel only on the second change in vessel registration for the year. No change in vessel registration is effective until the limited entry permit has been reissued as registered with the new vessel.

(D) *Sablefish-endorsed permits.* If a permit owner submits an application to register a sablefish-endorsed limited entry permit to a new vessel during the primary sablefish season described at § 660.231 (generally April 1 through October 31), the initial permit owner 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 associated with the new vessel must sign the application form

acknowledging the amount of landings to date given by the initial permit owner. This certified amount should match the total amount of primary season sablefish landings reported on state landing receipts. As required at § 660.12(b), any person landing sablefish must retain on board the vessel from which sablefish is landed, and provide to an authorized officer upon request, copies of any and all reports of sablefish landings from the primary season containing all data, and in the exact manner, required by the applicable state law throughout the primary sablefish season during which a landing occurred and for 15 days thereafter.

* * * * *

(vi) * * *

(B) *Limited entry fixed gear and trawl-endorsed permits (without MS/CV or C/P endorsements).* Limited entry fixed gear and trawl-endorsed permits (without MS/CV or C/P endorsements) permits may not be registered for use with a different vessel more than once per calendar year, except in cases of death of a permit holder or if the permitted vessel is totally lost as defined in § 660.11. The exception for death of a permit holder applies for a permit held by a partnership or a corporation if the person or persons holding at least 50 percent of the ownership interest in the entity dies.

* * * * *

(vii) *Application and supplemental documentation.* Permit owners may request a change in vessel registration and/or change in permit ownership by submitting a complete application form. In addition, a permit owner applying for renewal, replacement, or change in permit ownership or change in vessel registration of a limited entry permit has the burden to submit evidence to prove that qualification requirements are met. The following evidentiary standards apply:

* * * * *

(F) For a request to change a permit's ownership that is necessitated by the death of the permit owner(s), the individual(s) requesting conveyance of the permit to a new owner must provide SFD with a death certificate of the permit owner(s) and appropriate legal documentation that either: Specifically registers the permit to a designated individual(s); or, provides legal authority to the transferor to convey the permit ownership or to request a change in vessel registration.

* * * * *

(viii) *Application forms available.* Application forms for a change in vessel registration and a change in permit

ownership of limited entry permits are available from the SFD at: NMFS Northwest Region, Sustainable Fisheries Division, ATTN: Applications, 7600 Sand Point Way, NE., Seattle, WA 98115; or <http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Permits/index.cfm>. Contents of the application, and required supporting documentation, are specified in the application form.

* * * * *

(ix) *Records maintenance.* The SFD will maintain records of all limited entry permits that have been issued, renewed, registered, or replaced.

* * * * *

(6) *At-sea processing exemptions—*

(i) *Sablefish at-sea processing exemption.* As specified at § 660.112(b)(1)(xii) and at 660.212(d)(3), vessels are prohibited from processing sablefish at sea that were caught in the primary sablefish fishery without a sablefish at-sea processing exemption. The sablefish at-sea processing exemption has been issued to a particular vessel and that permit and vessel owner who requested the exemption. The exemption is not part of the limited entry permit. The exemption cannot be registered with any other vessel, vessel owner, or permit owner for any reason. The sablefish at-sea processing exemption will expire upon registration of the vessel to a new owner or if the vessel is totally lost, as defined at § 660.11.

(ii) *Non-whiting at-sea processing exemption.* As specified at § 660.112(b)(1)(xii), vessels are prohibited from processing non-whiting groundfish at sea that were caught in the Shorebased IFQ Program without a non-whiting at-sea processing exemption. A permit and/or vessel owner may get an exemption to this prohibition by applying for the exemption as provided in paragraph (b)(6)(ii)(B) of this section and if his/her vessel meets the exemption qualifying criteria provided in paragraph (b)(6)(ii)(A) of this section. The non-whiting at-sea processing exemption is issued to a particular vessel and that 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 non-whiting at-sea processing exemption will expire upon registration of the vessel to a new owner or if the vessel is totally lost, as defined at § 660.11.

(A) *Qualifying criteria.* A non-whiting at-sea processing exemption will be issued to any vessel registered for use

with a limited entry trawl permit that meets the non-whiting at-sea processing exemption qualifying criteria and for which the vessel owner submits a timely and complete application. The qualifying criteria for a non-whiting at-sea processing exemption are that the vessel must have been registered to a limited entry trawl permit, the vessel must have legally processed non-whiting groundfish at sea prior to August 31, 2010, and that the vessel landed that processed catch at a shorebased processor or buyer. The best evidence of a vessel having met these qualifying criteria will be receipts of processed product from shorebased processors, buyers, or exporters, accompanied by the state fish tickets or landings receipts appropriate to the processed product. Documentation showing investment in freezer equipment without also showing evidence of landing processed product is not sufficient evidence to qualify a vessel for a non-whiting at-sea processing exemption. All landings of processed non-whiting groundfish must have been harvested in waters managed under this part. Non-whiting groundfish taken in tribal fisheries or taken outside of the fishery management area, as defined at § 660.10, does not meet the qualifying criteria.

(B) *Application and issuance process for non-whiting at-sea processing exemptions.*

(1) The SFD will mail non-whiting at-sea processing exemption applications to all current trawl permit holders and will make the application available online at <http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Permits/index.cfm>. Permit holders will have until February 15, 2012 to submit applications. A permit holder who believes that their vessel may qualify for the non-whiting at-sea processing exemption must submit evidence with their application showing how their vessel has met the qualifying criteria described at paragraph (b)(6)(ii)(A) of this section. Paragraph (b)(6)(ii)(C) of this section sets out the relevant evidentiary standards and burden of proof. Applications must be postmarked or hand-delivered no later than close of business February 15, 2012, to NMFS at: NMFS Northwest Region, Sustainable Fisheries Division, ATTN: Fisheries Permit Office—Processing Exemption, 7600 Sand Point Way NE., Seattle, WA 98115.

(2) After receipt of a complete application, the SFD will notify applicants by letter of initial administrative determination (IAD) whether their vessel qualifies for the non-whiting at-sea processing

exemption. A person who has been notified by the SFD that their vessel qualifies for a non-whiting at-sea processing exemption will be issued an exemption letter by SFD that must be onboard the vessel at all times.

(3) If an applicant chooses to file an appeal of the IAD letter under paragraph (b)(6)(ii)(B)(2) of this section, the applicant must follow the appeals process outlined at paragraph (g) of this section and, for the timing of the appeals, at paragraph (g)(4)(ii) of this section.

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

(1) A copy of the current vessel documentation or registration (USCG or state) is the best evidence of vessel ownership.

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

(3) A copy of a state fish receiving ticket, dock receiving ticket, landing receipt, or other written receipt indicating the name of their buyer, the date, and a description of the product form and the name and amount of non-whiting groundfish landed is the best evidence of the commercial transfer of processed product (including glazing).

(4) A copy of a sales receipt is the best evidence of the purchase of freezing equipment.

(5) 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) *Permit fees.* The Regional Administrator is authorized to charge fees to cover administrative expenses related to issuance of permits including initial issuance, renewal, permit registration, vessel registration, replacement, and appeals. The appropriate fee must accompany each application.

* * * * *

10. In § 660.55, revise paragraphs (a), (e)(2) introductory text, and (m) to read as follows:

§ 660.55 Allocations.

(a) *General.* An allocation is the apportionment of a harvest privilege for a specific purpose, to a particular person, group of persons, or fishery sector. The opportunity to harvest Pacific Coast groundfish is allocated among participants in the fishery when

the ACLs for a given year are established in the biennial harvest specifications. For any stock that has been declared overfished, any formal allocation may be temporarily revised for the duration of the rebuilding period. For certain species, primarily trawl-dominant species, beginning with the 2011–2012 biennial specifications process, separate allocations for the trawl and nontrawl fishery (which for this purpose includes limited entry fixed gear, directed open access, and recreational fisheries) will be established biennially or annually using the standards and procedures described in Chapter 6 of the PCGFMP. Chapter 6 of the PCGFMP provides the allocation structure and percentages for species allocated between the trawl and nontrawl fisheries. Also, for those species not subject to the trawl and nontrawl allocations specified under Amendment 21 and in paragraph (c)(1) of this section, separate allocations for the limited entry and open access fisheries may be established using the procedures described in Chapters 6 and 11 of the PCGFMP and this subpart. Allocation of sablefish north of 36° N. lat. is described in paragraph (h) of this section and in the PCGFMP. Allocation of Pacific whiting is described in paragraph (i) of this section and in the PCGFMP. Allocation of black rockfish is described in paragraph (l) of this section. Allocation of Pacific halibut bycatch is described in paragraph (m) of this section. Allocations not specified in the PCGFMP are established in regulation through the biennial harvest specifications and are listed in Tables 1 a through d and Tables 2 a through d of this subpart.

* * * * *

(e) * * *

(2) Species with LE/OA allocations.

For species with LE/OA allocations that are not subject to Amendment 21 allocations, the allocation between the limited entry (both trawl and fixed gear) and the open access fisheries is determined by applying the percentage for those species with a LE/OA allocation to the commercial harvest guideline plus the amount set-aside for the non-groundfish fisheries.

* * * * *

(m) Pacific halibut bycatch allocation.

The Pacific halibut fishery off Washington, Oregon and California (Area 2A in the halibut regulations) is managed under regulations at 50 CFR part 300, subpart E. The PCGFMP sets the trawl bycatch mortality limit at 15 percent of the Area 2A total constant exploitation yield (TCEY) for legal size halibut (net weight), not to exceed 130,000 pounds annually for legal size

halibut (net weight) for 2012 through 2014 and, beginning in 2015, not to exceed 100,000 pounds annually for legal size halibut (net weight). The TCEY used for these calculations will be the best estimate of the TCEY available from the International Pacific Halibut Commission at the time of the calculation. For the purpose of this paragraph, the term “legal sized” halibut refers to halibut with a total length of 32 inches and above, or O32, and the term “sublegal sized” halibut refers to halibut under 32 inches in total length, or U32. To determine the trawl bycatch mortality limit, the pounds of halibut available to the trawl fleet will be expanded from the legal sized halibut mortality (net weight) to a round weight legal and sublegal sized amount. To convert from net weight to round weight, multiply by the conversion factor used by the International Pacific Halibut Commission at the time of calculation for net weight to round weight. To convert from legal sized halibut to legal and sublegal sized halibut, multiply by the conversion factor from the NMFS trawl fishery bycatch report as reported to the International Pacific Halibut Commission at the time of calculation for legal sized to legal and sublegal sized halibut. The bycatch allocation percent can be adjusted downward or upward through the biennial specifications and management measures process but the upper bound on the maximum pounds of allocation can only be changed through an FMP amendment. Part of the overall total mortality limit is a set-aside of 10 mt of Pacific halibut (legal and sublegal, round weight), to accommodate bycatch in the at-sea Pacific whiting fishery and in the shorebased trawl fishery south of 40°10' N. lat. (estimated to be approximately 5 mt each). This set-aside can be adjusted through the biennial specifications and management measures process.

- 11. In § 660.60,
 - a. Add paragraph (c)(1)(iv),
 - b. Revise headings to paragraphs (h)(5), (h)(5)(i), and (h)(5)(ii); and
 - c. Revise paragraph (h)(7), to read as follows:

§ 660.60 Specifications and management measures.

* * * * *

(c) * * *

(1) * * *

- (iv) *List of IFQ species documented on observer form.* As specified at §§ 660.112(b)(1)(xiii) and 660.140(h)(1)(i), observer or catch monitor coverage while in port depends on documentation of specified retained

IFQ species while the vessel is at sea by the observer program on a form. The list of IFQ species documented on the observer program form may be modified on a biennial or more frequent basis.

* * * * *

(h) * * *

(5) *Size limits, length measurement, and weight conversions.* * * *

(i) *Length measurement.* * * *

* * * * *

(ii) *Weight conversions and size limits.* * * *

* * * * *

(7) *Crossover provisions.* Crossover provisions apply to two activities: Fishing on different sides of a management line, or fishing in both the limited entry and open access fisheries. NMFS uses different types of management areas for West Coast groundfish management, such as the *north-south management areas* as defined in § 660.11. Within a management area, a large ocean area with northern and southern boundary lines, trip limits, seasons, and conservation areas follow a single theme. Within each management area, there may be one or more conservation areas, defined at § 660.11 and §§ 660.70 through 660.74. The provisions within this paragraph apply to vessels fishing in different management areas.

Crossover provisions also apply to vessels that fish in both the limited entry and open access fisheries, or that use open access non-trawl gear while registered to limited entry fixed gear permits. Fishery specific crossover provisions can be found in subparts D through F of this part.

(i) *Fishing in management areas with different trip limits.* Trip limits for a species or a species group may differ in different management areas along the coast. The following crossover provisions apply to vessels fishing in different geographical areas that have different cumulative or “per trip” trip limits for the same species or species group, with the following exceptions. Such crossover provisions do not apply to: IFQ species defined at § 660.140(c), for vessels that are declared into the Shorebased IFQ Program (see § 660.13(d)(5)(iv)(A), for valid Shorebased IFQ Program declarations), species that are subject only to daily trip limits, or to the trip limits for black rockfish off Washington, as described at § 660.230(e) and § 660.330(e).

(A) *Going from a more restrictive to a more liberal area.* If a vessel takes and retains any groundfish species or species group of groundfish in an area where a more restrictive trip limit applies before fishing in an area where

a more liberal trip limit (or no trip limit) applies, then that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(B) *Going from a more liberal to a more restrictive area.* If a vessel takes and retains a groundfish species or species group in an area where a higher trip limit or no trip limit applies, and takes and retains, possesses or lands the same species or species group in an area where a more restrictive trip limit applies, that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(C) *Fishing in two different areas where a species or species group is managed with different types of trip limits.* During the fishing year, NMFS may implement management measures for a species or species group that set different types of trip limits (for example, per trip limits versus cumulative trip limits) for different areas. If a vessel fishes for a species or species group that is managed with different types of trip limits in two different areas within the same cumulative limit period, then that vessel is subject to the most restrictive overall cumulative limit for that species, regardless of where fishing occurs.

(D) *Minor rockfish.* Several rockfish species are designated with species-specific limits on one side of the 40°10' N. lat. management line, and are included as part of a minor rockfish complex on the other side of the line. A vessel that takes and retains fish from a minor rockfish complex (nearshore, shelf, or slope) on both sides of a management line during a single cumulative limit period is subject to the more restrictive cumulative limit for that minor rockfish complex during that period.

(1) If a vessel takes and retains minor slope rockfish north of 40°10' N. lat., that vessel is also permitted to take and retain, possess or land splitnose rockfish up to its cumulative limit south of 40°10' N. lat., even if splitnose rockfish were a part of the landings from minor slope rockfish taken and retained north of 40°10' N. lat.

(2) If a vessel takes and retains minor slope rockfish south of 40°10' N. lat., that vessel is also permitted to take and retain, possess or land POP up to its cumulative limit north of 40°10' N. lat., even if POP were a part of the landings from minor slope rockfish taken and retained south of 40°10' N. lat.

(ii) *Fishing in both limited entry and open access fisheries—*

(A) *Fishing in limited entry and open access fisheries with different trip limits.* Open access trip limits apply to any fishing conducted with open access gear, even if the vessel has a valid limited entry permit with an endorsement for another type of gear, except such provisions do not apply to IFQ species defined at § 660.140(c), for vessels that are declared into the Shorebased IFQ Program (see § 660.13(d)(5)(iv)(A) for valid Shorebased IFQ Program declarations). A vessel that fishes in both the open access and limited entry fisheries is not entitled to two separate trip limits for the same species. If a vessel has a limited entry permit registered to it at any time during the trip limit period and uses open access gear, but the open access limit is smaller than the limited entry limit, the open access limit may not be exceeded and counts toward the limited entry limit. If a vessel has a limited entry permit registered to it at any time during the trip limit period and uses open access gear, but the open access limit is larger than the limited entry limit, the smaller limited entry limit applies, even if taken entirely with open access gear.

(B) *Limited entry permit restrictions for vessels fishing in the open access fishery—*(1) *Vessel registered to a limited entry trawl permit.* To participate in the open access fishery, described at part 660, subpart F, with open access gear, defined at § 660.11, a vessel registered to a limit entry trawl permit must make the appropriate fishery declaration, as specified at § 660.14(d)(5)(iv)(A). In addition, a vessel registered to a limit entry trawl permit must remove the permit from their vessel, as specified at § 660.25(b)(4)(v), unless the vessel will be fishing in the open access fishery under one of the following declarations specified at § 660.13(d):

- (i) Non-groundfish trawl gear for pink shrimp,
- (ii) Non-groundfish trawl gear for ridgeback prawn,
- (iii) Non-groundfish trawl gear for California halibut,
- (iv) Non-groundfish trawl gear for sea cucumber,
- (v) Open access Dungeness crab pot/trap gear,
- (vi) Open access HMS line gear,
- (vii) Open access salmon troll gear,
- (viii) Open access Coastal Pelagic Species net gear.

(2) *Vessel registered to a limited entry fixed gear permit.* To participate with open access gear, defined at § 660.11, subpart C, a vessel registered to a limit entry fixed gear permit must make the

appropriate open access declaration, as specified at § 660.14(d)(5)(iv)(A).

- 12. In § 660.111, revise the definition for “Catch history assignment” to read as follows:

§ 660.111 Trawl fishery—definitions.

* * * * *

Catch history assignment or CHA means a percentage of the mothership sector allocation of Pacific whiting based on a limited entry permit’s qualifying history and which is specified on the MS/CV-endorsed limited entry permit.

* * * * *

- 13. In § 660.112,
- a. Revise paragraphs (b)(1)(iv) and (b)(1)(xii)(B); and add paragraph (b)(1)(xii)(C);
- b. Revise paragraph (b)(1)(xiii);
- c. Revise paragraphs (b)(2)(i) and (ii) to read as follows:

§ 660.112 Trawl fishery—prohibitions.

* * * * *

(b) * * *

(1) * * *

(iv) Register the limited entry trawl endorsed permit to another vessel or sell the limited entry trawl endorsed permit to another owner if the vessel registered to the permit has a deficit (negative balance) in their vessel account, until the deficit is covered, regardless of the amount of the deficit.

* * * * *

(xii) * * *

(B) A vessel that has a sablefish at-sea processing exemption, described at § 660.25(b)(6)(i) may process sablefish at-sea.

(C) A vessel that has a non-whiting at-sea processing exemption, described at § 660.25(b)(6)(ii) may process non-whiting groundfish at sea.

* * * * *

(xiii) Retain any IFQ species/species group onboard a vessel unless the vessel has observer coverage during the entire trip and observer or catch monitor coverage while in port until all IFQ species from the trip are offloaded, except for the following IFQ species: Bocaccio, yelloweye rockfish, canary rockfish, and cowcod. If the observer makes available to the catch monitor an observer program form reporting the weight and number of each of the IFQ species that were retained onboard the vessel during that trip and noting any discrepancy in those species between the vessel operator and observer, the vessel would not need to maintain observer or catch monitor coverage on the vessel while in port and until the offload is complete. A vessel may deliver IFQ species/species groups to

more than one IFQ first receiver, but must maintain observer coverage onboard the vessel during any transit between delivery points. Once transfer of fish begins, all fish aboard the vessel are counted as part of the same landing as defined at § 660.11. Modifying the list of IFQ species to which this exception applies has been designated as a “routine management measure” and may be modified through an inseason action, as specified at § 660.60(c)(1)(iv).

* * * *

(2) * * *

(i) Receive, purchase, or take custody, control, or possession of an IFQ landing from a vessel that harvested the catch while fishing under the Shorebased IFQ Program without a valid first receiver site license.

(ii) Fail to sort fish received from a IFQ landing prior to first weighing after offloading as specified at § 660.130(d)(2) for the Shorebased IFQ Program, with the following exception. Vessels declared in to the Shorebased IFQ Program at § 660.13(d)(5)(iv)(A), may weigh catch on a bulk scale or automatic hopper scale before sorting as described at § 660.140(j)(2)(viii), for Pacific whiting taken with midwater trawl gear, and at § 660.140(j)(2)(ix)(A), for all other IFQ landings. For this exception, all but the predominant species must then be reweighed.

* * * *

■ 14. In § 660.113, revise paragraphs (a)(2) and (b)(4)(i) and (ii) to read as follows:

§ 660.113 Trawl fishery—recordkeeping and reporting.

* * * *

(a) * * *

(2) *Retention of records.* All records used in the preparation of records or reports specified in this section or corrections to these reports must be maintained for a period of not less than three years after the date of landing and must be immediately available upon request for inspection by NMFS or authorized officers or others as specifically authorized by NMFS. Records used in the preparation of required reports specified in this section or corrections to these reports that are required to be kept include, but are not limited to, any written, recorded, graphic, electronic, or digital materials as well as other information stored in or accessible through a computer or other information retrieval system; worksheets; weight slips; preliminary, interim, and final tally sheets; receipts; checks; ledgers; notebooks; diaries; spreadsheets; diagrams; graphs; charts; tapes; disks; or computer printouts. All

relevant records used in the preparation of electronic fish ticket reports or corrections to these reports, including dock tickets, must be maintained for a period of not less than three years after the date and must be immediately available upon request for inspection by NMFS or authorized officers or others as specifically authorized by NMFS.

(b) * * *

(4) * * *

(i) *Required information.* All IFQ first receivers must provide the following types of information: Date of landing, vessel that made the delivery, vessel account number, name of the vessel operator, gear type used, catch area, first receiver, actual weights of species landed listed by species or species group including species with no value, condition landed, number of salmon by species, number of Pacific halibut, ex-vessel value of the landing by species, fish caught inside/outside 3 miles or both, and any other information deemed necessary by the Regional Administrator as specified on the appropriate electronic fish ticket form.

(ii) *Submissions.* The IFQ first receiver must:

(A) Include as part of each electronic fish ticket submission, the actual scale weight for each groundfish species as specified by requirements at § 660.15(c), and the vessel identification number.

(B) Use for the purpose of submitting electronic fish tickets, and maintain in good working order, computer equipment as specified at § 660.15(d);

(C) Install, use, and update as necessary, any NMFS-approved software described at § 660.15(d);

(D) Submit a completed electronic fish ticket for every IFQ landing no later than 24 hours after the date the fish are received, unless a waiver of this requirement has been granted under provisions specified at paragraph (b)(4)(iv) of this section.

(E) Follow these process and submittal requirements for offloading at a first receiver site where the fish will be processed at the offload site or if an electronic fish ticket will be recorded prior to transport:

(1) The IFQ first receiver must communicate the electronic fish ticket number to the catch monitor.

(2) After completing the offload, the electronic fish ticket information must be recorded immediately.

(3) Prior to submittal of the electronic fish ticket, the information recorded for the electronic fish ticket must be reviewed by the catch monitor and the vessel operator who delivered the fish.

(4) After review, the IFQ first receiver and the vessel operator must sign a printed hard copy of the electronic fish

ticket or, if the delivery occurs outside of business hours, the original dock ticket.

(5) Prior to submittal, three copies of the signed electronic fish ticket must be produced by the IFQ first receiver and a copy provided to each of the following:

(i) The vessel operator,

(ii) The state of origin if required by state regulations, and

(iii) The IFQ first receiver.

(6) After review and signature, the electronic fish ticket must be submitted within 24 hours of the completion of the offload, as specified in paragraph (b)(4)(ii)(D) of this section.

(F) Follow these process and submittal requirements for offloading at a first receiver site where the fish will be transported for processing at a different location if an electronic fish ticket is not recorded prior to transport:

(1) The IFQ first receiver must communicate the electronic fish ticket number to the catch monitor at the beginning of the offload.

(2) The vessel name and the electronic fish ticket number must be recorded on each dock ticket related to that delivery.

(3) Upon completion of the dock ticket, but prior to transfer of the offload to another location, the dock ticket information that will be used to complete the electronic fish ticket must be reviewed by the catch monitor and the vessel operator who delivered the fish.

(4) After review, the IFQ first receiver and the vessel operator must sign the original copy of each dock ticket related to that delivery.

(5) Prior to submittal of the electronic fish ticket, three copies of the signed dock ticket must be produced by the IFQ first receiver and a copy provided to each of the following:

(i) The vessel operator,

(ii) The state of origin if required by state regulations, and

(iii) The IFQ first receiver.

(6) Based on the information contained in the signed dock ticket, the electronic fish ticket must be completed and submitted within 24 hours of the completion of the offload, as specified in paragraph (b)(4)(ii)(D) of this section.

(7) Three copies of the electronic fish ticket must be produced by the IFQ first receiver and a copy provided to each of the following:

(i) The vessel operator,

(ii) The state of origin if required by state regulations, and

(iii) The IFQ first receiver.

* * * *

■ 15. Revise § 660.120 to read as follows:

§ 660.120 Trawl fishery—crossover provisions.

The crossover provisions listed at § 660.60(h)(7), apply to vessels fishing in the limited entry trawl fishery.

- 16. In § 660.130, remove paragraph (c)(4)(ii)(B) and redesignate paragraph (c)(4)(ii)(C) as (c)(4)(ii)(B), revise paragraph (c) heading, (c) introductory text, (c)(4) introductory text, (d) introductory text, and (d)(2)(i) to read as follows:

§ 660.130 Trawl fishery—management measures.

* * * * *

(c) *Restrictions by limited entry trawl gear type.* Management measures may vary depending on the type of trawl gear (i.e., large footrope, small footrope, selective flatfish, or midwater trawl gear) used and/or on board a vessel during a fishing trip, cumulative limit period, and the area fished. Trawl nets may be used on and off the seabed. For some species or species groups, Table 1 (North) and Table 1 (South) of this subpart provide trip limits that are specific to different types of trawl gear: Large footrope, small footrope (including selective flatfish), selective flatfish, midwater, and multiple types. If Table 1 (North) and Table 1 (South) of this subpart provide gear specific limits for a particular species or species group, it is unlawful to take and retain, possess or land that species or species group with limited entry trawl gears other than those listed.

* * * * *

(4) *More than one type of trawl gear on board.* The trip limits in Table 1 (North) or Table 1 (South) of this subpart must not be exceeded.

* * * * *

(d) *Sorting.* Under § 660.12 (a)(8), it is unlawful for any person to “fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, scientific sorting designation, quota, harvest guideline, ACL or ACT or OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, scientific sorting designation, quota, harvest guideline, ACL or ACT or OY applied.” The States of Washington, Oregon, and California may also require that vessels record their landings as sorted on their state landing receipt. Sector specific sorting requirements and exceptions are listed at paragraphs (d)(2) and (d)(3) of this section.

* * * * *

(2) * * *

(i) *First receivers.* Fish landed at IFQ first receivers (including shoreside

processing facilities and buying stations that intend to transport catch for processing elsewhere) must be sorted, prior to first weighing after offloading from the vessel and prior to transport away from the point of landing, with the following exception. Vessels declared in to the Shorebased IFQ Program at § 660.13(d)(5)(iv)(A), may weigh catch on a bulk scale or automatic hopper scale before sorting as described at § 660.140(j)(2)(viii), for Pacific whiting taken with midwater trawl gear, and at § 660.140(j)(2)(ix)(A), for all other IFQ landings. For this exception, all but the predominant species must then be reweighed.

* * * * *

- 17. In § 660.140,

- a. Revise paragraph (a) introductory text, paragraphs (d)(1)(ii) introductory text, (d)(1)(ii)(A) and (C), (d)(2)(ii), (d)(3)(i)(D), (d)(3)(ii)(A), (d)(4)(v), (e)(1)(i), (e)(2)(ii), (e)(3)(i)(D), (e)(3)(ii), (e)(4)(i) introductory text, (e)(5)(i), (f)(1) and (2), (f)(3) introductory text, (f)(3)(iii) introductory text, (f)(3)(iii)(B), (f)(5) through (f)(7), (h)(1)(i), (j)(1), and (l)(2);
- b. Add paragraphs (f)(3)(ii)(D) and (f)(3)(iii)(C)(11) to read as follows:

§ 660.140 Shorebased IFQ Program.

(a) *General.* The Shorebased IFQ Program applies to qualified participants in the Pacific Coast Groundfish fishery and includes a system of transferable QS for most groundfish species or species groups, IBQ for Pacific halibut, and trip limits or set-asides for the remaining groundfish species or species groups. NMFS will issue a QS permit to eligible participants and will establish a QS account for each QS permit owner to track the amount of QS or IBQ and QP or IBQ pounds owned by that owner. QS permit owners may own QS or IBQ for IFQ species, expressed as a percent of the allocation to the Shorebased IFQ Program for that species. NMFS will issue QP or IBQ pounds to QS permit owners, expressed in pounds, on an annual basis, to be deposited in the corresponding QS account. NMFS will establish a vessel account for each eligible vessel owner participating in the Shorebased IFQ Program, which is independent of the QS permit and QS account. In order to use QP or IBQ pounds, a QS permit owner must transfer the QP or IBQ pounds from the QS account into the vessel account for the vessel to which the QP or IBQ pounds is to be assigned. Harvests of IFQ species may only be delivered to an IFQ first receiver with a first receiver site license. In addition to the requirements of this section, the

Shorebased IFQ Program is subject to the following groundfish regulations of subparts C and D:

* * * * *

(d) * * *

(1) * * *

(ii) *Annual QP and IBQ pound allocations.* QP and IBQ pounds will be deposited into QS accounts annually. QS permit owners will be notified of QP deposits via the IFQ Web site and their QS account. QP and IBQ pounds will be issued to the nearest whole pound using standard rounding rules (i.e. decimal amounts less than 0.5 round down and 0.5 and greater round up), except that in the first year of the Shorebased IFQ Program, issuance of QP for overfished species greater than zero but less than one pound will be rounded up to one pound. Rounding rules may affect distribution of the entire shorebased trawl allocation. NMFS will distribute such allocations to the maximum extent practicable, not to exceed the total allocation. QS permit owners must transfer their QP and IBQ pounds from their QS account to a vessel account in order for those QP and IBQ pounds to be fished. QP and IBQ pounds must be transferred in whole pounds (i.e. no fraction of a QP or IBQ pound can be transferred). All QP and IBQ pounds in a QS account must be transferred to a vessel account by September 1 of each year in order to be fished.

(A) *Non-whiting QP annual sub-allocations.* NMFS will issue QP for IFQ species other than Pacific whiting and Pacific halibut annually by multiplying the QS permit owner's QS for each such IFQ species by that year's shorebased trawl allocation for that IFQ species. Deposits to QS accounts for IFQ species other than Pacific whiting and Pacific halibut will be made on or about January 1 each year. Until the method for distributing the QP issued for adaptive management program QS, specified at paragraph (l) of this section, is developed and implemented or through 2014, whichever is earlier, the resulting AMP QP will be issued to all QS permit owners in proportion to their non-whiting QS.

(1) In years where the groundfish harvest specifications are known by January 1, deposits to QS accounts for IFQ species will be made on or about January 1.

(2) In years where the groundfish harvest specifications are not known by January 1, NMFS will issue QP in two parts. On or about January 1, NMFS will deposit QP based on the shorebased trawl allocation multiplied by the lower end of the range of potential harvest specifications for that year. After the

final harvest specifications are established later in the year, NMFS will deposit additional QP to the QS account.

* * * * *

(C) *Pacific halibut IBQ pounds annual allocation.* NMFS will issue IBQ pounds for Pacific halibut annually by multiplying the QS permit owner's IBQ percent by the Shorebased IFQ Program component of the trawl bycatch mortality limit for that year. Deposits to QS accounts for Pacific halibut IBQ pounds will be made on or about January 1 each year. Mortality of any size Pacific halibut count against IBQ pounds.

(1) In years where the Pacific halibut total constant exploitation yield is known by January 1, deposits to QS accounts will be made on or about January 1.

(2) In years where the Pacific halibut total constant exploitation yield is not known by January 1, NMFS will issue QP in two parts. On or about January 1, NMFS will deposit QP based on some portion of the International Pacific Halibut Commission's staff recommended total constant exploitation yield from their interim meeting. After the final Pacific halibut total constant exploitation yield is established from the International Pacific Halibut Commission's annual meeting, NMFS will deposit additional QP to the QS account.

* * * * *

(2) * * *

(ii) *Registration.* A QS account will be established by NMFS with the issuance of a QS permit. The administrative functions associated with the Shorebased IFQ Program (e.g., account registration, landing transactions, and transfers) are designed to be accomplished online; therefore, a participant must have access to a computer with Internet access and must set up online access to their QS account to participate. The computer must have Internet browser software installed (e.g., Internet Explorer, Netscape, Mozilla Firefox); as well as the Adobe Flash Player software version 9.0 or greater. NMFS will mail initial QS permit owners instructions to set up online access to their QS account. NMFS will use the QS account to send messages to QS permit owners; it is important for QS permit owners to monitor their online QS account and all associated messages.

(3) * * *

(i) * * *

(D) QS permits will not be renewed until SFD has received a complete application for a QS permit renewal, which includes payment of required

fees, complete documentation of QS permit ownership on the Trawl Identification of Ownership Interest Form as required under paragraph (d)(4)(iv) of this section, a complete economic data collection form if required under § 660.114. The QS permit renewal will be considered incomplete until the required information is submitted.

* * * * *

(ii) * * *

(A) *Change in QS permit ownership.* Ownership of a QS permit cannot be registered to another individual or entity. The QS permit owner cannot change or add additional individuals or entities as owners of the permit (i.e., cannot change the legal name of the permit owner(s) as given on the permit). Any change in ownership of the QS permit requires the new owner(s) to apply for a QS permit, and is subject to accumulation limits and approval by NMFS.

* * * * *

(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 after which they will have to completely divest of 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 excess QS or IBQ during years three and four of the IFQ program. Holders 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. At the end of year 4 of the IFQ program, any QS or IBQ held by a person (including any person who has ownership interest in the owner named on the permit) in excess of the accumulation limits will be revoked and redistributed to the remainder of the QS or IBQ owners in proportion to the QS or IBQ holdings in year 5. No compensation will be due for any revoked shares.

* * * * *

(e) * * *

(1) * * *

(i) *Gear exception.* Vessels registered to a limited entry trawl permit using the following gears would not be required to cover groundfish catch with QP or Pacific halibut catch with IBQ pounds: Non-groundfish trawl, gear types defined in the coastal pelagic species FMP, gear types defined in the highly migratory species FMP, salmon troll, crab pot, and limited entry fixed gear when the vessel also has a limited entry permit endorsed for fixed gear and has declared that it is fishing in the limited entry fixed gear fishery. Vessels using gears falling under this exception are subject to the open access fishery restrictions and limits when declared in to an open access fishery.

* * * * *

(2) * * *

(ii) *Registration.* A vessel account must be registered with the NMFS SFD Permits Office. A vessel account may be established at any time during the year. An eligible vessel owner must submit a request in writing to NMFS to establish a vessel account. The request must include the vessel name; USCG vessel registration number (as given on USCG Form 1270) or state registration number, if no USCG documentation; all vessel owner names (as given on USCG Form 1270, or on state registration, as applicable); and business contact information, including: Address, phone number, fax number, and email. Requests for a vessel account must also include the following information: A complete economic data collection form as required under § 660.113(b), (c) and (d), and a complete Trawl Identification of Ownership Interest Form as required under paragraph (e)(4)(ii) of this section. The request for a vessel account will be considered incomplete until the required information is submitted. Any change specified at paragraph (e)(3)(ii) of this section, including a change in the legal name of the vessel owner(s), will require the new owner to register with NMFS for a vessel account. A participant must have access to a computer with Internet access and must

set up online access to their vessel account to participate. The computer must have Internet browser software installed (e.g., Internet Explorer, Netscape, Mozilla Firefox); as well as the Adobe Flash Player software version 9.0 or greater. NMFS will mail vessel account owners instructions to set up online access to their vessel account. NMFS will use the vessel account to send messages to vessel owners in the Shorebased IFQ Program; it is important for vessel owners to monitor their online vessel account and all associated messages.

(3) * * *

(i)

(D) Vessel accounts will not be renewed until SFD has received a complete application for a vessel account renewal, which includes payment of required fees, a complete documentation of permit ownership on the Trawl Identification of Ownership Interest Form as required under paragraph (e)(4)(ii) of this section, and a complete economic data collection form as required under § 660.114. The vessel account renewal will be considered incomplete until the required information is submitted.

* * * * *

(ii) *Change in vessel account ownership.* Vessel accounts are non-transferable and ownership of a vessel account cannot change (i.e., cannot change the legal name of the owner(s) as given on the vessel account). If the ownership of a vessel changes (as given on a USCG or state vessel registration documentation), then a new vessel account must be opened by the new owner in order for the vessel to participate in the Shorebased IFQ Program.

* * * * *

(4) * * *

(i) *Vessel limits.* For each IFQ species or species group specified in this paragraph, vessel accounts may not have QP or IBQ pounds in excess of the QP Vessel Limit (Annual Limit) in any year, and, for species covered by Unused QP Vessel Limits (Daily Limit), may not have QP or IBQ pounds in excess of the Unused QP Vessel Limit at any time. The QP Vessel Limit (Annual Limit) is calculated as unused available QPs plus used QPs (landings and discards) plus any pending outgoing transfer of QPs. The Unused QP Vessel Limits (Daily Limit) is calculated as unused available QPs plus any pending outgoing transfer of QPs. These vessel limits are as follows:

* * * * *

(5) * * *

(i) *Surplus QP or IBQ pounds.* A vessel account with a surplus of QP or IBQ pounds (unused QP or IBQ pounds) for any IFQ species at the end of the fishing year may carryover for use in the immediately following year an amount of unused QP or IBQ pounds up to its carry over limit. The carryover limit for the surplus is calculated as 10 percent of the cumulative total QP or IBQ pounds (used and unused, less any transfers or any previous carryover amounts) in the vessel account at the end of the year. To the extent allowed by the conservation requirements of the Magnuson-Stevens Act, NMFS will credit the carryover amount to the vessel account in the immediately following year once NMFS has completed its end-of-the-year account reconciliation. NMFS will notify vessel account owners through the online IFQ system of any additional QP or IBQ pounds resulting from a carryover of surplus pounds. If there is a decline in the ACL between the base year and the following year in which the QP or IBQ pounds would be carried over, the carryover amount will be reduced in proportion to the reduction in the ACL. Surplus QP or IBQ pounds may not be carried over for more than one year. Any amount of QP or IBQ pounds in a vessel account and in excess of the carryover amount will expire on December 31 each year and will not be available for any future use.

* * * * *

(f) * * *

(1) *General.* The first receiver site license authorizes the holder to receive, purchase, or take custody, control, or possession of an IFQ landing at a specific physical site onshore directly from a vessel. Each buyer of groundfish from a vessel making an IFQ landing must have a first receiver site license for each physical location where the IFQ landing is offloaded.

(2) *Issuance.* (i) First receiver site licenses will only be issued to a person registered to a valid license issued by the state of Washington, Oregon, or California, and that authorizes the person to receive fish from a catcher vessel.

(ii) A separate first receiver site license will be issued for each IFQ first receiver for each specific physical location where the IFQ first receiver will receive, purchase or take custody, control, or possession of an IFQ landing from a vessel.

(iii) An IFQ first receiver may apply for a first receiver site license at any time during the calendar year.

(iv) IFQ first receivers must reapply for a first receiver site license as

specified at paragraphs (f)(6) and (7) of this section.

* * * * *

(3) *Application process.* Persons interested in being licensed as an IFQ first receiver for a specific physical location must submit a complete application for a first receiver site license to NMFS, Northwest Region, Permits Office, ATTN: Catch Monitor Coordinator, Bldg. 1, 7600 Sand Point Way NE, Seattle, WA 98115. NMFS will only consider complete applications for approval. A complete application includes:

* * * * *

(ii) * * *

(D) The name and signature of the person submitting the application and the date of the application.

* * * * *

(iii) *A catch monitoring plan.* All IFQ first receivers must prepare and operate under a NMFS-accepted catch monitoring plan for each specific physical location. A proposed catch monitoring plan detailing how the IFQ first receiver will meet each of the performance standards in paragraph (f)(3)(iii)(C) of this section must be included with the application. NMFS will not issue a first receiver site license to a person that does not have a current, NMFS-accepted catch monitoring plan.

* * * * *

(B) *Arranging an inspection.* After receiving a complete application for a first receiver site license, including the proposed catch monitoring plan, NMFS will contact the applicant to schedule a site inspection.

* * * * *

(C) * * *

(11) *Electronic fish ticket submittal.* Describe how the electronic fish ticket submittal requirements specified at § 660.113(b)(4)(ii) will be met.

* * * * *

(5) *Effective date.* The first receiver site license is effective upon approval and issuance by NMFS and will be effective for one year from the date of NMFS issuance, or until the state license required by paragraph (f)(2)(i) of this section is no longer effective, whichever occurs first.

(6) *Reissuance in subsequent years.* Existing license holders must reapply annually. If the existing license holder fails to reapply, the first receiver's site license will expire as specified in paragraph (f)(5) of this section. The IFQ first receiver will not be authorized to receive IFQ species from a vessel if their first receiver site license has expired.

(7) *Change in ownership of an IFQ first receiver.* If there are any changes to

the owner of a first receiver registered to a first receiver site license during a calendar year, the first receiver site license is void. The new owner of the first receiver must apply to NMFS for a first receiver site license. A first receiver site license may not be registered to any other person.

* * * * *

(h) * * *
(1) * * *

(i) Any vessel participating in the Shorebased IFQ Program must carry a NMFS-certified observer during any trip and must maintain observer or catch monitor coverage while in port until all fish from that trip have been offloaded, with the following exception. If the observer makes available to the catch monitor an observer program form reporting the weight and number of those overfished species identified in § 660.112(b)(1)(xiii) that were retained onboard the vessel during that trip and noting any discrepancy in those species between the vessel operator and observer, the vessel would not need to maintain observer or catch monitor coverage on the vessel while in port and until the offload is complete. If a vessel delivers fish from an IFQ trip to more than one IFQ first receiver, the observer must remain onboard the vessel during any transit between delivery points.

* * * * *

(j) * * *

(1) *Catch monitoring plan.* All IFQ first receivers must operate under a NMFS-accepted catch monitoring plan for each specific physical location where IFQ landings will be received, purchased, or taken custody, control, or possession of.

* * * * *

(l) * * *

(2) *AMP QP pass through.* The 10 percent of non-whiting QS will be reserved for the AMP, but the resulting AMP QP will be issued to all QS permit owners in proportion to their non-whiting QS through 2014 or until alternative criteria for distribution of the AMP QP is developed and implemented, whichever is earlier.

■ 18. In § 660.150,
■ a. Revise paragraph (a) introductory text, (c)(2)(i)(A), (d)(1)(iii) introductory text, (d)(1)(iii)(A)(1)(vi), (f)(2)(i), (f)(3)(i), (g)(1)(iii), (g)(2)(iv), and (g)(3)(i) introductory text;
■ b. Add paragraphs (c)(2)(i)(B)(1)(i) and (ii), (c)(2)(i)(C), (c)(2)(ii)(C), (g)(2)(v) and (vi) to read as follows:

§ 660.150 Mothership (MS) Coop Program.

(a) *General.* The MS Coop Program is a general term to describe the limited access program that applies to eligible

harvesters and processors in the mothership sector of the Pacific whiting at-sea trawl fishery. Eligible harvesters and processors, including coop and non-coop fishery participants, must meet the requirements set forth in this section of the Pacific Coast groundfish regulations. Each year a vessel registered to an MS/CV-endorsed permit may fish in either the coop or non-coop portion of the MS Coop Program, but not both. In addition to the requirements of this section, the MS Coop Program is subject to the following groundfish regulations of subparts C and D of this part:

* * * * *

(c) * * *
(2) * * *
(i) * * *

(A) *Pacific whiting catch history assignment.* Each MS/CV endorsement's associated catch history assignment of Pacific whiting will be annually allocated to a single permitted MS coop or to the non-coop fishery. If multiple MS/CV endorsements and their associated CHAs are registered to a limited entry permit, that permit may be simultaneously registered to more than one MS coop or to both a coop(s) and non-coop fishery. Once assigned to a permitted MS coop or to the non-coop fishery, each MS/CV endorsement's catch history assignment remains with that permitted MS coop or non-coop fishery for that calendar year. When the mothership sector allocation is established, the information for the conversion of catch history assignment to pounds will be made available to the public through a **Federal Register** announcement and/or public notice and/or the NMFS Web site. The amount of whiting from the catch history assignment will be issued to the nearest whole pound using standard rounding rules (i.e. less than 0.5 rounds down and 0.5 and greater rounds up).

(1) In years where the Pacific whiting harvest specification is known by the start of the mothership sector primary whiting season specified at § 660.131(b)(2)(iii)(B), allocation for Pacific whiting will be made by the start of the season.

(2) In years where the Pacific whiting harvest specification is not known by the start of the mothership sector primary whiting season specified at § 660.131(b)(2)(iii)(B), NMFS will issue Pacific whiting allocations in two parts. Before the start of the primary whiting season, NMFS will allocate Pacific whiting based on the MS Coop Program allocation percent multiplied by the lower end of the range of potential harvest specifications for Pacific

whiting for that year. After the final Pacific whiting harvest specifications are established, NMFS will allocate any additional amounts of Pacific whiting to the MS Coop Program.

(B) * * *
(1) * * *

(i) In years where the groundfish harvest specifications are known by the start of the mothership sector primary whiting season specified at § 660.131(b)(2)(iii)(B), allocation of non-whiting groundfish species with an allocation will be made by the start of the season.

(ii) In years where the groundfish harvest specifications are not known by the start of the mothership sector primary whiting season specified at § 660.131(b)(2)(iii)(B), NMFS will issue allocations for non-whiting groundfish species with an allocation in two parts. Before the start of the whiting primary season, NMFS will allocate non-whiting groundfish species with an allocation based on the MS Coop Program allocation percent multiplied by the lower end of the range of potential harvest specifications for those species for that year. After the final groundfish harvest specifications are established, NMFS will allocate any additional amounts of non-whiting groundfish species with an allocation to the MS Coop Program.

* * * * *

(C) Rounding rules may affect distribution of the MS Coop Program allocations among the catch history assignments for individual MS/CV-endorsed permits. NMFS will distribute such allocations to the maximum extent practicable, not to exceed the total allocation.

* * * * *

(ii) * * *

(C) If all MS/CV-endorsed permits are members of a single coop in a given year and there is not a non-coop fishery, then NMFS will allocate 100 percent of the MS Coop Program allocation to that coop.

* * * * *

(d) * * *

(1) * * *

(iii) *Application for MS coop permit.* The designated coop manager, on behalf of the coop entity, must submit a complete application form and include each of the items listed in paragraph (d)(1)(iii)(A) of this section. Only complete applications will be considered for issuance of a MS coop permit. An application will not be considered complete if any required application fees and annual coop reports have not been received by NMFS. NMFS may request additional

supplemental documentation as necessary to make a determination of whether to approve or disapprove the application. Application forms and instruction are available on the NMFS NWR Web site (<http://www.nwr.noaa.gov>) or by request from NMFS. The designated coop manager must sign the application acknowledging the responsibilities of a designated coop manager defined in paragraph (b)(3) of this section. For permit owners with more than one MS/CV endorsement and associated CHA, paragraph (g)(2)(iv)(D) of this section specifies how to join an MS coop(s).

(A) *

(1) *

(vi) A clause stating that if a permit is registered to a new permit owner during the effective period of the coop agreement, any new owners of that member permit would be coop members required to comply with membership restrictions in the coop agreement.

* * * *

(f) *

(2) *

(i) *Renewal.* An MS permit must be renewed annually consistent with the limited entry permit regulations given at § 660.25(b)(4). If a vessel registered to the MS permit will operate as a mothership in the year for which the permit is renewed, the permit owner must make a declaration as part of the permit renewal that while participating in the whiting fishery it will operate solely as a mothership during the calendar year to which its limited entry permit applies. Any such declaration is binding on the vessel for the calendar year, even if the permit is registered to a different permit owner during the year, unless it is rescinded in response to a written request from the permit owner. Any request to rescind a declaration must be made by the permit owner and granted in writing by the Regional Administrator before any unprocessed whiting has been taken on board the vessel that calendar year.

* * * *

(3) *

(i) *MS permit usage limit.* No person who owns an MS permit(s) may register the MS permit(s) to vessels that cumulatively process more than 45 percent of the annual mothership sector Pacific whiting allocation. For purposes of determining accumulation limits, NMFS requires that permit owners submit a complete trawl ownership interest form for the permit owner as part of annual renewal for the MS permit. An ownership interest form will also be required whenever a new permit owner obtains an MS permit as part of

a request for a change in permit ownership. Accumulation limits will be determined by calculating the percentage of ownership interest a person has in any MS permit. Determination of ownership interest will subject to the individual and collective rule.

* * * *

(g) * * *
(1) * * *

(iii) *MS/CV endorsement and CHA non-severable.* Subject to the regulations at paragraph (g)(2)(iv) and (v) of this section, an MS/CV endorsement and its associated CHA are permanently linked together as originally issued by NMFS and cannot be divided or registered separately to another limited entry trawl permit. An MS/CV endorsement and its associated CHA must be registered to a limited entry trawl permit and any change in endorsement registration must be to another limited entry trawl permit.

* * * *

(2) *

(iv) *Change in MS/CV endorsement registration.* As specified at § 660.25(b)(3)(v), each MS/CV endorsement has an associated CHA that is permanently linked as originally issued by NMFS and cannot be divided or registered separately to another limited entry trawl permit. An MS/CV endorsement and associated CHA must be registered to a limited entry trawl permit and any change in MS/CV endorsement registration must be to another limited entry trawl permit. Any change in MS/CV endorsement registration will be registered separately on the limited entry trawl permit. An MS/CV endorsement and its associated CHA cannot be registered to any other person other than the specified owner of the limited entry trawl permit to which it is registered.

(A) *Multiple MS/CV endorsements on a limited entry trawl permit.* Multiple MS/CV endorsements and associated CHAs may be registered to a single limited entry trawl permit. If multiple endorsements are registered to a single limited entry trawl permit, the whiting CHA amount (expressed as a percent) will remain in the amount that it was originally issued by NMFS and will not be combined as a single larger CHA, unless two or more MS/CV-endorsed permits are combined for purposes of increasing the size endorsement, as specified at § 660.25(b)(4)(ii)(B). Any change in MS/CV endorsement registration may be disapproved if the person owning the limited entry trawl permit has aggregate CHA amounts in excess of the accumulation limits

specified at paragraph (g)(3) of this section.

(B) *Application.* A request for a change in MS/CV endorsement registration must be made between September 1 and December 31 of each year. Any transfer of MS/CV endorsement and its associated CHA to another limited entry trawl permit must be requested using a change in permit ownership form and the permit owner or an authorized representative of the permit owner must certify that the application is true and correct by signing and dating the form. In addition, the form must be notarized, and the permit owner selling the MS/CV endorsement and CHA must provide the sale price of the MS/CV endorsement and its associated CHA. If any assets in addition to the MS/CV endorsement and its associated CHA are included in the sale price, those assets must be itemized and described.

(C) *Effective date.* Any change in MS/CV endorsement registration from one limited entry trawl permit to another limited entry trawl permit will be effective on January 1 in the year following the application period.

(D) A limited entry trawl permit with multiple MS/CV endorsement registrations may be simultaneously registered to more than one coop or to both a coop(s) and non-coop fishery. In such cases, as part of the coop permit application process, specified at paragraph (d)(iii) of this section, the permit owner must specify on the coop permit application form which MS/CV endorsement and associated CHA is specifically registered to a particular coop or to the non-coop fishery.

(v) *Combination.* An MS/CV-endorsed permit may be combined with one or more other limited entry trawl permits; the resulting permit will be a single permit with an increased size endorsement. If the MS/CV-endorsed permit is combined with another limited entry trawl-endorsed permit other than a C/P-endorsed permit, the resulting permit will be MS/CV-endorsed. If an MS/CV-endorsed permit is combined with a C/P-endorsed permit, the resulting permit will be exclusively a C/P-endorsed permit, and will not have an MS/CV endorsement. If an MS/CV-endorsed permit is combined with another MS/CV-endorsed permit, the combined catch history assignment of the permit(s) will be added to the active permit (the permit remaining after combination) and the other permit will be retired. If a trawl permit has more than one MS/CV endorsements and it is combined with a non C/P-endorsed trawl permit with no such endorsements, the MS/CV endorsements

on the resulting permit will be maintained as separate endorsements on the resulting permit. NMFS will not approve a permit combination if it results in a person exceeding the accumulation limits specified at paragraph (g)(3) of this section. Any request to combine permits is subject to the provision provided at § 660.25(b), including the combination formula for resulting size endorsements.

(vi) *One-time request to undo a permit combination.* If two or more MS/CV-endorsed permits have been combined before January 1, 2012 for purposes of increasing the vessel's size endorsement, a permit owner of the resulting combined permit will have until February 29, 2012 to undo that permit combination. The permit owner must submit a letter to NMFS requesting such action. The letter must be postmarked or hand-delivered to NMFS by the deadline.

* * * * *

(3) * * *

(i) *MS/CV-endorsed permit ownership limit.* No person shall own MS/CV-endorsed permits for which the collective Pacific whiting allocation total is greater than 20 percent of the total mothership sector allocation. For purposes of determining accumulation limits, NMFS requires that permit owners submit a complete trawl ownership interest form for the permit owner as part of annual renewal of an MS/CV-endorsed permit. An ownership interest form will also be required whenever a new permit owner obtains an MS/CV-endorsed permit as part of a request for a change in permit ownership. Accumulation limits will be determined by calculating the percentage of ownership interest a person has in any MS/CV-endorsed permit and the amount of the Pacific whiting catch history assignment given on the permit. Determination of ownership interest will be subject to the individual and collective rule.

* * * * *

- 19. In § 660.160,
 - a. Revise paragraphs (a) introductory text, (d)(1)(iii)(A)(1)(iv), (e)(1)(i), (e)(2)(i);
 - b. Add paragraphs (c)(2)(i) and (ii), and (c)(3)(i)(A) and (B) to read as follows:

§ 660.160 Catcher/processor (C/P) Coop Program.

(a) *General.* The C/P Coop Program is a limited access program that applies to vessels in the C/P sector of the Pacific whiting at-sea trawl fishery and is a single voluntary coop. Eligible harvesters and processors must meet the

requirements set forth in this section of the Pacific Coast groundfish regulations. In addition to the requirements of this section, the C/P Coop Program is subject to the following groundfish regulations:

* * * * *

(c) * * *

(2) * * *

(i) In years where the Pacific whiting harvest specification is known by the start of the catcher/processor sector primary whiting season specified at § 660.131(b)(2)(iii)(A), allocation for Pacific whiting will be made by the start of the season.

(ii) In years where the Pacific whiting harvest specification is not known by the start of the catcher/processor sector primary whiting season specified at § 660.131(b)(2)(iii)(A), NMFS will issue Pacific whiting allocations in two parts. Before the start of the primary whiting season, NMFS will allocate Pacific whiting based on the C/P Coop Program allocation percent multiplied by the lower end of the range of potential harvest specifications for Pacific whiting for that year. After the final Pacific whiting harvest specifications are established, NMFS will allocate any additional amounts of Pacific whiting to the C/P Coop Program.

(3) * * *

(i) * * *

(A) In years where the groundfish harvest specifications are known by the start of the catcher/processor sector primary whiting season specified at § 660.131(b)(2)(iii)(A), allocation of non-whiting groundfish species with an allocation will be made by the start of the season.

(B) In years where the groundfish harvest specifications are not known by the start of the catcher/processor sector primary whiting season specified at § 660.131(b)(2)(iii)(A), NMFS will issue allocations for non-whiting groundfish species with an allocation in two parts. Before the start of the primary whiting season, NMFS will allocate non-whiting groundfish species with an allocation based on the C/P Coop Program allocation percent multiplied by the lower end of the range of potential harvest specifications for those species for that year. After the final groundfish harvest specifications are established, NMFS will allocate any additional amounts of non-whiting groundfish species with an allocation to the C/P Coop Program.

* * * * *

(d) * * *

(1) * * *

(iii) * * *

(A) * * *

(1) * * *

(iv) A clause stating that if a permit is registered to a new permit owner during the effective period of the coop agreement, any new owners of that member permit would be coop members and are required to comply with membership restrictions in the coop agreement.

* * * * *

(e) * * *

(1) * * *

(i) *Non-severable.* A C/P endorsement is not severable from the limited entry trawl permit, and therefore, the endorsement may not be registered to another permit owner or to another vessel separately from the limited entry trawl permit.

* * * * *

(2) * * *

(i) *Renewal.* A C/P-endorsed permit must be renewed annually consistent with the limited entry permit regulations given at § 660.25(b)(4). If a vessel registered to the C/P-endorsed permit will operate as a mothership in the year for which the permit is renewed, the permit owner must make a declaration as part of the permit renewal that while participating in the whiting fishery they will operate solely as a mothership during the calendar year to which its limited entry permit applies. Any such declaration is binding on the vessel for the calendar year, even if the permit is registered to a different permit owner during the year, unless it is rescinded in response to a written request from the permit owner. Any request to rescind a declaration must be made by the permit owner and granted in writing by the Regional Administrator before any unprocessed whiting has been taken on board the vessel that calendar year.

* * * * *

- 20. In § 660.212, revise paragraph (d)(3) to read as follows:

§ 660.212 Fixed gear fishery—prohibitions.

* * * * *

(d) * * *

(3) Process sablefish taken at-sea in the limited entry fixed gear sablefish primary fishery defined at § 660.231, from a vessel that does not have a sablefish at-sea processing exemption, described at § 660.25(b)(6)(i).

- 21. Revise 660.220 to read as follows:

§ 660.220 Fixed gear fishery—crossover provisions.

The crossover provisions listed at § 660.60(h)(7), apply to vessels fishing in the limited entry fixed gear fishery.

- 22. In § 660.231, revise paragraph (b)(4)(i) and (b)(4)(ii)(A) to read as follows:

§ 660.231 Limited entry fixed gear sablefish primary fishery.

* * * * *

(b) * * *

(4) * * *

(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 change in permit ownership was approved, 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) * * *

(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 registered 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.

* * * * *

■ 23. Revise 660.320 to read as follows:

§ 660.320 Open access fishery—crossover provisions.

The crossover provisions listed at § 660.60(h)(7), apply to vessels fishing in the open access fishery.

■ 24. In § 660.333, revise paragraphs (b) through (d) to read as follows:

§ 660.333 Open access non-groundfish trawl fishery—management measures.

* * * * *

(b) *Participation in the ridgeback prawn fishery.* A trawl vessel will be considered participating in the open access, non-groundfish trawl ridgeback prawn fishery if:

(1) It is declared “non-groundfish trawl gear for ridgeback prawn” under § 660.13(d)(5)(iv), regardless of whether it is registered to a Federal limited entry trawl-endorsed permit; and

(2) The landing includes ridgeback prawns taken in accordance with California Fish and Game Code, section 8595, which states: “Prawns or shrimp may be taken for commercial purposes with a trawl net, subject to Article 10 (commencing with Section 8830) of Chapter 3.”

(c) *Participation in the California halibut fishery.* A trawl vessel will be considered participating in the open access, non-groundfish trawl California halibut fishery if:

(1) It is declared “non-groundfish trawl gear for California halibut” under § 660.13(d)(5)(iv), regardless of whether it is registered to a Federal limited entry trawl-endorsed permit;

(2) All fishing on the trip takes place south of Pt. Arena, CA (38°57.50' N. lat.); and

(3) The landing includes California halibut of a size required by California Fish and Game Code section 8392, which states: “No California halibut may be taken, possessed or sold which measures less than 22 in (56 cm) in total length, unless it weighs 4-lb (1.8144 kg) or more in the round, 3 and one-half lbs (1.587 kg) or more dressed with the head on, or 3-lbs (1.3608 kg) or more dressed with the head off. Total length means the shortest distance between the tip of the jaw or snout, whichever extends farthest while the mouth is closed, and the tip of the longest lobe of the tail, measured while the halibut is lying flat in natural repose, without resort to any force other than the swinging or fanning of the tail.”

(d) *Participation in the sea cucumber fishery.* A trawl vessel will be considered to be participating in the open access, non-groundfish trawl sea cucumber fishery if:

(1) It is declared “non-groundfish trawl gear for sea cucumber” under § 660.13(d)(5)(iv), regardless of whether it is registered to a Federal limited entry trawl-endorsed permit;

(2) All fishing on the trip takes place south of Pt. Arena, CA (38°57.50' N. lat.); and

(3) The landing includes sea cucumbers taken in accordance with California Fish and Game Code, section 8405, which requires a permit issued by the State of California.

* * * * *

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 665**

[Docket No. 090130102-91386-02]

RIN 0648-XA780

Western and Central Pacific Fisheries for Highly Migratory Species; 2011 Bigeye Tuna Longline Fishery Closure

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

ACTION: Withdrawal of temporary rule.

SUMMARY: NMFS withdraws the temporary rule that would have closed the U.S. pelagic longline fishery for bigeye tuna in the western and central Pacific Ocean as a result of the fishery reaching the 2011 catch limit. NMFS no longer expects that the fishery will reach the limit by the date specified in the temporary rule.

DATES: The temporary rule published on November 18, 2011 (76 FR 71469) is withdrawn on November 28, 2011.

FOR FURTHER INFORMATION CONTACT: Tom Graham, NMFS Pacific Islands Region, (808) 944-2219.

SUPPLEMENTARY INFORMATION: NMFS established a catch limit of 3,763 metric tons (mt) of bigeye tuna (*Thunnus obesus*) for calendar year 2011 (74 FR 63999, December 7, 2009, and codified at 50 CFR 300.224). The limit was established under Conservation and Management Measure 2008-01 (CMM 2008-01) by the Commission for the Conservation and Management of Highly Migratory Species of the Western and Central Pacific Ocean (Commission). The catch limit applies to the U.S. pelagic longline fishery operating in the area of application of the Convention on the Conservation and