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15 CFR Part 902

50 CFR Part 660

Fisheries off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Amendments 20 and 21; Trawl Rationalization Program; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

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[Docket No. 100212086–0354–04]

RIN 0648–AY68

Fisheries off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Amendments 20 and 21; Trawl Rationalization Program

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

ACTION: Final rule.

SUMMARY: NMFS is implementing Amendments 20 and 21 to the Pacific Coast Groundfish Fishery Management Plan (FMP), which were partially approved by the Secretary on August 9, 2010. Amendment 20 establishes a trawl rationalization program for the Pacific Coast groundfish fishery. Amendment 20's trawl rationalization program consists of: an individual fishing quota (IFQ) program for the shorebased trawl fleet (including whiting and non-whiting sectors); and cooperative (coop) programs for the at-sea (whiting only) mothership and catcher/processor trawl fleets. The trawl rationalization program is intended to increase net economic benefits, create individual economic stability, provide full utilization of the trawl sector allocation, consider environmental impacts, and achieve individual accountability of catch and bycatch. Amendment 21 establishes fixed allocations for limited entry trawl participants. These allocations are intended to improve management under the rationalization program by streamlining its administration, providing stability to the fishery, and addressing halibut bycatch. This rule finalizes only certain key components necessary for issuance of permits and endorsements in time for use in the 2011 fishery and in order to have the 2011 specifications reflect the new allocation scheme. Specifically, this rule establishes the allocations set forth under Amendment 21 and establishes procedures for initial issuance of permits, endorsements, quota shares (QS), and catch history assignments under the IFQ and coop programs. In addition, this rule restructures the entire Pacific Coast groundfish regulations to more closely track the organization of the proposed management measures and to make the total groundfish regulations more clear.

DATES: This rule is effective November 1, 2010.

ADDRESSES: Background information and documents, including the final environmental impacts statements for Amendment 20 and Amendment 21, 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.

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 by e-mail 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

The Amendment 20 trawl rationalization program is a limited access privilege program under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), as reauthorized in 2007. It consists of: (1) An IFQ program for the shorebased trawl fleet; and (2) coop programs for the mothership and catcher-processor trawl fleets. The trawl rationalization program is intended to increase net economic benefits, create individual economic stability, provide full utilization of the trawl sector allocation, consider environmental impacts, and achieve individual accountability of catch and bycatch. Amendment 21 establishes fixed allocations for limited entry trawl participants. These allocations are intended to improve management under the rationalization program by streamlining its administration, providing stability to the fishery, and addressing halibut bycatch.

The trawl rationalization program is scheduled to be implemented on January 1, 2011. Due to the complexity of the program and the tight timeline for implementation, NMFS has issued, or is in the process of issuing multiple rulemakings that would implement this program. The following actions are related to the trawl rationalization program:

- A final rule (75 FR 4684, January 29, 2010) which announced that potential participants in the program should review and, if necessary, correct their data that will be used for the issuance of QS, permits, and endorsements. It also established which data NMFS would use and requested ownership information from potential participants.
- A notice of availability for Amendments 20 and 21 (75 FR 26702, May 12, 2010).
- A proposed rule (75 FR 32994, June 10, 2010) that would implement Amendments 20 and 21, focused on provisions deemed necessary to issue permits and endorsements in time for use in the 2011 fishery and to have the 2011 harvest specifications reflect the new allocation scheme. In addition, the June 10th proposed rule also proposed to restructure the entire Pacific Coast groundfish regulations at 50 CFR part 660 from one subpart (Subpart G) to five subparts (Subparts C–G).
- A correction to the June 10th proposed rule (75 FR 37744, June 30, 2010) which corrected two dates referenced in the preamble to the proposed rule regarding the decision date for the FMP amendments and the end date for the public comment period.
- The Secretary's review of and decision to partially approve Amendments 20 and 21 on August 9, 2010.
- A proposed rule (75 FR 53380, August 31, 2010) which proposes for implementation on January 1, 2011, additional program details, including: measures applicable to gear switching for the IFQ program, observer programs, retention requirements, equipment requirements, catch monitors, catch weighing requirements, coop permits, coop agreement requirements, first receiver site licenses, QS accounts, vessel accounts, further tracking and monitoring components, and economic data collection requirements.

This final rule follows the June 10th proposed rule (75 FR 32994) and implements the following aspects of Amendments 20 and 21: (1) The allocations set forth under Amendment 21, and (2) procedures for initial issuance of permits, endorsements, QS, individual bycatch quota (IBQ), and catch history assignments under the IFQ and coop programs. In addition, this rule restructures the entire Pacific Coast groundfish regulations to more closely track the organization of the proposed

management measures and to make the total groundfish regulations more clear. The preamble to the proposed rule (75 FR 32994, June 10, 2010), called the "initial issuance" proposed rule because it proposed the requirements for initial issuance of new permits and endorsements for the trawl rationalization program, provided detailed information on the trawl rationalization program and a general overview on the provisions in Amendments 20 and 21, and is not fully repeated here.

Partial Approval of Amendments 20 and 21

NMFS partially approved Amendments 20 and 21 on August 9, 2010. Some minor provisions were disapproved in both Amendments 20 and 21. In Amendment 20, NMFS disapproved three provisions applicable to mothership coops (MS coops): (1) The requirement that MS coops file a coop contract with the Council and to make it available for public review [it must still be filed with NMFS]; (2) the requirement that MS coops file a letter from the Department of Justice; and (3) the requirement that coop agreements include a clause that at least a majority of the members are required to dissolve the coop. In Amendment 21, NMFS disapproved language that referred to the trawl, non-trawl allocations superseding limited entry, open access allocations. This partial disapproval of Amendment 21 does not affect implementation of the trawl rationalization program or the harvest specifications for 2011 because these allocations are currently suspended as a result of overfished species rebuilding plans. However, NMFS has requested the Council to go through the amendment process to make the FMP more clear on how the limited entry, open access allocations relate to the trawl, non-trawl allocations.

Description of Data Used for Initial Issuance Decisions

The allocation formulas in Amendment 20 and implemented by this final rule are based on vessel landings or processor receipt histories for the shoreside sector. As discussed in the preamble to the proposed rule, NMFS will use data from the Pacific Fisheries Information Network (PacFIN) of the Pacific States Marine Fisheries Commission (PSMFC) to derive these histories. Since 1974, PSMFC has worked actively with its member states and State and Federal fisheries agencies to improve the quality and timeliness of fisheries data collection, processing, and analysis, and to produce regionally coherent data summaries required for regional conservation and management purposes. PacFIN is a regional fisheries data network that is a joint Federal and State data collection and information management project; for more information *see http://pacfin.psmfc.org/index.php.* Although it addresses other species of fish and related uses, PacFIN has a strong focus on the informational needs of the Council. PacFIN first came on line in 1981 by providing the Council's Groundfish Management Team, originally called the Plan Team, with two reports and an associated retrieval system. One report displayed monthly catch by species by area and another report displayed monthly catch by species by data source, including foreign countries and joint-ventures.

The data in PacFIN include fish tickets, or state landings receipts, which are official documents required by the states of California, Oregon, and Washington, and logbook information. The information collected by the states undergoes substantial quality control and quality assurance processes before and after it is submitted to PacFIN. Since 1981, PacFIN data have provided the basis for numerous Federal and state fishery management actions, including harvest determinations necessary to take inseason action to maintain fishing levels within established quotas and fishery closures; analyses of major management restructuring programs such as the Council's groundfish limited entry system or the Federal groundfish trawl buyback program; assessments of salmon and groundfish fishery disaster programs including determining and verifying which fishermen and processors receive aid and at what level; and for scientific stock assessments and other scientific research carried out by states, NMFS, and academia. The states, the Council, and NMFS rely on the PacFIN information as the best scientific information available.

Similarly, the initial allocations for the at-sea coops rely on the observer data from NMFS' Northwest Fisheries Science Center's Pacific whiting observer data in NORPAC (NORPAC data), which also undergoes substantial quality control and quality assurance of the data. As with the PacFIN data, NMFS, the Council, and the states rely on the NORPAC data as the best scientific information available, and use it for multiple purposes, including quota monitoring and stock assessments.

In addition to the PacFIN and NORPAC quality control and quality assurance process, in early 2010, NMFS provided notice to all participants (basically all current owners of limited entry trawl permits and groundfish first receivers) to review their catch data for the purpose of ensuring that the QS and other calculations would be based on the best available data. As explained in more detail in the preamble to the proposed rule, NMFS provided instructions and Federal and state contact information for participants to use in requesting data and correcting data, and in support of this process, the PSMFC developed scripts for the States to use in providing fishermen and processors their data directly related to their business interests, specifically landings sold or purchased by the data requestor. A similar process was established for the NORPAC data. In order for participants to understand the calculations and application of the PacFIN and NORPAC information, the Council provided a series of tables with its preliminary estimates of QS, which were mailed to current permit owners, who were again notified of the importance of correcting the underlying data bases. These timely corrections through the states and ultimately to PacFIN were extremely important to assure that the data used by NMFS to determine the initial allocations are based on the best scientific information available because the correction process cannot be made by NMFS unilaterally and additional corrections or modifications to the underlying data would not be appropriate during the application process.

Use of 2011 Harvest Specifications and Management Measures

Some of the initial issuance formulas include calculations that depend on results of the 2011–2012 biennial harvest specifications and management measures process. In particular, calculations for initial issuance of QS for overfished species caught incidentally (Group 2 and Group 3 species) and for Pacific halibut IBQ require that the target species used as a basis for the calculation be converted to pounds using the 2011 OYs in order to determine the relative weighting between the target species. The use of 2011 OYs in these formulas presents several implementation issues. First, the harvest specifications and management measures will not be final until after the initial issuance of QS and IBQ for the trawl rationalization program is scheduled to occur. Second, while the Council motion for trawl rationalization and the final initial issuance rule published here refer to OYs, the Council has been proceeding with the adoption of an FMP amendment on a parallel track, Amendment 23, which would replace OYs with annual catch limits

(ACLs) (if Amendment 23 is adopted, NMFS intends to replace all references to OY in the initial issuance regulations with references to ACL). Because of these two issues, pre-filled applications and initial issuance of QS and IBQ will be provisional based on the projected 2011 ACLs recommended by the Council during the 2011–2012 harvest specifications and management measures process. Thus, the initial issuance of QS and IBQ may be adjusted if NMFS adopts different OYs or ACLs for 2011 and 2012 than the ACLs adopted by the Council at their June 2010 meeting.

Similarly, some of the QS allocation formulas depend upon allocations between whiting and non-whiting trips developed as part of the 2011–2012 harvest specifications and management measures process. As described at § 660.140(d)(8)(iv)(A)(*10*) of this final rule, canary rockfish, bocaccio, cowcod, yelloweye rockfish, minor shelf rockfish N. of 40°10′ N. lat., and minor shelf rockfish S. of 40°10′ N. lat., and minor slope rockfish S. of 40°10′ N. lat. were not allocated between whiting and non-whiting trips through Amendment 21, and instead will be decided through the harvest specifications and management measures process. Consistent with the Council's June 2010 motion on the harvest specifications and with Amendment 21, Table 1e of the harvest specifications and management measures will list all of the IFQ species and the percentages of QS for whiting trips versus non-whiting trips. The initial issuance of QS for these species will be provisional based on the allocations recommended by the Council at its June 2010 meeting, pending final decision of the Secretary on the 2011 harvest specifications and management measures.

Comments and Responses

NMFS solicited public comment on both Amendments 20 and 21 (75 FR 26702, May 12, 2010) and on the proposed rule (75 FR 32994, June 10, 2010). The comment period for these notices ended July 12, 2010. Because these notices are related, the responses to public comments in this section of the preamble address Amendments 20 and 21 and the proposed rule.

NMFS received 33 individualized letters of comments on the proposed rule and amendments, submitted by individuals or organizations and 385 form letters. The letters raised a variety of issues related to the proposed rule and Amendments 20 and 21.

Some commenters have incorporated by reference previous comments submitted during the Council process. Comments presented to the Council are part of the record and were considered by the Council during their deliberation. In reviewing the proposed rule and amendments, NMFS considered the record as a whole.

General Comments in Support and Opposed

Comment 1. NMFS received multiple comments expressing general support for the proposed rule and amendments.

Response. NMFS acknowledges these comments.

Comment 2. NMFS received multiple comments expressing general disagreement with the proposed rule and amendments.

Response. NMFS acknowledges these comments.

Comment 3. NMFS received multiple comments expressing support for the proposed rule and amendments and identifying expected benefits such as that it would help conservation of the resource, increase net economic benefits, provide stability, and reduce bycatch; stabilize the whiting fishery and traditional fisheries; give fishermen greater control over the resource; stabilize fishing communities; and eliminate regulatory discards.

Response. NMFS concurs that multiple benefits are anticipated as a result of Amendments 20 and 21 and the proposed rule. The analyses supporting the amendments and the rule describe both costs and benefits, and conclude that the costs are justified by the benefits.

Comment 4. NMFS received multiple comments objecting to the proposed rule and amendments on the grounds that they would not promote conservation or maximize economic benefit. Commenters stated that predicted benefits have been overstated and cited the example of the Orange Roughy. Commenters also cited studies that show catch share programs have hidden costs and adverse impacts on quality of life. Some commenters stated that the proposed rule and amendments would not meet the objectives of rationalization.

Response. The underlying analyses support the conclusions regarding the anticipated effects of these measures and the extent to which they meet their objectives. While we can learn from other fisheries around the world, every fishery is different. The 5 year review will give us a chance to assess whether the program is working as anticipated and what changes may need to be made.

Comment 5. NMFS received multiple comments objecting to the proposed rule and amendments due to general policy objections including to the use of quotas, the perception that the proposal serves the interests of a few against the interests of many, and objections to perceived redistribution of wealth and privatization of a public resource. In addition, NMFS received comments suggesting alternative management measures that commenters would prefer to see adopted such as owner on board requirements, IFQs for all three whiting sectors, and other approaches.

Response. The MSA expressly authorizes the use of Limited Access Privilege Programs (LAPPs) and vests the Council with responsibility for developing and identifying which management measures to recommend through its open public process. The Council considered a number of alternative management measures in the development of this program, inclusive of those suggested in public comments. Appendix A "Analysis of Components, Elements, and Options for the Individual Fishing Quota Alternative Trawl Individual Quota Components" of the final EIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery" documents these considerations in two sections. Under Section A–2, IFQ System Details, pages A–33 to A–397, for many of the program details, a description is provided of options considered but either not included or not analyzed further. Additionally, Section A–3 of Appendix A, pages A–402 to A–444, addressed a number of options, including: Adaptive Management; Halibut Individual Bycatch Quota; Program Duration (Fixed Term and Auctions); Gear Conversion; Regional Landing Zones; Community Fishing Associations; Owner on Board Provisions; and Sideboard Measures to Prevent Spillover (into other fisheries). Council rationale and decisions regarding which options were selected, and which were not, are described. NMFS has reviewed the FEIS's, the public comments, and the record as a whole and concludes that the decision is consistent with MSA and other applicable law.

Comment 6. NMFS received multiple comments praising the Council's process for development of the amendments for its transparency and fairness.

Response. NMFS agrees that the Council utilized a fair and transparent public process that included numerous public committee meetings and Council meetings, as described in pages 19–22 in the FEIS (detailed list of those meetings).

Comment 7: NMFS received some comments stating that the public process has been inadequate.

Response. NMFS disagrees. In addition to the Council process referenced above, the agency complied with the MSA requirement to have a public comment period on both amendments and the proposed rule for initial issuance, and the NEPA requirement to have a comment period on the draft environmental impact statement (DEIS). NMFS also intends to publish for public comment the proposed rule on the program components.

Comment 8. NMFS received multiple comments objecting to the proposed rule because it did not contain certain components such as the observer coverage requirements and tracking and monitoring requirements. One commenter added that the proposed rule's administrative provisions lack due process.

Response. NMFS published a proposed rule to implement program components on August 31, 2010 (75 FR 53380). Prior to publication in the **Federal Register,** both rules to implement the rationalization program have gone through substantial public review and comment by the Council, including several public meetings of the Council's Regulatory Deeming Workgroup. As described above, the Council and NMFS followed an open public process in developing and adopting the amendments and the implementing regulations.

Comment 9: Some commenters advocated partial approval for different elements of the program, such as disapproval of the shorebased section; approval of whiting components only; disapproval with respect to non-whiting groundfish.

Response. NMFS has reviewed the amendments in their entirety and, except for several minor provisions, has not identified a basis for partial approval.

Comment 10. One commenter stated that the trailing amendments burden the wrong people.

Response. These amendments are currently under development by the Council. When completed, they will be submitted to NMFS for agency review in conjunction with public comment periods. Members of the public should participate in the Council process to help design these amendments.

Comment 11. One commenter stated that the proposed rule and amendments should be disapproved due to unexplored alternatives and negative impacts.

Response. As described in the EIS, NMFS and the Council have explored a wide range of alternatives and analyzed the potential impacts. As stated in the responses to comments 19 and 34, the underlying analyses conclude that the negative impacts are justified by the anticipated benefits.

Comment 12. NMFS received multiple comments citing problems with the status quo.

Response. NMFS acknowledges this comment.

Comment 13. One commenter requested a workshop to explain the shoreside whiting allocation procedure.

Response. NMFS has developed outreach materials that are currently available at: *http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Trawl-Program/index.cfm.* In addition, NMFS is planning a series of public workshops in September/October in California, Oregon and Idaho (session in Idaho during two evenings at the September Council meeting) at six locations to discuss the specifics of the program. These workshops are designed to address all aspects of the trawl rationalization program.

Comments Pertaining to Timing

Comment 14. Congressman Thompson submitted a comment requesting a delay issuing rules until fully briefed.

Response. The Congressman's staff has been briefed by NMFS on the provisions associated with the trawl rationalization program.

Comment 15. One commenter suggested not making this a permanent program, to keep some flexibility when stocks rebuild.

Response. The Council envisions a process whereby the program will adapt to changing circumstances. A major component of the program at the outset is the Adaptive Management Program (AMP), which sets aside 10 percent of the nonwhiting shoreside quota shares to address unforeseen impacts, beginning with year 3 of the program. Additionally, a comprehensive review of the program to evaluate effectiveness in relation to the original program goals and objectives is scheduled for year five of the program. Flexibility to adapt to changing circumstances was specifically acknowledged. On page 54 of the EIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery", it states "In taking this action, the Council acknowledged that work will have to continue to monitor the program and to make adjustments in response to program performance. Even prior to implementation, the Council will continue to work on provisions for Community Fishing Associations (CFAs) and an AMP. While there may be unintended and unanticipated consequences, there will be an opportunity to modify the program through a review process, and a data collection process will be implemented to support that review."

Comment 16. One commenter suggested a delay of the program until a referendum is conducted.

Response. The Council chose not to consider a referendum (vote by fishermen in support or disapproval) prior to moving forward. This program has been under development through the Council process for over five years, and ample opportunities have been provided for input into the design of the program. See response to comment 18 below for additional details on the public input process.

Comment 17. One commenter suggested the program should not be implemented because the fishermen are still experiencing negative effects and financial impacts from buyback.

Response. In 2003, approximately one-half of the West Coast Limited Entry Groundfish Trawl Fishery permits were retired as part of a voluntary government-backed loan and auction buyback scheme. Section 2.6.5 of the EIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery" describes broad level Council concerns and tradeoffs in choosing between status quo and trawl rationalization, and the buyback program was part of that discussion (page 53). The Council concluded that the trawl rationalization program addresses many of the difficult, time-consuming management problems it has struggled with under status quo. It is expected to provide a basic management framework that will provide the most benefits to the nation for the public resource, including: assigning personal accountability for the fisheries; providing opportunities for bycatch reduction; enhancing stock rebuilding through improved fishery information and full observer coverage; providing opportunities to maximize catch of targeted species while protecting species of concern; improving economic performance; helping to maintain community stability; improving safety; guarding against local stock depletion; and addressing unforeseen circumstances through an innovative adaptive management provision. The trawl rationalization program is a program that will help address conservation concerns and take a system that is not economically viable for many and turn it into one that will work for those who remain in the fishery after rationalization.

Comment 18. There were a number of public comments on timing and implementation of the trawl

rationalization program. The comments ranged from those wanting to implement the program as proposed, without delay, to comments stating their opposition to implementation generally, to the "incremental approach, and the lack of opportunity for public comment and short time frames for review.

Response. The public participation process involving the Council's deliberations is specifically identified in detail in Chapter 1 of the Final Environmental Impact Statement "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery, June 2010" on pages 15–18. Development and refinement of the alternatives leading to the Council's choice of a preferred alternative has taken more than five years, with numerous Council and committee meetings during the process. The Council's initial scoping and program development process began at a Council meeting in September, 2003. The EIS includes Table 1–1 on page 18, listing all of the Council committees associated with this subject matter. The EIS also includes Table 1–2, on pages 19–22, listing the meetings that have been held by the committees as well as Council meetings at which trawl rationalization or intersector allocation were discussed, with a brief description of the topics covered in each meeting.

At the agency level, NMFS has complied with the statutory requirements regarding public comment on the Amendments, the proposed initial issuance rule, and the DEIS. In addition, consistent with statutory requirements, NMFS will provide for public review and comment on the program components rule. NMFS believes that were adequate opportunities for public comment on proposed Amendments 20 and, the NEPA documents and the initial issuance rule for trawl rationalization. As for the incremental approach, NMFS has fully analyzed the program and made that analysis available to the public and used it in the decision on the Amendments. The Council agreed with the agency's approach to implement the Amendments through two rulemakings.

Comments on Program Costs

Comment 19. One commenter expressed concern about negative impacts on smaller boats, deckhands, and smaller ports, pointing out issues such as vessels in certain ports that will receive lower catch, but have increased costs, and the effects of fleet reduction on port infrastructure.

Response. While the trawl rationalization program would move the fishery toward some of its most important goals and objectives, in order for the program to realize those benefits, a large amount of consolidation would have to occur, resulting in fewer people employed in the fishery. The Council acknowledged and expressed concern about the expected consolidation and its impacts, and noted the need to attend to the potential for disproportionate impacts on some communities. There was also concern that the potential accumulation of wealth under the IFQ program should have corresponding levels of benefit for the nation, and that state implementation costs be addressed. The Council also expressed an interest in maintaining the character of the fleet and a diversified industry. Balancing the need for consolidation to generate adequate levels of benefit with the potential adverse impacts of consolidation was a major challenge. At the same time, continuation of status quo would have its own impacts, with both the buyback program and cumulative limits having caused significant consolidation in the fleet and a redistribution of vessels along the coast.

Because of the high degree of concern about impacts on communities and maintaining some sharing of benefits (both among harvesters and between harvesters, processors, and others dependent on the fishery) the Council made a number of tradeoffs in the trawl rationalization program that may prevent the program from reaching the full degree of economic efficiency that might otherwise be achievable through rationalization. For example, accumulation limits would help disperse fishery benefits, but would inhibit consolidation. Additionally, some QS was set aside for use in an AMP to address such objectives as community and processor stability, new entry, conservation, and other unidentified/unforeseen adverse consequences. A number of other measures were also considered as the Council struggled to find a balance among sectors, states, vessels, ports, conservation obligations, and its responsibility to try to develop a regime that maximizes economic benefits while simultaneously realizing, recognizing, and honoring the social effects of its decisions.

Consideration was also given to allocating QSs to communities and crew members. With respect to the Council consideration of CDQs, up to the very end of the Council's deliberations, communities expressed little or no interest in receiving an initial allocation of QSs. Therefore, the Council developed other mechanisms to address concerns about communities, including, but not limited to, the AMP, a two-year moratorium on QS transfers, a five-year review that includes a community advisory committee, accumulation limits and a two-year review of some of the limits, the opportunity for communities to receive an initial QS allocation by acquiring a trawl permit, and a trailing action on CFAs. With respect to crew members, an initial allocation is difficult because there is limited historic information on the identity of crew members who have fished on trawl vessels. It is the Council's hope that by providing highly divisible QSs and ensuring that other elements of the program design facilitate crew ownership of QS, that crew members who want to do so will be able to incrementally accumulate QSs.

In terms of impacts on small businesses, the trawl rationalization program is intended to increase net economic benefits, create economic stability, provide full utilization of the trawl sector allocation, consider environmental impacts, and promote conservation through individual accountability for catch and bycatch. The allocations of quota under the new program do not differ significantly from status quo allocations made biennially in terms of total allocations. However, instead of fleetwide quotas, there will now be individual allocations of quota shares and quota pounds to permit owners. Allocations of overfished species constrain all groundfish fishermen, for both large and small operations. In some cases, smaller operators may be constrained to a greater extent. This was recognized in development of the program, and operators are encouraged to work together cooperatively, through mechanisms like combining and sharing quota amounts. The program provides for leasing of additional quota as needed to facilitate operations.

The proposed action includes provisions that would have a beneficial impact on small entities. It would create a management program under which most recent participants in the Pacific Coast groundfish limited entry trawl fishery (many of which are small entities) would be eligible to continue participating in the fishery and under which the fishery itself would experience an increase in economic profitability. Small entities choosing to exit the fishery should receive financial compensation from selling their permit or share of the resource. To prevent a particular individual, corporation, or other entity from acquiring an excessive share of the total harvest privileges in the program, accumulation limits would restrict the amount of harvest privileges

that can be held, acquired, or used by individuals and vessels. In addition, for the shoreside sector of the fishery, an AMP was created to mitigate any adverse impacts, including impacts on small entities and communities that might result from the proposed action.

Comment 20. The Council has not adopted a methodology for a cost-recovery plan, as required by the MSA, and the cost to taxpayers and participants is too high.

Response. Information about program costs was included in the EIS and the RIR/IRFA. The Council took all of these factors into consideration in moving forward with a recommendation to implement the trawl rationalization program. The Council intends to develop a cost recovery plan through a trailing amendment. NMFS encourages public participation in both the Council and the Secretarial review process.

Comment 21. The costs to the government are too high and will divert funds from other conservation purposes.

Response. NMFS has taken the costs of implementing the amendments into consideration when approving them. To the extent allowed by the MSA, NMFS will recover the agency costs of management, data collection and analysis, and enforcement activities from the fishing industry when a cost-recovery plan is implemented.

Comment 22. The program costs to fishermen, including the costs of entering the fishery and the costs of observers and monitoring, are too high.

Response. Analyses indicate that the program benefits will outweigh the program costs. The EIS anticipates that the value of the fishery will increase through a variety of mechanisms, including increased efficiency of existing vessels, the transfer of effort to the most efficient vessels, and increased retention of target species. The program includes opportunities for adaptive management if actual impacts differ from projected impacts. In addition, the Council made quota shares highly divisible to increase the ability of crew members and others to buy into the fishery. To aid the fishing industry during the transition to a rationalized fishery, the agency has announced its intent, subject to available Federal funding, to cover a portion of the initial cost of hiring observers and catch monitors. As stated by the agency, participants would initially be responsible for 10 percent of the cost of hiring observers and catch monitors, with that amount increased every year so that by 2014, the industry would be responsible for 100 percent of the cost of hiring the observers and catch monitors.

Comments on the Observer Program

Comment 23. One commenter stated that observer rules need to change for trawl and small boats to reflect the "vastly different bycatch which occurs when mistakes are made."

Response. The final design features of the observer program and applicability to both large and small vessels were evaluated thoroughly through development of these program components, and ultimately led to the Council decision to require 100 percent observations for those fishing vessels that continue trawling under this rationalization program. By "mistakes" we assume the commenter meant situations where high bycatch of overfished species events occur, and that larger vessels may have potentially greater negative impacts. While this may be true, vessels that participate in the shorebased IFQ program will be held individually accountable for any bycatch of overfished species. In the at-sea program, there are sector specific bycatch caps that will remain in place. These bycatch caps are limits, and can have the effect of closing sectors of the trawl industry when reached. Conservation measures in order to facilitate the rebuilding of overfished species were specific components of the trawl rationalization program.

Comment 24. Public comments expressed concern that the cost of the observer program disadvantages smaller operators; that IFQs, even with observers, increase the risk of high-grading; that observer costs are generally too high; and that observer program doesn't enhance conservation, just total catch accounting.

Response. Appendix H to the EIS for Amendment 20, the "Regulatory Impact Review and Initial Regulatory Flexibility Analysis, (RIR/IRFA)" addresses a number of these issues. As noted in the RIR/IRFA, the cost estimates are preliminary; the direct observer and monitoring costs depend heavily on operational decisions by industry (both fishing vessels and processors) to reduce costs. In addition, it is impossible to predict how much consolidation will occur, especially in the initial years of program implementation. For these reasons, the RIR/IRFA makes broad assumptions about industry behavior to frame the range of costs. At one extreme, annual observer costs could rise to $18 million if a 100-vessel fleet needed observers 365 days a year at a cost of $500 per day. However, as stated at numerous Council meetings, the industry could reduce costs by voluntary limits on the number of vessels that can be at sea at any one time or agreements to share observer coverage between multiple vessels. Observer and other costs could decline as the number of participating vessels decline, when the fleet consolidates because of the program. As discussed in the RIR/IRFA, the Lian analysis (Lian *et al.,* 2008) indicates an expectation that there will be a fleet of 50 to 60 vessels of a size of 60 to 70 feet after rationalization. If this were to happen, one would expect the costs to be significantly lower and approximately half of the estimated costs for the current fleet.

As stated in the response to comments on the draft EIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery," analysis indicates that the program benefits will outweigh the program costs. For those participants who feel the costs are too much of a burden, they have the option of selling or leasing their QS. In addition, as stated at Council meetings, vessels, both large and small, are encouraged to coordinate with each other and with the observer providers to reduce costs and provide more efficiency.

In terms of the comment that the risk of high-grading (sorting to retain more marketable fish) will be increased under and IFQ system, NMFS believes that the exact opposite will occur under total catch accounting. With 100 percent mandated observer coverage, all catch will be accounted for, and individuals will be held responsible for their behavior. This structure leads to the opposite conclusion regarding high-grading.

One commenter questioned what conservation goals the observer program is achieving other than total catch accounting, citing lack of economic benefits and lack of individual stability. NMFS disagrees with this perspective. Conservation of the fishery resources and rebuilding of overfished species are the main reasons why the Council has recommended a program with total catch accounting. Individuals will be held responsible for conducting harvests consistent with their QS and QP allocated. To the extent that individuals may need additional QS and QP to conduct their operations, the options of leasing of QS and purchasing QS and QP through time should lead to economic stability for those individuals whom choose to remain as active participants in the trawl rationalization program.

Comments on Initial Allocation of Catch Shares

a. General Comments

Comment 25. One commenter argued that shore-based processors should not receive 20 percent of the quota because that sector has too much control over the fishing fleet. Another commenter expressed support for the proposed allocation of quota to processors.

Response. The Council recommended that 20 percent of the shoreside harvest allocation of whiting would be initially allocated to shoreside processors, based on those processors' history. The Council concluded, and NMFS agrees, that this initial allocation was fair and equitable, thus consistent with section 303A(c)(5) of the MSA, which requires the Council to "ensure fair and equitable allocations, including consideration of (i) current and historical harvests; (ii) employment in the harvesting and processing sectors; (iii) investments in, and dependence upon, the fishery; and (iv) the current and historical participation of fishing communities." As explained in Section A–2.1.1a (Appendix A) of the EIS, NMFS and the Council took the statutory factors into account and determined that, among the various alternatives under consideration, the initial allocation of whiting harvesting privileges as a 20/80 percent split to processors and current permit holders was fair and equitable.

The issue of reduced competition and anticompetitive impacts of allocating quota to processors was analyzed extensively in the EIS and was discussed and considered carefully by the Council. During development of the trawl rationalization program, the NOAA Office of General Counsel (GC) had informal consultations with the Antitrust Division of the U.S. Department of Justice. Based on those informal consultations and analysis of relevant facts and applicable legal rules, NOAA GC submitted a letter to the Council dated October 11, 2008, in which the antitrust savings clause in Section 303A of the MSA was noted and advised "that any fishery participants that are uncertain about the legality under the antitrust laws of the United States of any of their anticipated activities should consult legal counsel prior to commencing those activities." The NOAA GC letter provided citations to guidance or resource documents available on the Federal Trade Commission Web site. The NOAA GC letter is available on the Pacific Council's Web site at *http://www.pcouncil.org/bb/2008/1108/F3d_SUP_GC_1108.pdf.*

Comment 26. It is unfair that permits that have not made payments for the buyback program will receive an initial allocation.

Response. All permits will receive an initial allocation of non-overfished species, based on the equal division of QS associated with the history of the permits bought back plus an amount of QS related to the actual 1994–2003 deliveries by the permit. The designation of an equal allocation amount based on the history of the buyback permits was viewed as an equitable way to help resolve the initial allocation issue, ensuring that the smaller producing harvesters were more likely to receive an initial allocation adequate to cover their needs while the larger producing harvesters, more likely to be better financed, might have to purchase more QS to maintain their recent harvest levels. NMFS and the Council are aware that this will include some permits that have not made landings since the inception of the buyback loan payback program (December 2003). The Council recommended, and NMFS is implementing, what it believes to be the best balance among a variety of possible allocation approaches.

Comment 27. The quota allocations do not support current fishing practices. In order to keep fishing, some fishermen will have to purchase additional quota of some species while receiving more than needed of other species. In order for high producers to fish all their boats, they will have to buy more quota.

Response. Chapter 4 the Amendment 20 EIS described in detail the anticipated impacts of the trawl rationalization program on the various sectors of the fishing industry. NMFS acknowledges that, depending on the allocation formula, some permit holders and catcher vessels may receive a greater or lesser amount of allowable catch than under status quo conditions. In addition, they may receive a different mix of species allocated as quota compared to the mix of species they currently harvest. In the long run, however, transfers of those fishing privileges should occur in a way that is more optimal to individual harvesters, and that transfer will act as a cost to those that purchase the shares and as a benefit to those that sell them.

The Council anticipates that consolidation is likely to occur in the nonwhiting sector that will trend toward the most efficient vessels. The fleet reduction and cost efficiency model shows the consolidation that may occur could diminish the number of vessels by 50 to 66 percent.

Comment 28. One comment criticizes the eligibility criteria for initial allocations as too narrowly focused, not providing for captains and crew due to a lack of data.

Response. Although a lack of data was one factor in the decision not to extend eligibility to receive an initial QS allocation, there were several other factors considered. The Council enumerates several of the reasons behind the decision to allocate to permits and processors in A–14 and A–15 of the Amendment 20 EIS, Appendix A.

Direct allocation to skippers and crewmembers was discussed and the costs and complexity of identifying vessel workers and determining whether they participated on vessels while those vessels were fishing in the groundfish trawl fishery were noted. Complexities include the fact that crew member-licensing requirements vary between states and in some cases crewmembers are not required to have permits. Multiple alternative sources of information would have to be considered in determining crew member eligibility for an initial allocation.

With respect to relative impacts of an initial QS allocation on different classes of fishery participants, it was noted that for a crew member dislocated because of the IFQ program there would likely be a greater number of economic alternatives available, as compared to a fishing permit or vessel. Additionally, since crew members move between fishing operations, an allocation to crew could reduce the initial allocation available to a harvester in comparison with its recent operation levels, leaving fixed capital assets without significant production opportunities. While harvesters receiving less than their needs would be able to acquire additional QS through purchase, the need to make such purchases would likely mean a greater disruption during initial implementation of the program.

b. Allocation Formula in General

Comment 29. Several commenters addressed the qualifying history period selected by the Council for both whiting and nonwhiting non-overfished species. One commenter criticized the period as "arbitrary." Others expressed a belief that MSA "recency" requirements are not being met because the qualifying period of 1994–2003 is too out of date. One commenter suggested increasing emphasis on recent years by moving the start of the allocation period from 1994 to 1997 and the end from 2003 to 2006 (and using 2003 through 2006 for the allocation period for overfished species), recognizing a new control date

of January 1, 2007. Further comments on the qualifying history period include:

- It rewards the inefficiencies, inadequate infrastructure and lack of investment that characterized the qualifying year window. Allocations of nonwhiting groundfish to inactive participants in the fishery harm active participants.
- The allocation period includes years with inaccurate species composition and discard data that will skew the picture of the true state of nature.
- More current data is available and critically important.
- There have been dramatic changes in the whiting fishery starting in 2001, and which have been especially significant after 2003.

Response. Similar comments were received during the public comment period on the draft EIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery." Parts of the detailed response to those comments bears repeating as directly relevant and responsive to the comments received recently. In recommending initial allocations, the Council is required to consider several factors including current harvests and historic harvests. *See* 16 U.S.C. 1853a(c)(5)(A); see also 16 U.S.C. 1853(b)(6). Appendix A to the Amendment 20 EIS includes a review of the Council's consideration of all of these factors, including a discussion of the rationale for considering a variety of dates for the allocation period, including start dates of 1994 and each year from 1997 through 2001. The allocation dates selected represent a balance between emphasis on more recent history and considering the historic fishing opportunities which may have had a determining effect on the levels of capital investment by individual firms. The start date of 1994 was selected because 1994 was the first year of the license limitation program. The decision to utilize a long allocation period was deliberate; it is likely that capital investment is based on longer term opportunity and that capital persists after contractions in the fishery such as that reflected by the disaster declaration in 2000. On this basis it is appropriate to give some weight to landings from the 1990s. Because more fish was taken during that time period, the relative pounds approach (measuring catch history as a vessel's share of total catch) reduces the emphasis on a pound of fish caught in the 1990s as compared to a pound of fish caught after 2000. While some argue that fishermen who caught fish in the mid-1990s caused the disaster and should not receive QS for that fish, the catch taken in the mid-1990s was in line with what was allowed under the regulations and believed to be sustainable at the time.

The Council selected the ending year of 2003 because that year corresponds to the previously announced control date for the fishery. The Council adopted and published the control date of November 6, 2003 (see 69 FR 1563 (January 9, 2004); 70 FR 29713 (May 24, 2005). The Council believes it is very important that the 2003 control date be used in order to prevent future fishery disruptions. The purpose of announcing a control date in advance of developing a LAPP is to discourage entry into a fishery and increased harvest while the Council goes through the process of developing the program details, which can be a lengthy exercise. If the Council develops a pattern of announcing and abandoning control dates, then the announcement of control dates will become a signal to harvesters to intensify their efforts to catch fish in order to increase their odds of qualifying for greater initial allocations. Such a response would be disruptive to fisheries and exacerbate the challenges of meeting conservation objectives. Additionally, abandoning the original control date would reduce the perceived fairness of the program by rewarding those who fished speculatively after the control date (fishing primarily on the chance that the control date would be abandoned and they would acquire more quota as a result of their post control date fishing) at the expense of those who heeded the control date. In balancing the importance of the reliable control date, and the importance of considering historic participation, against the potential for some disruption of using a time period ending several years prior to the start of the program, the Council found that it was preferable to use the 2003 control date.

The public was given significant notice of the use of November 6, 2003, as a potential control date. The notice was originally published in the **Federal Register** on January 9, 2004, and an additional notice was published on May 24, 2005. Both notices were posted on the Council's Web site, with an explanation of the possible consequences of the control date. In addition, starting in October 2003, The Council and its Trawl Individual Quota Committee held numerous public meetings and discussions at Council meetings on the trawl rationalization program including the use of the control date and the alternate qualifying periods.

The Council disagrees with the commenter's assertion that Amendment 15 to the Groundfish management plan created a new control date of January 1, 2007, that should be controlling here. Nowhere does Amendment 15 address the 2003 control date or purport to change the qualifying period for the groundfish trawl program. Amendment 15 was a limited interim action for the non-Tribal whiting fishery issued in anticipation of the trawl rationalization that in no way attempted to address matters beyond its limited scope. Moreover, the Council has explicitly stated that vessels that qualified for Pacific whiting fishery participation under Amendment 15 were not guaranteed future participation or inclusion in the Pacific whiting fishery under the provisions of Amendment 20. *See http://www.pcouncil.org/groundfish/fishery-management-plan/fmp-amendment-15.*

With regards to "recency" concerns, the Council does take into account recent participation patterns in the fishery by allocating QS to current permit holders rather than to individuals or vessels that originally caught the fish. In this way, during the extensive period required to develop a program of this kind, entry and exit can occur and QS can be allocated in a less disruptive manner than would occur if the allocations went to the individuals who caught the fish historically.

While the overfished species allocation formula includes logbooks for 2003–2006, these records are used to determine the fishing pattern, not the overall level of harvest activity. The Council's methodology for allocating overfished species is significantly different than the methodology for allocating target catch. The 1994–2003 period is still used to determine the target species allocation, and the harvest patterns from the 2003–2006 logbooks are used to determine the amount of overfished species an entity would need to take its target species. In this fashion, more recent information for the fishery is used without rewarding post control date increases in effort. The 1994–2003 harvest patterns were not used to determine a target species QS recipient's need for overfished species QS. This is because of the substantial changes in fishing patterns which were induced by the determination that some species were overfished and the implementation of the rockfish conservation areas (RCAs) and because the RCAs will remain in place after the trawl rationalization system is put into place. Therefore the Council considered that an estimate of likely patterns of activity should be based on a period of time when the RCAs were in place. The RCAs were not in place for most of the

1994–2003 period but were in place for 2003–2006.

One commenter made the point that the initial allocation, because it is different from the current distribution of harvest, may reward inefficiencies and reverse recent conservation gains, including reductions in bycatch. While it is possible that the initial allocations may not go to the most efficient and innovative harvesters, because of the need to draw a balance between a reliable control date and disruption, fairness and equity, recent participation and historic participation issues, it is expected that society will benefit over the long haul as the quota is transferred to use by the most efficient harvesters as the program progresses. Independent of the initial allocation, the QS system is expected to provide substantial incentive for vessels to avoid bycatch. One hundred percent observer coverage will ensure full individual vessel accountability. These individual vessel incentives are expected to preserve gains made in bycatch avoidance in recent years.

The same commenter also made the point that the discard and catch composition data quality from those years is poor and will skew the picture of the true state of nature. The allocation formula does not use discard data from the mid-1990s. With respect to catch composition data, it has been accepted that these data may skew the mix of species any particular permit would receive away from its actual catch, simply because the catch composition data was designed to estimate catch at the fleet level rather than the individual vessel level. Catch composition data has the same problem whether it is from the mid-1990s or early 2000s. While the catch composition data might be of better quality in more recent years, the Council felt that it was more important that the control date and longer allocation period be maintained and worth the tradeoff entailed in relying on older catch composition data.

Comment 30. A comment was submitted on behalf of owners and operators of a harvesting vessel, in support generally of Amendments 20 and 21 for improving management of groundfish but noting that the program improperly excludes valid "B" Permit groundfish fishing history in the initial allocation process. The commenter submitted multiple exhibits in support of their comments.

Response. NMFS has reviewed the comments and the supporting exhibits. The commenter's position is that the prior permit owner's assignment in 2004 of all fishing history to the current vessel/permit owner included the groundfish "B" Permit fishing history from 1994, 1995 and 1996, and therefore the program improperly excludes valid "B" Permit groundfish fishing history in the initial allocation process. Further, the comment notes that nothing in Amendment 20 or 21 precludes inclusion of that "B" Permit history in the total catch history owned by the current permit owner. NMFS disagrees, for the following reasons.

Amendment 20 specifies that the initial allocation will be made to the current owner of groundfish limited entry permits. These permits have been in place since 1994, as part of the implementation of Amendment 6, the groundfish limited entry program. Limited entry permits with "A" and "B" endorsements were implemented as part of the groundfish limited entry program (57 FR 54001–01, November 16, 1992). The program established permits with "A" endorsements, which were transferable, for trawl vessels that met specific minimum landing requirements. It also established permits with "B" endorsements, which were not transferable, and which expired upon transfer to a different owner, or at the end of 1996 (whichever occurred first). These "B" endorsements were intended for vessels that had some low level of activity in the fishery prior to August 1, 1988, and under the current owner, but did not meet the landing requirements for vessels receiving "A" endorsements. The "B" endorsements provided a three-year adjustment period during which the vessel owners could either make arrangements to stay in the fishery through the purchase of an existing "A" endorsed permit or stop participating in the limited entry fishery. NMFS accordingly removed the "B" endorsement provisions from the regulation after the "B" endorsements had expired; in addition to the "A" endorsement, the only endorsements on limited entry permits are now gear endorsements (trawl, longline, pot or trap) and size endorsements (*see* 66 FR 29729, June 1, 2001, and 50 CFR 660.333).

Consistent with this background, the current limited entry permits are "A" endorsed only and have no relationship to "B" endorsed permits, which expired at the end of 1996. The current limited entry permits in the trawl fishery with trawl endorsements originally, under Amendment 6, were called limited entry permits with "A" endorsements. When the "B" permits expired, NMFS revised the regulations to refer to limited entry permits with trawl endorsements. These are the limited entry permits referred to in the trawl rationalization program and they and their landings history, are distinct from the permits with "B" endorsements that are no longer in existence.

NMFS recognizes that the supporting exhibits submitted by the commenter show that for purposes of the American Fisheries Act (AFA), the NMFS, Alaska Region, approved the request that the F/V Pacific Challenger be named as a replacement vessel for the F/V Amber Dawn. However, this decision for the AFA fisheries is separate from and has no effect on the relation to the Pacific Coast Groundfish permits and the trawl rationalization fishery.

c. Allocation of Bycatch/Overfished Species IFQ

Comment 31. Some commenters stated that the program has been compromised by a Council recommendation to not allocate overfished species in the same manner as all other species, but to instead use a method based on a constrained fleet outside of the time frame which the rest of the program is based. Commenters state that during the years used for the overfished species allocation, responsible operators made efforts to minimize bycatch of overfished species. They further state that this punishes those who attempted to fish sustainably and rewards those who maximized their landings in a manner contrary to the conservation goals of the Magnuson-Stevens Act.

Response. The Council considered and rejected the option of allocating overfished species for nonwhiting trips using the same method as for other nonwhiting IFQ species as not appropriate under the circumstances. In particular, the relative weighting approach, by which landings for a year are measured as a percent of all landings for the year and species, would have given a particularly high amount of credit for pounds caught during the rebuilding period. Additionally, QS would have been allocated to those who targeted some of the overfished species in the mid-1990s (before they were declared overfished) rather than to those who need such QS to access current target species. Accordingly, the Council rejected the approach of using the same allocation formula for overfished species as for nonwhiting target species based on the desire to not reward bycatch during the rebuilding period and in order to provide QS to those who would need it to cover incidental catch taken with their target species QS allocation.

Regarding the comment that overfished species years selected were arbitrary, the Council's methodology for allocating overfished species is

significantly different than the methodology for allocating target catch. The 1994–2003 period is still used to determine the target species allocation, and the harvest patterns from the 2003–2006 logbooks are used to determine the amount of overfished species an entity would need to take its target species. In this fashion, more recent information for the fishery is used without rewarding post control date increases in effort. The 1994–2003 harvest patterns were not used to determine a target species QS recipients need for overfished species QS. This is because of the substantial changes in fishing patterns which were induced by the determination that some species were overfished and the implementation of the RCAs and because the RCAs will remain in place after the trawl rationalization system is put into place. Therefore the Council considered that an estimate of likely patterns of activity should be based on a period of time when the RCAs were in place. The RCAs were not in place for most of the 1994–2003 period but were in place for 2003–2006, further supporting the conclusion to use this period for the allocation of overfished species.

Comment 32. One comment expressed concern over the impact of the allocation formulas on Fort Bragg fishermen.

Response. After the adoption of its final preferred alternative, the Council heard public comment with regard to concerns of the owners of Fort Bragg trawl vessels over the initial allocation of QS for constraining overfished species. The Council considered such testimony and subsequently revised its initial final preferred alternative so that all permits would receive an allocation of canary rockfish from the equal division of the pool of QS associated with the catch history of the buyback permits. The Council declined to revise the FPA for constraining overfished species other than canary.

Comment 33. A comment stated that establishing IFQs for overfished species will not solve problems of overfishing. IFQs will be transferrable and distributed freely in the initial allocation to those who are deemed to have the greatest need due to catch history. IFQs are presumed to incentivize responsible fishing due to the cost of purchasing additional quota. Because the value of IFQs is likely to skyrocket due to high demand for a scarce resource, this system favors larger operations with greater access to capital.

Response. The Council recommended its preferred alternative in response to the identified need for bycatch control and the need for conservation through its focus on individual accountability for catch and bycatch. At present, total mortality for all species is measured and controlled by monitoring total landings and sampling 20 percent of the trawl trips to estimate bycatch rates (discard rates) that are then applied to landings to develop an estimate of total catch and mortality. With this approach, there is substantially less certainty about total catch and mortality than there are total landings. Further, while agencies are able to regulate total landings in the nonwhiting trawl fishery through two-month cumulative limit periods and influence bycatch rates with catch area restrictions and gear restrictions, they face difficulties in managing for total catch in the nonwhiting portion of the trawl fishery. The fishery is a mixed stock fishery. When, despite best regulatory efforts, a fisherman encounters amounts of certain species that are in excess of the two-month cumulative landing limits, they may continue to fish for other target species, discarding the species for which they have reached their limit. The current monitoring system was designed to provide fleetwide total catch estimates over the course of a year. It was not intended as a tool for managing individual vessel discards in the nonwhiting trawl fishery or for providing for individual accountability.

With 100-percent observer coverage, NMFS and the Council will be able to better monitor total mortality of all groundfish species. Better mortality estimates will improve both stock assessments and the ability to keep catch below the harvest limits developed based on those assessments, substantially contributing to conservation goals. Additionally, rationalization, based on a system that relies on transferable quotas, enhances the incentive to avoid bycatch. Without transferable quota, the incentive is to reduce bycatch only to the point where all targeted species can be harvested. With transferable quotas, fishermen who can lower bycatch rates even further have a potential opportunity to sell their unused quota to others, thus benefitting from reducing their bycatch rate to a level lower than what was necessary for them to take their own available target harvest.

Finally, this is a forward-looking management program. It is expected to improve the economics of the overall trawl fishery. Economic analysis of the fishery indicates that the average nonwhiting shoreside fisherman is either breaking even or losing money (not fully covering its capital costs). Fishing businesses that don't receive an initial allocation may participate either by acquiring QP each year from quota shareholders or acquiring long-term security through the purchase of QS. Those fishing businesses that do not choose to acquire QS will have to compete each year in the market for QP. Their ability to purchase QP will depend on their ability to be more efficient than other fishing businesses, and thereby more able to offer a higher price for the QP. Fishing businesses that choose to do so will be able to increase the security of their investments by acquiring QS.

Comments on Quota Ownership and Transfer

Comment 34. Commenters expressed concern that the average fisherman will not be able to afford to participate and that this will lead to increased consolidation and leave many ports no longer viable.

Response. NMFS recognizes the likelihood of increased consolidation and negative impacts on some communities. The RIR/IRFA and FEIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery" analyze these impacts and consider them in the context of other costs and benefits expected to result from this program. Based on these analyses, the program is expected to achieve net benefits to the nation.

It is recognized that fleet consolidation will have an impact on communities; however, other measures are provided to mitigate impacts on communities (see Section 10.1.5 of the FEIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery"). Under an IFQ program, communities will have opportunities to plan and control their destiny through the acquisition of QS, if they so desire. Furthermore, the Council may use part or all of the 10 percent quota set aside in the AMP to mitigate impacts on communities. The Council will also be considering a trailing amendment to allow community fishing associations to acquire quota, potentially in excess of control limits.

While this rule and amendments may have negative impacts on certain communities and participants, viewing the fishery as a whole, the rule and amendments are expected to improve the economics of the overall trawl fishery.

The Council recognizes that for new entrants, the cost of acquiring individual quota will add to the expense of entering the fishery. An increase in profits (before taking into account the cost of the quota and normal profits after taking into account the cost of the quota) and stability is expected to

compensate for the increase in costs. Under status quo management, the value of a new entrant's capital investment would be at greater risk because of the potential erosion of fishing opportunity through the increased effort of others. With respect to the capital badly needed for infrastructure and vessel improvements, this is a condition that has occurred under status quo management. There is no reason to believe that continuation of status quo would improve the situation; however, under IFQs, greater economic stability may facilitate a safer fleet with a stronger infrastructure. Section A–2.2.2.d of Appendix A to the EIS identifies ways in which the Council considered the needs of new entrants.

With respect to new entrants working their way up from the bottom, the QS system provides an opportunity for individuals such as crew members to accumulate capital. For example, crew members might invest in some QS, which is highly divisible, and sell their QP to the vessel each year, creating a stream of income which may be accumulated to allow them to purchase more QS and eventually a vessel.

Comment 35. Commenters stated that there should be greater restrictions on ownership and transfer, such as requirements for an owner on board, maximum lease percentages, and control at the community level. Some commenters also stated that captains and crew can be disadvantaged when employed on vessels with leased quota as opposed to when fishing on vessels run by quota owners. One commenter stated that the need to recoup the price of the quota lease makes it more difficult for vessels fishing leased quota to be profitable and provides an example from the Canadian halibut fishery.

Response. As noted above, with respect to new entrants working their way up from the bottom, the QS system provides an opportunity for individuals such as crew members to accumulate capital. For example, crew members might invest in some QS, which is highly divisible, and sell their QP to the vessel each year, creating a stream of income. In addition, the AMP may potentially be used for aiding new entrants into the fishery; the Council will be addressing the AMP program during the first two years of the rationalization program.

The Council considered requiring an owner on board, but rejected that alternative due to: The impracticality of such a provision in a multispecies fishery which would rely heavily on quota trading to match quota mix to catch mix; the substantial increase in tracking and monitoring costs that such a provision would entail; and the fact that the owner-operator mode of organization is less dominant in the trawl fleet than in other, smaller boat, fisheries.

The Council recommended accumulation limits that reflect the current level of concentration in the fleet, as reflected by the harvest activity of individual permits. After consideration of a variety of approaches, the Council recommended control at levels more constraining than necessary to address concerns related to the effective functioning of QS markets. This was done in order to achieve certain objectives related to the distribution of QS ownership.

Accumulation limits for IFQ fisheries range widely depending on the needs and circumstances of any particular fishery. The U.S. surf clam and Wreckfish IFQ programs have no limits and rely on antitrust laws to ensure excessive control does not occur. Limits in the New Zealand system range from 10 to 40 percent, and limits in Iceland's IFQ system run from 12 to 35 percent. Nova Scotia has a limit of 2 percent. Limits in the halibut and sablefish IFQ fisheries in Alaska are set at 0.5 and 1.0 percent. The method used by the Council to develop the QS control limits for this program considered experiences with these approaches in other programs and is explained in the FEIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery."

The Council's recommended limits are intended to facilitate fleet consolidation and increase efficiency.

Comment 36: Two commenters supported substantially rewriting the ownership and control rules in proposed § 660.140(d)(4)(iii).

Response: The specific comments are summarized and addressed below.

a. Under proposed § 660.140(d)(4)(iii)(B), "any person who serves in an executive or management capacity of a corporate entity that may own quota shares is considered to have control, even though that person may have not actual control over the use of the company's quota shares." A similar situation exists with (iii)(F), where there is implied control as a coincidental circumstance of employment with a particular entity.

The commenters provided an example where the Vice President of Human Resources of Company X would be considered to have control even though she has no control over fishing activities, and such Vice President is also a member of a family corporation that owns a boat that has quota shares. The commenters ask who would be required to divest shares in excess of the accumulation limits, if the total of the "two completely separate and distinct quota share holding exceeds the accumulation limits, or whether the Vice President would be required to resign her position.

NMFS does not agree that § 660.140(d)(4)(iii)(B) needs revision. The commenters did not provide sufficient facts to enable NMFS to determine whether the Vice President's position provides her the type and scope of authority described in that section of the regulations. It did not provide sufficient information to determine her share of the family corporation to determine how much of that corporation's quota share she has attributed to her for ownership purposes. It also does not describe the amount of control she has within the family corporation or to determine whether she should be attributed with control over the entire family share. A determination of whether this person would exceed any control limit would be based on a variety of factors, including the details of the Vice President's position with Company X, the share of the family corporation she has, and her position in the structure of the family corporation. As to divestiture when a limit is exceeded, the parties involved would need to make the decision on how to divest or otherwise come into compliance with the limits.

b. Proposed § 660.140(d)(4)(iii)(D) and (E) "could eliminate the ability of a quota share/quota pound owner to obtain necessary financing for fishing operations. Under these sub-clauses, a bank or other financial institution would be unable to provide loans using quota shares/pounds as collateral, a common practice in limited access fisheries. A quota share brokerage would be unable to take title or otherwise encumber quota shares/pounds beyond the accumulation limits, even if a fisherman requested the broker do so."

NMFS does not intend that these sections apply to banks or financial institutions, unless the financial documents specify control beyond normal business agreements. NMFS has modified the regulations accordingly. As for quota share brokerages, each transaction must comply with the accumulation or control limits; however, compliance does not prevent brokerage transactions. Compliance would be based on the facts of the transactions.

c. Proposed § 660.140(d)(4)(iii)(D) and (E), "along with sub-clause (iii)(H), could prevent the formation of

cooperative entities among fishermen to maximize efficiencies, reduce observer costs, and increase revenues—all activities that are assumed to be benefits and expected outcomes of Amendment 20."

In response, NMFS notes that participants in any cooperative arrangement need to comply with the accumulation limits; it will be important that the terms of the cooperative arrangement, or any other arrangement, be carefully drafted and implemented such that the accumulation limits are not exceeded. The Council has stated its intent to consider a type of cooperative arrangement for communities (community fishing associations or CFAs) in the future as a trailing amendment—proponents of CFAs have suggested the need for modifications to the accumulation limits under certain circumstances.

NMFS acknowledges that participants in the fishery may be concerned about whether potential actions would comply with the accumulation limits. It is the responsibility of the participants to comply with the regulations; if participants have questions about potential actions, NMFS encourages those participants to provide the agency with specific facts and questions prior to entering into agreements or taking action in order to understand NMFS's interpretation of the potential facts in relation to the regulation.

Comment 37. Commenters stated that factors such as the cost of quota, unrestricted leasing, and no owner-on-board requirement will increase involvement of those not currently involved in fishing to the detriment of fishing families and communities.

Response. This issue, as well as eligibility-to-own rules, and other relevant issues will be reviewed during the 5-year review. The proposed program components rule includes a comprehensive mandatory economic data collection program that is specifically designed to provide socioeconomic data that will assist the Council in their scheduled 5-year review of the program. NMFS has published a final rule (75 FR 4684, January 29, 2010) to collect information needed to track ownership patterns. This issue, as well as eligibility-to-own rules, and other relevant issues will be reviewed during the 5-year review.

Comment 38. A commenter expressed concern that the cost of quota shares will lead to dominance by larger scale participants resulting in a loss of political voice by smaller scale fishermen affecting the Council's ability to change or revoke catch shares in the future.

Response. The Council will conduct a comprehensive review no later than five years after the implementation of the program to determine whether the program has achieved the goals and objectives of Amendment 20. Based on this review, which will be during the public Council process, the Council may recommend a variety of actions, including dissolution of the program, revocation of all or part of the quota shares, or other fundamental changes to the program.

Comment 39. Several commenters objected to the ownership and transfer provisions for the following reasons: Concerns over consolidation that may leave ports no longer viable; negative effects on captains and crew when employed on vessels with leased quota; concerns about loss of opportunity to comment in the process; auctions and rent caps should have been considered; costs of quota and unrestricted leasing will increase involvement of those currently not participating; and the need for owner on board requirements.

Response. With respect to the concern that excessive consolidation will leave some ports no longer viable, and that this is inconsistent with MSA national standards, as stated in the FEIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery," Chapter 10, page 672, National Standard 8 states that "Conservation and management measures shall, consistent with the conservation requirements of the Magnuson-Stevens Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to: (1) Provide for the sustained participation of such communities; and (2) To the extent practicable, minimize adverse economic impacts on such communities."

Chapter 4.14 of the analysis describes anticipated impacts on communities and acknowledges a possibly profound impact on communities that depend on trawling. This is due to the nature of rationalization which results in fewer fishery participants and likely geographic shifts. The goal of attaining a sustainable fishery as a whole requires some impacts to individual communities. However, the Council also recommended measures that should mitigate these impacts. For example, the program would allow communities to purchase quota or permits to keep some of the fishery in the community. In addition, the AMP is intended for use in ameliorating impacts on communities.

In addition, fishing community participation is addressed in the FEIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery," on page 676. Appendix A provides additional discussion of the Council's consideration of communities at Section A–2.1.1.a, and lists alternative means by which Amendment 20 addresses community needs, including:

- Maintenance of a split between the at-sea and shoreside trawl sectors.
- Broad eligibility for ownership.
- A temporary moratorium on the transfer of QS to ease the adjustment period and allow for adaptive response.
- Specification of vessel and control limits to spread QS among more owners and potentially more communities.
- Inclusion of a community advisory committee as a formal part of the program performance review process.
- The Adaptive Management set-aside.

In conclusion, NMFS believes that potential impacts to Pacific coast communities as a result of trawl rationalization were well analyzed, and the rationalization program minimizes these impacts to the extent practicable.

With respect to the concern that vessel leasing arrangements can adversely impact the captains and crew participating under a quota share program, NMFS notes that captains and crew have the option of selecting employment opportunities under the trawl rationalization program that best suits their individual needs, including selection based on their understanding of the terms associated with their employment. In addition, the accumulation limits envisioned under this program place serious constraints on the abilities of vessel owners to accumulate quota through leasing arrangements.

With respect to the comment that there was a lack of opportunity to comment on the QS ownership and transfer options, NMFS does not agree that there was a lack of opportunity to comment on the specifics of this program. The reader is referred to the response to comment 18 above where the public input process is described in detail.

With respect to the suggestions regarding the auction concept and rent caps suggested by one commenter, or "cap-rent-recycle model alternative," NMFS's response was addressed in the response to comments on the draft EIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery," and is repeated here. This alternative would have government capture resource rents to be used for

public purposes. The use of fixed-term QS that would be auctioned off periodically is one method to achieve such "rent capture." The Council considered fixed terms and auctions but rejected this mechanism from further detailed study. In doing so, the Council considered the analysis contained in Appendix F of the EIS and the critique of the analysis presented by their SSC. The Council rejected inclusion of fixed-term QS and auctions in the range of alternatives, because (1) auctioning quota at the outset of the program could make it more difficult for the groundfish trawl fleet to successfully transition to IFQ/co-op management, and (2) exclusion of auctions from the range of alternatives does not imply that access privileges have been irrevocably distributed.

NMFS and the Council intend to give further consideration of auctioning harvest privileges during the 5-year program review.

With respect to the comment that unrestricted leasing could be problematic, NMFS agrees with this perspective, and in Appendix A of the FEIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery," on pages A–284 to A–307, there is a lengthy discussion of the vessel limits and QS control limits recommended by the Council. Accumulation limits are described generally on page A–284, "This provision restricts the amount of QS and QP that may be held. Three types of accumulation limits are included, control limits, vessel limits, and an unused QP limit for vessels. The control limit would apply to QS; the vessel limit would cap the total amount of QP that may be registered to a single vessel during the year, and would cover both the vessels' used and unused QP. Under this limit, a vessel could not have more QPs registered for the vessel than a predetermined percentage of the QP pool. The unused QP limit for vessels would cap the amount of unused QP in a vessel's account." From page A–285, "There is a tension between allowing a sufficient accumulation to improve the efficiencies of harvesting activities and preventing levels of accumulation that could result in a variety of adverse economic and social effects." NMFS believes that the accumulation limits established for Amendment 20 represent a reasonable balance of interests.

The owner-on-board provision was addressed in the response to comments on the draft EIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery," and is repeated here. "An owner-operator or owner-on-board provision was considered but rejected. In Section A–11 of Appendix A, three reasons are identified for rejection of the provisions: First, the impracticality of such a provision in a multispecies fishery which would rely heavily on quota trading to match quota mix to catch mix; second, the substantial increase in tracking and monitoring costs that such a provision would entail; and third, the owner-operator mode of organization is less dominant in the trawl fleet than in other, smaller boat, fisheries."

Comments on Community Impacts, Involvement, and CFAs

Comment 40. A commenter expressed concern that the cost of quota shares will lead to dominance by larger scale participants resulting in a loss of political voice by certain communities and negative impacts on community infrastructure.

Response. As stated in responses to comments 39, and 65–67, the underlying analyses consider a wide variety of community impacts, including impacts related to consolidation. However, the Council process is an open public process and communities will continue to be able to participate regardless of the amount of QS located within a community.

Comment 41. Several commenters stated that there should be an initial allocation to communities and that the Council should have worked with communities. Some commenters provided additional specific input on this point such as that the crabbers in San Francisco are forming a CFA and would benefit from an initial allocation. One commenter stated that CFAs should receive 25 percent at time of initial allocation. Another suggested providing CFA an initial allocation out the adaptive management program, from quota from the "bought out draggers", or from increases in fish populations due to rebuilding.

Response. The Council conducted extensive outreach to communities beginning very early in the development of Amendments 20 and 21. The results of this outreach effort and community concerns thereby raised was summarized in Appendix H to the Council's 2005 scoping report (*see* pp. 108–112). The Trawl Individual Quota Committee (TIQC) also discussed community-related issues at length; as with all Council committees, their meetings were open to the public and opportunities for public comments from non-committee members were provided. Another example of community outreach may be found in the 2004 Environmental Defense report submitted to the Council summarizing the results of a survey of community stakeholders and their concerns over the development of the trawl rationalization program.

In June 2005, the Council directed the analytical team in consultation with the Council's SSC to draft a range of alternatives for community involvement in the trawl rationalization program. Then in November 2005, the Council devoted substantial time to the consideration of options to address community impacts, including the distribution of QS to communities. DEIS Appendix A, pp. A–41 to A–42, summarizes results of the process, noting the difficulty in identifying an appropriate representative body within the community that would hold QS. As described there, at that time community leaders did not express interest in receiving an initial allocation of QS because of the administrative and political costs of managing such an allocation. Furthermore, communities (through whatever organizational mechanism) have not been precluded from acquiring groundfish limited entry trawl permits, which would make them eligible for the initial allocation of QS associated with a permit. Additionally, the Council's preferred alternative includes a very broad definition of who may own QS so communities are not precluded from acquiring QS once the program is implemented. Appendix A of the 2005 Council's scoping report also contains an analysis of community measures and effects in the context of the use of regional area restrictions.

Although the Council considered incorporating provisions for CFAs into the alternatives early in the development process, no strong recommendation or advocacy was voiced by members of the public or representatives on the TIQC, which was intended to represent a cross section of interests for the development of recommendations on structuring the trawl rationalization program. Proposals for including provisions for CFAs in the program emerged later on, when the Council was at the point of adopting a preferred alternative in November 2008, in part tied to the issue of how to deal with QS holding in excess of accumulation limits. Further refinement of the preferred alternative, which occurred at Council meetings in 2009, included additional consideration of CFA provisions. Specifically, at the April 2009 Council meeting, Agenda Item F.4 addressed CFAs, and it was at this time that the Council concluded that it would be more appropriate for CFA provisions to be implemented through a trailing action. However, the moratorium on the transfer of QS during

the first two years of the program, combined with provisions to allow divestiture of QS over accumulation limits during years 3 and 4 of the program, were designed to facilitate the transfer of QS to CFAs. The moratorium is in part intended to slow the movement of QS holdings out of communities during a time when the trailing action for CFAs can be developed and implemented in a considered fashion. Recommendations for how to structure the CFA provisions in a trailing action are welcome and should be brought forward as that proposal is developed. The Council is likely to begin developing CFA provisions in 2010 so that they could be in place before the QS divestiture period begins.

Comment 42. Several commenters stated that it is important that CFAs be formed at the start of the process, rather than after the initial issuance. They stated that the proposed rule would hinder development of CFAs. One commenter stated that having to purchase quota will make it too expensive for communities, without a public subsidy, to acquire what was once a public resource.

Response. See response to comment 41 above with respect to the timing issue. See the discussion in section 13(a), below, about perceptions regarding the privatization of a public resource.

Comment 43. One commenter stated that the development of coops for nonwhiting shoreside would help communities, but the rule seems to preclude this.

Response. This rule does nothing to preclude the formation of coops as long as they are consistent with accumulation and control limits. However, other authorities may apply, including but limited to the Fishermen's Collective Marketing Act, 15 U.S.C. 12.

Comment 44. Some commenters stated that the proposed rule and amendments would have negative impacts on community infrastructure. Specific examples of negative impacts, projected to be devastating, were provided for several communities including Humboldt Bay, and Port Orford. One commenter stated that the Council refused to evaluate impacts to Port Orford.

Response. See response to comments 39, 40 and 65–67. Impacts on a broad range of communities are assessed and acknowledged.

Comment 45. Some commenters objected to the disparate impacts on some communities versus others.

Response. See response to comments 39, 40 and 65–67. Impacts on a broad range of communities are assessed and acknowledged.

Comment 46. Some commenters stated that as a result of consolidation there will be fewer active fishing ports.

Response. See response to comments 39, 40 and 65–67. Impacts on a broad range of communities are assessed and acknowledged.

Comments on Adaptive Management

Comment 47. Two comments were received regarding the AMP: One felt the AMP "should be used to mitigate 'one-off' transition impacts including the one-time resolution of proven stranded capital issues. It should then be held, to provide an incentive pool for conservation results and for further transitions as required to improve the program;" and the other general comment was "too little too late."

Response. The comments on how the AMP should be used can be seen as entirely consistent with the intent of the Council and NMFS in designing the program. Beginning in year 3, the AMP set-aside of 10 percent of the nonwhiting QS in the shoreside non whiting sector will be used to address specific objectives, identified on page 402 of Appendix A of the FEIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery." The objectives are: "Community stability, processor stability, conservation, unintended/unforeseen consequences of IFQ management, and facilitating new entrants." The objective of an incentive pool for conservation results was identified by NMFS as a high priority for use of the AMP in future years.

Regarding the "too little too late" comment, for the first two years of the program, the 10 percent AMP is allocated to the shoreside nonwhiting sector to ease the transition to an IFQ system. The Council and NMFS will be evaluating the changes that will occur after implementation, and will be in a position to react as necessary to address impacts under the objectives already identified. NMFS believes this is the proper way to proceed with the AMP component of the program, and is not too little or too late.

Comments on Participation by and Effect on Nontrawl Fisheries

Comment 48. Comments on participation by and effect on non-trawl fisheries as a result of this rule included: Concerns with spillover effects in non-trawl fisheries; impacts on fixed gear fleet; impacts on crab and shrimp fisheries; more equitable intersector allocation to allow fixed gear to harvest trawl quota; and lack of conservation associated with gear switching provisions.

Response. The potential spillover effects on other fisheries associated with the trawl rationalization program are specifically addressed in the FEIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery" in Chapter 4, Sections 4.8.2 and 4.8.3 on pages 402–409. The potential effects due to rationalization include fleet consolidation, harvest timing flexibility, bycatch, and gear switching. All of these potential effects were identified and analyzed, to the extent possible, without the knowledge of observed or actual impacts. These potential impacts were highlighted for the purpose of monitoring behavioral changes in the fishery, understanding their impacts, and reacting through the Council process to minimize impacts. These matters will also be evaluated through the 5 year comprehensive review of the trawl rationalization program.

With regard to intersector allocations and allowing fixed gear to harvest trawl quota, it should be noted that trawlers who have entered the fishery since 1994 have had to buy trawl permits to access trawl quota, thus in this respect other vessels would be on an even footing with trawl vessels. This issue of requiring a trawl permit and quota to harvest trawl quota with fixed gear is addressed in Chapter 10, page 661 of the FEIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery." On average there are about 120 trawl vessels that participate in the fishery each year; however, there are about 168 permits. This indicates some opportunity for nontrawl vessels to acquire trawl permits and use trawl IFQ. Further, it is expected that there will be consolidation in the trawl fleet, increasing the number of trawl permits potentially available for use by nontrawl vessels. Thus, despite the limited scope the IFQ system will allow for some use of trawl IFQ by nontrawl vessels.

Regarding the comment about lack of conservation associated with gear switching provisions, this issue of fishing with more environmentally friendly gear can be evaluated through time. All fishing associated with trawl IFQ will be subject to 100 percent observer requirements, including trawl IFQ that is harvested with fixed gear. Given this, there will be documentation of impacts associated with target catch, bycatch of overfished species, and non-target species. This documentation will provide first hand opportunities for assessing the impacts of differential gear types on all groundfish species in a quantitative manner.

Comments on Other Effects

Comment 49. Some commenters stated that there will be negative impacts on processors, that small processors will be driven out of business due to consolidation, and that processors will not be able to make up losses from lost trawl revenues, and that shortened seasons will further affect them. Some commenters stated that the proposed rule and amendments will change the nature of the fishery, and eliminate the "mom and pop" businesses, and cause loss of fishing heritage.

Response. This response builds on the response to Comment 19. The processing sector is organized with a few very large operations and their subsidiaries, along with a number of small and mid-sized firms. Based on available information, the processing sector for nonwhiting trawl groundfish is characterized by a relatively small number of processing companies processing most of the harvest. The three largest companies handle approximately 80 percent of the nonwhiting trawl landings, while the fourth through sixth largest companies handle just over 10 percent of the landings. For 2008, purchases of limited entry trawl groundfish by first receiver. In 2008, 75 first receivers purchased limited entry trawl groundfish. There were 36 small purchasers (less than $150,000), 26 medium purchasers (purchases equal to or greater than $150,000 but less than $1,000,000), and 13 large purchasers (purchases equal to or greater than $1.0 million). When the trawl rationalization program is implemented, to continue buying limited entry trawl groundfish, these purchasers will have to obtain a processor site license that includes requirements to submit electronic fish tickets, provide a catch monitoring plan, and schedule a catch monitor. Given the costs associated with these reporting requirements, it is expected that many of the 36 small purchasers will cease buying fish altogether or obtain their fish through other processors that have invested in a site license.

It is expected that the TIQ will lead to consolidation and this may affect small processors, particularly if they are in disadvantaged ports. Chapter 4 of the FEIS analyzed the effects on processors from various perspectives: The distribution of landings across west coast ports may change as a result of fleet consolidation, industry agglomeration, and the comparative advantage of ports (a function of bycatch rates in the waters constituting the operational area for the port, differences in infrastructure, and other factors). In particular, the Council analysis indicated that processors associated with disadvantaged communities may see trawl groundfish volumes decline.

The analysis highlights that those processors receiving landings from Central California or Neah Bay may see a reduction in trawl caught groundfish if the market is able to redirect activity toward more efficient and advantaged ports. However, in addition to increased landings that are expected to result from the TIQ program, small processors and disadvantaged communities may benefit from the control limits, vessel limits, and adaptive management policies. Control limits will limit the ability of large processors to obtain shares of the fisheries while the adaptive management processes will allow the Council to consider the impacts on small processors, and disadvantaged communities when allocating the adaptive management quota (10 percent of the total non-whiting trawl quotas). Although vessel accumulation limits tend to lower economic efficiency and restrict profitability for the average vessel, they could help retain vessels in communities because more vessels would remain.

Another process by which small processors and disadvantaged communities may benefit from will be the future establishment of regulations and policies that allow CFAs to be formed. Some of the potential benefits of CFAs include: Ensuring access to the fishery resource in a particular area or community to benefit the local fishing economy; enabling the formation of risk pools and sharing monitoring and other costs; ensuring that fish delivered to a local area will benefit local processors and businesses; providing a local source of QSs for new entrants and others wanting to increase their participation in the fishery; increasing local accountability and responsibility for the resource; and benefiting other providers and users of local fishery infrastructure. The development of CFAs could have a positive impact on the culture of fishing communities. Although little research has been done on the effect of CFAs on culture, it seems likely that CFAs could strengthen a community's cultural associations with fishing by contributing to a unique sense of identity, increasing accountability for both natural and cultural resources, and building and strengthening connections among community members.

Comments on the RIR/IRFA

Comment 50. One commenter stated that the summary of the initial regulatory flexibility analysis (IRFA) contained in the preamble makes erroneous assumptions regarding costs and benefits. Benefits to harvesters are in part predicated on the idea that somehow raw fish prices can increase if harvesters have enough time available to suspend their fishing activity and hold fish processors hostage ("The extended period would give harvesters greater latitude to hold out for better prices compared to the no action alternative." 75 FR 33022). The commenter noted that the idea that fishermen going on strike to force higher prices of a commodity that has substantial substitutability in the marketplace was unreasonable and referred the preparers of the IRFA to review reports in local and trade press regarding the groundfish trawl vessel tie-up that occurred in March and April of 2007 and its aftermath to see where their assumptions are erroneous. Similarly, the commenter objected to the following in the summary of the IRFA: "Even though processors may have to pay fishermen higher ex-vessel prices, processors may see cost savings under the preferred alternative to the degree that rationalization allows greater control over the timing and location of landings." The commenter noted that if the preferred alternative is going to allow fishermen to control timing through their ability to hold out for better prices, how can it also allow processors to control timing?

Response. There are two versions of the IRFA. The first version of the IRFA was a preliminary analysis that was developed for the DEISs (DEIS IRFAs): Amendment 20—Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery, which would create the structure and management details of the trawl fishery rationalization program; and Amendment 21—Allocation of Harvest Opportunity Between Sectors of the Pacific Coast Groundfish Fishery, which would allocate the groundfish stocks between trawl and non-trawl fisheries. The second version of the IRFA was developed to support the proposed rule (75 FR 32994, June 10, 2010) associated with this final rule (PR IRFA) and is a combination and update of the DEIS IRFAs. NMFS has reviewed the summary of the PR IRFA contained in the preamble to the proposed rule and concludes that the summary statements are inconsistent with Chapter 4 of the Amendment 20 DEIS and with that DEIS IRFA.

The main analysis of the Amendment 20 DEIS IRFA included the following correct statement, which was not included in the PR IRFA: "Groundfish compete in regional, national, and global markets where many products are

substitutable. Therefore, west coast groundfish producers (harvesters and buyers/processors) have little ability to influence price based on supply. In general, the ability to influence price is not expected to change under the proposed action. However, rationalization of the fishery could allow quality improvement and the development of new product forms/markets that could increase prices for certain species of fish currently caught. As noted above as an example, the whiting fishery operates as a derby fishery (especially in relation to bycatch species limits rather than the target species) causing the fishery to close due to imposed limits rather than availability of fish or market conditions. Whiting attain a larger size later in the year, commanding a higher unit price. Nonwhiting harvesters currently operate under 2-month cumulative landing limits, which allow greater flexibility in terms of harvest timing between 2-month periods but less flexibility within periods (because any difference between actual limits and the period limit cannot be carried over to the next period). In contrast, under the IFQ program harvesters will have control over harvest timing over the whole calendar year. However, in terms of any influence on price, this increased flexibility is unlikely to have a noticeable effect. The degree to which harvesters versus processors are able to capture profits due to increases in price depends on their relative bargaining power * * *." Bargaining power is a concept related to the abilities of parties in a given situation to exert influence over each other. Fishermen and processors negotiate the prices that are paid to the fishermen for delivering their fish to the processor. One way for fishermen to exert influence on the prices they receive for their fish is to delay the delivery of fish until the processor provides the desired price. Under the IFQ system, fishermen have the ability to choose when they can deliver their fish. Under the current system, the fishermen are given two month landing limits and these limits are designed to achieve a year-round fishery and to address the seasonality of the market. Given that the current system is already designed to address the seasonality of the market, the influence of fishermen to raise market prices based on the timing of deliveries relative to the current timing of deliveries is not expected to be great.

Chapter 4 of the FEIS (*http://www.pcouncil.org/groundfish/fishery-management-plan/fmp-amendment-20/#EIS*) provides the following analyses concerning the issue of a fishermen's strike: "In order to foster the year-round goal of this fishery, regulations are created with the intention of spreading the harvest throughout the year. These management tools evolved into two-month catch limits, which effectively act as a two-month nontransferable quota for vessels in the fishery. Because of this two-month quota system, Olympic conditions do not exist in this fishery, and large pulses of harvest over a short time generally do not occur, except in cases where prolonged episodes of poor weather have restricted harvest opportunities. The two-month limit structure and elimination of Olympic fishery conditions make it possible for harvesters in this sector to collectively negotiate over ex-vessel prices with processors compared to harvesters in the whiting fishery. However, the ability for these negotiations to occur appears to be somewhat limited by the length of the two-month period. If harvesters strike for more than 60 days, they risk foregoing the harvest available to them during that two-month period. While managers may increase opportunities later in the year to make up for lost harvest, history has shown that often this is not possible because of time-sensitive interactions with rebuilding stocks and the fact that protecting rebuilding stocks often leads to a reduction in harvest opportunity for healthy stocks. This means that, while harvesters have a greater likelihood of collectively negotiating higher prices in the nonwhiting fishery, the ability to do so may break down quickly as the end of a two-month limit approaches.

A review of relevant articles indicates that 100 fishermen did undergo a six week strike from March 1, 2007 to April 12, 2007, seeking an agreement with processors for increased prices for petrale sole and dover sole and that the strike was unsuccessful. Within these articles the following factors were mentioned: Prestrike glut due to high effort and trip limits; loss of income to fishermen; differences between fishing groups; differences between processors; that the major products were sold in fresh markets; competition with frozen product; increased quotas for dover sole and petrale sole; effects of the bimonthly trip limits; processor fleets versus fishermen's association fleet; independent fishermen; destabilized prices; major decrease in prices, because of the strike—loss of market share to tilapia; and the inability of the largest groundfish fishermen's association and two of the largest processors to come to an agreement.

Therefore, in response to this comment, the FRFA will contain this comment and response and NMFS will make the summary consistent with main body of analysis by redrafting the summary to reflect the following statement: "Nonwhiting harvesters currently operate under 2-month cumulative landing limits, which allow greater flexibility in terms of harvest timing between 2-month periods but less flexibility within periods (because any difference between actual limits and the period limit cannot be carried over to the next period). In contrast, under the IFQ program harvesters will have control over harvest timing over the whole calendar year. However, in terms of any influence on price, this increased flexibility is unlikely to have a noticeable effect."

Comments on Policies and Legal Standards

Comment 51. One commenter stated that Amendment 20 fails to meet the goals and objectives for the program established for it by the Council which are to: create and implement a capacity rationalization plan that increases net economic benefits, creates individual economic stability, provides for full utilization of the trawl sector allocation, considers environmental impacts, and achieves individual accountability of catch and bycatch. The commenter further states that Amendment 20 fails to meet at least four of the eight specific objectives identified by the Council: It does not provide for a viable, profitable and efficient groundfish fishery in northern California; it does not increase operational flexibility for the shoreside non-whiting sector (in fact the opposite is true); it does not "minimize adverse effects from an IFQ program on fishing communities and other fisheries to the extent practical;" and it will destroy fishing related employment in Fort Bragg, rather than "promot[ing] measurable economic and employment benefits through the seafood catching, processing, distribution elements and support sectors of the industry."

Response. The analyses included in the FEIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery" fully disclose anticipated impacts and recognize that catch share programs can have disparate impacts on different segments of the fishery. Thus, while negative impacts will occur in some areas, NMFS believes that Amendment 20 will result in a fishery that is more sustainable as a whole and that will provide maximum benefits to the nation.

a. Public Trust and Privatization

Comment 52. Some comments expressed concern that the trawl IQ program gives a public resource to individual fishermen and fishing corporations in perpetuity.

Response. The Amendments do not change the fundamental nature of the Pacific groundfish fishery. Fishery resources continue to be public resources managed under the MSA and fish are not considered to be private property until they are harvested. The MSA authorizes the implementation of limited access programs such as the trawl IQ program. Under this program, fishermen will need to acquire QS, through initial allocation or subsequent transfer, before harvesting fish. IQs are Federal fishing permits that may be transferred to qualified individuals or entities. They also may be revoked, limited or modified. NMFS and the Council will monitor the programs established by Amendments 20 and 21, and can amend the programs if they are not in the public interest.

Comment 53. A comment expressed concern that QS will be treated as assets to be traded, pledged as collateral, and held by third parties with no interest in fishing.

Response. QS are federal fishing permits that may be revoked, limited or modified. After the first 2 years of program implementation, transfers of QS would be allowed. While criteria for initial issuance limit recipients to owners of LE trawl permits, after the first 2 years, transfers could be made to a broader group. Generally, anyone eligible to own a U.S.-documented fishing vessel could acquire QS and QP in increments as small as one pound. As long as the regulatory requirements are met, this rule does not limit private arrangements for use or transfer of QS.

Comment 54: Some commenters expressed concern that the American public is not compensated for the privatization of a public resource.

Response: The Council intends to develop a trailing amendment that will provide for a program of fees to recover the agency costs of management, data collection and analysis, and enforcement activities, within limits established by the MSA. In addition, the Council considered an auction system to collect royalties for the initial allocation of QS, as required by the MSA. The Council concluded that the collection of resource rents without a phase-in would be disruptive to the fishery. Therefore, the Council deferred further deliberations on royalties until the first 5-year review of the program. As the trawl rationalization program matures in the future, the Council may provide for a greater return to the American public.

Comment 55: Commenters opposed the future use of public funds to compensate permittees, or to assist new entrants in buying QS from those who received it at no cost to themselves.

Response: These comments address future actions and are beyond the scope of this final rule. The regulations at 50 CFR 660.25(h)(2)(iii) state that the permits do not confer a right to compensation to the permit owner if a permit is revoked, limited or modified. In addition, the regulations at 50 CFR 660.24(h)(2)(iii) state that the permits do not create any right, title or interest in fish before the fish is harvested by the holder. Courts have found that a fishing ban and a revocation of a fishing permit do not constitute a taking under the 5th Amendment to the U.S. Constitution. (*See Conti* v. *United States,* 291 F.3d 1334 (U.S. Ct. App. 2002); *American Pelagic Fishing Company* v. *United States,* 379 F.3d 1363 (U.S. Ct. App. 2004.) The Council will continue to monitor the fishery and will solicit public comments on future amendments as necessary.

b. Magnuson-Stevens Act

Comment 56. Several commenters made general statements that the proposed rule and amendments appear inconsistent with the Magnuson-Stevens Act, National Standards 2, 7, 8, and 9 of the MSA, and/or other applicable laws.

Response. NMFS disagrees for the reasons described in this document, and specifically in the responses to comments 57 through 78.

Comment 57. One commenter stated that, because allocations are not fair and equitable, they do not achieve OY. Specifically, the commenter states that inequitable allocations of overfished incidental catch species will result in leaving sustainable stocks in the water, undermining the ability to achieve optimum yield.

Response. National Standard 1 requires that: "Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery * * *" MSA section 301(a)(1). The MSA defines OY to mean: "The amount of fish which—will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems; is prescribed on the basis of the "maximum sustainable yield" (MSY) from the fishery, as reduced by any relevant social, economic, or ecological factor; and in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery. MSA section 3(28); See also 50 CFR 600.310(e)(3). Thus, National Standard 1 does not require that FMPs provide for 100 percent harvest of all healthy stocks.

As described in the preamble to the proposed rule, Amendment 20 is intended to ameliorate the existing problem of overfished species constraining the harvest of healthier stocks. *See* response to comment 61 addressing the claims that the allocations are not fair and equitable.

Comment 58. One commenter stated that logbook data used to develop the allocations of overfished species is not the "best available data" because the years selected skew the results.

Response. The Council's selection of years on which to base the allocations of overfished species was a policy decision. See responses to comments 29 and 31 for more information on the rationale for that policy decision. The data used to inform that recommendation and the development of the allocations complied with National Standard 2.

The Council considered and rejected the option of allocating overfished species for nonwhiting trips using the same method as for other nonwhiting IFQ species as not appropriate under the circumstances. In particular, the relative weighting approach, by which landings for a year are measured as a percent of all landings for the year and species, would have given a particularly high amount of credit for pounds caught during the rebuilding period. Additionally, QS would have been allocated to those who targeted some of the overfished species in the mid-1990s (before they were declared overfished) rather than to those who need such QS to access current target species. Accordingly, the Council rejected the approach of using the same allocation formula for overfished species as for nonwhiting target species based on the desire to not reward bycatch during the rebuilding period and in order to provide QS to those who would need it to cover incidental catch taken with their target species QS allocation.

Comment 59. Some commenters stated that the proposed rule and amendments do not comply with National Standard 2 because some relevant case studies were not considered.

Response. Chapter 4.3.2 of the EIS provides descriptions of case studies and lessons learned from IFQ programs around the world. The Council and the

agency considered a broad range of case studies that focused on IQ programs in other parts of the United States or the world. *See* also the response to comment 68 below.

Comment 60. The comment stated that the choice of 1994–2003 as the qualifying years does not reflect the "best scientific information available," as required by 16 U.S.C. 1851(a)(2), because it ignores the dramatic changes that began taking place in the whiting fishery starting in 2001, and which have been especially significant after 2003.

Response. Generally speaking, NMFs disagrees that impermissibly dated or stale information was used for this action. The Council and NMFS have used the best information available at each step of the process in implementing the trawl rationalization program. The Council and NMFS analyzed and considered data including past and present participation, historical dependence of various sectors on the groundfish resource, economic impacts of the action on various sectors, cultural and social framework of the various sectors, impacts on other fisheries, and other relevant considerations.

As discussed in detail above, see response to comment 29, the Council is required to consider and balance several factors, including current harvests and historic harvests, when making initial allocation decisions. Although the Council did examine present participation levels, the Council gave greater weight to historic participation in determining the initial allocation.

Comment 61. Commenters stated that the allocation of overfished species QS violates National Standard 4 because some permit holders received up to 0.67 metric tons of Canary Rockfish while others "in effect received zero." Further, this "failure to equitably allocate QS for overfished incidental catch species" will prevent the fishery from achieving optimum yield. Because the plan will benefit the offshore whiting fleet primarily based in Washington and Oregon while harming the non-whiting shore based trawlers in Fort Bragg, California, the plan discriminates against citizens of different states. The commenter stated that "participants along the entire coast should bear equally" the burdens of protecting overfished stocks. Finally, the allocation of QS of healthy stocks violates National Standard 4 because it benefits "boats that only fish off the lower west coast on a part time basis," while harming full time fishermen from Oregon.

Response. National Standard 4 requires that conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such a manner that no particular individual, cooperation, or other entity acquires an excessive share of such privileges.

The National Standard 4 guidelines at § 600.325(c)(3)(i)(B) state that: "An allocation of fishing privileges may impose a hardship on one group if it is outweighed by the total benefits received by another group or groups. An allocation need not preserve the status quo in the fishery to qualify as fair and equitable, if a restructuring of fishing privileges would maximize overall benefits. The Council should make an initial estimate of the relative benefits and hardships imposed by the allocation, and compare its consequences with those of alternative allocation schemes, including the status quo."

Therefore, the Councils are given wide latitude to determine what is equitable within a particular fishery and to create the appropriate management measures to accomplish the goals of an FMP.

With respect to the allocation of overfished species in particular, see the response to comments 29 and 31. Generally, the adoption of any limited access privilege program has the potential to benefit certain fishermen, while disadvantaging others. The Council analyzed the positive and negative consequences of its decisions, and in Amendment 20 it chose to allocate QS in a manner that emphasizes historical participation in the Groundfish fishery. The underlying analyses adequately estimate the relative benefits and hardships imposed by the allocation, and the recommended measures comply with National Standard 4.

The trawl rationalization program was developed through the Council process, which facilitates substantial participation by state representatives. Generally, state proposals are brought forward when alternatives are crafted and integrated to the degree practicable. Decisions about catch allocation between different sectors or gear groups are also part of this participatory process, and emphasis is placed on equitable division while ensuring conservation goals. The Council determined that none of the alternatives considered, including the final plan, would discriminate against residents of different states. The rationalization program was structured to provide fair and equitable allocations of both target species and overfished species to participants.

Comment 62. One commenter indicated that the amendments violate National Standard 5's requirement that management measures may not have economic allocation as the sole purpose.

Response. As described in the preamble to the proposed rule at 75 FR 32996, Amendments 20 and 21 are intended to achieve multiple objectives beyond economic allocation. Amendment 20 is intended to: Create and implement a capacity rationalization plan that increases net economic benefits, creates individual economic stability, provides for full utilization of the trawl sector allocation, considers environmental impacts, and achieves individual accountability of catch and bycatch. The Council further identified eight specific objectives to support achievement of the goal:

1. Provide a mechanism for total catch accounting.
2. Provide for a viable, profitable, and efficient groundfish fishery.
3. Promote practices that reduce bycatch and discard mortality, and minimize ecological impacts.
4. Increase operational flexibility.
5. Minimize adverse effects from an IFQ program on fishing communities and other fisheries to the extent practical.
6. Promote measurable economic and employment benefits through the seafood catching, processing, distribution elements, and support sectors of the industry.
7. Provide quality product for the consumer.
8. Increase safety in the fishery.

Because OY on healthy stocks is constrained by rebuilding needs of co-occurring overfished stocks, Amendment 20 is intended to implement an approach that will support attainment of OY while improving bycatch avoidance and supporting rebuilding.

The purposes of Amendment 21 are to: Simplify or streamline future decisions by establishing allocations of specified groundfish stocks and stock complexes within the Pacific Coast Groundfish FMP; support rationalization of the LE trawl fishery (Amendment 20) by providing more certainty to the affected sectors and reducing the risk that these sectors would be closed because of other non-trawl sectors exceeding their allocation; facilitate individuals' ability to make long-range planning decisions based on the allocation of harvest privileges; support overall total catch accounting of

groundfish species by the group within the trawl sector; and limit the bycatch of Pacific halibut in future LE trawl fisheries.

Comment 63. One commenter stated that the proposed rule and amendments violate national standard 7 because they do not reduce costs compared to the status quo.

Response. National Standard 7 requires that "Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication." MSA section 301(a)(7). This is not a simple question of whether proposed measures will be more expensive than the status quo. The supporting analyses show that the costs imposed by the proposed rule and amendments are necessary and justified in order to achieve the anticipated benefits.

Comment 64. Some commenters stated that the proposed rule and amendments do not minimize impacts on fishing communities to the extent practicable. One commenter stated further that the impacts on small communities such as Fort Bragg have not been sufficiently analyzed and the approach of providing for mitigation measures through a future action violates NS 8.

Response. See responses to comments 39, 40, and 65–67.

Comment 65. Some commenters stated that the analysis of the impacts of consolidation on communities is inadequate and provides examples of impacts experienced in the Bering Sea/Aleutian Islands crab fishery and the British Columbia halibut fishery.

Response. NMFS and the Council have analyzed the likely effects of consolidation on communities. The Executive Summary of the FEIS, on pages xix and xx, lists the following expectations: "Fishing communities would be differentially affected due to the fleet and processor consolidation. Some communities would likely benefit and others would be harmed. Fleet and processor consolidation could result in the concentration of vessels and commercial infrastructure in fewer ports, disadvantaging communities that lose vessels and infrastructure. Limits on the amount of QSs an entity can control would reduce ownership consolidation and would increase the number and types of businesses involved in the fishery, contributing to diversity and stability. Isolated communities, where there are few alternative employment opportunities, could be adversely affected by the loss of fishing-related jobs. Processors would likely consolidate and possibly move, affecting processor labor and municipal revenue. Fishing, in all its diversity, is culturally important to coastal communities. As a consequence, communities experiencing a decline in fishing activity due to trawl rationalization would be adversely affected. Family fishing businesses would have to deal with the implications of the asset value associated with IFQs (or co-op shares). This can complicate fishery entry and exit, leading to intra-family strife. Tourism could be adversely affected in communities that lose a working waterfront to the degree it is important to the tourist identity of the community. Nontrawl communities could be affected by rationalization through increased competition, gear conflicts, impacts on the support sector, infrastructure impacts, and competition in the marketplace."

NMFS and the Council have considered the case studies cited in section 4.3.2.1 of the FEIS.

National Standard 8 requires consideration of impacts on communities, but recognizes the higher priority of National Standard 1. Specifically, National Standard 8 states that "Conservation and management measures shall, consistent with the conservation requirements of the Magnuson-Stevens Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to: (1) Provide for the sustained participation of such communities; and (2) To the extent practicable, minimize adverse economic impacts on such communities."

Chapter 4.14 of the analysis describes anticipated impacts on communities and acknowledges a possibly profound impact on communities that depend on trawling. This is due to the nature of rationalization which results in fewer fishery participants and likely geographic shifts. The goal of attaining a sustainable fishery as a whole requires some impacts to individual communities. However, the Council also recommended measures that should mitigate these impacts.

For example, the program would allow communities to purchase quota or permits to keep some of the fishery in the community. In addition, the AMP is intended for use in ameliorating impacts on communities.

Comment 66. Some commenters stated that captains and crew are an integral component to "aggregate community benefits," and more data and analysis are needed on impacts to captains and crew in order to accurately evaluate the impacts of these amendments.

Response. NMFS and the Council considered effects on captains and crew in chapter 4.7 of the FEIS. While more data would be beneficial, the analysis uses the best available information.

Comment 67. One commenter stated that, with respect to leased quota, National Standard 8 requires broader control at the community level and with restrictions on leasing as well as owner-on-board requirements.

Response. National Standard 8 requires that: "Conservation and management measures shall, consistent with the conservation requirements of this chapter (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of paragraph (2)(N.S. 2) in order to: (A) Provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities." MSA section 301(a)(8).

The adaptive management program is intended to minimize adverse impacts on communities.

Appendix A provides additional discussion of the Council's consideration of communities at Section A–2.1.1.a, and lists alternative means by which Amendment 20 addresses community needs, including:

- Maintenance of a split between the at-sea and shoreside trawl sectors.
- Broad eligibility for ownership.
- A temporary moratorium on the transfer of QS to ease the adjustment period and allow for adaptive response.
- Specification of vessel and control limits to spread QS among more owners and potentially more communities.
- Inclusion of a community advisory committee as a formal part of the program performance review process.
- The Adaptive Management set-aside.

While initial allocations of quota would be limited based on qualifying criteria, after the first two years, the proposed program would allow both ownership of privileges by communities and acquisition by entry level participants. In addition, parties, including communities, desiring to receive initial issuance would be able to purchase limited entry permits such as The Nature Conservancy has done and receive initial issuance. Appendix A Sections A–2.2.2.d and A–2.2.3 describe entry level opportunities and transfer provisions.

Comment 68. Some commenters stated that the proposed rule and

amendments will not reduce bycatch, which is one of the objectives of National Standard 9. Specifically, one stated that allowing lessees to fish will reduce incentive to avoid bycatch and undermine achievement of bycatch reduction goals. Another stated that catch shares could increase bycatch.

Response. There is a requirement that when a fisher runs out of quota, he must stop fishing regardless of whether he leases or owns. Chapter 4.17.2.2 of the EIS for Amendment 20 provides information indicating that the proposed trawl rationalization program would be expected to be more effective at reducing bycatch than the status quo. Based on the information in the record, NMFS believes that the proposed rule and amendments will achieve reductions in bycatch.

The study by Redstone Strategy Group and Environmental Defense (2007) analyzing pre- and post-implementation performance of 10 LAPPs, including all seven U.S. programs, cites interviews with fishery participants and other sources showing that QS value "transformed the mindset of fishermen, who developed a real stake in the outcome of their fishing practices" (p. 7). Other studies and reviews support the proposition that individual accountability fostered by IFQs (or the small group collective responsibility of the whiting co-ops) helps to reduce bycatch. "Sharing the Fish," a report on IFQs requested by Congress from the NRC (1999), includes bycatch reduction as part of the rationale for implementing IFQs, noting that harvesters can more carefully choose their time and area of fishing, which may "reduce bycatch of non-target species since operations can be moved to target more favorable harvesting conditions, or it might allow the opportunity to develop practices that could reduce bycatch" (p. 35). The aforementioned report by Redstone Strategy Group and Environmental Defense (2007) found that "nearly all the fisheries experienced decreases in their respective discard rates" when the LAPP was implemented.

Comment 69. One commenter stated that catch shares are not necessary to reduce bycatch and that TAC could be used as a stand-alone tool to reduce bycatch.

Response. The proposed rule and amendments offer multiple tools for addressing bycatch. The multiple tools employed are intended to increase the overall effectiveness. See also response to comment 68.

Comment 70. Some commenters stated that the proposed rule and amendments will help reduce bycatch and will address bycatch problems that the current system cannot solve.

Response. NMFS agrees.

Comment 71. One commenter stated that the proposed rule and amendments violate the MSA's LAPP provisions because they do not include owner-on-board requirements, restrictions on leasing, a 10-year sunset, and prohibitions on compensating for revoked permits.

Response. The regulations at 50 CFR 660.25(h)(2)(iii) state that the permits do not confer a right to compensation to the permit owner if a permit is revoked, limited, or modified. In addition, certain provisions of section 303A of the MSA, such as the permit characteristics in section 303A(f) apply to all LAPPs and do not need to be repeated in fishery management plans or implementing regulations. The Council and NMFS have provided for transferability of limited access privileges as required by 303A(c)(7). The Council considered, but did not include, an owner-on-board requirement. The MSA does not mandate such requirements.

Comment 72. One commenter stated that the proposed rule and amendments do not comply with 303A(a)(1) and (c)(1) of the MSA, which requires LAPPs to "promote" not "consider" conservation. The commenter interprets the preamble to the proposed rule as to indicate that NMFS intends the action to achieve economic benefits while only considering, not promoting, conservation.

Response. The preamble describes the Council's goals for Amendment 20 as follows: "Create and implement a capacity rationalization plan that increases net economic benefits, creates individual economic stability, provides for full utilization of the trawl sector allocation, considers environmental impacts, and achieves individual accountability of catch and bycatch. The Council further identified eight specific objectives to support achievement of the goal:

1. Provide a mechanism for total catch accounting.
2. Provide for a viable, profitable, and efficient groundfish fishery.
3. Promote practices that reduce bycatch and discard mortality, and minimize ecological impacts.
4. Increase operational flexibility.
5. Minimize adverse effects from an IFQ program on fishing communities and other fisheries to the extent practical.
6. Promote measurable economic and employment benefits through the seafood catching, processing, distribution elements, and support sectors of the industry.
7. Provide quality product for the consumer.
8. Increase safety in the fishery.

Because OY on healthy stocks is constrained by rebuilding needs of co-occurring overfished stocks, Amendment 20 is intended to implement an approach that will support attainment of OY while improving bycatch avoidance and supporting rebuilding."

Read in complete context, the Council's goals and objectives comply with the MSA. Furthermore, the effects of the actions are anticipated to promote both efficiency and conservation.

Comment 74. One commenter stated that Congress required the Council to develop criteria for qualifying communities to participate including initial allocation.

Response. Section 303A(c)(5) of the MSA requires that a Council consider the current and historical participation of fishing communities when establishing procedures to ensure fair and equitable initial allocations. In addition, the Council must consider the basic cultural and social framework of the fishery. The Council has complied with these requirements. Section 303A(c)(3) addresses eligibility of fishing communities, but does not require that a Council develop criteria for eligible communities to receive initial allocations of limited access privileges. The Council intends to address eligibility of fishing communities in future FMP amendments.

Comment 75. One commenter questioned NMFS's compliance with the Secretarial review provisions of the MSA at 304(b)(1).

Response. NMFS has complied with section 304 of the MSA which requires that upon transmittal of an FMP amendment by the Council NMFS shall: (A) Immediately commence a review of the plan or amendment to determine whether it is consistent with the national standards, the other provisions of this chapter, and any other applicable law; and (B) immediately publish in the **Federal Register** a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published, which was accomplished on May 12, 2010 (75 FR 26702).

For regulations, the MSA requires that, upon transmittal of proposed regulations to implement an FMP or amendment, NMFS must "immediately initiate an evaluation of the proposed regulations to determine whether they

are consistent with the fishery management plan, plan amendment, this chapter and other applicable law," and within 15 days of initiating that evaluation, make a determination, and (A) if that determination is affirmative, the Secretary shall publish such regulations in the **Federal Register**, with such technical changes as may be necessary for clarity and an explanation of those changes, for a public comment period of 15 to 60 days (75 FR 32994, June 10, 2010 had a comment period of 33 days); or (B) if that determination is negative, the Secretary shall notify the Council in writing of the inconsistencies and provide recommendations on revisions that would make the proposed regulations consistent with the fishery management plan, plan amendment, this chapter, and other applicable law.

Comment 76. One commenter stated that because of the expense of participation, capital will be redirected away from facilities, infrastructure and vessel improvements. As a result safety and efficiency will be sacrificed.

Response. NMFS and the Council recognize that for new entrants, the cost of acquiring individual quota will add to the expense of entering the fishery. An increase in profits (before taking into account the cost of the quota and normal profits after taking into account the cost of the quota) and stability is expected to compensate for the increase in costs. Under status quo management, the value of a new entrant's capital investment would be at greater risk because of the potential erosion of fishing opportunity through the increased effort of others. With respect to the capital badly needed for infrastructure and vessel improvements, this is a condition that has occurred under status quo management. There is no reason to believe that continuation of status quo would improve the situation; however, under IFQs, greater economic stability may facilitate a safer fleet with a stronger infrastructure.

Comment 77: Multiple commenters suggested that NMFS should "remand" the proposal to the Council and require the Council to develop and submit a specific management alternative. For example, one suggestion was to direct the Council to revise the proposal to consist of a whiting IFQ program for all three sectors and develop program for nonwhiting shoreside groundfish in the future such as cap and rent, and owner on board.

Response. The MSA expressly vests the Council with responsibility for developing and identifying which management measures to recommend through its open public process. It is not appropriate for NMFS to dictate the policy recommendations that are not produced through the MSA Council system.

Comment 78. One commenter stated that the regulations as deemed do not reflect Council intent.

Response. NMFS disagrees. NMFS and the Council conducted an extensive and public deeming process that included public Council meetings and public committee meetings.

c. Other Applicable Law

Comment 79. The EIS should have analyzed other alternatives, including existing catch share programs worldwide, and their full range of impacts.

Response. CEQ regulations at 40 CFR 1502.14 require agencies to "rigorously explore and objectively evaluate all reasonable alternatives." The Council engaged in an open scoping process to determine the scope of issues to be addressed and to identify the significant issues related to the action. In addition, other suggested alternatives were addressed in the response to comments in the FEIS. NMFS and the Council considered many other programs as described in section 4.3.2.1 of the EIS. However, neither NEPA nor the MSA requires that the Council, through the EIS, analyze all existing catch share programs worldwide.

Comment 80. A Supplemental EIS is needed because portions of the program related to observer coverage, monitoring, and other conservation-related measures are not included in this rulemaking.

Response. NMFS disagrees. The Council considered and the FEIS analyzed alternatives relative to those specific issues. NMFS, consistent with Council intent, is implementing regulations through two rulemakings; the proposed rule for program components was published on August 31, 2010 (75 FR 53380) and will be implemented prior to the January 1, 2011 implementation date.

Comments on Intersector Allocations

Comment 81. Some commenters raised concerns regarding the allocations to the trawl sector. Commenters argue that Groundfish are being allocated away from the fixed gear fleet to the trawl fleet, diminishing the value of fixed gear permits and impermissibly discriminating against fixed gear permit holders. Others argue that the trawl fishery is responsible for overfished conditions, but open access and fixed gear fishermen are being penalized.

Response. NMFS does not agree that the regulations punish the non-trawl sectors, or privilege the trawl sector. Most of the species subject to trawl/non-trawl allocations in this action are trawl dominant (sector dominance for a species is defined in the Amendment 21 EIS as average landings during the 1995 to 2005 period to the sector at least 90 percent of total directed non-treaty landings; see Amendment 21 FEIS Table 4–17) based on the sector catch histories used in Amendment 21 analyses. The action largely limits the trawl allocation of many of the Amendment 21 species to percentages less than the historical trawl catch shares to the benefit of the non-trawl sectors. For instance, the proposed action limits the maximum trawl allocation of any Amendment 21 species to 95 percent of the directed harvest when historical trawl catch shares for many of these species have been higher than 95 percent. Amendment 21 species' allocations that tend to favor non-trawl sectors (i.e., non-trawl sector allocations greater than observed in the 1995 to 2005 historical catch) include Pacific cod, Pacific ocean perch, chilipepper rockfish south of 40°10′ N lat., splitnose rockfish south of 40°10′ N lat., shortspine thornyhead north of 34°27′ N lat., longspine thornyhead north of 34°27′ N lat., darkblotched rockfish, Dover sole, English sole, petrale sole, arrowtooth flounder, starry flounder, and species in the Other Flatfish complex. All other Amendment 21 species' allocations under the proposed action are generally favorable to non-trawl sectors in that the highest non-trawl sector catch percentages analyzed were proposed to be allocated to the non-trawl sectors. The only exception to this is lingcod where a more favorable trawl allocation was adopted as the final action. The rationale for a higher trawl allocation of lingcod is that, unlike the non-trawl sectors that predominantly use hook-and-line gear to target groundfish, the trawl sectors are not as constrained by management measures designed to foster yelloweye rockfish rebuilding. This is because the mandatory use of trawls with small-diameter footropes (*i.e.,* at least 8 inches) shoreward of the RCA effectively keeps bottom trawls out of the high relief habitats where yelloweye occur. A higher trawl allocation of lingcod would minimize stranding of harvestable yields of lingcod that would otherwise be allocated to non-trawl sectors and unavailable for harvest due to yelloweye rebuilding constraints.

Thus, the inter-sector allocation does not provide more bottom trawl opportunity than status quo management measures and allocations.

In addition, the trawl rationalization allows limited entry trawl permit holders to switch from trawl to fixed gears to fish their quotas, which, in turn, would reduce trawl impacts. It also allows nontrawl vessels to harvest the allocation to the trawl sector if they acquire a trawl permit and IFQ. These facts lead to the conclusion that potential adverse impacts from trawl gear could be expected to be lower under the proposed action than under status quo management or under any of the other alternatives analyzed.

Moreover, the allocations are consistent with the current distribution of fishing opportunity among Groundfish sectors. Even if the fixed gear sector had the capacity and desire to catch significantly greater amounts of Groundfish, which is questionable, those factors are not, in and of themselves, criteria for determining allocations. Allocations are necessary precisely because more than one group has some level of "capacity and desire," which engenders potential conflicts over resources access that must be resolved through allocation.

Comment 82. One commenter felt that the allocation of sablefish to the limited entry tier system unfairly impacts open access fishermen.

Response. This comment is not specifically related to the actions contemplated under Amendments 20 and 21. Under the FEIS "Allocation of Harvest Opportunity Between Sectors of the Pacific Coast Groundfish Fishery, the Council recommended a sector split between the trawl and non-trawl sectors of the groundfish fishery. The Council did not consider, as part of this process, allocations of sablefish between the limited entry fixed gear and directed open access fisheries of the non-trawl sector.

Comment 83. Trawl gear does more damage to fishery resources than fixed gear, but the program will favor the trawl sector. Gear switching is not a sufficient incentive for quota owners to give up trawling in favor of less damaging gear because gear switching will only enable trawlers to fill in off-season by temporarily using fixed gear to take huge hauls out of the fixed gear fishing grounds.

Response. NMFS disagrees with the commenter's characterization of the trawl fleet. That said, the FEIS identifies and discloses the potential adverse impacts of trawl gear cited by this commenter. To the degree that these impacts may exist, they are not increased under trawl rationalization and may be reduced because it allows more opportunities for use of fixed gear to harvest the trawl allocation. The Council actions under Amendment 20 provide an opportunity for the transition of harvest away from the trawl sector and its action under Amendment 21 limits the trawl fleet allocation to the lower end of its recent harvest share. Furthermore, the allocations provided to trawlers in Amendment 21 are not permanent and may be changed in the future as it is determined to be appropriate. Additionally, trawl rationalization is expected to decrease total trawling hours required to take a given amount of harvest. Amendment 20 allows some movement of harvest toward the nontrawl gear through gear switching and the transfer of IFQ to the nontrawl fleet. For the time being, that movement is constrained by the number of trawl permits available and the dictates of the market place, combined with any incentives or subsidies that may be created.

Given that formal allocations of trawl-dominant and other important trawl target species have been judged in the scoping process to be important to support trawl rationalization, the proposed action under Amendment 21, by indirectly supporting trawl rationalization, should reduce species impacts by monitoring 100 percent of the total catch of IFQ species and reducing potential habitat impacts through rationalized fleet consolidation relative to status quo allocations and management measures.

While there are no formal incentives to encourage gear switching, the existing provision alone may have a mitigating effect compared to status quo, since trawl-endorsed permits are currently prohibited from using other gear types to fish against their bimonthly limits. Any vessel switching gear types with less habitat impacts would represent a reduction in impacts compared to existing, ongoing habitat impacts due to trawl fishing under status quo. Under the license limitation program, trawl vessels are already allowed to use fixed gear to take the trawl allocation, albeit they must do so under the open access regulations, which have much lower limits. Fixed gear endorsements give a vessel access to the fixed gear allocation. Allowing trawl vessels to gear switch (or other vessels to acquire a trawl permit and IFQ) does not give trawl permitted vessels access to the fixed gear quota; it merely allows the vessel to use nontrawl gear to take the trawl IFQ.

Comment 84. One commenter felt the halibut bycatch rates should be based on all landed flatfish using 1994–2003 as opposed to using petrale sole and arrowtooth flounder harvests in 2003–2006 to determine bycatch rates, so targets match better with bycatch.

Response. Under the FEIS "Allocation of Harvest Opportunity Between Sectors of the Pacific Coast Groundfish Fishery," the Council recommended to allocate 15 percent of the Area 2A (i.e. all waters off Washington, Oregon, and California) total constant exploitation yield (total harvest expressed in terms of legal-sized halibut, since the primary commercial target halibut fishery, using gear other than trawl, can only retain and land legal-sized halibut) halibut to the limited entry trawl sector, not to exceed 130,000 pounds for the first four years of the program and not to exceed 100,000 pounds for years five and beyond. The method for the initial allocation of halibut is similar to that used for overfished species (Appendix C of the EIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery." The Council decided to base initial allocation of IBQ on the different rates of bycatch in different areas or in association with various target species (*e.g.* arrowtooth flounder and Petrale sole). Halibut cannot be allocated based on individual vessel records because halibut mortality is estimated based on fleet averages. The 130,000 pounds recommended by the Council represents an approximate reduction of 50 percent from the total bycatch estimate provided by the Northwest Fisheries Science Center for the most recent year estimated (2007) and is contained in Agenda Item E.1.b, Supplemental NMFS Report, September, 2008. Pacific halibut IBQ would function in a manner similar to IFQ for other species, except that retention and landing of halibut would be prohibited, and only pounds of dead halibut would be counted against the IBQ. Discard at sea of Pacific halibut would be required; before discard occurred, observers would estimate the halibut bycatch mortality on that vessel (average mortality rates would be applied based on the condition of the halibut in a particular tow) to provide greater individual accountability and incentives for harvesters to control halibut mortality.

Under any of the allocation alternatives suggested by the Council, halibut IBQ as part of the trawl rationalization program will be constraining, and this was specifically the intent in designing the methods selected. Because the limit recommended by the Council is lower than the bycatch observed, it was unclear how such a stringent limit might affect the fishery. As stated under the EIS "Allocation of Harvest Opportunity Between Sectors of the Pacific Coast Groundfish Fishery" on

Page 36, "It may turn out that the socioeconomic impacts are too great under these stringent limits, and the Council may ultimately decide to increase the total catch limit. Conversely, the trawl industry may adjust well to these lower limits, and the realized bycatch of Pacific halibut will be lower than the prescribed limits. In that case, the Council may want to adjust the future total catch limit downward from 100,000 pounds to provide more benefits to Area 2A directed halibut fisheries. In either case, the Council preferred the flexibility of deciding future total catch limits of Pacific halibut in the biennial specifications and management measures process.

Items NMFS Requested Comment on in the Proposed Rule

In addition to the comments received above, NMFS specifically requested comment on several items upon which no comments were received. Where NMFS has made changes to the proposed rule where comments were specifically requested, these specific requests are identified in the section on "changes from the proposed rule."

Changes From the Proposed Rule

A. All Trawl Programs

I. Definitions

In the proposed rule (75 FR 32994, June 10, 2010), NMFS specifically requested comment on revised definitions. No comments were received on the definitions in the proposed rule. However, based on further review and as the logical extension of what was proposed, NMFS is making some changes to the definitions as follows. The definition of "ownership interest" at § 660.11 is revised for the limited entry trawl fishery to reflect that ownership interest information will also be collected from owners of vessel accounts because ownership of vessel accounts may be tied to control of QS or IBQ. In addition, the definition of "mutual agreement exception" at § 660.111 is revised to reflect that a processor obligation applies to a MS/CV-endorsed permit rather than the vessel registered to that permit, and that it is the catch history assignment of that permit that is obligated to the mothership processor.

II. Ownership Issues

Language was added to § 660.25(b)(4)(iv)(A) to cross-reference the language in the specific trawl rationalization programs that states the owner of a limited entry trawl permit may not change during the application process for a QS permit, an MS/CV endorsement, or a C/P endorsement, as specified at §§ 660.140(d)(8)(viii), 660.150(g)(6)(vii), and 660.160(d)(7)(vi), respectively.

NMFS is also revising the provisions for determination of ownership interest based on further review of the proposed regulation. In reviewing provisions on calculating ownership interest, NMFS has identified two ownership structures where the ownership of the permit may not be clear for the purpose of determining compliance with accumulation limits: (1) Joint ownership, and (2) ownership by a trust. A joint ownership situation exists where more than one person claims an interest indivisible from that of another person, such that the total ownership interest is greater than 100 percent. In these situations, NMFS would credit each owner with the full percent claimed, even though the sum of all ownership interests would exceed 100 percent. NMFS believes that for some owners, the benefits of joint tenancy may be greater than the parties' concern for accumulation limits, particularly if they are more interested in estate planning than accumulation of privileges, and that if the parties to a joint tenancy don't want to avoid individual accountability for the entire ownership interest, they would have the option of restructuring. With a trust, generally, a trustee holds title to the property granted by the trustor on behalf of the beneficiaries of the trust. Because a trust vests the legal title to the property in the trustee, under the proposed rule NMFS would credit ownership to the trustee. If there is more than one trustee (*i.e.,* "co-trustees"), NMFS would consider each trustee to have 100 percent ownership of the trust property. In the preamble to the program components proposed rule (75 FR 53380, August 31, 2010), NMFS requests additional comment on any other ownership structures that may affect accumulation limits; NMFS may add provisions for additional ownership structures as a result. This final rule also includes provisions that NMFS may ask for additional information it believes to be necessary for determination of compliance with accumulation limits.

Some additional modifications have been made to the accumulation limits language. For the Shorebased IFQ Program, as described in the responses to comments, above, NMFS does not intend that control rules would apply to banks and other financial institutions that rely on QS or IBQ as collateral for loans, unless the financial documents specify control beyond normal business agreements. Accordingly, based on further agency consideration and in response to public comment received, NMFS further clarified the application of the control rules for QS or IBQ at § 660.140(d)(4). In addition, in the MS Coop Program, NMFS further clarified the ownership language at §§ 660.150(f)(3)(ii) and 660.150(g)(3)(i)(A) for MS permits and MS/CV endorsements, respectively.

III. Allocations

In § 660.55, Allocations, paragraph (h) on sablefish allocations north of 36° N. lat., is corrected to specify that the remainder of the sablefish quota after deductions for the tribal fishery is available to the nontribal fishery (both commercial and recreational), not just to the nontribal commercial fishery as had been stated in the proposed rule. In addition, sablefish allocations between the commercial limited entry and open access fisheries are specified in regulation consistent with the FMP, instead of just referencing the FMP.

In § 660.55(a) language has been added to implement Amendment 21 stating that a formal allocation may be suspended when a species is overfished. The proposed rule only contained the prior language from the existing FMP regarding suspension of limited entry/open access allocations for overfished species. There are additional minor edits in this section, consistent with the partial disapproval of a minor section of Amendment 21 to indicate that the Amendment 21 allocations did not override the limited entry/open access allocations. These limited entry/open access allocations have not been implemented recently because the constraints of the rebuilding plans have overridden the ability to achieve these allocations. The allocations are directly suspended for the overfished species themselves, and the access to healthy stocks in various places in the EEZ has been limited by the need to significantly reduce fishing mortality on overfished species.

IV. Application and Appeals Process

No comments were received on the application and appeals process specified in the proposed regulations. Based on further agency consideration of the proposed regulations, NMFS has modified the regulations as described here. The proposed regulations specified in several places that NMFS would "extract" landings data from PacFIN, in the case of calculating shoreside landings history, or NORPAC, in the case of calculating at-sea harvest history, on July 1, 2010. NMFS extended the date for allowing the public to correct NORPAC data until August 1,

2010, as announced on June 22, 2010; this final regulation is modified accordingly.

In addition, NMFS is clarifying that the initial allocation calculations will be based on the relevant "PacFIN dataset on July 1, 2010," and as appropriate, the relevant "NORPAC dataset on August 1, 2010." NMFS has removed the term "extracted" from the regulations in order to be more specific. As explained above, NMFS has determined that the July 1, 2010, dataset in PacFIN and the August 1, 2010, dataset in NORPAC as corrected through the public process and in conjunction with the relevant data base QA/QC processes, constitute the best scientific information available.

NMFS is also clarifying the specified basis for appeal of the agency's Initial Administrative Determination (IAD) by replacing the words "extracted' or extraction" with more specific terms. The proposed regulations state in several places that items not subject to appeal include, but are not limited to, the accuracy of the permit landings data in "the data set extracted from PacFIN" or, as appropriate, "extracted from NORPAC." The proposed bases for appeal of the IAD are "errors in NMFS' extraction, aggregation, or expansion of data, including: (1) Errors in NMFS' extraction of landings data from PacFIN; (2) errors in NMFS' extraction of state logbook data from PacFIN; (3) errors in NMFS' application of the QS allocation formula; (4) errors in identification of permit owner, permit combinations, or vessel registration as listed on NMFS permit database; and (5) errors in identification of ownership information for the first receiver or the processor that first processed the fish." In addition, NMFS is adding another item for appeal, "NMFS' use or application of ownership interest information."

In order to be more specific and accurate, the final regulations specify that items not subject to appeal include, but are not limited to, the accuracy of data in the relevant "PacFIN dataset on July 1, 2010," and as appropriate, the relevant "NORPAC dataset on August 1, 2010." Similarly, the bases for appeal are revised to read: "Errors in NMFS' use or application of data, including: (1) Errors in NMFS' use or application of landings data from PacFIN; (2) errors in NMFS' use or application of state logbook data from PacFIN; (3) errors in NMFS' application of the QS allocation formula; (4) errors in identification of permit owner, permit combinations, or vessel registration as listed on NMFS permit database; (5) errors in identification of ownership information for the first receiver or the processor that first processed the fish; and (6) errors in NMFS' use or application of ownership interest information."

As mentioned in the preamble to the proposed rule and described in more detail in a NMFS report for the March 2010 Council meeting, because of the timing of this application process for an initial issuance of a permit, endorsement, or QS under the trawl rationalization program, the owner of a limited entry trawl permit may not change during the application process for the initial issuance of a QS permit, an MS/CV-endorsed permit, or a C/P-endorsed permit, as specified at §§ 660.140(d)(8)(viii), 660.150(g)(6)(vii), and 660.160(d)(7)(vi), respectively. In other words, the limited entry trawl permit owner may not transfer his or her permit to another owner once the application process has started until the application process is complete. This is necessary for administration of the agency process of considering applications and making the IAD. The proposed rule stated that the application process would begin on the date of publication of this final rule. NMFS received no comment on this provision. However, based on further agency consideration of the proposed regulations, NMFS has changed the start of the application period during which permits could not be transferred. In this final rule, NMFS establishes that the start date for the application period will begin either 30 days after the publication of this final rule, or when the agency receives an application for initial issuance of a QS permit, an MS/CV-endorsed permit, or a C/P-endorsed permit, whichever date occurs first. NMFS is making this change to allow permit owners an opportunity to transfer their permits after receiving pre-filled applications from NMFS indicating anticipated issuance of QS or endorsements based on PacFIN and/or NORPAC data, as described above. NMFS believes this change is consistent with the Council intent to provide an opportunity for entry level participants to obtain a qualifying trawl limited entry permit prior to initial issuance with reasonable certainty of anticipated QS that would be issued on the basis of that permit. Further, for permit owners that have qualifying history that would exceed control limits, this change will provide an opportunity to divest permits prior to calculation of QS and any redistribution of QS under § 660.140(d)(4)(v). Accordingly, NMFS is changing the language to state, "NMFS will not review or approve any request for a change in limited entry trawl permit owner at any time after either November 1, 2010 or the date upon which the application is received by NMFS, whichever occurs first, until a final decision is made by the Regional Administrator on behalf of the Secretary of Commerce * * *" Limited entry trawl permits may be transferred after the application process is complete, once the permit owner has received a final decision (*i.e.,* the QS, permit, or endorsement has been issued and the appeals process has been completed).

NMFS recognizes that during the application process it may receive multiple applications for QS that reflect identical ownership. NMFS intends to issue a single QS permit for each individual owner, thus where multiple applications are received for the same person (*e.g.,* where the same person owns several qualifying permits), NMFS will issue a single QS permit that combines the amounts of all QS or IBQ derived from all limited entry permits for that unique owner, subject to accumulation limits and divestiture provisions. Because QS and IBQ ownership is subject to accumulation limits and because QS and IBQ will be highly divisible, NMFS does not believe there is any need to issue more than one QS permit for each unique owner and is taking this implementation approach to reduce redundancy, minimize costs, and improve efficiency in the administration of the program. The proposed rule set forth accumulation limits and divestiture provisions, and the program components proposed rule sets forth divisibility of QS and IBQ. No regulation change is made in this final rule regarding NMFS approach to combining QS or IBQ amounts from multiple applications for the same unique owner, because none is needed. NMFS highlights this in this preamble to clarify the initial issuance process for QS permits.

V. Application Deadline

The application deadline for the initial issuance of QS permits, MS permits, MS/CV endorsements, and C/P endorsements has been changed from what was described in the proposed rule. The proposed rule stated that applications would be due no later than 60 days after date of publication of the final rule in the **Federal Register**. However, this final rule specifies that applications are due no later than November 1, 2010. NMFS has determined that the November 1 deadline provides applicants with sufficient time to submit applications, while still providing the agency with sufficient time to process the applications. The agency intends that pre-filled applications will be available to current permit owners in mid-to-late

September, and the agency will hold a series of informational meetings with the public during the month of September to address, among other things, the application process. Therefore, with this final rule, NMFS is setting a specific deadline date for all applications of November 1, 2010. Applications must be complete and received by NMFS, or postmarked, no later than November 1, 2010.

VI. Changes To Reflect Recent NMFS Actions

Some changes are made in this final rule to update the regulations to reflect inseason actions that have been implemented at 50 CFR part 660 since the proposed rule (75 FR 32994, June 10, 2010) was published. Section 660.231(b)(3)(iv) of this final rule is updated to incorporate changes to the retention of Pacific halibut in the fixed gear sablefish fishery from an inseason action published May 4, 2010 (75 FR 23615). Section 660.131(b)(5)(i) of this final rule is updated to incorporate changes to the bycatch limits for Pacific whiting fisheries from a final rule published May 4, 2010 (75 FR 23620) [the 2010 tribal allocation was already reflected the June 10th proposed rule].

VII. Whiting Closure and Reapportionment Authority

The existing regulations at § 660.323(c) allow for closure of the individual sectors when each sector's allocation is reached or projected to be reached, and reapportionment of unused whiting to another sector before the end of the year. Under the Trawl Rationalization program whiting sectors will not be closed because the achievement of the individual quotas or coop allocations will close the fisheries, and whiting will not be reapportioned between sectors. In 2010, however, this closure and reapportionment ability is still in effect. In the reorganization of the existing regulations in the proposed rule this provision would have been inadvertently overwritten. Therefore, the closure and reapportionment authority for whiting is being renumbered and included in this final rule at § 660.131(b)(6). NMFS intends to remove this section in the program components final rule, which establishes the management measures specific to the groundfish management in 2011 and beyond under trawl rationalization.

VIII. Minor Edits

NMFS has made some minor edits to the regulations to make terminology more consistent (*e.g.,* references to shorebased IFQ fishery are edited to read Shorebased IFQ Program) and to correct typographical errors and technical errors (*e.g.,* "Other fish" are not an IFQ species and are thus removed from the QS accumulation limit table). In addition, Table 2d of Part 660, Subpart C (2012 At-sea Whiting Fishery Set-asides) is removed and Table 1d of Part 660, Subpart C is relabeled, "At-Sea Whiting Fishery Annual Set-Asides, 2011 and 2012" to cover annual set-asides for both 2011 and 2012.

B. Shorebased IFQ Program

I. General

Some general changes are made to regulatory language in this final rule. Where appropriate, the terms "QS" and "QP" have been revised to read "QS and IBQ" and "QP or IBQ pounds," respectively. Pacific halibut is listed as an IFQ species. However, Pacific halibut has an individual bycatch quota (IBQ) which is distinct from QS for groundfish species listed under the groundfish FMP. This change is to make it clear that Pacific halibut IBQ or IBQ pounds are distinct and may be managed differently than QS or QP. This distinction in the regulations was highlighted by NMFS at the Council's June 2010 meeting.

II. Accumulation Limits

In the proposed rule (75 FR 32994, June 10, 2010), NMFS specifically requested comment on how NMFS would calculate aggregate nonwhiting QS for compliance with accumulation limits. NMFS received no comment on this issue. Consistent with the Council motion, NMFS will calculate aggregate nonwhiting QS using the 2010 OYS. To determine the shoreside trawl allocation for the purpose of determining compliance with the control limit during initial issuance, NMFS will apply the Amendment 21 allocation percentages to the 2010 OYs for species that are allocated by Amendment 21, and where applicable, will deduct the Amendment 21 preliminary set-asides for the at-sea sectors for these species. To determine the shoreside trawl allocations for species not allocated by Amendment 21, NMFS will apply a percentage based on the Northwest Fisheries Science Center (NWFSC) final report on 2010 estimated total fishing mortality of groundfish by sector, or the most recent final report available if the final report for 2010 is not available. The regulations at § 660.140(d)(4)(i)(B) have been revised to reflect this clarification.

NMFS also specifically requested comment in the proposed rule (75 FR 32994, June 10, 2010) on the method (order) of calculating control limits for divestiture purposes. NMFS received no comments on this issue. Based on further review of the record and in order to result in an initial issuance of QS that more closely reflects the weighting of nonwhiting species in the permit's history, NMFS will calculate aggregate limits first, when determining compliance with control rules. Regulations at § 660.140(d)(4)(v) in this final rule have been revised to reflect this clarification.

III. Initial Issuance Allocation Formulas

In the proposed rule (75 FR 32994, June 10, 2010), NMFS specifically requested comment on the use of data other than PacFIN in cases where species in PacFIN do not match IFQ species. For example, unspecified rockfish in PacFIN do not match an IFQ species group. As described above, the information contained in the PacFIN database represents the best scientific information available, and NMFS believes that an analysis to match groundfish species in PacFIN that do not exactly match an IFQ species using state landing receipts and logbook information (instead of PacFIN) would be impracticable, extremely time consuming, and likely to result in inaccurate information. NMFS received no comments on this issue. Thus, in this final rule, NMFS has removed the regulatory language from the proposed rule at § 660.140(d)(8)(iii)(A)(*2*) that read, "For species that do not match IFQ species categories after applying standard PacFIN species composition algorithms, NMFS will assign species to an IFQ species category based on other information from state landing receipts or logbook information in PacFIN." NMFS will use data from PacFIN that matches IFQ species/species groupings and will not make assumptions for unspecified groundfish.

An additional change to the proposed rule on the initial issuance allocation formulas for QS and IBQ is a step added at §§ 660.140(d)(8)(iii)(G) and 660.140(d)(8)(iv)(I) to clarify that NMFS will redistribute any QS or IBQ in excess of accumulation limits for permits transferred after November 8, 2008, or not registered with NMFS by November 30, 2008, as specified at § 660.140(d)(4)(v).

For the initial issuance calculation, the Council motion requires that bycatch rates be calculated for 8 geographic areas for overfished species and 4 geographic areas for Pacific halibut. These include zones stratified by latitude and depth. Bycatch rates included in the proposed rule were

estimates used for example purposes. Subsequently, NWFSC has completed its calculation of bycatch rates based on West Coast Groundfish Observer Program (WCGOP) data, and the finalized bycatch rates are included in this final rule at § 660.140(d)(8).

In calculating the bycatch rates, to determine depth stratification, the NWFSC evaluated models to determine an appropriate break to isolate data as either shoreward or seaward of the Rockfish Conservation Areas (RCAs). The NWFSC concluded that the 115 fathom break was an appropriate means of stratifying the data shoreward and seaward of the RCA, as had been previously requested by the Council for Pacific halibut bycatch ratios. NMFS has revised the final rule to reflect the use of 115 fathoms as the division between shoreward and seaward geographical areas for the purpose of calculating QS for Group 2 and Group 3 species.

Estimated bycatch rates in the proposed rule were truncated to the eighth decimal place, however, the bycatch rates published in the final rule are the rates calculated by the NWFSC truncated to the ninth decimal place. NMFS decided to extend the published rates to the ninth decimal place in order to assure accuracy of calculations to one-tenth of one pound, consistent with standard rounding rules discussed in the regulations.

C. At-Sea Coop Programs

I. MS Coop Program

In the MS Coop Program, eligibility requirements for ownership of an MS permit has been clarified. MS permits, as a new type of limited entry permit, are subject to eligibility requirements for all limited entry permits at § 660.25(b)(1)(ii), which states: "Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12113(a) may be issued or may hold a limited entry permit." The proposed rule at § 660.150(f)(1)(i) stated: "To acquire an MS permit a person must be eligible to own and control a U.S. fishing vessel with a fishery endorsement pursuant to 46 U.S.C. 12113 (general fishery endorsement requirements and 75 percent citizenship requirement for entities) and must be: A United States citizen; a permanent resident alien; or a corporation, partnership or other entity established under the laws of the United States or any State." The language in § 660.150 had been adopted by the Council with regards to eligibility to own QS or IBQ in the Shorebased IFQ Program, and had been inadvertently repeated in the provisions for the MS Coop Program. Accordingly, the provision included in the proposed rule has been removed from this final rule.

Another change from the proposed rule for the MS Coop Program in this final rule is the removal of all references to "control" at § 660.150. The Council motion for the MS Coop Program, as reflected in Appendix E to the FMP, did not identify any ownership rules or control limits for either MS/CV-endorsed permits or MS permits. At its June 2010 meeting, the Council clarified that for the purpose of accumulation limits, ownership of MS/CV-endorsed permits and MS permits is subject to the individual and collective rule.

NMFS is also changing the divestiture provisions for MS/CV-endorsed permits from that described in the proposed rule. Upon further review of the regulation comparing the MS/CV-endorsed permit and the QS permit divestiture provisions and after consideration of oral comments submitted to the Council at its June 2010 meeting, NMFS is revising the divestiture provisions for the MS/CV-endorsed permits to provide additional time for owners of MS/CV-endorsed permits to come into compliance with accumulation limits. The divestiture provision for QS permits allows 2 years for a permit owner to come in to compliance with the requirement. As drafted in the proposed rule, the divestiture provision for owners of MS/CV-endorsed permits would only allow these individuals a couple of months, at most, to come in to compliance with the provision. NMFS believes that a longer time for divestiture would be appropriate for owners of MS/CV-endorsed permits. Applying a similar time frame for divestiture in the MS Coop Program as the divestiture provision for the Shorebased IFQ Program is a logical extension from what was proposed, and is consistent, NMFS believes, with the Council's intent in Amendment 20. One difference that will remain between the two divestiture provisions is that the QS permits must divest between years 3 and 4 after implementation of the program, which is after the 2 year moratorium on the transfer of QS. In Amendment 20, the MS/CV-endorsed permits are not subject to a 2 year moratorium on transfers. Thus, NMFS is revising the divestiture provision at § 660.150(g)(3)(i)(D) to allow MS/CV-endorsed permit owners 2 years after implementation of the program to divest of excess ownership in MS/CV-endorsed permit(s).

II. C/P Coop Program

There are no substantive changes to the C/P Coop Program from the proposed rule.

Classification

The Administrator, Northwest Region, NMFS, determined that FMP Amendments 20 and 21, as implemented in part through this final rule, are necessary for the conservation and management of the Pacific coast groundfish fishery and that they are consistent with the MSA and other applicable laws.

NMFS and the Council prepared final environmental impact statements (EISs) for Amendment 20 and for Amendment 21 to the Pacific Coast Groundfish FMP. A notice of availability was published on June 25, 2010 (75 FR 36386). In partially approving FMP Amendments 20 and 21 on August 9, 2010, NMFS issued a Record of Decision (ROD) for each amendment identifying the selected alternatives. Copies of the RODs are available from NMFS (*see* **ADDRESSES**).

This final rule has been determined to be significant for purposes of Executive Order 12866.

The preamble to the proposed rule (75 FR 32994, June 10, 2010) included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here. 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, and NMFS's responses to those comments. A copy of the FRFA is available from NMFS (*see* **ADDRESSES**) and a summary of the FRFA follows:

The Council has prepared two EIS documents: Amendment 20—Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery, which would create the structure and management details of the trawl fishery rationalization program; and Amendment 21—Allocation of Harvest Opportunity Between Sectors of the Pacific Coast Groundfish Fishery, which would allocate the groundfish stocks between trawl and non-trawl fisheries. The two draft EIS's prepared by the Council provide economic analyses of the Council's preferred alternatives and draft RIR and IRFAs (DEIS IRFAs). The DEIS IRFAs were updated and combined into a single RIR/IRFA for use with the "initial issuance" proposed rule that was published on June 10, 2010 (75 FR 32994) (PR IRFA). The PR IRFA

reviewed and summarized the benefits and costs, and the economic effects of the Council's recommendations as presented in the two EIS's.

Although other alternatives were examined in the EISs, the FRFA focuses on the two key alternatives—the No-Action Alternative and the Preferred Alternative. The EISs include an economic analysis of the impacts of all the alternatives and the PR IRFA and the FRFA incorporates this analysis. For the Amendment 20 EIS, the alternatives ranged from status quo (no action), to IFQ for all trawl sectors, IFQ for the non-whiting sector and coops for all whiting sectors, and IFQ for the shorebased sector and coops for the at-sea sectors (preferred). Various elements were part of each of these alternatives and varied among them, including initial qualifications and allocations, accumulation limits, grandfathering, processor shares, species covered, number of sectors, adaptive management, area management, and carryover provisions. The preferred alternative is a blending of components from the other alternatives analyzed in the EIS. For the Amendment 21 EIS, alternatives were provided for 6 decision points: (1) Limited entry trawl allocations for Amendment 21 species, (2) shoreside trawl sector allocations, (3) trawl sector allocations of trawl-dominant overfished species, (4) at-sea whiting trawl sector set-asides, (5) Pacific halibut total bycatch limits, and (6) formal allocations in the FMP. For most of these decision points, the alternatives within them were crafted around approximately maintaining historical catch levels by the sectors or, in some cases, increasing opportunity for the non-trawl sector.

By focusing on the two key alternatives in the PR IRFA and in the FRFA (no action and preferred), it encompasses parts of the other alternatives and informs the reader of these regulations. The analysis of the no action alternative describes what is likely to occur in the absence of the action. It provides a benchmark against which the incremental effects of the action can be compared. Under the no action alternative, the current, primary management tool used to control the Pacific coast groundfish trawl catch includes a system of two month cumulative landing limits for most species and season closures for Pacific whiting. This management program would continue under the no action alternative. Only long-term, fixed allocations for Pacific whiting and sablefish north of 36° N. lat. would exist. All other groundfish species would not be formally allocated between the trawl and non-trawl sectors. Allocating the available harvest of groundfish species and species complexes would occur in the Council process of deciding biennial harvest specifications and management measures and, as such, would be considered short term allocations.

The analysis of the preferred alternative describes what is likely to occur as a result of the action. Alternative 4b was the Council's preferred alternative for rationalizing the west coast groundfish limited entry trawl fishery. The Council's preferred alternative establishes IFQs for both shoreside sectors of the trawl fishery and allows them to trade IFQs between one another, effectively combining both shoreside sectors, whiting and non-whiting, into one. Under the preferred alternative, shoreside processors are allocated 20 percent of the shoreside IFQ for whiting. Under the preferred alternative, shoreside processors would not receive IFQ for nonwhiting species that have been landed with whiting. Furthermore, a subset of species is covered with IFQs in the shoreside fishery and with allocations in the at-sea fishery, rather than all species in the Council's ABC/OY table for groundfish. Those species which are not covered with IFQs or allocations are excluded because the incidental catch of those species is small relative to management targets and the inclusion of those species may have negative economic implications with little to no benefit to management. The mothership sector is managed with harvest cooperatives (coops), and each catcher vessel wanting to participate in a coop must declare a mothership to which it will deliver in the upcoming year. The catcher-processor sector is managed with a limited entry system designed to facilitate the continuation of the voluntary cooperative in that sector. In the event that the voluntary cooperative breaks apart, each permit is allocated an equal number of QS, and the catcher-processor sector becomes an IFQ fishery.

Other provisions of Alternative 4b include initial allocation that allocates bycatch species based on a bycatch rate (in the nonwhiting portion of the fishery) and on a pro rata distribution for the whiting portion of the fishery. The initial allocation of IFQ to the shoreside sectors divides the buyback portion of catch history equally for some IFQ species and is based on the years 1994 to 2003, where the two worst years are dropped. This equal division only applies to non-overfished species and canary rockfish. The other overfished species would be allocated based on current permits' landing history alone. In the mothership sector, the best 8 out of 10 years are used between 1994 and 2003 for calculating catch history.

The need for a change from status quo is identified in the problem statement. After reviewing the status quo situation and both the beneficial and adverse impacts of the trawl rationalization alternatives (as described in detail in Chapter 2, Chapter 4, and the appendices to the Amendment 20 EIS), the Council's judgment was that the advantages of its final preferred alternative for trawl rationalization, Alternative 4b, outweighed the disadvantages in comparison to continuation with status quo management, the other trawl rationalization alternatives that were considered, and other proposals for modification of status quo (*e.g.,* providing longer cumulative limit periods). There are two primary drivers in the problem statement that guided this process: the first is the need to account for, control, and reduce bycatch, and the second is the need to provide for an economically sustainable fishery for the benefit of industry participants and fishery dependent communities. These needs are both reflected in the goal for this action: Create and implement a capacity rationalization plan that increases net economic benefits, creates individual economic stability, provides for full utilization of the trawl sector allocation, considers environmental impacts, and achieves individual accountability of catch and bycatch. There are no significant alternatives to this action that accomplish the stated objectives of applicable statutes and that minimize any of the significant economic impact of the rule on small entities. As discussed below, the action includes provisions that would have a beneficial impact on small entities.

As described in the RIR/IRFA, NMFS developed the following estimates of the number of small entities to which this rule would apply. NMFS makes the following conclusions based primarily on analyses associated with 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 industry to on-going survey on ownership. Entities were analyzed as to whether they were only affected by the Amendment 21 allocation processes (non-trawl), or if they were affected by both Amendment 20 and 21 (trawl).

The non-trawl businesses are associated with 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 this group can be considered small. For the trawl sector, there are 177 permit holders. Nine limited entry trawl permits are associated with the catcher-processing vessels which are considered "large" companies. Of the remaining 168 limited entry permits, 25 limited entry trawl permits are either owned or closely associated with a "large" shore-based 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 134 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 equal to or greater than $150,000 but less than $1,000,000); and 13 large purchasers (purchases equal to or greater than $1.0 million). Because of the costs of obtaining a "processor site license", procuring and scheduling a catch monitor, and installing and using the electronic fish ticket software, these "small" purchasers will likely opt out of buying groundfish, or make arrangements to purchase fish from another company that has obtained a processing site license.

NMFS received one comment specific to the RIR/IRFA. This comment concerned the potential benefits to harvesters concerning price negotiations with processors from the perspective of moving from 2-month cumulative landings limits to IFQs. This comment is summarized above as Comment 50. NMFS responded that the summary of the IRFA contained in the preamble of the proposed rule was inconsistent with Chapter 4 of the DEIS and with the draft RIR/IRFA that was included with the DEIS, NMFS will correct the summary appropriately. The full response to this comment is described above in the response to Comment 50.

Although not specifically addressed to RIR/IRFA, comments were received that relate to the impacts on small businesses. In particular, concerns were raised about "negative impacts on smaller boats, deckhands, and smaller boats (Comment 19), "program costs to fishermen, including the costs of entering the fishery and the costs of observers and monitoring are too high" (Comments 22 and 24), "observer rules need to change for trawl and small boats to reflect the vastly different bycatch which occurs when mistakes are made." (Comment 23); "impact of the allocation formulas on Fort Bragg fishermen (Comment 32); "concern that average fishermen will not be able to afford to participate and that this will lead to increased consolidation and leave many ports no longer viable" (Comment 34); and "negative impacts on processors, that small processors will be driven out of business due to consolidation * * * will eliminate the "mom and pop businesses" (Comment 49).

NMFS has responded to these comments above in detail and these responses will not be repeated here. However, as discussed in the response to Comments 19 (small harvesters) and 49 (small processors) the overall general nature of these responses is the following. In terms of impacts on small businesses, the trawl rationalization program is intended to increase net economic benefits, create economic stability, provide full utilization of the trawl sector allocation, consider environmental impacts, and promote conservation through individual accountability for catch and bycatch. The allocations of quota under the new program do not differ significantly from status quo allocations made biennially in terms of total allocations. However, instead of fleetwide quotas, there will now be individual allocations of quota shares and quota pounds to permit owners. Allocations of overfished species constrain all groundfish fishermen, for both large and small operations. In some cases, smaller operators may be constrained to a greater extent. This was recognized in development of the program, and operators are encouraged to work together cooperatively, through mechanisms like combining and sharing quota amounts. The program provides for leasing of additional quota as needed to facilitate operations. The proposed action includes provisions that would have a beneficial impact on small entities. It would create a management program under which most recent participants in the Pacific Coast groundfish limited entry trawl fishery (many of which are small entities) would be eligible to continue participating in the fishery and under which the fishery itself would experience an increase in economic profitability. Small entities choosing to exit the fishery should receive financial compensation from selling their permit or share of the resource. To prevent a particular individual, corporation, or other entity from acquiring an excessive share of the total harvest privileges in the program, accumulation limits would restrict the amount of harvest privileges that can be held, acquired, or used by individuals and vessels. In addition, for the shoreside sector of the fishery, an AMP was created to mitigate any adverse impacts, including impacts on small entities and communities that might result from the proposed action.

It is expected that the TIQ will lead to consolidation and this may affect small processors, particularly if they are in disadvantaged ports. Chapter 4 of the FEIS analyzed the effects on processors from various perspectives: The distribution of landings across west coast ports may change as a result of fleet consolidation, industry agglomeration, and the comparative advantage of ports (a function of bycatch rates in the waters constituting the operational area for the port, differences in infrastructure, and other factors). In particular, the Council analysis indicated that processors associated with disadvantaged communities may see trawl groundfish volumes decline. The analysis highlights that those processors receiving landings from Central California or Neah Bay may see a reduction in trawl caught groundfish if the market is able to redirect activity toward more efficient and advantaged ports. However, in addition to increased landings that are expected to result from the TIQ program, small processors and disadvantaged communities may benefit from the control limits, vessel limits, and adaptive management policies. Control limits will limit the ability of large processors to obtain shares of the fisheries while the adaptive management processes will allow the Council to consider the impacts on small processors, and disadvantaged communities when allocating the adaptive management quota (10 percent of the total non-whiting trawl quotas). Although vessel accumulation limits tend to lower economic efficiency and restrict profitability for the average vessel, they could help retain vessels in communities because more vessels would remain.

Another process by which small processors and disadvantaged communities may benefit from will be the future establishment of regulations and policies that allow CFAs to be formed. Some of the potential benefits of CFAs include: ensuring access to the fishery resource in a particular area or

community to benefit the local fishing economy; enabling the formation of risk pools and sharing monitoring and other costs; ensuring that fish delivered to a local area will benefit local processors and businesses; providing a local source of QSs for new entrants and others wanting to increase their participation in the fishery; increasing local accountability and responsibility for the resource; and benefiting other providers and users of local fishery infrastructure. The development of CFAs could have a positive impact on the culture of fishing communities. Although little research has been done on the effect of CFAs on culture, it seems likely that CFAs could strengthen a community's cultural associations with fishing by contributing to a unique sense of identity, increasing accountability for both natural and cultural resources, and building and strengthening connections among community members.

In summary, as stated in the RIR/IRFA, the major impacts of this rule appear to be on three groups: Shoreside processors which are a mix of large and small processors; and shore-based trawlers which are also a mix of large and small companies. The non-whiting shore-based trawlers are currently operating at a loss or at best are "breaking even." The new rationalization program would lead to profitability, but only with a reduction of about 50 percent of the fleet. This program would lead to major changes in the fishery. To help mitigate against these changes, as discussed above, the agency has announced its intent, subject to available Federal funding, that participants would initially be responsible for 10 percent of the cost of hiring observers and catch monitors. The industry proportion of the costs of hiring observers and catch monitors would be increased every year so that by 2014, once the fishery has transitioned to the rationalization program, the industry would be responsible for 100 percent of the cost of hiring the observers and catch monitors. NMFS believes that an incrementally reduced subsidy to industry funding would enhance the observer and catch monitor program's stability, ensure 100 percent observer and catch monitor coverage, and facilitate the industries' successful transition to the new quota system. In addition, to help mitigate against the negative impacts of this program, the Council has adopted an Adaptive Management Program where starting in year 3 of the program, 10 percent of non-whiting QS would be set aside every year to address community impacts and industry transition needs. After reviewing the initial effects of ITQ programs in other parts of the world, the council had placed a short term QS trading prohibition so that fishermen can learn from their experiences and not make premature sales of their QS. The Council is also envisioning future regulatory processes that would allow community fisheries associations to be established to help aid communities and fishermen.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. Copies of this final rule are available from the Northwest Regional Office, and the small entity compliance guide will be sent to the following: (1) "Pre-qualified" limited entry trawl permit owners, (2) "pre-qualified" shorebased processors of Pacific whiting, (3) Pacific whiting license owners, (4) owners of vessels registered to limited entry trawl permits, and (5) members of the groundfish public notice e-mail list. The guide and this final rule are also available on the NMFS Northwest Region Web site (*http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Trawl-Program/index.cfm*) and upon request.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by the Office of Management and Budget (OMB) under control number 0648–0611. Public reporting burden for the QS Initial Issuance/QS Permit Application is estimated to average 6 hours per response (180 responses). Public reporting burden for the MS Permit Application is estimated to average 1 hour per response (6 responses). Public reporting burden for the MS/CV Endorsement Application is estimated to average 2 hours per response (30 responses). Public reporting burden for the C/P Endorsement Application is estimated to average 30 minutes per response (10 responses). Public reporting burden for the Ownership Interest form is estimated to average 30 minutes per response (216 responses). Public reporting burden for the Appeals is estimated to average 6 hours per response (100 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 regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (*see* **ADDRESSES**) and by e-mail to *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 Endangered Species Act (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 (71 FR 17757, April 7, 2006) and the southern DPS of Pacific eulachon (75 FR 13012, March 18, 2010) were also recently listed as threatened under the ESA. As a consequence, NMFS has reinitiated its Section 7 consultation on the Groundfish FMP.

After reviewing the available information, NMFS concluded that, consistent with Sections 7(a)(2) and 7(d) of the ESA, the implementation of this final rule 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.

Amendments 20 and 21 to the FMP were developed after meaningful consultation and collaboration, through the Council process, with the tribal representative on the Council. The Amendments have no direct effect on tribes; the reorganization of the groundfish regulations includes regulations that address tribal fishing; these sections were deemed by the Council as "necessary or appropriate" to implement the FMP as amended.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: September 13, 2010.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 15 CFR Chapter IX and 50 CFR Chapter VI are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1(b), in the table under the entry "50 CFR":

■ a. Remove the entries and corresponding OMB numbers for 660.303, 660.305, 660.322, 660.323, 660.333, and 660.337.

■ b. Add new entries and corresponding OMB numbers for 660.20, 660.25, 660.113, 660.219, and 660.319.

The additions read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648 –)
* * * * *	
50 CFR	
* * * * *	
660.20	– 0355
660.25	– 0203
660.113	– 0271
660.219	– 0352
660.319	– 0352
* * * * *	

50 CFR Chapter VI

PART 660—FISHERIES OFF WEST COAST STATES

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

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

■ 4. Add subparts C through F to read as follows:

Subpart C—West Coast Groundfish Fisheries

Sec.

660.10 Purpose and scope.
660.11 General definitions.
660.12 General groundfish prohibitions.
660.13 Recordkeeping and reporting.
660.14 Vessel Monitoring System (VMS) requirements.
660.15 Equipment requirements.
660.16 Groundfish observer program.
660.17 Catch monitors and catch monitor service providers [Reserved].
660.18 Certification and decertification procedures for observers, catch monitors, catch monitor providers and observer providers.
660.20 Vessel and gear identification.
660.24 Limited entry and open access fisheries
660.25 Permits.
660.26 Pacific whiting vessel licenses.
660.30 Compensation with fish for collecting resource information—EFPs.
660.40 Overfished species rebuilding plans.
660.50 Pacific coast treaty Indian fisheries.
660.55 Allocations.
660.60 Specifications and management measures.
660.65 Groundfish harvest specifications.
Table 1a to Part 660, Subpart C—2009, Specifications of ABCs, OYs, and HGs, by Management Area (weights in metric tons)
Table 1b to Part 660, Subpart C—2009, Harvest Guidelines for Minor Rockfish by Depth Sub-groups (weights in metric tons)
Table 1c to Part 660, Subpart C—2009, Open Access and Limited Entry Allocations by Species or Species Group (weights in metric tons)
Table 1d to Part 660, Subpart C— At-Sea Whiting Fishery Annual Set-Asides, 2011 and 2012.
Table 2a to Part 660, Subpart C—2010, Specifications of ABCs, OYs, and HGs, by Management Area (weights in metric tons)

Table 2b to Part 660, Subpart C—2010, and Beyond, Harvest Guidelines for Minor Rockfish by Depth Sub-groups (weights in metric tons)
Table 2c to Part 660, Subpart C—2010, and Beyond, Open Access and Limited Entry Allocations by Species or Species Group (weights in metric tons)

Subpart D–West Coast Groundfish—Limited Entry Trawl Fisheries

660.100 Purpose and scope.
660.111 Trawl fishery—definitions.
660.112 Trawl fishery—prohibitions.
660.113 Trawl fishery—recordkeeping and reporting
660.116 Trawl fishery—observer requirements.
660.120 Trawl fishery—crossover provisions.
660.130 Trawl fishery—management measures.
660.131 Pacific whiting fishery management measures.
660.140 Shorebased IFQ Program.
660.150 Mothership (MS) Coop Program.
660.160 Catcher/processor (C/P) Coop Program.
Table 1 (North) to Part 660, Subpart D—2010 Trip Limits for Limited Entry Trawl Gear North of 40°10′ N. Lat.
Table 1 (South) to Part 660, Subpart D—2010 Trip Limits for Limited Entry Trawl Gear South of 40°10′ N. Lat.
Figure 1 to Part 660, Subpart D—Diagram of Selective Flatfish Trawl

Subpart E—West Coast Groundfish—Limited Entry Fixed Gear Fisheries

660.210 Purpose and scope.
660.211 Fixed gear fishery—definitions.
660.212 Fixed gear fishery—prohibitions.
660.213 Fixed gear fishery—recordkeeping and reporting.
660.216 Fixed gear fishery—observer requirements.
660.219 Fixed gear identification and marking.
660.220 Fixed gear fishery—crossover provisions.
660.230 Fixed gear fishery—management measures.
660.231 Limited entry fixed gear primary fishery for sablefish.
660.232 Limited entry daily trip limit (DTL) fishery for sablefish
Table 2 (North) to Part 660, Subpart E—2010 Trip Limits for Limited Entry Fixed Gear North of 40°10′ N. Lat.
Table 2 (South) to Part 660, Subpart E—2010 Trip Limits for Limited Entry Fixed Gear South of 40°10′ N. Lat.

Subpart F—West Coast Groundfish—Open Access Fisheries

660.310 Purpose and scope.
660.311 Open access fishery—definitions.
660.312 Open access fishery—prohibitions.
660.313 Open access fishery—recordkeeping and reporting.
660.316 Open access fishery—observer requirements.
660.319 Open access fishery gear identification and marking.
660.320 Open access fishery—crossover provisions.
660.330 Open access fishery—management measures.
660.332 Open access daily trip limit (DTL) fishery for sablefish.
660.333 Open access non-groundfish trawl fishery—management measures.
Table 3 (North) to Part 660, Subpart F—2010 Trip Limits for Open Access Gears North of 40°10′ N. Lat.
Table 3 (South) to Part 660, Subpart F—2010 Trip Limits for Open Access Gears South of 40°10′ N. Lat.

Subpart C—West Coast Groundfish Fisheries

§ 660.10 Purpose and scope.

(a) Subparts C through G of this part implement the Pacific Coast Groundfish Fishery Management Plan (PCGFMP) developed by the Pacific Fishery Management Council. Subparts C through G govern fishing vessels of the U.S. in the EEZ off the coasts of Washington, Oregon, and California. All weights are in round weight or round-weight equivalents, unless specified otherwise.

(b) Any person fishing subject to subparts C through G of this part is bound by the international boundaries described in this section, notwithstanding any dispute or negotiation between the U.S. and any neighboring country regarding their respective jurisdictions, until such time as new boundaries are established or recognized by the U.S.

§ 660.11 General definitions.

These definitions are specific to the fisheries covered in subparts C through G of this part.

Active sampling unit means the portion of the groundfish fleet in which an observer coverage plan is being applied.

Address of Record means the business address a person has provided to NMFS for NMFS use in providing notice of agency actions and other business with that person.

Allocation. (*See* § 600.10 of this chapter)

Base permit, with respect to a limited entry permit stacking program, means a limited entry permit described at § 660.25(b)(3)(i), subpart C registered for use with a vessel that meets the permit length endorsement requirements appropriate to that vessel, as described at § 660.25(b)(3)(iii), subpart C.

Biennial fishing period means a 24-month period beginning at 0001 local time on January 1 and ending at 2400 local time on December 31 of the subsequent year.

B_{MSY} means the biomass level that produces maximum sustainable yield (MSY), as stated in the PCGFMP at Section 4.2.

Calendar day means the day beginning at 0001 hours local time and continuing for 24 consecutive hours.

Calendar year. (*see* "fishing year")

Catch, take, harvest. (*See* § 600.10 of this chapter)

Catch monitor means an individual that is certified by NMFS, is deployed to a first receiver, and whose primary duties include: monitoring and verification of the sorting of fish relative to federal requirements defined in § 660.60, subpart C; documentation of the weighing of fish relative to the requirements of § 660.13, subpart C; and verification of first receivers reporting relative to the requirements defined in § 660.113, subpart D.

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

Closure or closed means, when referring to closure of a fishery or a closed fishery, that taking and retaining, possessing, or landing the particular species or species group covered by the fishing closure is prohibited. Unless otherwise announced in the **Federal Register** or authorized in this subpart, offloading must begin before the closure time.

Commercial fishing means:

(1) Fishing by a person who possesses a commercial fishing license or is required by law to possess such license issued by one of the states or the Federal Government as a prerequisite to taking, landing and/or sale of fish; or

(2) Fishing that results in or can be reasonably expected to result in sale, barter, trade or other disposition of fish for other than personal consumption.

Commercial harvest guideline or commercial quota means the fishery harvest guideline minus the estimated recreational catch. Limited entry and open access allocations are derived from the commercial harvest guideline or quota.

Conservation area(s) means either a Groundfish Conservation Area (GCA),

an Essential Fish Habitat Conservation Area (EFHCA), or both.

(1) *Groundfish Conservation Area or GCA* means a geographic area defined by coordinates expressed in degrees latitude and longitude, wherein fishing by a particular gear type or types may be prohibited. GCAs are created and enforced for the purpose of contributing to the rebuilding of overfished West Coast groundfish species. Regulations at § 660.70, Subpart C define coordinates for these polygonal GCAs: Yelloweye Rockfish Conservation Areas, Cowcod Conservation Areas, waters encircling the Farallon Islands, and waters encircling the Cordell Banks. GCAs also include Rockfish Conservation Areas or RCAs, which are areas closed to fishing by particular gear types, bounded by lines approximating particular depth contours. RCA boundaries may and do change seasonally according to the conservation needs of the different overfished species. Regulations at §§ 660.70 through 660.74, subpart C define RCA boundary lines with latitude/longitude coordinates; regulations at Tables 1 (North) and 1 (South) of subpart D, Tables 2 (North) and 2 (South) of subpart E, and Tables 3 (North) and 3 (South) of subpart F set RCA seasonal boundaries. Fishing prohibitions associated with GCAs are in addition to those associated with EFH Conservation Areas.

(2) *Essential Fish Habitat Conservation Area or EFHCA* means a geographic area defined by coordinates expressed in degrees latitude and longitude, wherein fishing by a particular gear type or types may be prohibited. EFHCAs are created and enforced for the purpose of contributing to the protection of West Coast groundfish essential fish habitat. Regulations at §§ 660.75, through 660.79, Subpart C define EFHCA boundary lines with latitude/longitude coordinates. Fishing prohibitions associated with EFHCAs, which are found at § 660.12, subpart C, are in addition to those associated with GCAs.

Continuous transiting or transit through means that a fishing vessel crosses a groundfish conservation area or EFH conservation area on a constant heading, along a continuous straight line course, while making way by means of a source of power at all times, other than drifting by means of the prevailing water current or weather conditions.

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

Council means the Pacific Fishery Management Council, including its Groundfish Management Team (GMT), Scientific and Statistical Committee (SSC), Groundfish Advisory Subpanel (GAP), and any other advisory body established by the Council.

Date of landing means the date on which the transfer of fish or offloading of fish from any vessel to a processor or other first receiver begins.

Direct financial interest means any source of income to or capital investment or other interest held by an individual, partnership, or corporation or an individual's spouse, immediate family member or parent that could be influenced by performance or non-performance of observer or catch monitor duties.

Electronic fish ticket means a software program or data files meeting data export specifications approved by NMFS that is used to send landing data to the Pacific States Marine Fisheries Commission. Electronic fish tickets are used to collect information similar to the information required in state fish receiving tickets or landing receipts, but do not replace or change any state requirements.

Electronic Monitoring System or EMS means a data collection tool that uses a software operating system connected to an assortment of electronic components, including video recorders, to create a collection of data on vessel activities.

Endorsement means an additional specification affixed to the limited entry permit that further restricts fishery participation or further specifies a harvest privilege, and is non-severable from a limited entry permit.

Entity. (*See* "Person")

Essential Fish Habitat or EFH. (*See* § 600.10 of this chapter)

First Receiver means a person who receives, purchases, or takes custody, control, or possession of catch onshore directly from a vessel.

Fish. (*See* § 600.10 of this chapter)

Fishery (*See* § 600.10 of this chapter)

Fishery harvest guideline means the harvest guideline or quota after subtracting from the OY any allocation for the Pacific Coast treaty Indian tribes, projected research catch, deductions for fishing mortality in non-groundfish fisheries, as necessary, and set-asides for EFPs.

Fishery management area means the EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nm offshore, and bounded on the north by the Provisional International Boundary between the U.S. and Canada, and bounded on the south by the International Boundary between the U.S. and Mexico. The inner boundary of the fishery management area is a line coterminous with the seaward boundaries of the States of Washington, Oregon, and California (the "3–mile limit"). The outer boundary of the fishery management area is a line drawn in such a manner that each point on it is 200 nm from the baseline from which the territorial sea is measured, or is a provisional or permanent international boundary between the U.S. and Canada or Mexico. All groundfish possessed between 0–200 nm offshore or landed in Washington, Oregon, or California are presumed to have been taken and retained from the EEZ, unless otherwise demonstrated by the person in possession of those fish.

Fishing. (See § 600.10 of this chapter)

Fishing gear includes the following types of gear and equipment:

(1) *Bottom contact gear* means fishing gear designed or modified to make contact with the bottom. This includes, but is not limited to, beam trawl, bottom trawl, dredge, fixed gear, set net, demersal seine, dinglebar gear, and other gear (including experimental gear) designed or modified to make contact with the bottom. Gear used to harvest bottom dwelling organisms (e.g. by hand, rakes, and knives) are also considered bottom contact gear for purposes of this subpart.

(2) *Demersal seine* means a net designed to encircle fish on the seabed. The demersal seine is characterized by having its net bounded by lead-weighted ropes that are not encircled with bobbins or rollers. Demersal seine gear is fished without the use of steel cables or otter boards (trawl doors). Scottish and Danish Seines are demersal seines. Purse seines, as defined at § 600.10 of this chapter, are not demersal seines. Demersal seine gear is included in the definition of bottom trawl gear in paragraph (11)(i) of this definition.

(3) *Dredge gear* means a gear consisting of a metal frame attached to a holding bag constructed of metal rings or mesh. As the metal frame is dragged upon or above the seabed, fish are pushed up and over the frame, then into the mouth of the holding bag.

(4) *Entangling nets* include the following types of net gear:

(i) *Gillnet.* (*See* § 600.10 of this chapter)

(ii) *Set net* means a stationary, buoyed, and anchored gillnet or trammel net.

(iii) *Trammel net* means a gillnet made with two or more walls joined to a common float line.

(5) *Fixed gear (anchored nontrawl gear)* means the following gear types: longline, trap or pot, set net, and stationary hook-and-line (including commercial vertical hook-and-line) gears.

(6) *Hook-and-line* means one or more hooks attached to one or more lines. It may be stationary (commercial vertical hook-and-line) or mobile (troll).

(i) *Bottom longline* means a stationary, buoyed, and anchored groundline with hooks attached, so as to fish along the seabed. It does not include pelagic hook-and-line or troll gear.

(ii) *Commercial vertical hook-and-line* means commercial fishing with hook-and-line gear that involves a single line anchored at the bottom and buoyed at the surface so as to fish vertically.

(iii) *Dinglebar gear* means one or more lines retrieved and set with a troll gurdy or hand troll gurdy, with a terminally attached weight from which one or more leaders with one or more lures or baited hooks are pulled through the water while a vessel is making way.

(iv) *Troll gear* means a lure or jig towed behind a vessel via a fishing line. Troll gear is used in commercial and recreational fisheries.

(7) *Mesh size* means the opening between opposing knots. Minimum mesh size means the smallest distance allowed between the inside of one knot to the inside of the opposing knot, regardless of twine size.

(8) *Nontrawl gear* means all legal commercial groundfish gear other than trawl gear.

(9) *Spear* means a sharp, pointed, or barbed instrument on a shaft.

(10) *Trap or pot* See § 600.10 of this chapter, definition of "trap". These terms are used as interchangeable synonyms.

(11) *Trawl gear* means a cone or funnel-shaped net that is towed through the water, and can include a pair trawl that towed simultaneously by two boats. For the purpose of this definition, trawl gear includes groundfish and non-groundfish trawl. See definitions for groundfish trawl and non-groundfish trawls (previously called "exempted trawl").

(i) *Bottom trawl* means a trawl in which the otter boards or the footrope of the net are in contact with the seabed. It includes demersal seine gear, and pair trawls fished on the bottom. Any trawl not meeting the requirements for a midwater trawl in § 660.130(b), subpart D is a bottom trawl.

(A) *Beam trawl gear* means a type of trawl gear in which a beam is used to hold the trawl open during fishing. Otter boards or doors are not used.

(B) *Large footrope trawl gear* means a bottom trawl gear with a footrope diameter larger than 8 inches (20 cm,) and no larger than 19 inches (48 cm) including any rollers, bobbins, or other material encircling or tied along the length of the footrope.

(C) *Small footrope trawl gear* means a bottom trawl gear with a footrope diameter of 8 inches (20 cm) or smaller, including any rollers, bobbins, or other material encircling or tied along the length of the footrope. Selective flatfish trawl gear that meets the gear component requirements in § 660.130(b), subpart D is a type of small footrope trawl gear.

(ii) *Midwater (pelagic or off-bottom)* trawl means a trawl in which the otter boards and footrope of the net remain above the seabed. It includes pair trawls if fished in midwater. A midwater trawl has no rollers or bobbins on any part of the net or its component wires, ropes, and chains. For additional midwater trawl gear requirements and restrictions, *see* § 660.130(b), subpart D.

(iii) *Trawl gear components* include:

(A) *Breastline* means a rope or cable that connects the end of the headrope and the end of the trawl fishing line along the edge of the trawl web closest to the towing point.

(B) *Chafing gear* means webbing or other material attached to the codend of a trawl net to protect the codend from wear.

(C) *Codend.* (*See* § 600.10 of this chapter)

(D) *Double-bar mesh* means webbing comprised of two lengths of twine tied into a single knot.

(E) *Double-walled codend* means a codend constructed of two walls (layers) of webbing.

(F) *Footrope* means a chain, rope, or wire attached to the bottom front end of the trawl webbing forming the leading edge of the bottom panel of the trawl net, and attached to the fishing line.

(G) *Headrope* means a chain, rope, or wire attached to the trawl webbing forming the leading edge of the top panel of the trawl net.

(H) *Rollers or bobbins* means devices made of wood, steel, rubber, plastic, or other hard material that encircle the trawl footrope. These devices are commonly used to either bounce or pivot over seabed obstructions, in order to prevent the trawl footrope and net from snagging on the seabed.

(I) *Single-walled codend* means a codend constructed of a single wall of webbing knitted with single or double-bar mesh.

(J) *Trawl fishing line* means a length of chain, rope, or wire rope in the bottom front end of a trawl net to which the webbing or lead ropes are attached.

(K) *Trawl riblines* means a heavy rope or line that runs down the sides, top, or underside of a trawl net from the mouth of the net to the terminal end of the codend to strengthen the net during fishing.

Fishing or Calendar year means the year beginning at 0001 local time on January 1 and ending at 2400 local time on December 31 of the same year. There are two fishing years in each biennial fishing period.

Fishing trip means a period of time between landings when fishing is conducted.

Fishing vessel. (*See* § 600.10 of this chapter)

Grandfathered or first generation, when referring to a limited entry sablefish-endorsed permit owner, means those permit owners who owned a sablefish-endorsed limited entry permit prior to November 1, 2000, and are, therefore, exempt from certain requirements of the sablefish permit stacking program within the parameters of the regulations at § 660.25(b), subpart C and § 660.231, subpart E.

Groundfish means species managed by the PCGFMP, specifically:

(1) Sharks: Leopard shark, *Triakis semifasciata;* soupfin shark, *Galeorhinus zyopterus;* spiny dogfish, *Squalus acanthias.*

(2) Skates: Big skate, *Raja binoculata;* California skate, *R. inornata;* longnose skate, *R. rhina.*

(3) Ratfish: Ratfish, *Hydrolagus colliei.*

(4) Morids: Finescale codling, *Antimora microlepis.*

(5) Grenadiers: Pacific rattail, *Coryphaenoides acrolepis.*

(6) Roundfish: Cabezon, *Scorpaenichthys marmoratus;* kelp greenling, *Hexagrammos decagrammus;* lingcod, *Ophiodon elongatus;* Pacific cod, *Gadus macrocephalus;* Pacific whiting, *Merluccius productus;* sablefish, *Anoplopoma fimbria.*

(7) Rockfish: In addition to the species below, longspine thornyhead, *S. altivelis,* and shortspine thornyhead, *S. alascanus,* "rockfish" managed under the PCGFMP include all genera and species of the family *Scorpaenidae* that occur off Washington, Oregon, and California, even if not listed below. The *Scorpaenidae* genera are *Sebastes, Scorpaena, Scorpaenodes,* and *Sebastolobus.* Where species below are listed both in a major category (nearshore, shelf, slope) and as an area-specific listing (north or south of 40°10' N. lat.) those species are considered "minor" in the geographic area listed.

(i) Nearshore rockfish includes black rockfish, Sebastes melanops and the following minor nearshore rockfish species:

(A) North of 40°10′ N. lat.: Black and yellow rockfish, *S. chrysomelas;* blue rockfish, *S. mystinus;* brown rockfish, *S.*

auriculatus; calico rockfish, *S. dalli;* China rockfish, *S. nebulosus;* copper rockfish, *S. caurinus;* gopher rockfish, *S. carnatus;* grass rockfish, *S. rastrelliger;* kelp rockfish, *S. atrovirens;* olive rockfish, *S. serranoides;* quillback rockfish, *S. maliger;* treefish,. *S. serriceps.*

(B) South of 40°10′ N. lat., nearshore rockfish are divided into three management categories:

(*1*) *Shallow nearshore rockfish* consists of black and yellow rockfish, *S. chrysomelas;* China rockfish, *S. nebulosus;* gopher rockfish, *S. carnatus;* grass rockfish, *S. rastrelliger;* kelp rockfish, *S. atrovirens.*

(*2*) Deeper nearshore rockfish consists of black rockfish, *S. melanops;* blue rockfish, *S. mystinus;* brown rockfish, *S. auriculatus;* calico rockfish, *S. dalli;* copper rockfish, *S. caurinus;* olive rockfish, *S. serranoides;* quillback rockfish, *S. maliger;* treefish, *S. serriceps.*

(*3*) *California scorpionfish, Scorpaena guttata.*

(ii) *Shelf rockfish* includes bocaccio, *Sebastes paucispinis;* canary rockfish, *S. pinniger;* chilipepper, *S. goodei;* cowcod, *S. levis;* shortbelly rockfish, *S. jordani;* widow rockfish, *S. entomelas;* yelloweye rockfish, *S. ruberrimus;* yellowtail rockfish, *S. flavidus* and the following minor shelf rockfish species:

(A) *North of 40°10′ N. lat.:* Bronzespotted rockfish, *S. gilli;* bocaccio, *S. paucispinis;* chameleon rockfish, *S. phillipsi;* chilipepper, *S. goodei;* cowcod, *S. levis;* dusky rockfish, *S. ciliatus;* dwarf-red, *S. rufianus;* flag rockfish, *S. rubrivinctus;* freckled, *S. lentiginosus;* greenblotched rockfish, *S. rosenblatti;* greenspotted rockfish, *S. chlorostictus;* greenstriped rockfish, *S. elongatus;* halfbanded rockfish, *S. semicinctus;* harlequin rockfish, *S. variegatus;* honeycomb rockfish, *S. umbrosus;* Mexican rockfish, *S. macdonaldi;* pink rockfish, *S. eos;* pinkrose rockfish, *S. simulator;* pygmy rockfish, *S. wilsoni;* redstripe rockfish, *S. proriger;* rosethorn rockfish, *S. helvomaculatus;* rosy rockfish, *S. rosaceus;* silvergray rockfish, *S. brevispinis;* speckled rockfish, *S. ovalis;* squarespot rockfish, *S. hopkinsi;* starry rockfish, *S. constellatus;* stripetail rockfish, *S. saxicola;* swordspine rockfish, *S. ensifer;* tiger rockfish, *S. nigrocinctus;* vermilion rockfish, *S. miniatus.*

(B) South of 40°10′ N. lat.: Bronzespotted rockfish, *S. gilli;* chameleon rockfish, *S. phillipsi;* dusky rockfish, *S. ciliatus;* dwarf-red rockfish, *S. rufianus;* flag rockfish, *S. rubrivinctus;* freckled, *S. lentiginosus;* greenblotched rockfish, *S. rosenblatti;* greenspotted rockfish, *S. chlorostictus;* greenstriped rockfish, *S. elongatus;* halfbanded rockfish, *S. semicinctus;* harlequin rockfish, *S. variegatus;* honeycomb rockfish, *S. umbrosus;* Mexican rockfish, *S. macdonaldi;* pink rockfish, *S. eos;* pinkrose rockfish, *S. simulator;* pygmy rockfish, *S. wilsoni;* redstripe rockfish, *S. proriger;* rosethorn rockfish, *S. helvomaculatus;* rosy rockfish, *S. rosaceus;* silvergray rockfish, S. brevispinis; speckled rockfish, *S. ovalis;* squarespot rockfish, *S. hopkinsi;* starry rockfish, *S. constellatus;* stripetail rockfish, *S. saxicola;* swordspine rockfish, *S. ensifer;* tiger rockfish, *S. nigrocinctus;* vermilion rockfish, *S. miniatus;* yellowtail rockfish, *S. flavidus.*

(iii) Slope rockfish includes darkblotched rockfish, *S. crameri;* Pacific ocean perch, *S. alutus;* splitnose rockfish, *S. diploproa;* and the following minor slope rockfish species:

(A) North of 40°10′ N. lat.: Aurora rockfish, *Sebastes aurora;* bank rockfish, *S. rufus;* blackgill rockfish, *S. melanostomus;* redbanded rockfish, *S. babcocki;* rougheye rockfish, *S. aleutianus;* sharpchin rockfish, *S. zacentrus;* shortraker rockfish, *S. borealis;* splitnose rockfish, *S. diploproa;* yellowmouth rockfish, *S. reedi.*

(B) South of 40°10′ N. lat.: Aurora rockfish, *Sebastes aurora;* bank rockfish, *S. rufus;* blackgill rockfish, *S. melanostomus;* Pacific ocean perch, *S. alutus;* redbanded rockfish, *S. babcocki;* rougheye rockfish, *S. aleutianus;* sharpchin rockfish, *S. zacentrus;* shortraker rockfish, *S. borealis;* yellowmouth rockfish, *S. reedi.*

(8) Flatfish: Arrowtooth flounder (arrowtooth turbot), *Atheresthes stomias;* butter sole, *Isopsetta isolepis;* curlfin sole, *Pleuronichthys decurrens;* Dover sole, *Microstomus pacificus;* English sole, *Parophrys vetulus;* flathead sole, *Hippoglossoides elassodon;* Pacific sanddab, *Citharichthys sordidus;* petrale sole, *Eopsetta jordani;* rex sole, *Glyptocephalus zachirus;* rock sole, *Lepidopsetta bilineata;* sand sole, *Psettichthys melanostictus;* starry flounder, *Platichthys stellatus.* Where regulations of subparts C through G of this part refer to landings limits for "other flatfish," those limits apply to all flatfish cumulatively taken except for those flatfish species specifically listed in Tables 1a and 2a of this subpart. (*i.e.,* "other flatfish" includes butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.)

(9) "Other fish": Where regulations of subparts C through G of this part refer to landings limits for "other fish," those limits apply to all groundfish listed here in paragraphs (1) through (8) of this definition except for the following: Those groundfish species specifically listed in Tables 1a and 2a of this subpart with an ABC for that area (generally north and/or south of 40°10′ N. lat.); and Pacific cod and spiny dogfish coastwide. (*i.e.,* "other fish" may include all sharks (except spiny dogfish), skates, ratfish, morids, grenadiers, and kelp greenling listed in this section, as well as cabezon in the north.)

(10) "DTS complex": Where regulations of subparts C through G of this part refer to "DTS complex" species, that group of species includes Dover sole, shortspine thornyhead, longspine thornyhead, and sablefish.

Groundfish trawl means trawl gear that is used under the authority of a valid limited entry permit issued under subparts C and D of this part endorsed for trawl gear and which meets the gear requirements specified in subpart D of this part. It does not include any type of trawl gear listed as non-groundfish trawl gear (previously called "exempted gear").

Harvest guideline means a specified numerical harvest objective that is not a quota. Attainment of a harvest guideline does not require closure of a fishery.

Incidental catch or incidental species means groundfish species caught while fishing for the primary purpose of catching a different species.

Initial Administrative Determination (IAD) means a formal, written determination made by NMFS on an application or permit request, that is subject to an appeal within NMFS.

Land or landing means to begin transfer of fish, offloading fish, or to offload fish from any vessel. Once transfer of fish begins, all fish aboard the vessel are counted as part of the landing.

Legal fish means fish legally taken and retained, possessed, or landed in accordance with the provisions of 50 CFR part 660, subparts C through G, the Magnuson-Stevens Act, any document issued under part 660, and any other regulation promulgated or permit issued under the Magnuson-Stevens Act.

Length overall or LOA (with respect to a vessel) means the length overall set forth in the Certificate of Documentation (CG–1270) issued by the USCG for a documented vessel, or in a registration certificate issued by a state or the USCG for an undocumented vessel; for vessels that do not have the LOA stated in an official document, the LOA is the LOA as determined by the USCG or by a marine surveyor in accordance with the USCG method for measuring LOA.

License owner means a person who is the owner of record with NMFS, SFD, Permits Office of a License issued under § 660.140, subpart D.

Limited entry fishery means the fishery composed of vessels registered for use with limited entry permits.

Limited entry gear means longline, trap (or pot), or groundfish trawl gear used under the authority of a valid limited entry permit affixed with an endorsement for that gear.

Limited entry permit means:

(1) The Federal permit required to fish in the limited entry "A"-endorsed fishery, and includes any gear, size, or species endorsements affixed to the permit, or

(2) The Federal permit required to receive and process fish as a mothership processor.

Maximum Sustainable Yield or MSY. (*See* § 600.310 of this chapter)

Mobile transceiver unit means a vessel monitoring system or VMS device, as set forth at § 660.14, subpart C installed on board a vessel that is used for vessel monitoring and transmitting the vessel's position as required by subpart C.

Non-groundfish fishery means any fishing using non-groundfish trawl gear or nontrawl gear when targeting salmon, HMS, CPS, crab, prawn, or any other species not managed under the PCGFMP. Non-groundfish fishery is sometimes referred to as the incidental open access fishery in which groundfish could be encountered with the gear used, regardless of whether groundfish is retained.

Non-groundfish trawl (previously "exempted" trawl) means any trawl gear other than the Pacific Coast groundfish trawl gear that is authorized for use with a valid groundfish limited entry permit endorsed for trawl gear. Non-groundfish trawl gear includes trawl gear used to fish for pink shrimp, ridgeback prawn, California halibut south of Pt. Arena, and sea cucumbers south of Pt. Arena.

Nontrawl fishery means

(1) For the purpose of allocations at § 660.55, subpart C, nontrawl fishery means the limited entry fixed gear fishery, the open access fishery, and the recreational fishery.

(2) For the purposes of all other management measures in subparts C through G of this part, nontrawl fishery means fishing with any legal limited entry fixed gear or open access non-trawl groundfish gear other than trawl gear (groundfish trawl gear and non-groundfish trawl gear), but does not include the recreational fishery.

North-South management area means the management areas defined in paragraph (1) of this definition, or defined and bounded by one or more or the commonly used geographic coordinates set out in paragraph (2) of this definition for the purposes of implementing different management measures in separate geographic areas of the U.S. West Coast.

(1) *Management areas.*

(i) *Vancouver.*

(A) The northeastern boundary is that part of a line connecting the light on Tatoosh Island, WA, with the light on Bonilla Point on Vancouver Island, British Columbia (at 48°35.73′ N. lat., 124°43.00′ W. long.) south of the International Boundary between the U.S. and Canada (at 48°29.62′ N. lat., 124°43.55′ W. long.), and north of the point where that line intersects with the boundary of the U.S. territorial sea.

(B) The northern and northwestern boundary is a line connecting the following coordinates in the order listed, which is the provisional international boundary of the EEZ as shown on NOAA/NOS Charts 18480 and 18007:

Point	N. Lat.	W. Long.
1	48°29.62′	124°43.55′
2	48°30.18′	124°47.22′
3	48°30.37′	124°50.35′
4	48°30.23′	124°54.87′
5	48°29.95′	124°59.23′
6	48°29.73′	125°00.10′
7	48°28.15′	125°05.78′
8	48°27.17′	125°08.42′
9	48°26.78′	125°09.20′
10	48°20.27′	125°22.80′
11	48°18.37′	125°29.97′
12	48°11.08′	125°53.80′
13	47°49.25′	126°40.95′
14	47°36.78′	127°11.97′
15	47°22.00′	127°41.38′
16	46°42.08′	128°51.93′
17	46°31.78′	129°07.65′

(C) The southern limit is 47°30′ N. lat.

(ii) *Columbia.*

(A) The northern limit is 47°30′ N. lat.

(B) The southern limit is 43°00′ N. lat.

(iii) *Eureka.*

(A) The northern limit is 43°00′ N. lat.

(B) The southern limit is 40°30′ N. lat.

(iv) *Monterey.*

(A) The northern limit is 40°30′ N. lat.

(B) The southern limit is 36°00′ N. lat.

(v) *Conception.*

(A) The northern limit is 36°00′ N. lat.

(B) The southern limit is the U.S.-Mexico International Boundary, which is a line connecting the following coordinates in the order listed:

Point	N. lat.	W. long.
1	32°35.37′	117°27.82′
2	32°37.62′	117°49.52′
3	31°07.97′	118°36.30′
4	30°32.52′	121°51.97′

(2) *Commonly used geographic coordinates.*

(i) Cape Alava, WA—48°10.00′ N. lat.

(ii) Queets River, WA—47°31.70′ N. lat.

(iii) Pt. Chehalis, WA—46°53.30′ N. lat.

(iv) Leadbetter Point, WA—46°38.17′ N. lat.

(v) Washington/Oregon border—46°16.00′ N. lat.

(vi) Cape Falcon, OR—45°46.00′ N. lat.

(vii) Cape Lookout, OR—45°20.25′ N. lat.

(viii) Cascade Head, OR—45°03.83′ N. lat.

(ix) Heceta Head, OR—44°08.30′ N. lat.

(x) Cape Arago, OR—43°20.83′ N. lat.

(xi) Cape Blanco, OR—42°50.00′ N. lat.

(xii) Humbug Mountain—42°40.50′ N. lat.

(xiii) Marck Arch, OR—42°13.67′ N. lat.

(xiv) Oregon/California border—42°00.00′ N. lat.

(xv) Cape Mendocino, CA—40°30.00′ N. lat.

(xvi) North/South management line—40°10.00′ N. lat.

(xvii) Point Arena, CA—38°57.50′ N. lat.

(xviii) Point San Pedro, CA—37°35.67′ N. lat.

(xix) Pigeon Point, CA—37°11.00′ N. lat.

(xx) Ano Nuevo, CA—37°07.00′ N. lat.

(xxi) Point Lopez, CA—36°00.00′ N. lat.

(xxii) Point Conception, CA—34°27.00′ N. lat. [Note: Regulations that apply to waters north of 34°27.00′ N. lat. are applicable only west of 120°28.00′ W. long.; regulations that apply to waters south of 34°27.00′ N. lat. also apply to all waters both east of 120°28.00′ W. long. and north of 34°27.00′ N. lat.]

Observer. (*See* § 600.10 of this chapter—U.S. Observer or Observer)

Observer Program or Observer Program Office means the West Coast Groundfish Observer Program (WCGOP) Office of the Northwest Fishery Science Center, National Marine Fisheries Service, Seattle, Washington.

Office of Law Enforcement or OLE refers to the National Marine Fisheries Service, Office of Law Enforcement, Northwest Division.

Open access fishery means the fishery composed of commercial vessels using open access gear fished pursuant to the harvest guidelines, quotas, and other management measures governing the harvest of open access allocations (detailed in § 660.55 and Tables 1c and 2c of subpart C of this part) or governing the fishing activities of open access

vessels (detailed in subpart F of this part). Any commercial vessel that is not registered to a limited entry permit and which takes and retains, possesses or lands groundfish is a participant in the open access groundfish fishery.

Open access gear means all types of fishing gear except:

(1) *Longline or trap (or pot) gear* fished by a vessel that has a limited entry permit affixed with a gear endorsement for that gear.

(2) *Groundfish trawl.*

Operate a vessel means any use of a vessel, including, but not limited to, fishing or drifting by means of the prevailing water current or weather conditions.

Operator. (*See* § 600.10)

Optimum yield or OY means the amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and, taking into account the protection of marine ecosystems, is prescribed as such on the basis of the MSY from the fishery, as reduced by any relevant economic, social, or ecological factor; and, in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the MSY in such fishery. OY may be expressed numerically (as a harvest guideline, quota, or other specification) or non-numerically.

Overage means the amount of fish harvested by a vessel in excess of:

(1) The applicable trip limit for any fishery to which a trip limit applies;

(2) The amount authorized by the applicable permit for trawl fisheries at subpart D of this part;

(3) The amount authorized by the applicable sablefish-endorsed permits for fixed gear sablefish fisheries at subpart E of this part.

Ownership interest means participation in ownership of a corporation, partnership, or other entity:

(1) For sablefish-endorsed permits, ownership interest means participation in ownership of a corporation, partnership, or other entity that owns a sablefish-endorsed permit. Ownership interest does not mean owning stock in a publicly owned corporation.

(2) For the limited entry trawl fishery in subpart D of this part, ownership interest means participation in ownership of a corporation, partnership, or other entity that owns a QS permit, vessel account, MS permit, or an MS/CV-endorsed limited entry permit.

Pacific Coast Groundfish Fishery Management Plan or PCGFMP means the Fishery Management Plan for the Washington, Oregon, and California Groundfish Fishery developed by the Pacific Fishery Management Council and approved by the Secretary on January 4, 1982, and as it may be subsequently amended.

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

Permit holder means a vessel owner as identified on the USCG form 1270 or state motor vehicle licensing document and as registered on a limited entry permit issued under Subparts C through E of this part.

Permit owner means a person who is the owner of record with NMFS, SFD, Permits Office of a limited entry permit. For first receiver site licenses, see definition for "license owner."

Person, as it applies to limited entry and open access fisheries conducted under 50 CFR part 660, Subparts C through G, means any individual, corporation, partnership, association or other entity (whether or not organized or existing under the laws of any state), and any Federal, state, or local government, or any entity of any such government that is eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a).

Processing or to process means the preparation or packaging of groundfish to render it suitable for human consumption, retail sale, industrial uses or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil, but does not mean heading and gutting unless additional preparation is done. (Also see an exception to certain requirements at § 660.131(a), subpart D pertaining to Pacific whiting shoreside vessels 75-ft (23-m) or less LOA that, in addition to heading and gutting, remove the tails and freeze catch at sea.)

(1) At-sea processing means processing that takes place on a vessel or other platform that floats and is capable of being moved from one location to another, whether shorebased or on the water.

(2) Shorebased processing or processing means processing that takes place at a facility that is permanently fixed to land. (Also see the definition for shoreside processing at § 660.140, subpart D which defines shoreside processing for the purposes of qualifying for a Shorebased IFQ Program QS permit.)

Processor means person, vessel, or facility that engages in processing; or receives live groundfish directly from a fishing vessel for retail sale without further processing. (Also see the definition for processors at § 660.140, subpart D which defines processor for the purposes of qualifying for a Shorebased IFQ Program QS permit.)

Prohibited species means those species and species groups whose retention is prohibited unless authorized by provisions of this section or other applicable law. The following are prohibited species: Any species of salmonid, Pacific halibut, Dungeness crab caught seaward of Washington or Oregon, and groundfish species or species groups under the PCGFMP for which quotas have been achieved and/or the fishery closed.

Quota means a specified numerical harvest objective, the attainment (or expected attainment) of which causes closure of the fishery for that species or species group.

Recreational fishing means fishing with authorized recreational fishing gear for personal use only, and not for sale or barter.

Regional Administrator means the Administrator, Northwest Region, NMFS.

Reserve means a portion of the harvest guideline or quota set aside at the beginning of the fishing year or biennial fishing period to allow for uncertainties in preseason estimates.

Round weight. (*See* § 600.10 of this chapter). Round weight does not include ice, water, or slime.

Sale or sell. (*See* § 600.10 of this chapter)

Scientific research activity. (*See* § 600.10 of this chapter)

Secretary. (*See* § 600.10 of this chapter)

Specification is a numerical or descriptive designation of a management objective, including but not limited to: Acceptable biological catch; optimum yield; harvest guideline; quota; limited entry or open access allocation; a set-aside or allocation for a recreational or treaty Indian fishery; an apportionment of the above to an area, gear, season, fishery, or other subdivision.

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

Stacking is the practice of registering more than one limited entry permit for use with a single vessel (*See* § 660.25(b)(4)(iii), subpart C).

Sustainable Fisheries Division or SFD means the Chief, Sustainable Fisheries Division, Northwest Regional Office, NMFS, or a designee.

Target fishing means fishing for the primary purpose of catching a particular species or species group (the target species).

Tax-exempt organization means an organization that received a determination letter from the Internal Revenue Service recognizing tax exemption under 26 CFR part 1 (§§ 1.501 to 1.640).

Totally lost means the vessel being replaced no longer exists *in specie,* or is absolutely and irretrievably sunk or otherwise beyond the possible control of the owner, or the costs of repair (including recovery) would exceed the value of the vessel after repairs.

Trawl fishery means

(1) For the purpose of allocations at § 660.55, subpart C, trawl fishery means the groundfish limited entry trawl fishery.

(2) For the purposes of all other management measures in subparts C through G of this part, trawl fishery means any fishery using trawl gear as defined under the definition of fishing gear in this section.

Trip. (*See* § 600.10 of this chapter)

Trip limits. Trip limits are used in the commercial fishery to specify the maximum amount of a fish species or species group that may legally be taken and retained, possessed, or landed, per vessel, per fishing trip, or cumulatively per unit of time, or the number of landings that may be made from a vessel in a given period of time, as follows:

(1) A per trip limit is the total allowable amount of a groundfish species or species group, by weight, or by percentage of weight of legal fish on board, that may be taken and retained, possessed, or landed per vessel from a single fishing trip.

(2) A daily trip limit is the maximum amount of a groundfish species or species group that may be taken and retained, possessed, or landed per vessel in 24 consecutive hours, starting at 0001 hours local time. Only one landing of groundfish may be made in that 24-hour period. Daily trip limits may not be accumulated during multiple day trips.

(3) A weekly trip limit is the maximum amount of a groundfish species or species group that may be taken and retained, possessed, or landed per vessel in 7 consecutive days, starting at 0001 hours local time on Sunday and ending at 2400 hours local time on Saturday. Weekly trip limits may not be accumulated during multiple week trips. If a calendar week falls within two different months or two different cumulative limit periods, a vessel is not entitled to two separate weekly limits during that week.

(4) A cumulative trip limit is the maximum amount of a groundfish species or species group that may be taken and retained, possessed, or landed per vessel in a specified period of time without a limit on the number of landings or trips, unless otherwise specified. The cumulative trip limit periods for limited entry and open access fisheries, which start at 0001 hours local time and end at 2400 hours local time, are as follows, unless otherwise specified:

(i) The 2-month or "major" cumulative limit periods are: January 1–February 28/29, March 1–April 30, May 1–June 30, July 1–August 31, September 1–October 31, and, November 1–December 31.

(ii) One month means the first day through the last day of the calendar month.

(iii) One week means 7 consecutive days, Sunday through Saturday.

Vessel manager means a person or group of persons whom the vessel owner has given authority to oversee all or a portion of groundfish fishing activities aboard the vessel.

Vessel monitoring system or VMS means a vessel monitoring system or mobile transceiver unit as set forth in § 660.14, subpart C and approved by NMFS for use on vessels that take (directly or incidentally) species managed under the PCGFMP, as required by this subpart.

Vessel of the United States or U.S. vessel. (*See* § 600.10)

Vessel owner or owner of a vessel, as used in subparts C through G of this part, means a person identified as the current owner in the Certificate of Documentation (CG–1270) issued by the USCG for a documented vessel, or in a registration certificate issued by a state or the USCG for an undocumented vessel.

§ 660.12 General groundfish prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to:

(a) *General.* (1) Retain any prohibited species (defined in § 660.11, subpart C and restricted in § 660.60(e), subpart C) caught by means of fishing gear authorized under this subpart, unless authorized by part 600 or part 300 of this chapter. Prohibited species must be returned to the sea as soon as practicable with a minimum of injury when caught and brought on board.

(2) Falsify or fail to affix and maintain vessel and gear markings as required by § 660.20 or § 660.219, subpart E or § 660.319, subpart F.

(3) Fish for groundfish in violation of any terms or conditions attached to an EFP under § 600.745 of this chapter or § 660.30, subpart C of this part.

(4) Fish for groundfish using gear not authorized in subparts C through G of this part or in violation of any terms or conditions attached to an EFP under § 660.30, subpart C of this part or part 600 of this chapter.

(5) Take and retain, possess, or land more groundfish than specified under § 660.50, § 660.55, § 660.60 of subpart C, or subpart D through G of this part, or under an EFP issued under § 660.30, subpart C of this part, or part 600 of this chapter.

(6) Take, retain, possess, or land more than a single cumulative limit of a particular species, per vessel, per applicable cumulative limit period, except for sablefish taken in the primary limited entry, fixed gear sablefish season from a vessel authorized to fish in that season, as described at § 660.231, subpart E.

(7) Take and retain, possess, or land groundfish in excess of the landing limit for the open access fishery without having a valid limited entry permit for the vessel affixed with a gear endorsement for the gear used to catch the fish.

(8) 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, 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, or OY applied; except as specified at § 660.131, subpart C for vessels participating in the Pacific whiting at-sea sectors.

(9) When requested or required by an authorized officer, refuse to present fishing gear for inspection, refuse to present fish subject to such persons control for inspection; or interfere with a fishing gear or marine animal or plant life inspection.

(10) Transfer fish to another vessel at sea unless a vessel is participating in the primary Pacific whiting fishery as part of the mothership or catcher/processor sectors.

(11) Fish with dredge gear (defined in § 660.11, subpart C) anywhere within EFH within the EEZ. For the purposes of regulation, EFH within the EEZ is described at § 660.75, subpart C.

(12) Fish with beam trawl gear (defined in § 660.11, subpart C) anywhere within EFH within the EEZ. For the purposes of regulation, EFH within the EEZ is described at § 660.75, subpart C.

(13) During times or in areas where at-sea processing is prohibited, take and

retain or receive Pacific whiting, except as cargo or fish waste, on a vessel in the fishery management area that already has processed Pacific whiting on board. An exception to this prohibition is provided if the fish are received within the tribal U&A from a member of a Pacific Coast treaty Indian tribe fishing under § 660.50, subpart C.

(b) *Reporting and Recordkeeping.* (1) Falsify or fail to make and/or file, retain or make available any and all reports of groundfish landings, containing all data, and in the exact manner, required by the applicable State law, as specified in § 660.13, subpart C, provided that person is required to do so by the applicable state law.

(2) Fail to retain on board a vessel from which groundfish is landed, and provide to an authorized officer upon request, copies of any and all reports of groundfish landings, or receipts containing all data, and made in the exact manner required by the applicable state law throughout the cumulative limit period during which such landings occurred and for 15 days thereafter.

(c) *Limited entry fisheries.* (1) Carry on board a vessel, or deploy, limited entry gear when the limited entry fishery for that gear is closed, except that a vessel may carry on board limited entry groundfish trawl gear as provided in § 660.112(a)(1), subpart D.

(2) [Reserved]

(d) *Limited entry permits.*

(1) If a limited entry permit is registered for use with a vessel, fail to carry that permit onboard the vessel registered for use with the permit. A photocopy of the permit may not substitute for the original permit itself.

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

(e) *Groundfish observer program.* (1) Forcibly assault, resist, oppose, impede, intimidate, harass, sexually harass, bribe, or interfere with an observer.

(2) Interfere with or bias the sampling procedure employed by an observer including either mechanically or manually sorting or discarding catch before sampling.

(3) Tamper with, destroy, or discard an observer's collected samples, equipment, records, photographic film, papers, or personal effects without the express consent of the observer.

(4) Harass an observer by conduct that:

(i) Has sexual connotations,

(ii) Has the purpose or effect of interfering with the observer's work performance, and/or

(iii) Otherwise creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

(5) Fish for, land, or process fish without observer coverage when a vessel is required to carry an observer under subparts C through G of this part.

(6) Require, pressure, coerce, or threaten an observer to perform duties normally performed by crew members, including, but not limited to, cooking, washing dishes, standing watch, vessel maintenance, assisting with the setting or retrieval of gear, or any duties associated with the processing of fish, from sorting the catch to the storage of the finished product.

(7) Fail to provide departure or cease fishing reports specified at § 660.116, subpart D, § 660.216, subpart E, or § 660.316, subpart F.

(8) Fail to meet the vessel responsibilities specified at § 660.116, subpart D, § 660.216, subpart E, or § 660.316, subpart F.

(f) *Vessel Monitoring Systems.* (1) Use any vessel required to operate and maintain a VMS unit under § 660.14(b) unless that vessel carries a NMFS OLE type-approved mobile transceiver unit and complies with all the requirements described at § 660.14(c).

(2) Fail to install, activate, repair or replace a mobile transceiver unit prior to leaving port as specified at § 660.14.

(3) Fail to operate and maintain a mobile transceiver unit on board the vessel at all times as specified at § 660.14.

(4) Tamper with, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate the VMS, mobile transceiver unit, or VMS signal required to be installed on or transmitted by a vessel as specified at § 660.14.

(5) Fail to contact NMFS OLE or follow NMFS OLE instructions when automatic position reporting has been interrupted as specified at § 660.14.

(6) Register the same VMS transceiver unit to more than one vessel at the same time.

(7) Falsify any VMS activation report or VMS exemption report that is authorized or required, as specified at § 660.14.

(8) Falsify any declaration report that is required, as specified at § 660.13.

§ 660.13 Recordkeeping and reporting.

(a) This subpart recognizes that catch and effort data necessary for implementing the PCGFMP are collected by the States of Washington, Oregon, and California under existing state data collection requirements.

(b) Any person who is required to do so by the applicable state law must make and/or file, retain, or make available any and all reports (*i.e.,* logbooks, state landing receipts, etc.) of groundfish harvests and landings containing all data, and in the exact manner, required by the applicable state law.

(c) Any person landing groundfish must retain on board the vessel from which groundfish is landed, and provide to an authorized officer upon request, copies of any and all reports of groundfish landings containing all data, and in the exact manner, required by the applicable state law throughout the cumulative limit period during which a landing occurred and for 15 days thereafter.

(d) *Declaration reporting requirements*—(1) *Declaration reports for vessels registered to limited entry permits.* The operator of any vessel registered to a limited entry permit must provide NMFS OLE with a declaration report, as specified at paragraph (d)(5)(iv) of this section, before the vessel leaves port on a trip in which the vessel is used to fish in U.S. ocean waters between 0 and 200 nm offshore of Washington, Oregon, or California.

(2) *Declaration reports for all vessels using non-groundfish trawl gear.* The operator of any vessel that is not registered to a limited entry permit and which uses non-groundfish trawl gear to fish in the EEZ (3–200 nm offshore), must provide NMFS OLE with a declaration report, as specified at paragraph (d)(5)(iv) of this section, before the vessel leaves port to fish in the EEZ.

(3) *Declaration reports for open access vessels using non trawl gear (all types of open access gear other than non-groundfish trawl gear).* The operator of any vessel that is not registered to a limited entry permit, must provide NMFS with a declaration report, as specified at paragraph (d)(5)(iv) of this section, before the vessel leaves port on a trip in which the vessel is used to take and retain or possess groundfish in the EEZ or land groundfish taken in the EEZ.

(4) *Declaration reports for tribal vessels using trawl gear.* The operator of any tribal vessel using trawl gear must provide NMFS with a declaration report, as specified at paragraph (d)(5)(iv) of this section, before the

vessel leaves port on a trip in which fishing occurs within the trawl RCA.

(5) *Declaration reports.* (i) The operator of a vessel specified in paragraphs (d)(1), (d)(2), and (d)(3) of this section must provide a declaration report to NMFS OLE prior to leaving port on the first trip in which the vessel meets the requirement specified at § 660.14(b) to have a VMS.

(ii) The vessel operator must send a new declaration report before leaving port on a trip in which a gear type that is different from the gear type most recently declared for the vessel will be used. A declaration report will be valid until another declaration report revising the existing gear declaration is received by NMFS OLE.

(iii) During the period of time that a vessel has a valid declaration report on file with NMFS OLE, it cannot fish with a gear other than a gear type declared by the vessel.

(iv) Declaration reports will include: The vessel name and/or identification number, and gear type (as defined in paragraph (d)(5)(iv)(A) of this section). Upon receipt of a declaration report, NMFS will provide a confirmation code or receipt to confirm that a valid declaration report was received for the vessel. Retention of the confirmation code or receipt to verify that a valid declaration report was filed and the declaration requirement was met is the responsibility of the vessel owner or operator. Vessels using non trawl gear may declare more than one gear type, however, vessels using trawl gear may only declare one of the trawl gear types listed in paragraph (d)(5)(iv)(A) of this section on any trip and may not declare non trawl gear on the same trip in which trawl gear is declared.

(A) One of the following gear types must be declared:

(*1*) Limited entry fixed gear,

(*2*) [Reserved]

(*3*) Limited entry mid water trawl, non-whiting,

(*4*) Limited entry mid water trawl, Pacific whiting shore based sector,

(*5*) Limited entry mid water trawl, Pacific whiting catcher/processor sector,

(*6*) Limited entry mid water trawl, Pacific whiting mother ship sector,

(*7*) Limited entry bottom trawl, not including emerald trawl,

(*8*) Limited entry emerald trawl,

(*9*) Non-groundfish trawl gear for pink shrimp,

(*10*) Non-groundfish trawl gear for ridgeback prawn,

(*11*) Non-groundfish trawl gear for California halibut,

(*12*) Non-groundfish trawl gear for sea cucumber,

(*13*) Open access longline gear for groundfish,

(*14*) Open access Pacific halibut longline gear,

(*15*) Open access groundfish trap or pot gear,

(*16*) Open access Dungeness crab trap or pot gear,

(*17*) Open access prawn trap or pot gear,

(*18*) Open access sheephead trap or pot gear,

(*19*) Open access line gear for groundfish,

(*20*) Open access HMS line gear,

(*21*) Open access salmon troll gear,

(*22*) Open access California Halibut line gear,

(*23*) Open access net gear,

(*24*) Other gear, or

(*25*) Tribal trawl.

(B) [Reserved]

§ 660.14 Vessel Monitoring System (VMS) requirements.

(a) *What is a VMS*? A VMS consists of a NMFS OLE type-approved mobile transceiver unit that automatically determines the vessel's position and transmits it to a NMFS OLE type-approved communications service provider. The communications service provider receives the transmission and relays it to NMFS OLE.

(b) *Who is Required to Have a VMS*? The following vessels are required to install a NMFS OLE type-approved mobile transceiver unit and to arrange for a NMFS OLE type-approved communications service provider to receive and relay transmissions to NMFS OLE prior to fishing:

(1) Any vessel registered for use with a limited entry permit that fishes 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).

(2) Any vessel that uses non-groundfish trawl gear to fish in the EEZ.

(3) Any vessel that uses open access gear to take and retain, or possess groundfish in the EEZ or land groundfish taken in the EEZ.

(c) *How are Mobile Transceiver Units and Communications Service Providers Approved by NMFS OLE*?

(1) NMFS OLE will publish type-approval specifications for VMS components in the **Federal Register** or notify the public through other appropriate media.

(2) Mobile transceiver unit manufacturers or communication service providers will submit products or services to NMFS OLE for evaluation based on the published specifications.

(3) NMFS OLE may publish a list of NMFS OLE type-approved mobile transceiver units and communication service providers for the Pacific Coast groundfish fishery in the **Federal Register** or notify the public through other appropriate media. As necessary, NMFS OLE may publish amendments to the list of type-approved mobile transceiver units and communication service providers in the **Federal Register** or through other appropriate media. A list of VMS transceivers that have been type-approved by NMFS OLE may be mailed to the permit owner's address of record. NMFS will bear no responsibility if a notification is sent to the address of record and is not received because the applicant's actual address has changed without notification to NMFS, as required at § 660.25(b)(4)(i)(B).

(d) *What are the Vessel Owner's Responsibilities*? If you are a vessel owner that must participate in the VMS program, you or the vessel operator must:

(1) Obtain a NMFS OLE type-approved mobile transceiver unit and have it installed on board your vessel in accordance with the instructions provided by NMFS OLE. You may obtain a copy of the VMS installation and operation instructions from the NMFS OLE Northwest, VMS Program Manager upon request at 7600 Sand Point Way NE., Seattle, WA 98115–6349, phone: (206) 526–6133.

(2) Activate the mobile transceiver unit, submit an activation report at least 72 hours prior to leaving port on a trip in which VMS is required, and receive confirmation from NMFS OLE that the VMS transmissions are being received before participating in a fishery requiring the VMS. Instructions for submitting an activation report may be obtained from the NMFS, Northwest OLE VMS Program Manager upon request at 7600 Sand Point Way NE., Seattle, WA 98115–6349, phone: (206) 526–6133. An activation report must again be submitted to NMFS OLE following reinstallation of a mobile transceiver unit or change in service provider before the vessel may be used to fish in a fishery requiring the VMS.

(i) *Activation reports.* If you are a vessel owner who must use VMS and you are activating a VMS transceiver unit for the first time or reactivating a VMS transceiver unit following a reinstallation of a mobile transceiver unit or change in service provider, you must fax NMFS OLE an activation report that includes: Vessel name; vessel owner's name, address and telephone number, vessel operator's name, address and telephone number, USCG vessel documentation number/state registration number; if applicable, the groundfish permit number the vessel is

registered to; VMS transceiver unit manufacturer; VMS communications service provider; VMS transceiver identification; identifying if the unit is the primary or backup; and a statement signed and dated by the vessel owner confirming compliance with the installation procedures provided by NMFS OLE.

(ii) *Transferring ownership of VMS unit.* Ownership of the VMS transceiver unit may be transferred from one vessel owner to another vessel owner if all of the following documents are provided to NMFS OLE: A new activation report, which identifies that the transceiver unit was previously registered to another vessel; a notarized bill of sale showing proof of ownership of the VMS transceiver unit; documentation from the communications service provider showing proof that the service agreement for the previous vessel was terminated and that a service agreement was established for the new vessel.

(3) *Transceiver unit operation.* Operate and maintain the mobile transceiver unit in good working order continuously, 24 hours a day throughout the fishing year, unless such vessel is exempted under paragraph (d)(4) of this section. The mobile transceiver unit must transmit a signal accurately indicating the vessel's position at least once every hour, 24 hours a day, throughout the year unless a valid exemption report, as described in paragraph (b)(4) of this section, has been received by NMFS OLE. Less frequent position reporting at least once every four hours is authorized when a vessel remains in port for an extended period of time, but the mobile transceiver unit must remain in continuous operation at all times unless the vessel is exempted under this section.

(4) *VMS exemptions.* A vessel that is required to operate and maintain the mobile transceiver unit continuously 24 hours a day throughout the fishing year may be exempted from this requirement if a valid exemption report, as described at paragraph (d)(4)(vii) of this section, is received by NMFS OLE and the vessel is in compliance with all conditions and requirements of the VMS exemption identified in this section and specified in the exemption report.

(i) *Haul out exemption.* When it is anticipated that a vessel will be continuously out of the water for more than 7 consecutive days and a valid exemption report has been received by NMFS OLE, electrical power to the VMS mobile transceiver unit may be removed and transmissions may be discontinued. Under this exemption, VMS transmissions can be discontinued from the time the vessel is removed from the water until the time that the vessel is placed back in the water.

(ii) *Outside areas exemption.* When the vessel will be operating seaward of the EEZ off Washington, Oregon, or California continuously for more than 7 consecutive days and a valid exemption report has been received by NMFS OLE, the VMS mobile transceiver unit transmissions may be reduced or discontinued from the time the vessel leaves the EEZ off the coasts of Washington, Oregon or California until the time that the vessel re-enters the EEZ off the coasts of Washington, Oregon or California. Under this exemption, the vessel owner or operator can request that NMFS OLE reduce or discontinue the VMS transmissions after receipt of an exemption report, if the vessel is equipped with a VMS transceiver unit that NMFS OLE has approved for this exemption.

(iii) *Permit transfer exemption.* If the limited entry permit has been transferred from a 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.

(iv) *Long-term departure exemption.* A vessel participating in the open access fishery that is required to have VMS under paragraph (b)(3) of this section may be exempted from VMS provisions after the end of the fishing year in which it fished in the open access fishery, providing the vessel submits a completed exemption report signed by the vessel owner that includes a statement signed by the vessel owner indicating that the vessel will not be used to take and retain or possess groundfish in the EEZ or land groundfish taken in the EEZ during the new fishing year.

(v) *Emergency exemption.* Vessels required to have VMS under paragraph (b) of this section may be exempted from VMS provisions in emergency situations that are beyond the vessel owner's control, including but not limited to: Fire, flooding, or extensive physical damage to critical areas of the vessel. A vessel owner may apply for an emergency exemption from the VMS requirements specified in paragraph (b) of this section for his/her vessel by sending a written request to NMFS OLE specifying the following information: The reasons for seeking an exemption, including any supporting documents (*e.g.,* repair invoices, photographs showing damage to the vessel, insurance claim forms, etc.); the time period for which the exemption is requested; and the location of the vessel while the exemption is in effect. NMFS OLE will issue a written determination granting or denying the emergency exemption request. A vessel will not be covered by the emergency exemption until NMFS OLE issues a determination granting the exemption. If an exemption is granted, the duration of the exemption will be specified in the NMFS OLE determination.

(vi) *Submission of exemption reports.* Signed long-term departure exemption reports must be submitted by fax or by emailing an electronic copy of the actual report. In the event of an emergency in which an emergency exemption request will be submitted, initial contact with NMFS OLE must be made by telephone, fax or email within 24 hours from when the incident occurred. Emergency exemption requests must be requested in writing within 72 hours from when the incident occurred. Other exemption reports must be submitted through the VMS or another method that is approved by NMFS OLE and announced in the **Federal Register**. Submission methods for exemption requests, except long-term departures and emergency exemption requests, may include email, facsimile, or telephone. NMFS OLE will provide, through appropriate media, instructions to the public on submitting exemption reports. Instructions and other information needed to make exemption reports may be mailed to the vessel owner's address of record. NMFS will bear no responsibility if a notification is sent to the address of record for the vessel owner and is not received because the vessel owner's actual address has changed without notification to NMFS. Owners of vessels required to use VMS who do not receive instructions by mail are responsible for contacting NMFS OLE during business hours at least 3 days before the exemption is required to obtain information needed to make exemption reports. NMFS OLE must be contacted during business hours (Monday through Friday between 0800 and 1700 Pacific Time).

(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 transfer 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.

(5) When aware that transmission of automatic position reports has been interrupted, or when notified by NMFS OLE that automatic position reports are not being received, contact NMFS OLE at 7600 Sand Point Way NE, Seattle, WA 98115–6349, phone: (206) 526–6133 and follow the instructions provided to you. Such instructions may include, but are not limited to, manually communicating to a location designated by NMFS OLE the vessel's position or returning to port until the VMS is operable.

(6) After a fishing trip during which interruption of automatic position reports has occurred, the vessel's owner or operator must replace or repair the mobile transceiver unit prior to the vessel's next fishing trip. Repair or reinstallation of a mobile transceiver unit or installation of a replacement, including change of communications service provider shall be in accordance with the instructions provided by NMFS OLE and require the same certification.

(7) Make the mobile transceiver units available for inspection by NMFS OLE personnel, USCG personnel, state enforcement personnel or any authorized officer.

(8) Ensure that the mobile transceiver unit is not tampered with, disabled, destroyed, operated, or maintained improperly.

(9) Pay all charges levied by the communication service provider as necessary to ensure continuous operation of the VMS transceiver units.

§ 660.15 Equipment requirements.

(a) *Applicability.* This section contains the equipment and operational requirements for scales used to weigh catch at sea, scales used to weigh catch at IFQ first receivers, computer hardware for electronic fish ticket software and computer hardware for electronic logbook software.

(b) *Performance and technical requirements for scales used to weigh catch at sea.* [Reserved]

(c) *Performance and technical requirements for scales used to weigh catch at IFQ first receivers.* [Reserved]

(d) *Electronic fish tickets.* Pacific whiting shoreside first receivers using the electronic fish ticket software provided by Pacific States Marine Fish Commission are required to meet the hardware and software requirements below. Those Pacific whiting shoreside first receivers who have NMFS-approved software compatible with the standards specified by Pacific States Marine Fish Commission for electronic fish tickets are not subject to any specific hardware or software requirements.

(1) *Hardware and software requirements.* (i) A personal computer with Pentium 75-MHz or higher. Random Access Memory (RAM) must have sufficient megabyte (MB) space to run the operating system, plus an additional 8 MB for the software application and available hard disk space of 217 MB or greater. A CD–ROM drive with a Video Graphics Adapter (VGA) or higher resolution monitor (super VGA is recommended).

(ii) Microsoft Windows 2000 (64 MB or greater RAM required), Windows XP (128 MB or greater RAM required) or later operating system.

(iii) Microsoft Access 2003 or newer.

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

(3) *Maintenance.* The Pacific whiting shoreside first receiver is responsible for ensuring that all hardware and software required under this subsection are fully operational and functional whenever the Pacific whiting primary season deliveries are accepted.

(4) *Improving data quality.* Vessel owners and operators, Pacific whiting shoreside first receivers, or shoreside processor owners, or managers may contact NMFS in writing to request assistance in improving data quality and resolving issues. Requests may be submitted to: Attn: Frank Lockhart, National Marine Fisheries Service, Northwest Region Sustainable Fisheries Division, 7600 Sand Point Way NE., Seattle, WA 98115, or via e-mail to *frank.lockhart@noaa.gov*.

§ 660.16 Groundfish observer program.

(a) *General.* Vessel owners, operators, and managers are jointly and severally responsible for their vessels' compliance with observer requirements specified in this section and within § 660.116, subpart D, § 660.216, subpart E, § 660.316, subpart F, or subpart G.

(b) *Purpose.* The purpose of the Groundfish Observer Program is to collect fisheries data deemed by the Northwest Regional Administrator, NMFS, to be necessary and appropriate for management, compliance monitoring, and research in the groundfish fisheries and for the conservation of living marine resources and their habitat.

(c) *Catcher vessels.* For the purposes of observer coverage requirements the term "catcher vessel" includes the vessels described in paragraphs (c)(1) through (c)(3) of this section. The term "catcher vessel" does not include: Catcher/processor or mothership vessels, Pacific whiting shoreside vessels that sort catch at sea, or recreational vessels.

(1) Any vessel registered for use with a Pacific Coast groundfish limited entry permit that fishes 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).

(2) Any vessel other than a vessel described in paragraph (c)(1) of this section that is used to take and retain, possess, or land groundfish in or from the EEZ.

(3) Any vessel that is required to take a Federal observer by the applicable State law.

(d) *Observer coverage requirements.* The following table provides references

to the regulatory sections with the observer coverage requirements.

West Coast Groundfish Fishery/Program	Regulation subpart and section
Catcher Vessels in the Trawl Fishery, and Pacific Whiting Shoreside Vessels that Sort Catch At Sea	subpart D, § 660.116.
Mothership Processors	subpart D, § 660.116.
Catcher/Processors	subpart D, § 660.116.
Catcher Vessels in the Fixed Gear Fisheries	subpart E, § 660.216.
Catcher Vessels in the Open Access Fisheries	subpart F, § 660.316.

(e) *NMFS-certified Observer Certification and Observer Responsibilities*—(1) *Observer Certification*—(i) *Applicability.* Observer certification authorizes an individual to fulfill duties as specified in writing by the NMFS Observer Program Office while under the employ of a NMFS-permitted observer provider and according to certification endorsements as designated under paragraph (e)(3) of this section.

(ii) *Certification requirements.* NMFS will certify individuals who:

(A) Are employed by an observer provider company permitted pursuant to 50 CFR 679.50 at the time of the issuance of the certification;

(B) Have provided, through their observer provider:

(*1*) Information identified by NMFS at 50 CFR 679.50(i)(2)(x)(A)(*1*)(*iii*) and (*iv*); and

(*2*) Information identified by NMFS at 50 CFR 679.50(i)(2)(x)(C) regarding the observer candidate's health and physical fitness for the job;

(C) Meet all education and health standards as specified in 50 CFR 679.50(i)(2)(i)(A) and (i)(2)(x)(C), respectively; and

(D) Have successfully completed NMFS-approved training as prescribed by the Observer Program.

(*1*) Successful completion of training by an observer applicant 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 training requirements established by the Observer Program.

(*2*) If a candidate fails training, he or she will be notified in writing on or before the last day of training. The notification will indicate: The reasons the candidate failed the training; whether the candidate can retake the training, and under what conditions, or whether, the candidate will not be allowed to retake the training. If a determination is made that the candidate may not pursue further training, notification will be in the form of an IAD denying certification, as specified under paragraph (e)(2)(i) of this section.

(E) Have not been decertified as specified in § 660.18(b), or pursuant to 50 CFR 679.50.

(2) *Agency determinations on observer certification*—(i) *Issuance of an observer certification.* An observer certification will be issued upon determination by the observer certification official (see § 660.18, subpart C) that the candidate has successfully met all requirements for certification as specified in paragraph (e)(1)(ii) of this section.

(ii) *Denial of a certification.* The NMFS observer certification official (see § 660.18, subpart C) will issue a written IAD denying observer certification when the observer certification official determines that a candidate has unresolvable deficiencies in meeting the requirements for certification as specified in § 660.18, subpart C. The IAD will identify the reasons certification was denied and what requirements were deficient.

(iii) *Appeals.* A candidate who receives an IAD that denies his or her certification may appeal pursuant to § 660.18, subpart C. A candidate who appeals the IAD will not be issued an interim observer certification, and will not receive a certification unless the final resolution of that appeal is in the candidate's favor.

(3) *Endorsements.* The following endorsements must be obtained, in addition to observer certification, in order for an observer to deploy.

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

(ii) *Annual general endorsements.* Each observer must obtain an annual general endorsement to their certification prior to his or her first deployment within any calendar year subsequent to a year in which a certification training endorsement is obtained. To obtain an annual general endorsement, an observer must successfully complete the annual briefing, as specified by the Observer Program. All briefing attendance, performance, and conduct standards required by the Observer Program must be met.

(iii) *Deployment endorsements.* Each observer who has completed an initial deployment after certification or annual briefing must receive a deployment endorsement to their certification prior to any subsequent deployments for the remainder of that year. An observer may obtain a deployment endorsement by successfully completing all pre-cruise briefing requirements. The type of briefing the observer must attend and successfully complete will be specified in writing by the Observer Program during the observer's most recent debriefing.

(iv) *Pacific whiting fishery endorsements.* A Pacific whiting fishery endorsement is required for purposes of performing observer duties aboard vessels that process groundfish at sea in the Pacific whiting fishery. A Pacific whiting fishery endorsement to an observer's certification may be obtained by meeting the following requirements:

(A) Be a prior NMFS-certified observer in the groundfish fisheries off Alaska or the Pacific Coast, unless an individual with this qualification is not available;

(B) Receive an evaluation by NMFS for his or her most recent deployment (if any) that indicated that the observer's performance met Observer Program expectations for that deployment;

(C) Successfully complete a NMFS-approved observer training and/or Pacific whiting briefing as prescribed by the Observer Program; and

(D) Comply with all of the other requirements of this section.

(4) *Standards of observer conduct*—(i) *Standards of behavior.* Observers must avoid any behavior that could adversely affect the confidence of the public in the integrity of the Observer Program or of the government, including but not limited to the following:

(A) Observers must perform their assigned duties as described in the Observer Manual or other written instructions from the Observer Program Office.

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

(C) Observers must not disclose collected data and observations made on board the vessel or in the processing facility to any person except the owner or operator of the observed vessel or processing facility, an authorized officer, or NMFS.

(D) Observers must refrain from engaging in any illegal actions or any other activities that would reflect negatively on their image as professional scientists, on other observers, or on the Observer Program as a whole. This includes, but is not limited to:

(*1*) Violating the drug and alcohol policy established by and available from the Observer Program;

(*2*) Engaging in the use, possession, or distribution of illegal drugs; or

(*3*) Engaging in physical sexual contact with personnel of the vessel or processing facility to which the observer is assigned, or with any vessel or processing plant personnel who may be substantially affected by the performance or non-performance of the observer's official duties.

§ 660.17 Catch monitors and catch monitor service providers. [Reserved]

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

(a) *Observer certification official.* The Regional Administrator (or a designee) will designate a NMFS observer certification official who will make decisions for the Observer Program Office on whether to issue or deny observer certification pursuant to the regulations at § 660.16(e), subpart C.

(b) *Observer suspension and decertification.*

(1) *Suspension and decertification review official.* The Regional Administrator (or a designee) will designate a suspension and decertification review official(s), who will have the authority to review certifications and issue initial administrative determinations of certification suspension and/or decertification.

(2) *Causes for suspension or decertification.* The suspension/decertification official may initiate suspension or decertification proceedings against an observer:

(i) When it is alleged that the observer has committed any acts or omissions of any of the following:

(A) Failed to satisfactorily perform the duties of observers as specified in writing by the NMFS Observer Program; or

(B) Failed to abide by the standards of conduct for observers as prescribed under § 660.16(e)(4), subpart C.

(ii) Upon conviction of a crime or upon entry of a civil judgment for:

(A) Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties as specified in writing by the NMFS Observer Program;

(B) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(C) Commission of any other offense indicating a lack of integrity or honesty that seriously and directly affects the fitness of observers.

(D) Conflict of interest as specified at § 660.18 (d) of this section.

(3) *Issuance of initial administrative determination.* Upon determination that suspension or decertification is warranted under § 660.18(b) of this section the suspension/decertification official will issue a written IAD to the observer and send it via certified mail to the observer's most current address of record as provided to NMFS. The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken. If the IAD issues a suspension of a certification, the terms of the suspension will be specified. Suspension or decertification is effective immediately as of the date of issuance, unless the suspension/decertification official notes a compelling reason for maintaining certification for a specified period and under specified conditions.

(4) *Appeals.* A certified observer who receives an IAD that suspends or revokes certification may appeal pursuant to paragraph (c) of this section.

(c) *Appeals process*—(1) *Decisions.* Decisions on appeals of initial administrative decisions denying certification to, or suspending, or decertifying, will be made by the Regional Administrator (or designated official). Appeals decisions shall be in writing and shall state the reasons therefore.

(2) *Filing an appeal of the determination.* An appeal must be filed with the Regional Administrator within 30 days of the initial administrative determination denying, suspending, or revoking the certification.

(3) *Content of an appeal.* The appeal must be in writing, and must allege facts or circumstances to show why the certification should be granted, or should not be suspended or revoked, under the criteria in this section.

(4) *Decision on an appeal.* Absent good cause for further delay, the Regional Administrator (or designated official) will issue a written decision on the appeal within 45 days of receipt of the appeal. The Regional Administrator's decision is the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce as of the date of the decision.

(d) *Limitations on conflict of interest*—(1) *Limitations on conflict of interest for observers:* (i) Must not have a direct financial interest, other than the provision of observer or catch monitor services, in a North Pacific fishery managed pursuant to an FMP for the waters off the coast of Alaska, Alaska state waters, or in a Pacific Coast fishery managed by either the state or Federal governments in waters off Washington, Oregon, or California, including but not limited to:

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

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

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

(ii) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(iii) May not serve as observer on any vessel or at any shoreside or floating stationary processing facility owned or operated where a person was previously employed.

(iv) May not solicit or accept employment as a crew member or an employee of a vessel, shoreside processor, or stationary floating

processor while employed by an observer or catch monitor provider.

(2) Provisions for remuneration of observers or catch monitors under this section do not constitute a conflict of interest.

(3) *Limitations on conflict of interest for catch monitors.* [Reserved]

(4) *Limitations on conflict of interest for catch monitors providers.* [Reserved]

§ 660.20 Vessel and gear identification.

(a) *Vessel identification*—(1) *Display.* The operator of a vessel that is over 25 ft (7.6 m) in length and is engaged in commercial fishing for groundfish must display the vessel's official number on the port and starboard sides of the deckhouse or hull, and on a weather deck so as to be visible from above. The number must contrast with the background and be in block Arabic numerals at least 18 inches (45.7 cm) high for vessels over 65 ft (19.8 m) long and at least 10 inches (25.4 cm) high for vessels between 25 and 65 ft (7.6 and 19.8 m) in length. The length of a vessel for purposes of this section is the length set forth in USCG records or in state records, if no USCG record exists.

(2) *Maintenance of numbers.* The operator of a vessel engaged in commercial fishing for groundfish must keep the identifying markings required by paragraph (a)(1) of this section clearly legible and in good repair, and must ensure that no part of the vessel, its rigging, or its fishing gear obstructs the view of the official number from an enforcement vessel or aircraft.

(3) *Commercial passenger vessels.* This section does not apply to vessels carrying fishing parties on a per-capita basis or by charter.

(b) *Gear identification.* Gear identification requirements specific to fisheries using fixed gear (limited entry and open access) are described at § 660.219, subpart E and § 660.319, subpart F.

§ 660.24 Limited entry and open access fisheries.

(a) *General.* All commercial fishing for groundfish must be conducted in accordance with the regulations governing limited entry and open access fisheries, except such fishing by treaty Indian tribes as may be separately provided for.

(b) [Reserved]

§ 660.25 Permits.

(a) *General.* Each of the permits or licenses in this section has different conditions or privileges as part of the permit or license. The permits or licenses in this section confer a conditional privilege of participating in the Pacific coast groundfish fishery, in accordance with Federal regulations in 50 CFR part 660, subparts C through G.

(b) *Limited entry permit*—(1) *Eligibility and registration*—(i) *General.* In order for a vessel to be used to fish in the limited entry fishery, the vessel owner must hold a limited entry permit and, through SFD, must register that vessel for use with a limited entry permit. When participating in the limited entry fishery, a vessel is authorized to fish with the gear type endorsed on the limited entry permit registered for use with that vessel, except that the MS permit does not have a gear endorsement. There are three types of gear endorsements: Trawl, longline, and pot (or trap). All limited entry permits, except the MS permit, have size endorsements; a vessel registered for use with a limited entry permit must comply with the vessel size requirements of this subpart. A sablefish endorsement is also required for a vessel to be used to fish in the primary season for the limited entry fixed gear sablefish fishery, north of 36° N. lat. Certain limited entry permits will also have endorsements required for participation in a specific fishery, such as the MS/CV endorsement and the C/P endorsement.

(A) Until the trawl rationalization program is implemented, a catcher vessel participating in either the Pacific whiting shorebased or mothership sector must, in addition to being registered for use with a limited entry permit, be registered for use with a sector-appropriate Pacific whiting vessel license under § 660.26, subpart C. A vessel participating in the Pacific whiting catcher/processor sector must, in addition to being registered for use with a limited entry permit, be registered for use with a sector-appropriate Pacific whiting vessel license under § 660.26, subpart C. Although a mothership vessel participating in the Pacific whiting mothership sector is not required to be registered for use with a limited entry permit, such vessel must be registered for use with a sector-appropriate Pacific whiting vessel license under § 660.26, subpart C.

(B) [Reserved]

(ii) *Eligibility.* Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12113 (a) may be issued or may hold a limited entry permit.

(iii) *Registration.* Limited entry permits will normally be registered for use with a particular vessel at the time the permit is issued, renewed, transferred, 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 transfer 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 issuance of the transferred permit.

(iv) *Limited entry permits indivisible.* Limited entry permits may not be divided for use by more than one vessel.

(v) *Initial administrative determination.* SFD will make an IAD regarding permit endorsements, renewal, replacement, 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, or change in vessel registration. The SFD will decline to act on an application for permit endorsement, renewal, transfer, replacement, or 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.

(2) *Mothership (MS) permit.* The MS permit conveys a conditional privilege for the vessel registered to it,, to participate in the MS fishery by receiving and processing deliveries of groundfish in the Pacific whiting mothership sector. An MS permit is a type of limited entry permit. An MS permit does not have any endorsements affixed to the permit, as listed in paragraph (b)(3) of this section. The provisions for the MS permit, including eligibility, renewal, change of permit ownership, vessel registration, fees, and appeals are described at § 660.150, subpart D.

(3) *Endorsements*—(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 transferable with the limited entry permit to another person, or to a different vessel under the same ownership 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.

(ii) *Gear endorsement.* There are three types of gear endorsements: Trawl, longline and pot (trap). When limited entry "A"-endorsed permits were first issued, some vessel owners qualified for more than one type of gear endorsement based on the landings history of their vessels. Each limited entry "A"-endorsed permit has one or more gear endorsement(s). Gear endorsement(s) assigned to the permit at the time of issuance will be permanent and shall not be modified. While participating in the limited entry fishery, the vessel registered to the limited entry "A"-endorsed permit is authorized to fish the gear(s) endorsed on the permit. While participating in the limited entry, fixed gear primary fishery for sablefish described at § 660.231, subpart E, a vessel registered to more than one limited entry permit is authorized to fish with any gear, except trawl gear, endorsed on at least one of the permits registered for use with that vessel. During the limited entry fishery, permit holders may also fish with open access gear, except that vessels fishing against primary sablefish season cumulative limits described at § 660.231, subpart E, may not fish with open access gear against those limits. An MS permit does not have a gear endorsement.

(iii) *Vessel size endorsements*—(A) *General.* Each limited entry "A"-endorsed permit will be endorsed with the LOA for the size of the vessel that initially qualified for the permit, except when permits are combined into one permit to be registered for use with a vessel requiring a larger size endorsement, the new permit will be endorsed for the size that results from the combination of the permits.

(B) *Limitations of size endorsements.* (*1*) A limited entry permit may be registered for use with a vessel up to 5 ft (1.52 m) longer than, the same length as, or any length shorter than, the size endorsed on the existing permit without requiring a combination of permits or a change in the size endorsement.

(*2*) The vessel harvest capacity rating for each of the permits being combined is that indicated in Table 3 of subpart C for the LOA (in feet) endorsed on the respective limited entry permit. Harvest capacity ratings for fractions of a foot in vessel length will be determined by multiplying the fraction of a foot in vessel length by the difference in the two ratings assigned to the nearest integers of vessel length. The length rating for the combined permit is that indicated for the sum of the vessel harvest capacity ratings for each permit being combined. If that sum falls between the sums for two adjacent lengths on Table 3 of subpart C, the length rating shall be the higher length.

(C) *Size endorsement requirements for sablefish-endorsed permits.* Notwithstanding paragraphs (b)(3)(iii)(A) and (B) of this section, when multiple permits are "stacked" on a vessel, as described in paragraph (b)(4)(iii), at least one of the permits must meet the size requirements of those sections. The permit that meets the size requirements of those sections is considered the vessel's "base" permit, as defined in § 660.11, subpart C. If more than one permit registered for use with the vessel has an appropriate length endorsement for that vessel, NMFS SFD will designate a base permit by selecting the permit that has been registered to the vessel for the longest time. If the permit owner objects to NMFS' selection of the base permit, the permit owner may send a letter to NMFS SFD requesting the change and the reasons for the request. If the permit requested to be changed to the base permit is appropriate for the length of the vessel, NMFS SFD will reissue the permit with the new base permit. Any additional permits that are stacked for use with a vessel participating in the limited entry fixed gear primary sablefish fishery may be registered for use with a vessel even if the vessel is more than 5 ft (1.5 m) longer or shorter than the size endorsed on the permit.

(iv) *Sablefish endorsement and tier assignment*—(A) *General.* Participation in the limited entry fixed gear sablefish fishery during the primary season north of 36° N. lat., described in § 660.231, Subpart E, requires that an owner of a vessel hold (by ownership or lease) a limited entry permit, registered for use with that vessel, with a longline or trap (or pot) endorsement and a sablefish endorsement. Up to three permits with sablefish endorsements may be registered for use with a single vessel. Limited entry permits with sablefish endorsements are assigned to one of three different cumulative trip limit tiers, based on the qualifying catch history of the permit.

(*1*) A sablefish endorsement with a tier assignment will be affixed to the permit and will remain valid when the permit is transferred.

(*2*) A sablefish endorsement and its associated tier assignment are not separable from the limited entry permit, and therefore may not be transferred separately from the limited entry permit.

(B) *Issuance process for sablefish endorsements and tier assignments.* No new applications for sablefish endorsements will be accepted after November 30, 1998. All tier assignments and subsequent appeals processes were completed by September 1998.

(C) *Ownership requirements and limitations.* (*1*) No partnership or corporation may own a limited entry permit with a sablefish endorsement unless that partnership or corporation owned a limited entry permit with a sablefish endorsement on November 1, 2000. Otherwise, only individual human persons may own limited entry permits with sablefish endorsements.

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

(*3*) A partnership or corporation will lose the exemptions provided in paragraphs (b)(3)(iv)(C)(*1*) and (*2*) of this section on the effective date of any change in the corporation or partnership from that which existed on November 1, 2000. A "change" in the partnership or

corporation is defined at § 660.11, subpart C. A change in the partnership or corporation must be reported to SFD within 15 calendar days of the addition of a new shareholder or partner.

(*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 transfer 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 up to a year from the date the last permit was approved for transfer, and retain their exemption from the owner-on-board requirements. An individual person, partnership or corporation could only obtain a permit if it has not added or changed individuals since November 1, 2000, excluding individuals that have left the partnership or corporation or that have died.

(D) *Sablefish at-sea processing prohibition and exemption.* Vessels are prohibited from processing sablefish at sea that were caught in the primary sablefish fishery without sablefish at-sea processing exemptions. 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 is not transferable to any other vessel, vessel owner, or permit owner for any reason. The sablefish at-sea processing exemption will expire upon transfer of the vessel to a new owner or if the vessel is totally lost, as defined at § 660.11, subpart C.

(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, subpart D. 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, subpart D.

(vi) *C/P endorsement.* A C/P endorsement on a trawl limited entry permit conveys a conditional privilege that allows a vessel registered to it to fish in the C/P Coop Program described at § 660.160, subpart D. The provisions for the C/P-endorsed limited entry permit, including eligibility, renewal, change of permit ownership, vessel registration, combinations, fees, and appeals are described at § 660.160, subpart D.

(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 transferred separately from the limited entry permit. Sablefish at-sea processing exemptions are associated with the vessel and not with the limited entry permit and may not be transferred at all.

(4) *Limited entry permit actions—renewal, combination, stacking, change of permit ownership or permit holdership, and transfer*—(i) *Renewal of limited entry permits and gear endorsements.* (A) Limited entry permits expire at the end of each calendar year, and must be renewed between October 1 and November 30 of each year in order to remain in force the following year.

(B) Notification to renew limited entry permits will be issued by SFD prior to September 1 each year to the permit owner's most recent address in the SFD record. The permit owner shall provide SFD with notice of any address change within 15 days of the change.

(C) Limited entry permit renewal requests received in SFD between November 30 and December 31 will be effective on the date that the renewal is approved. A limited entry permit that is allowed to expire will not be renewed unless the permit owner requests reissuance by March 31 of the following year and the SFD determines that failure to renew was proximately caused by illness, injury, or death of the permit owner.

(D) Limited entry permits with sablefish endorsements, as described at paragraph (b)(3)(iv) of this section, will not be renewed until SFD has received complete documentation of permit ownership as required under paragraph (b)(3)(iv)(C)(*4*) of this section.

(E) Limited entry permits with an MS/CV endorsement or an MS permit, will not be renewed until SFD has received complete documentation of permit ownership as required under § 660.150(g) and § 660.150(f) of subpart D, respectively.

(ii) *Combining limited entry "A" permits.* Two or more limited entry permits with "A" gear endorsements for the same type of limited entry gear may be combined and reissued as a single permit with a larger size endorsement as described in paragraph (b)(3)(iii) of this section.

(A) *Sablefish-endorsed permit.* With respect to limited entry permits endorsed for longline and pot (trap) gear, a sablefish endorsement will be issued for the new permit only if all of the permits being combined have sablefish endorsements. If two or more permits with sablefish endorsements are combined, the new permit will receive the same tier assignment as the tier with the largest cumulative landings limit of the permits being combined.

(B) *MS/CV-endorsed permit.* When an MS/CV-endorsed permit is combined with another non-C/P-endorsed permit (including unendorsed permits), the resulting permit will be MS/CV-endorsed. If an MS/CV-endorsed permit is combined with a C/P-endorsed permit, the MS/CV endorsement and catch history assignment will not be reissued on the combined permit.

(C) *C/P-endorsed permit.* A C/P-endorsed permit that is combined with

a limited entry trawl permit that is not C/P-endorsed will result in a single C/P-endorsed permit with a larger size endorsement. An MS/CV endorsement on one of the permits being combined will not be reissued on the resulting permit.

(iii) *Stacking limited entry permits.* "Stacking" limited entry permits, as defined at § 660.11, subpart C, refers to the practice of registering more than one sablefish-endorsed permit for use with a single vessel. Only limited entry permits with sablefish endorsements may be stacked. Up to 3 limited entry permits with sablefish endorsements may be registered for use with a single vessel during the primary sablefish season described at § 660.231, subpart E. Privileges, responsibilities, and restrictions associated with stacking permits to fish in the primary sablefish fishery are described at § 660.231, subpart E and at paragraph (b)(3)(iv) of this section.

(iv) *Changes in permit ownership and permit holder.* (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 that does not meet the ownership requirements for such permit described at § 660.150(g)(3), subpart D. 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.

(*1*) During the initial issuance application period for the trawl rationalization program, NMFS will not review or approve any request for a change in limited entry trawl permit owner at any time during the application period, as specified at § 660.140(d)(8)(viii) for QS applicants, at § 660.150(g)(6)(vii) for MS/CV endorsement applicants, and at § 660.160(d)(7)(vi) for C/P endorsement applicants. The initial issuance application period for the trawl rationalization program will begin on either November 1, 2010 or the date upon which the application is received by NMFS, whichever occurs first.

(*2*) [Reserved]

(B) *Effective date.* The change in ownership of the permit or change in the permit holder will be effective on the day the change is approved by SFD, unless there is a concurrent change in the vessel registered to the permit. Requirements for changing the vessel registered to the permit are described at paragraph (e) of this section.

(C) *Sablefish-endorsed permits.* If a permit owner submits an application to transfer a sablefish-endorsed limited entry permit to a new permit owner or holder (transferee) during the primary sablefish season described at § 660.231, subpart E (generally April 1 through October 31), the initial permit owner (transferor) must certify on the application form the cumulative quantity, in round weight, of primary season sablefish landed against that permit as of the application signature date for the then current primary season. The transferee must sign the application form acknowledging the amount of landings to date given by the transferor. This certified amount should match the total amount of primary season sablefish landings reported on state landing receipts. As required at § 660.12(b), subpart C, any person landing sablefish must retain on board the vessel from which sablefish is landed, and provide to an authorized officer upon request, copies of any and all reports of sablefish landings from the primary season containing all data, and in the exact manner, required by the applicable state law throughout the primary sablefish season during which a landing occurred and for 15 days thereafter.

(v) *Changes in vessel registration-transfer of limited entry permits and gear endorsements*—(A) *General.* A permit may not be used with any vessel other than the vessel registered to that permit. For purposes of this section, a permit transfer occurs when, through SFD, a permit owner registers a limited entry permit for use with a new vessel. Permit transfer applications must be submitted to SFD with the appropriate documentation described at paragraph (b)(4)(vii) of this section. Upon receipt of a complete application, and following review and approval of the application, the SFD will reissue the permit registered to the new vessel. Applications to transfer limited entry permits with sablefish endorsements will not be approved until SFD has received complete documentation of permit ownership as described at paragraph (b)(3)(iv)(C)(*4*) of this section and as required under paragraph (b)(4)(vii) of this section.

(B) *Application.* A complete application must be submitted to SFD in order for SFD to review and approve a change in vessel registration. At a minimum, a permit owner seeking to transfer a limited entry permit shall submit to SFD a signed application form and his/her current limited entry permit before the first day of the cumulative limit period in which they wish to fish. If a permit owner provides a signed application and current limited entry permit after the first day of a cumulative limit period, the permit will not be effective until the succeeding cumulative limit period. SFD will not approve a change in vessel registration (transfer) until it receives a complete application, the existing permit, a current copy of the USCG 1270, and other required documentation.

(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 transfer form and the original limited entry permit. No transfer is effective until the limited entry permit has been reissued as registered with the new vessel.

(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, subpart E (generally April 1 through October 31), the initial permit owner (transferor) must certify on the application form the cumulative quantity, in round weight, of primary season sablefish landed against that permit as of the application signature date for the then current primary season. The new permit owner or holder (transferee) associated with the new vessel must sign the application form acknowledging the amount of landings to date given by the transferor. This certified amount should match the total amount of primary season sablefish landings reported on state landing receipts. As required at § 660.12(b), subpart C, any person landing sablefish must retain on board the vessel from which sablefish is landed, and provide to an authorized officer upon request, copies of any and all reports of sablefish landings from the primary season containing all data, and in the exact manner, required by the applicable state law throughout the primary sablefish season during which a landing occurred and for 15 days thereafter.

(vi) *Restriction on frequency of transfers*—(A) *General.* A permit owner may designate the vessel registration for a permit as "unidentified," meaning that no vessel has been identified as registered for use with that permit. No vessel is authorized to use a permit with

the vessel registration designated as "unidentified." A vessel owner who removes a permit from his vessel and registers that permit as "unidentified" is not exempt from VMS requirements at § 660.14, subpart C unless specifically authorized by that section. When a permit owner requests that the permit's vessel registration be designated as "unidentified," the transaction is not considered a "transfer" for purposes of this section. Any subsequent request by a permit owner to change from the "unidentified" status of the permit in order to register the permit with a specific vessel will be considered a change in vessel registration (transfer) and subject to the restriction on frequency and timing of changes in vessel registration (transfer).

(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 (transfer) 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, subpart C. 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.

(C) *Limited entry MS permits and limited entry permits with MS/CV or C/P endorsements.* Limited entry MS permits and limited entry permits with MS/CV or C/P endorsements may be registered to another vessel up to two times during the fishing season as long as the second transfer is back to the original vessel. The original vessel is either the vessel registered to the permit as of January 1, or if no vessel is registered to the permit as of January 1, the original vessel is the first vessel to which the permit is registered after January 1. After the original vessel has been established, the first transfer would be to another vessel, but any second transfer must be back to the original vessel.

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

(A) For a request to change a vessel registration and/or change in permit ownership or permit holder, the permit owner must provide SFD with a current copy of the USCG Form 1270 for vessels of 5 net tons or greater, or a current copy of a state registration form for vessels under 5 net tons.

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

(C) For a request to change permit ownership for an MS permit or for a request to change a vessel registration and/or change in permit ownership or permit holder for an MS/CV-endorsed limited entry trawl permit, an Identification of Ownership Interest Form must be completed and included with the application form.

(D) For a request to change the vessel registration to a permit, the permit owner must submit to SFD a current marine survey conducted by a certified marine surveyor in accordance with USCG regulations to authenticate the length overall of the vessel being newly registered with the permit. Marine surveys older than 3 years at the time of the request for change in vessel registration will not be considered "current" marine surveys for purposes of this requirement.

(E) For a request to change a permit's ownership where the current permit owner is a corporation, partnership or other business entity, the applicant must provide to SFD a corporate resolution that authorizes the conveyance of the permit to a new owner and which authorizes the individual applicant to request the conveyance on behalf of the corporation, partnership, or other business entity.

(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 transfers the permit to a designated individual(s); or, provides legal authority to the transferor to convey the permit ownership.

(G) For a request to change a permit's ownership that is necessitated by divorce, the individual requesting the change in permit ownership must submit an executed divorce decree that awards the permit to a designated individual(s).

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

(viii) *Application forms available.* Application forms for the change in vessel registration (transfer) and change of permit ownership or permit holder of limited entry permits are available from the SFD (see part 600 for address of the Regional Administrator). 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, transferred, registered, or replaced.

(5) *Small fleet.* (i) Small limited entry fisheries fleets that are controlled by a local government, are in existence as of July 11, 1991, and have negligible impacts on the groundfish resource, may be certified as consistent with the goals and objectives of the limited entry program and incorporated into the limited entry fishery. Permits issued under this subsection will be issued in accordance with the standards and procedures set out in the PCGFMP and will carry the rights explained therein.

(ii) A permit issued under this section may be registered only to another vessel that will continue to operate in the same certified small fleet, provided that the total number of vessels in the fleet does not increase. A vessel may not use a small fleet limited entry permit for participation in the limited entry fishery outside of authorized activities of the small fleet for which that permit and vessel have been designated.

(c) *Quota share (QS) permit.* A QS permit conveys a conditional privilege to a person to own QS or IBQ for designated species and species groups and to fish in the Shorebased IFQ Program described § 660.140, subpart D. A QS permit is not a limited entry permit. The provisions for the QS permit, including eligibility, renewal, change of permit ownership, accumulation limits, fees, and appeals are described at § 660.140, subpart D.

(d) *First receiver site license.* The first receiver site license conveys a conditional privilege to a first receiver to receive, purchase, or take custody, control or possession of landings from the Shorebased IFQ Program. The first receiver site license is issued for a person and a unique physical site consistent with the terms and

conditions required to account for and weigh the landed species. A first receiver site license is not a limited entry permit. The provisions for the First Receiver Site License, including eligibility, registration, change of ownership, fees, and appeals are described at § 660.140(f), subpart D.

(e) *Coop permit.* [Reserved]

(1) *MS coop permit.* [Reserved]

(2) *C/P coop permit.* [Reserved]

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

(g) *Permit appeals process*—(1) *General.* For permit actions, including issuance, renewal, change in vessel registration, change in permit owner or permit holder, and endorsement upgrade, the Assistant Regional Administrator for Sustainable Fisheries will make an initial administrative determination (IAD) on the action. In cases where the applicant disagrees with the IAD, the applicant may appeal that decision. Final decisions on appeals of IADs regarding issuance, renewal, change in vessel registration, change in permit owner or permit holder, and endorsement upgrade, will be made in writing by the Regional Administrator acting on behalf of the Secretary of Commerce and will state the reasons therefore. This section describes the procedures for appealing the IAD on permit actions made in this title under subparts C through G of part 660. Additional information regarding appeals of an IAD related to the trawl rationalization program is contained in the specific program sections under subpart D of part 660.

(2) *Who May Appeal?* Only a person who received an IAD that disapproved any part of their application may file a written appeal. For purposes of this section, such person will be referred to as the "applicant."

(3) *Submission of appeals.* (i) The appeal must be in writing, must allege credible facts or circumstances to show why the criteria in this subpart have been met, and must include any relevant information or documentation to support the appeal.

(ii) Appeals must be mailed or faxed to: National Marine Fisheries Service, Northwest Region, Sustainable Fisheries Division, ATTN: Appeals, 7600 Sand Point Way NE., Seattle, WA, 98115; Fax: 206–526–6426; or delivered to National Marine Fisheries Service at the same address.

(4) *Timing of appeals.* (i) If an applicant appeals an IAD, the appeal must be postmarked, faxed, or hand delivered to NMFS no later than 30 calendar days after the date on the IAD. If the applicant does not appeal the IAD within 30 calendar days, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(ii) The time period to submit an appeal begins with the date on the IAD. If the last day of the time period is a Saturday, Sunday, or Federal holiday, the time period will extend to the close of business on the next business day.

(5) *Address of record.* For purposes of the appeals process, NMFS will establish as the address of record, the address used by the applicant in initial correspondence to NMFS. Notifications of all actions affecting the applicant after establishing an address of record will be mailed to that address, unless the applicant provides NMFS, in writing, with any changes to that address. NMFS bears no responsibility if a notification is sent to the address of record and is not received because the applicant's actual address has changed without notification to NMFS.

(6) *Decisions on appeals.* (i) For the appeal of an IAD related to the application and initial issuance process for the trawl rationalization program listed in subpart D of part 660, the Regional Administrator shall appoint an appeals officer. After determining there is sufficient information and that all procedural requirements have been met, the appeals officer will review the record and issue a recommendation on the appeal to the Regional Administrator, which shall be advisory only. The recommendation must be based solely on the record. Upon receiving the findings and recommendation, the Regional Administrator shall issue a final decision on the appeal acting on behalf of the Secretary of Commerce in accordance with paragraph (g)(6)(ii) of this section.

(ii) *Final decision on appeal.* The Regional Administrator will issue a written decision on the appeal which is the final decision of the Secretary of Commerce.

(7) *Status of permits pending appeal.* (i) For all permit actions, except those actions related to the application and initial issuance process for the trawl rationalization program listed in subpart D of part 660, the permit registration remains as it was prior to the request until the final decision has been made.

(ii) For permit actions related to the application and initial issuance process for the trawl rationalization program listed in subpart D of part 660, the status of permits pending appeal is as follows:

(A) For permit and endorsement qualifications and eligibility appeals (i.e., QS permit, MS permit, MS/CV endorsement, C/P endorsement), any permit or endorsement under appeal after December 31, 2010 may not be used to fish in the Pacific Coast groundfish fishery until a final decision on the appeal has been made. If the permit or endorsement will be issued, the permit or endorsement will be effective upon approval, except for QS permits, which will be effective at the start of the next fishing year.

(B) For a QS or IBQ amount for specific IFQ management unit species under appeal, the QS or IBQ amount for the IFQ species under appeal will remain as the amount assigned to the associated QS permit in the IAD). The QS permit may be used to fish in the Pacific Coast groundfish fishery with the QS or IBQ amounts assigned to the QS permit in the IAD. Once a final decision on the appeal has been made and if a revised QS or IBQ amount for a specific IFQ species will be assigned to the QS permit, the additional QS or IBQ amount associated with the QS permit will be effective at the start of the next calendar year following the final decision.

(C) For a Pacific whiting catch history assignment associated with an MS/CV endorsement under appeal, the catch history assignment will remain as that previously assigned to the associated MS/CV-endorsed limited entry permit in the IAD). The MS/CV-endorsed limited entry permit may be used to fish in the Pacific Coast groundfish fishery with the catch history assigned to the MS/CV-endorsed permit in the IAD. Once a final decision on the appeal has been made, and if a revised catch history assignment will be issued, the additional Pacific whiting catch history assignment associated with the MS/CV endorsement will be effective at the start of the next calendar year following the final decision.

(h) *Permit sanctions.* (1) All permits and licenses issued or applied for under Subparts C through G are subject to sanctions pursuant to the Magnuson-Stevens Act at 16 U.S.C. 1858(g) and 15 CFR part 904, subpart D.

(2) All Shorebased IFQ Program permits (QS permit, first receiver site license), QS accounts, vessel accounts, and MS Coop Program permits (MS permit, MS/CV-endorsed permit, and MS coop permit), and C/P Coop Program permits (C/P-endorsed permit, C/P coop permit) issued under subpart D:

(i) Are considered permits for the purposes of 16 U.S.C. 1857, 1858, and 1859;

(ii) May be revoked, limited, or modified at any time in accordance with the Magnuson-Stevens Act, including revocation if the system is found to have jeopardized the sustainability of the stocks or the safety of fishermen;

(iii) Shall not confer any right of compensation to the holder of such permits, licenses, and accounts if it is revoked, limited, or modified;

(iv) Shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested by the holder; and

(v) Shall be considered a grant of permission to the holder of the permit, license, or account to engage in activities permitted by such permit, license, or account.

§ 660.26 Pacific whiting vessel licenses.

(a) *General.* After May 11, 2009, participation in the Pacific whiting seasons described in § 660.131(b), subpart D requires:

(1) An owner of any vessel that catches Pacific whiting must own a limited entry permit, registered for use with that vessel, with a trawl gear endorsement; and, a Pacific whiting vessel license registered for use with that vessel and appropriate to the sector or sectors in which the vessel intends to fish;

(2) An owner of any mothership vessel that processes Pacific whiting to hold a Pacific whiting vessel license registered for use with that vessel and appropriate to the sector or sectors in which the vessel intends to fish.

(b) *In combination with a limited entry permit.* Pacific whiting vessel licenses are separate from limited entry permits and do not license a vessel to harvest Pacific whiting in the primary Pacific whiting season unless that vessel is also registered for use with a limited entry permit with a trawl gear endorsement.

(c) *Pacific whiting vessel license qualifying criteria*—(1) *Qualifying catch and/or processing history.* Vessel catch and/or processing history will be used to determine whether that vessel meets the qualifying criteria for a Pacific whiting vessel license and to determine the sectors for which that vessel may qualify. Vessel catch and/or processing history includes only the catch and/or processed product of that particular vessel, as identified in association with the vessel's USCG number. Only Pacific whiting regulated 50 CFR part 660, subparts C and D that was taken with midwater (or pelagic) trawl gear will be considered for the Pacific whiting vessel license. Pacific whiting harvested or processed by a vessel that has since been totally lost, scrapped, or is rebuilt such that a new U.S.C.G. documentation number would be required will not be considered for this license. Pacific whiting harvested or processed illegally or landed illegally will not be considered for this license. Catch and/or processing history associated with a vessel whose permit was purchased by the Federal Government through the Pacific Coast groundfish fishing capacity reduction program, as identified at 68 FR 62435 (November 4, 2003), does not qualify a vessel for a Pacific whiting vessel license and no vessel owner may apply for or receive a Pacific whiting vessel license based on catch and/or processing history from one of those buyback vessels. The following sector-specific license qualification criteria apply:

(i) For catcher/processor vessels, the qualifying criteria for a Pacific whiting vessel license is evidence of having caught and processed any amount of Pacific whiting during a primary catcher/processor season during the period January 1, 1997 through January 1, 2007.

(ii) For mothership at-sea processing vessels, the qualifying criteria for a Pacific whiting vessel license is documentation of having received and processed any amount of Pacific whiting during a primary mothership season during the period January 1, 1997 through January 1, 2007.

(iii) For catcher vessels delivering Pacific whiting to at-sea mothership processing vessels, the qualifying criteria for a Pacific whiting vessel license is documentation of having delivered any amount of Pacific whiting to a mothership processor during a primary mothership season during the period January 1, 1997, through January 1, 2007.

(iv) For catcher vessels delivering Pacific whiting to Pacific whiting shoreside first receivers, the qualifying criteria for a Pacific whiting vessel license is documentation of having made at least one landing of Pacific whiting taken with midwater trawl gear during a primary shorebased season during the period January 1, 1994, through January 1, 2007, and where the weight of Pacific whiting exceeded 50 percent of the total weight of the landing.

(2) *Documentation and burden of proof.* A vessel owner applying for a Pacific whiting vessel license has the burden to submit documentation that qualification requirements are met. An application that does not include documentation of meeting the qualification requirements during the qualifying years will be considered incomplete and will not be reviewed. The following standards apply:

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

(ii) A certified copy of a State fish receiving ticket is the best documentation of a landing at a Pacific whiting shoreside first receiver, and of the type of gear used.

(iii) For participants in the at-sea Pacific whiting fisheries, documentation of participation could include, but is not limited to: A final observer report documenting a particular catcher vessel, mothership, or catcher/processor's participation in the Pacific whiting fishery in an applicable year and during the applicable primary season, a bill of lading for Pacific whiting from an applicable year and during the applicable primary season, a catcher vessel receipt from a particular mothership known to have fished in the Pacific whiting fishery during an applicable year, a signed copy of a Daily Receipt of Fish and Cumulative Production Logbook (mothership sector) or Daily Fishing and Cumulative Production Logbook (catcher/processor sector) from an applicable year during the applicable primary season.

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

(d) *Issuance process for Pacific whiting vessel licenses.* (1) SFD will mail, to the most recent address provided to the SFD, Permits Office, a Pacific whiting vessel license application to all current and prior owners of vessels that have been registered for use with limited entry permits with trawl endorsements, excluding owners of those vessels whose permits were purchased through the Pacific Coast groundfish fishing capacity reduction program. NMFS will also make license applications available online at: *http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Permits/index.cfm.* A vessel owner who believes that his/her vessel may qualify for the Pacific whiting vessel license will have until May 11, 2009, to submit an application with documentation showing how his/her vessel has met the qualifying criteria described in this section. NMFS will not accept applications for Pacific whiting vessel licenses received after May 11, 2009.

(2) After receipt of a complete application, NMFS will notify applicants by letter of its determination

whether their vessels qualify for Pacific whiting vessel licenses and the sector or sectors to which the licenses apply. Vessels that have met the qualification criteria will be issued the appropriate licenses at that time. After May 11, 2009, NMFS will publish a list of vessels that qualified for Pacific whiting vessel licenses in the **Federal Register.**

(3) If a vessel owner files an appeal from the determination under paragraph (d)(2) of this section, the appeal must be filed with the Regional Administrator within 30 calendar days of the issuance of the letter of determination. The appeal must be in writing and must allege facts or circumstances, and include credible documentation demonstrating why the vessel qualifies for a Pacific whiting vessel license. The appeal of a denial of an application for a Pacific whiting vessel license will not be referred to the Council for a recommendation, nor will any appeals be accepted by NMFS after June 15, 2009.

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

(e) *Notification to NMFS of changes to Pacific whiting vessel license information.* The owner of a vessel registered for use with a Pacific whiting vessel license must provide a written request to NMFS to change the name or names of vessel owners provided on the vessel license, or to change the licensed vessel's name. The request must detail the names of all new vessel owners as registered with U.S. Coast Guard, a business address for the vessel owner, business phone and fax number, tax identification number, date of birth, and/or date of incorporation for each individual and/or entity, and a copy of the vessel documentation (USCG 1270) to show proof of ownership. NMFS will reissue a new vessel license with the names of the new vessel owners and/or vessel name information. The Pacific Whiting vessel license is considered void if the name of the vessel or vessel owner is changed from that given on the license. In addition, the vessel owner must report to NMFS any change in address for the vessel owner within 15 days of that change. Although the name of an individual vessel registered for use with a Pacific whiting vessel license may be changed, the license itself may not be registered to any vessel other than the vessel to which it was originally issued, as identified by that vessel's United States Coast Guard documentation number.

§ 660.30 Compensation with fish for collecting resource information—EFPs.

In addition to the reasons stated in § 600.745(b)(1) of this chapter, an EFP may be issued under this subpart C for the purpose of compensating the owner or operator of a vessel for collecting resource information according to a protocol approved by NMFS. NMFS may issue an EFP allowing a vessel to retain fish as compensation in excess of trip limits or to be exempt from other specified management measures for the Pacific coast groundfish fishery.

(a) *Compensation EFP for vessels under contract with NMFS to conduct a resource survey.* NMFS may issue an EFP to the owner or operator of a vessel that conducted a resource survey according to a contract with NMFS. A vessel's total compensation from all sources (in terms of dollars or amount of fish, including fish from survey samples or compensation fish) will be determined through normal Federal procurement procedures. The compensation EFP will specify the maximum amount or value of fish the vessel may take and retain after the resource survey is completed.

(1) *Competitive offers.* NMFS may initiate a competitive solicitation (request for proposals or RFP) to select vessels to conduct resource surveys that use fish as full or partial compensation, following normal Federal procurement procedures.

(2) *Consultation and approval.* At a Council meeting, NMFS will consult with the Council and receive public comment on upcoming resource surveys to be conducted if groundfish could be used as whole or partial compensation. Generally, compensation fish would be similar to surveyed species, but there may be reasons to provide payment with healthier, more abundant, less restricted stocks, or more easily targeted species. For example, NMFS may decline to pay a vessel with species that are, or are expected to be, overfished, or that are subject to overfishing, or that are unavoidably caught with species that are overfished or subject to overfishing. NMFS may also consider levels of discards, bycatch, and other factors. If the Council does not approve providing whole or partial compensation for the conduct of a survey, NMFS will not use fish, other than fish taken during the scientific research, as compensation for that survey. For each proposal, NMFS will present:

(i) The maximum number of vessels expected or needed to conduct the survey,

(ii) An estimate of the species and amount of fish likely to be needed as compensation,

(iii) When the survey and compensation fish would be taken, and

(iv) The year in which the compensation fish would be deducted from the ABC before determining the optimum yield (harvest guideline or quota).

(3) *Issuance of the compensation EFP.* Upon successful completion of the survey, NMFS will issue a "compensation EFP" to the vessel if it has not been fully compensated. The procedures in § 600.745(b)(1) through (b)(4) of this chapter do not apply to a compensation EFP issued under this subpart for the Pacific coast groundfish fishery (50 CFR part 660, subparts C through G).

(4) *Terms and conditions of the compensation EFP.* Conditions for disposition of bycatch or any excess catch, for reporting the value of the amount landed, and other appropriate terms and conditions may be specified in the EFP. Compensation fishing must occur during the period specified in the EFP, but no later than the end of September of the fishing year following the survey, and must be conducted according to the terms and conditions of the EFP.

(5) *Reporting the compensation catch.* The compensation EFP may require the vessel owner or operator to keep separate records of compensation fishing and to submit them to NMFS within a specified period of time after the compensation fishing is completed.

(6) *Accounting for the compensation catch.* As part of the harvest specifications process, as described at § 660.60, subpart C, NMFS will advise the Council of the amount of fish authorized to be retained under a compensation EFP, which then will be deducted from the next harvest specifications (ABCs) set by the Council. Fish authorized in an EFP too late in the year to be deducted from the following year's ABCs will be accounted for in the next management cycle where it is practicable to do so.

(b) Compensation for commercial vessels collecting resource information under a standard EFP. NMFS may issue an EFP to allow a commercial fishing vessel to take and retain fish in excess of current management limits for the purpose of collecting resource information (§ 600.745(b) of this chapter). The EFP may include a compensation clause that allows the participating vessel to be compensated with fish for its efforts to collect resource information according to NMFS' approved protocol. If

compensation with fish is requested in an EFP application, or proposed by NMFS, the following provisions apply in addition to those at § 600.745(b) of this chapter.

(1) *Application.* In addition to the requirements in § 600.745(b) of this chapter, application for an EFP with a compensation clause must clearly state whether a vessel's participation is contingent upon compensation with groundfish and, if so, the minimum amount (in metric tons, round weight) and the species. As with other EFPs issued under § 600.745 of this chapter, the application may be submitted by any individual, including a state fishery management agency or other research institution.

(2) *Denial.* In addition to the reasons stated in § 600.745(b)(3)(iii) of this chapter, the application will be denied if the requested compensation fishery, species, or amount is unacceptable for reasons such as, but not limited to, the following: NMFS concludes the value of the resource information is not commensurate with the value of the compensation fish; the proposed compensation involves species that are (or are expected to be) overfished or subject to overfishing, fishing in times or areas where fishing is otherwise prohibited or severely restricted, or fishing for species that would involve unavoidable bycatch of species that are overfished or subject to overfishing; or NMFS concludes the information can reasonably be obtained at a less cost to the resource.

(3) *Window period for other applications.* If the Regional Administrator or designee agrees that compensation should be considered, and that more than a minor amount would be used as compensation, then a window period will be announced in the **Federal Register** during which additional participants will have an opportunity to apply. This notification would be made at the same time as announcement of receipt of the application and request for comments required under § 600.745(b). If there are more qualified applicants than needed for a particular time and area, NMFS will choose among the qualified vessels, either randomly, in order of receipt of the completed application, or by other impartial selection methods. If the permit applicant is a state, university, or Federal entity other than NMFS, and NMFS approves the selection method, the permit applicant may choose among the qualified vessels, either randomly, in order of receipt of the vessel application, or by other impartial selection methods.

(4) *Terms and conditions.* The EFP will specify the amounts that may be taken as scientific samples and as compensation, the time period during which the compensation fishing must occur, management measures that NMFS will waive for a vessel fishing under the EFP, and other terms and conditions appropriate to the fishery and the collection of resource information. NMFS may require compensation fishing to occur on the same trip that the resource information is collected.

(5) *Accounting for the catch.* Samples taken under this EFP, as well as any compensation fish, count toward the current year's catch or landings.

§ 660.40 Overfished species rebuilding plans.

For each overfished groundfish stock with an approved rebuilding plan, this section contains the standards to be used to establish annual or biennial OYs, specifically the target date for rebuilding the stock to its MSY level and the harvest control rule to be used to rebuild the stock. The harvest control rule is expressed as a "Spawning Potential Ratio" or "SPR" harvest rate.

(a) *Bocaccio.* The target year for rebuilding the southern bocaccio stock to B_{MSY} is 2026. The harvest control rule to be used to rebuild the southern bocaccio stock is an annual SPR harvest rate of 77.7 percent.

(b) *Canary rockfish.* The target year for rebuilding the canary rockfish stock to B_{MSY} is 2021. The harvest control rule to be used to rebuild the canary rockfish stock is an annual SPR harvest rate of 88.7 percent.

(c) *Cowcod.* The target year for rebuilding the cowcod stock south of Point Conception to B_{MSY} is 2072. The harvest control rule to be used to rebuild the cowcod stock is an annual SPR harvest rate of 82.1 percent.

(d) *Darkblotched rockfish.* The target year for rebuilding the darkblotched rockfish stock to B_{MSY} is 2028. The harvest control rule to be used to rebuild the darkblotched rockfish stock is an annual SPR harvest rate of 62.1 percent.

(e) *Pacific Ocean Perch (POP).* The target year for rebuilding the POP stock to B_{MSY} is 2017. The harvest control rule to be used to rebuild the POP stock is an annual SPR harvest rate of 86.4 percent.

(f) *Widow rockfish.* The target year for rebuilding the widow rockfish stock to B_{MSY} is 2015. The harvest control rule to be used to rebuild the widow rockfish stock is an annual SPR harvest rate of 95.0 percent.

(g) *Yelloweye rockfish.* The target year for rebuilding the yelloweye rockfish stock to B_{MSY} is 2084. The harvest control rule to be used to rebuild the yelloweye rockfish stock is an annual SPR harvest rate of 66.3 percent in 2009 and in 2010. Yelloweye rockfish is subject to a ramp-down strategy where the harvest level has been reduced annually from 2007 through 2009. Yelloweye rockfish will remain at the 2009 level in 2010. Beginning in 2011, yelloweye rockfish will be subject to a constant harvest rate strategy with a constant SPR harvest rate of 71.9 percent.

§ 660.50 Pacific Coast treaty Indian fisheries.

(a) *Pacific Coast treaty Indian tribes have treaty rights.* Pacific Coast treaty Indian tribes have treaty rights to harvest groundfish in their usual and accustomed fishing areas in U.S. waters. In 1994, the United States formally recognized that the four Washington coastal treaty Indian tribes (Makah, Quileute, Hoh, and Quinault) have treaty rights to fish for groundfish in the Pacific Ocean, and concluded that, in general terms, the quantification of those rights is 50 percent of the harvestable surplus of groundfish that pass through the tribes U&A fishing areas.

(b) *Pacific Coast treaty Indian tribes.* For the purposes of this part, Pacific Coast treaty Indian tribes means the Hoh, Makah, and Quileute Indian Tribes and the Quinault Indian Nation.

(c) *Usual and accustomed fishing areas (U&A).* The Pacific Coast treaty Indian tribes' U&A fishing areas within the fishery management area (FMA) are set out below in paragraphs (c)(1) through (c)(4) of this section. Boundaries of a tribe's fishing area may be revised as ordered by a Federal court.

(1) *Makah.* That portion of the FMA north of 48°02.25′ N. lat. (Norwegian Memorial) and east of 125°44′ W. long.

(2) *Quileute.* That portion of the FMA between 48°07.60′ N. lat. (Sand Point) and 47°31.70′ N. lat. (Queets River) and east of 125°44′ W. long.

(3) *Hoh.* That portion of the FMA between 47°54.30′ N. lat. (Quillayute River) and 47°21′ N. lat. (Quinault River) and east of 125°44′ W. long.

(4) *Quinault.* That portion of the FMA between 47°40.10′ N. lat. (Destruction Island) and 46°53.30′ N. lat. (Point Chehalis) and east of 125°44′ W. long.

(d) *Procedures.* The rights referred to in paragraph (a) of this section will be implemented by the Secretary, after consideration of the tribal request, the recommendation of the Council, and the comments of the public. The rights will

be implemented either through an allocation or set-aside of fish that will be managed by the tribes, or through regulations in this section that will apply specifically to the tribal fisheries.

(1) *Tribal allocations, set-asides, and regulations.* An allocation, set-aside or a regulation specific to the tribes shall be initiated by a written request from a Pacific Coast treaty Indian tribe to the Regional Administrator, prior to the first Council meeting in which biennial harvest specifications and management measures are discussed for an upcoming biennial management period. The Secretary generally will announce the annual tribal allocations at the same time as the announcement of the harvest specifications.

(2) *Co-management.* The Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. Accordingly, the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

(e) *Fishing by a member of a Pacific Coast treaty Indian tribe.* A member of a Pacific Coast treaty Indian tribe fishing under this section and within their U&A fishing area is not subject to the provisions of other sections of subparts C through G of this part.

(1) *Identification.* A valid treaty Indian identification card issued pursuant to 25 CFR part 249, subpart A, is prima facie evidence that the holder is a member of the Pacific Coast treaty Indian tribe named on the card.

(2) *Permits.* A limited entry permit described under § 660.25, subpart C is not required for a member of a Pacific Coast treaty Indian tribe to fish in a tribal fishery described in paragraph (d) of this section.

(3) *Federal and tribal laws and regulations.* Any member of a Pacific Coast treaty Indian tribe must comply with this section, and with any applicable tribal law and regulation, when participating in a tribal groundfish fishery described in this section.

(4) *Fishing outside the U&A or without a groundfish allocation.* Fishing by a member of a Pacific Coast treaty Indian tribe outside the applicable Indian tribe's usual and accustomed fishing area, or for a species of groundfish not covered by an allocation, set-aside, or regulation under this section, is subject to the regulations in the other sections of subpart C through subpart G of this part. Treaty fisheries operating within tribal allocations are prohibited from operating outside U&A fishing areas.

(f) *Pacific Coast treaty Indian fisheries allocations and harvest guidelines.* The tribal harvest guideline for black rockfish is provided in paragraph (f)(1) of this section. Tribal fishery allocations for sablefish are provided in paragraph (f)(2) of this section, and Pacific whiting are provided in paragraph (f)(4) of this section. Trip limits for certain species were recommended by the tribes and the Council and are specified here with the tribal allocations.

(1) *Black rockfish.* (i) Harvest guidelines for commercial harvests of black rockfish by members of the Pacific Coast Indian tribes using hook and line gear will be established biennially for two subsequent one-year periods for the areas between the U.S.-Canadian border and Cape Alava (48°09.50′ N. lat.) and between Destruction Island (47°40′ N. lat.) and Leadbetter Point (46°38.17′ N. lat.), in accordance with the procedures for implementing harvest specifications and management measures. Pacific Coast treaty Indians fishing for black rockfish in these areas under these harvest guidelines are subject to the provisions in this section, and not to the restrictions in other sections of subparts C through G of this part.

(ii) For the commercial harvest of black rockfish off Washington State, a treaty Indian tribes' harvest guideline is set at 30,000 lb (13,608 kg) for the area north of Cape Alava, WA (48°09.50′ N. lat) and 10,000 lb (4,536 kg) for the area between Destruction Island, WA (47°40′ N. lat.) and Leadbetter Point, WA (46°38.17′ N. lat.). This harvest guideline applies and is available to the Pacific Coast treaty Indian tribes. There are no tribal harvest restrictions for black rockfish in the area between Cape Alava and Destruction Island.

(2) *Sablefish.* (i) The sablefish allocation to Pacific coast treaty Indian tribes is 10 percent of the sablefish total catch OY for the area north of 36° N. lat. This allocation represents the total amount available to the treaty Indian fisheries before deductions for discard mortality.

(ii) The tribal allocation is 694 mt per year. This allocation is, for each year, 10 percent of the Monterey through Vancouver area (North of 36° N. lat.) OY, less 1.6 percent estimated discard mortality.

(3) *Lingcod.* Lingcod taken in the treaty fisheries are subject to an overall expected total lingcod catch of 250 mt.

(4) *Pacific whiting.* The tribal allocation for 2010 is 49,939 mt.

(5) *Pacific cod.* There is a tribal harvest guideline of 400 mt of Pacific cod. The tribes will manage their fisheries to stay within this harvest guideline.

(g) *Washington coastal tribal fisheries management measures*—(1) *Rockfish.* The tribes will require full retention of all overfished rockfish species and all other marketable rockfish species during treaty fisheries.

(2) *Thornyheads.* The tribes will manage their fisheries to the limited entry trip limits in place at the beginning on the year for both shortspine and longspine thornyheads as follows:

(i) *Trawl gear.* (A) Shortspine thornyhead cumulative trip limits are as follows:

(*1*) Small and large footrope trawl gear—17,000-lb (7,711-kg) per 2 months.

(*2*) Selective flatfish trawl gear—3,000-lb (1,361-kg) per 2 months.

(*3*) Multiple bottom trawl gear—3,000-lb (1,361-kg) per 2 months.

(B) Longspine thornyhead cumulative trip limits are as follows:

(*1*) Small and large footrope trawl gear—22,000-lb (9,979-kg) per 2 months.

(*2*) Selective flatfish trawl gear—5,000-lb (2,268-kg) per 2 months.

(*3*) Multiple bottom trawl gear—5,000-lb (2,268-kg) per 2 months.

(ii) *Fixed gear.* (A) Shortspine thornyhead cumulative trip limits are 2,000-lb (907-kg) per 2 months.

(B) Longspine thornyhead cumulative trip limits are 10,000-lb (4,536-kg) per 2 months.

(3) *Canary rockfish*—are subject to a 300-lb (136-kg) trip limit.

(4) *Yelloweye rockfish*—are subject to a 100-lb (45-kg) trip limit.

(5) *Yellowtail and widow rockfish.* The Makah Tribe will manage the midwater trawl fisheries as follows: Yellowtail rockfish taken in the directed tribal mid-water trawl fisheries are subject to a cumulative limit of 180,000-lb (81,647 kg) per 2 month period for the entire fleet. Landings of widow rockfish must not exceed 10 percent of the weight of yellowtail rockfish landed, for a given vessel, throughout the year. These limits may be adjusted by the tribe inseason to minimize the incidental catch of canary rockfish and widow rockfish, provided the average 2-month cumulative yellowtail rockfish limit does not exceed 180,000-lb (81,647 kg) for the fleet.

(6) *Other rockfish.* Other rockfish, including minor nearshore, minor shelf, and minor slope rockfish groups are subject to a 300-lb (136-kg) trip limit per species or species group, or to the non-tribal limited entry trip limit for those species if those limits are less restrictive than 300-lb (136 kg) per trip.

(7) *Flatfish and other fish.* Treaty fishing vessels using bottom trawl gear

are subject to the limits applicable to the non-tribal limited entry trawl fishery for Dover sole, English sole, rex sole, arrowtooth flounder, and other flatfish in place at the beginning of the season. For Dover sole and arrowtooth flounder, the limited entry trip limits in place at the beginning of the season will be combined across periods and the fleet to create a cumulative harvest target. The limits available to individual vessels will then be adjusted inseason to stay within the overall harvest target as well as estimated impacts to overfished species. For petrale sole, treaty fishing vessels are restricted to a 50,000-lb (22,680 kg) per 2 month limit for the entire year. Trawl vessels are restricted to using small footrope trawl gear.

(8) *Pacific whiting.* Tribal whiting processed at-sea by non-tribal vessels, must be transferred within the tribal U&A from a member of a Pacific Coast treaty Indian tribe fishing under this section.

(9) *Spiny dogfish.* The tribes will manage their spiny dogfish fishery within the limited entry trip limits for the non-tribal fisheries.

(10) *Groundfish without a tribal allocation.* Makah tribal members may use midwater trawl gear to take and retain groundfish for which there is no tribal allocation and will be subject to the trip landing and frequency and size limits applicable to the limited entry fishery.

(11) *EFH.* Measures implemented to minimize adverse impacts to groundfish EFH, as described in § 660.12 of this subpart, do not apply to tribal fisheries in their U&A fishing areas.

§ 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 OYs 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 fishery and nontrawl fishery (which for this purpose includes limited entry fixed gear, 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, 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.

(b) *Fishery harvest guidelines and reductions made prior to fishery allocations.* Beginning with the 2011–2012 biennial specifications process and prior to the setting of fishery allocations, the OY is reduced by the Pacific Coast treaty Indian tribal harvest (allocations, set-asides, and estimated harvest under regulations at § 660.50); projected scientific research catch of all groundfish species, estimates of fishing mortality in non-groundfish fisheries and, as necessary, set-asides for EFPs. The remaining amount after these deductions is the fishery harvest guideline or quota. (*Note:* recreational estimates are not deducted here).

(1) Pacific Coast treaty Indian tribal allocations, set-asides, and regulations are specified during the biennial harvest specifications process and are found at § 660.50 and in Tables 1a and 2a of this subpart.

(2) Scientific research catch results from scientific research activity as defined in regulations at § 600.10.

(3) Estimates of fishing mortality in non-groundfish fisheries are based on historical catch and projected fishing activities.

(4) EFPs are authorized and governed by § 660.60(f).

(c) *Trawl/nontrawl allocations.* (1) Beginning with the 2011–2012 biennial specifications process, the fishery harvest guideline or quota, may be divided into allocations for groundfish trawl and nontrawl (limited entry fixed gear, open access, and recreational) fisheries. IFQ species not listed in the table below will be allocated between the trawl and nontrawl fisheries through the biennial harvest specifications process. Species/species groups and areas allocated between the trawl and nontrawl fisheries listed in Chapter 6, Table 6–1 of the PCGFMP are allocated based on the percentages that follow:

ALLOCATION PERCENTAGES FOR LIMITED ENTRY TRAWL AND NON-TRAWL SECTORS SPECIFIED FOR FMP GROUNDFISH STOCKS AND STOCK COMPLEXES

Stock or complex	All non-treaty LE trawl sectors %	All non-treaty non-trawl sectors %
Lingcod	45	55
Pacific Cod	95	5
Sablefish S. of 36° N. lat.	42	58
PACIFIC OCEAN PERCH	95	5
WIDOW	91	9
Chilipepper S. of 40°10′ N. lat.	75	25
Splitnose S. of 40°10′ N. lat.	95	5
Yellowtail N. of 40°10′ N. lat.	88	12
Shortspine N. of 34°27′ N. lat.	95	5
Shortspine S. of 34°27′ N. lat.	50 mt	Remaining Yield
Longspine N. of 34°27′ N. lat.	95	5
DARKBLOTCHED	95	5
Minor Slope RF North of 40°10′ N. lat.	81	18
Minor Slope RF South of 40°10′ N. lat.	63	37
Dover Sole	95	5
English Sole	95	5
Petrale Sole	95	5

ALLOCATION PERCENTAGES FOR LIMITED ENTRY TRAWL AND NON-TRAWL SECTORS SPECIFIED FOR FMP GROUNDFISH STOCKS AND STOCK COMPLEXES—Continued

Stock or complex	All non-treaty LE trawl sectors %	All non-treaty non-trawl sectors %
Arrowtooth Flounder	95	5
Starry Flounder	50	50
Other Flatfish	90	10

(i) *Trawl fishery allocation.* The allocation for the limited entry trawl fishery is derived by applying the trawl allocation percentage by species/species group and area as specified in paragraph (c) of this section and as specified during the biennial harvest specifications process to the fishery harvest guideline for that species/species group and area. For IFQ species other than darkblotched rockfish, Pacific Ocean Perch, and widow rockfish, the trawl allocation will be further subdivided among the trawl sectors (MS, C/P, and IFQ) as specified in §§ 660.140, 660.150, and 660.160 of subpart D. For darkblotched rockfish, Pacific Ocean Perch, and widow rockfish, the trawl allocation is further subdivided among the trawl sectors (MS, C/P, and IFQ) as follows:

(A) *Darkblotched rockfish.* Allocate 9 percent or 25 mt, whichever is greater, of the total trawl allocation of darkblotched rockfish to the whiting fisheries (MS, C/P, and IFQ combined). The distribution of the whiting trawl allocation of darkblotched to each sector (MS, C/P, and IFQ) will be done pro rata relative to the sectors' whiting allocation. After deducting allocations for the whiting fisheries, allocate the remainder of the trawl allocation to the nonwhiting fishery.

(B) *Pacific Ocean Perch (POP).* Allocate 17 percent or 30 mt, whichever is greater, of the total trawl allocation of Pacific ocean perch to the whiting fisheries (MS, C/P, and IFQ combined). The distribution of the whiting trawl allocation of POP to each sector (MS, C/P, and IFQ) will be done pro rata relative to the sectors' whiting allocation. After deducting allocations for the whiting fisheries, allocate the remainder of the trawl allocation to the nonwhiting fishery.

(C) *Widow rockfish.* Allocate 52 percent of the total trawl allocation of widow rockfish to the whiting sectors if the stock is under rebuilding or 10 percent of the total trawl allocation or 500 mt of the trawl allocation to the whiting sectors, whichever is greater, if the stock is rebuilt. The latter allocation scheme automatically kicks in when widow rockfish is declared rebuilt. The distribution of the whiting trawl allocation of widow to each sector (MS, C/P, and IFQ) will be done pro rata relative to the sectors' whiting allocation. After deducting allocations for the whiting fisheries, allocate the remainder of the trawl allocation to the nonwhiting fishery.

(ii) *Nontrawl fishery allocation.* The allocation for the nontrawl fishery is the fishery harvest guideline minus the allocation of the species/species group and area to the trawl fishery. These amounts will equal the nontrawl allocation percentage or amount by species for species listed in paragraph (c) of this section and the nontrawl allocation percentage from the biennial harvest specifications for other IFQ species. The nontrawl allocation will be shared between the limited entry fixed gear, open access, and recreational fisheries as specified through the biennial harvest specifications process and consistent with allocations in the PCGFMP.

(2) [Reserved]

(d) *Commercial harvest guidelines.* Beginning with the 2011–2012 biennial specifications process, to derive the commercial harvest guideline, the fishery harvest guideline is further reduced by the recreational set-asides. The commercial harvest guideline is then allocated between the limited entry fishery (both trawl and fixed gear) and the directed open access fishery, as appropriate.

(e) *Limited entry (LE)/open access (OA) allocations*—(1) *LE/OA allocation percentages.* The allocations between the limited entry and open access fisheries are based on standards from the PCGFMP.

(2) *Species with LE/OA allocations.* For species with LE/OA 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.

(i) *Limited entry allocation.* The allocation for the limited entry fishery is the commercial harvest guideline minus any allocation to the directed open access fishery.

(ii) *Open access allocation.* The allocation for the open access fishery is derived by applying the open access allocation percentage to the annual commercial harvest guideline or quota plus the non-groundfish fishery (*i.e.,* incidental open access fishery) amount described in paragraph (b) of this section. The result is the total open access allocation. The portion that is set-aside for the non-groundfish fisheries is deducted and the remainder is the directed open access portion. For management areas or stocks for which quotas or harvest guidelines for a stock are not fully utilized, no separate allocation will be established for the open access fishery until it is projected that the allowable catch for a species will be reached.

(A) *Open access allocation percentage.* For each species with a harvest guideline or quota, the initial open access allocation percentage is calculated by:

(*1*) Computing the total catch for that species during the window period (July 11, 1984 through August 1, 1988) for the limited entry program by any vessel that did not initially receive a limited entry permit.

(*2*) Dividing that amount by the total catch during the window period by all gear.

(*3*) The guidelines in this paragraph apply to recalculation of the open access allocation percentage. Any recalculated allocation percentage will be used in calculating the following biennial fishing period's open access allocation.

(B) [Reserved]

(f) *Catch accounting.* Catch accounting refers to how the catch in a fishery is monitored against the allocations described in this section. For species with trawl/nontrawl allocations, catch of those species are counted against the trawl/nontrawl allocations as explained in paragraph (f)(1) of this section. For species with limited entry/open access allocations in a given biennial cycle, catch of those species are counted against the limited entry/open access allocations as explained in paragraph (f)(2) of this section.

(1) *Between the trawl and nontrawl fisheries*—(i) *Catch accounting for the trawl allocation.* Any groundfish caught

by a vessel registered to a limited entry trawl-endorsed permit will be counted against the trawl allocation while they are declared in to a groundfish limited entry trawl fishery and while the applicable trawl fishery listed in subpart D of this part for that vessel's limited entry permit is open.

(ii) *Catch accounting for the nontrawl allocation.* All groundfish caught by a vessel not registered to a limited entry permit and not fishing in the non-groundfish fishery will be counted against the nontrawl allocation. All groundfish caught by a vessel registered to a limited entry permit when the fishery for a vessel's limited entry permit has closed or they are not declared in to a limited entry fishery, will be counted against the nontrawl allocation, unless they are declared in to a non-groundfish fishery. Catch by vessels fishing in the non-groundfish fishery, as defined at § 660.11, will be accounted for in the estimated mortality in the non-groundfish fishery that is deducted from the OY.

(2) *Between the limited entry and open access fisheries.* Any groundfish caught by a vessel with a limited entry permit will be counted against the limited entry allocation while the limited entry fishery for that vessel's limited entry gear is open. When the fishery for a vessel's limited entry gear has closed, groundfish caught by that vessel with open access gear will be counted against the open access allocation. All groundfish caught by vessels without limited entry permits will be counted against the open access allocation.

(g) *Recreational fisheries.* Recreational fishing for groundfish is outside the scope of, and not affected by, the regulations governing limited entry and open access fisheries. Certain amounts of groundfish will be set aside for the recreational fishery during the biennial specifications process. These amounts will be estimated prior to dividing the commercial harvest guideline between the limited entry and open access fisheries.

(h) *Sablefish Allocations (north of 36° N. lat.).* The allocations of sablefish north of 36° N. lat. described in paragraph (h) of this section are specified in Chapter 6 of the PCGFMP.

(1) *Tribal/nontribal allocation.* The sablefish allocation to Pacific coast treaty Indian tribes is identified at § 660.50(f)(2), subpart C. The remainder is available to the nontribal fishery (limited entry, open access (directed and incidental), and research).

(2) *Between the limited entry and open access fisheries.* The allocation of sablefish after tribal deductions is further reduced by the estimated total mortality of sablefish in research and incidental catch in non-groundfish fisheries (incidental open access); the remaining yield (nontribal share) is divided between open access and limited entry fisheries. The limited entry fishery allocation is 90.6 percent and the open access allocation is 9.4 percent.

(3) *Between the limited entry trawl and limited entry fixed gear fisheries.* The limited entry sablefish allocation is further allocated 58 percent to the trawl fishery and 42 percent to the limited entry fixed gear (longline and pot/trap) fishery.

(4) *Between the limited entry fixed gear primary season and daily trip limit fisheries.* Within the limited entry fixed gear fishery allocation, 85 percent is reserved for the primary season described in § 660.231, subpart E, leaving 15 percent for the limited entry daily trip limit fishery described in § 660.232, subpart E.

(5) *Ratios between tiers for sablefish-endorsed limited entry permits.* The Regional Administrator will biennially or annually calculate the size of the cumulative trip limit for each of the three tiers associated with the sablefish endorsement such that the ratio of limits between the tiers is approximately 1:1.75:3.85 for Tier 3:Tier 2:Tier 1, respectively. The size of the cumulative trip limits will vary depending on the amount of sablefish available for the primary fishery and on estimated discard mortality rates within the fishery. The size of the cumulative trip limits for the three tiers in the primary fishery will be announced in § 660.231(b)(3), subpart E.

(i) *Pacific whiting allocation.* The allocation structure and percentages for Pacific whiting are described in the PCGFMP.

(1) Annual treaty tribal Pacific whiting allocations are provided in § 660.50, subpart C.

(2) The commercial harvest guideline for Pacific whiting is allocated among three sectors, as follows: 34 percent for the catcher/processor sector; 24 percent for the mothership sector; and 42 percent for the Shorebased IFQ Program. No more than 5 percent of the shorebased allocation may be taken and retained south of 42° N. lat. before the start of the primary Pacific whiting season north of 42° N. lat. Specific sector allocations for a given calendar year are found in Tables 1a and 2a of this subpart. Set asides for other species for the at-sea whiting fishery for a given calendar year are found in Tables 1d and 2d of this subpart.

(j) *Fishery set-asides.* Annual set-asides are not formal allocations but they are amounts which are not available to the other fisheries during the fishing year. For the catcher/processor and mothership sectors of the at-sea Pacific whiting fishery, set-asides will be deducted from the limited entry trawl fishery allocation. Set-aside amounts will be specified in Tables 1a through 2d of this subpart and may be adjusted through the biennial harvest specifications and management measures process.

(k) *Exempted fishing permit set-asides.* Annual set-asides for EFPs described at § 660.60(f), will be deducted from the OY. Set-aside amounts will be adjusted through the biennial harvest specifications and management measures process.

(l) *Black rockfish harvest guideline.* The commercial tribal harvest guideline for black rockfish off Washington State is specified at § 660.50(f)(1), subpart C.

(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. Beginning with the 2011–2012 biennial specifications process, the PCGFMP sets a trawl mortality bycatch limit for legal and sublegal halibut at 15 percent of the Area 2A constant exploitation yield (CEY) for legal size halibut, not to exceed 130,000 pounds for the first four years of trawl rationalization and not to exceed 100,000 pounds starting in the fifth year. This total bycatch limit may be adjusted downward or upward through the biennial specifications and management measures process. Part of the overall total catch limit is a set-aside of 10 mt of Pacific halibut, to accommodate bycatch in the at-sea Pacific whiting fishery and in the shoreside trawl fishery south of 40°10′ N lat (estimated to be approximately 5 mt each).

§ 660.60 Specifications and management measures.

(a) *General.* NMFS will establish and adjust specifications and management measures biennially or annually and during the fishing year. Management of the Pacific Coast groundfish fishery will be conducted consistent with the standards and procedures in the PCGFMP and other applicable law. The PCGFMP is available from the Regional Administrator or the Council. Regulations under this subpart may be promulgated, removed, or revised during the fishing year. Any such action will be made according to the framework standards and procedures in

the PCGFMP and other applicable law, and will be published in the **Federal Register**.

(b) *Biennial actions.* The Pacific Coast Groundfish fishery is managed on a biennial, calendar year basis. Harvest specifications and management measures will be announced biennially, with the harvest specifications for each species or species group set for two sequential calendar years. In general, management measures are designed to achieve, but not exceed, the specifications, particularly optimum yields (harvest guidelines and quotas), fishery harvest guidelines, commercial harvest guidelines and quotas, limited entry and open access allocations, or other approved fishery allocations, and to protect overfished and depleted stocks. Management measures will be designed to take into account the co-occurrence ratios of target species with overfished species, and will select measures that will minimize bycatch to the extent practicable.

(c) *Routine management measures.* In addition to the catch restrictions in subparts D through G of this part, other catch restrictions that are likely to be adjusted on a biennial or more frequent basis may be imposed and announced by a single notification in the **Federal Register** if good cause exists under the APA to waive notice and comment, and if they have been designated as routine through the two-meeting process described in the PCGFMP. Routine management measures that may be revised during the fishing year via this process are implemented in paragraph (h) of this section, and in subparts D through G of this part, including Tables 1 (North) and 1 (South) of subpart D, Tables 2 (North) and 2 (South) of subpart E, Tables 3 (North) and 3 (South) of subpart F. Most trip, bag, and size limits, and area closures in the groundfish fishery have been designated "routine," which means they may be changed rapidly after a single Council meeting. Council meetings are held in the months of March, April, June, September, and November. Inseason changes to routine management measures are announced in the **Federal Register** pursuant to the requirements of the Administrative Procedure Act (APA). Changes to trip limits are effective at the times stated in the **Federal Register**. Once a change is effective, it is illegal to take and retain, possess, or land more fish than allowed under the new trip limit. This means that, unless otherwise announced in the **Federal Register**, offloading must begin before the time a fishery closes or a more restrictive trip limit takes effect. The following catch restrictions have been designated as routine:

(1) *Commercial Limited Entry and Open Access Fisheries.* (i) Trip landing and frequency limits, size limits, all gear. Trip landing and frequency limits have been designated as routine for the following species or species groups: Widow rockfish, canary rockfish, yellowtail rockfish, Pacific ocean perch, yelloweye rockfish, black rockfish, blue rockfish, splitnose rockfish, chilipepper rockfish, bocaccio, cowcod, minor nearshore rockfish or shallow and deeper minor nearshore rockfish, shelf or minor shelf rockfish, and minor slope rockfish; DTS complex which is composed of Dover sole, sablefish, shortspine thornyheads, and longspine thornyheads; petrale sole, rex sole, arrowtooth flounder, Pacific sanddabs, and the flatfish complex, which is composed of those species plus any other flatfish species listed at § 660.11, subpart C; Pacific whiting; lingcod; Pacific cod; spiny dogfish; and "other fish" as a complex consisting of all groundfish species listed at § 660.11, subpart C and not otherwise listed as a distinct species or species group. Size limits have been designated as routine for sablefish and lingcod. Trip landing and frequency limits and size limits for species with those limits designated as routine may be imposed or adjusted on a biennial or more frequent basis for the purpose of keeping landings within the harvest levels announced by NMFS, and for the other purposes given in paragraphs (c)(1)(i)(A) and (B) of this section.

(A) *Trip landing and frequency limits.* To extend the fishing season; to minimize disruption of traditional fishing and marketing patterns; to reduce discards; to discourage target fishing while allowing small incidental catches to be landed; to protect overfished species; to allow small fisheries to operate outside the normal season; and, for the open access fishery only, to maintain landings at the historical proportions during the 1984–88 window period.

(B) *Size limits.* To protect juvenile fish; to extend the fishing season.

(ii) *Differential trip landing limits and frequency limits based on gear type, closed seasons, and bycatch limits.* Trip landing and frequency limits that differ by gear type and closed seasons may be imposed or adjusted on a biennial or more frequent basis for the purpose of rebuilding and protecting overfished or depleted stocks. To achieve the rebuilding of an overfished or depleted stock, bycatch limits may be established and adjusted to be used to close the primary season for any sector of the Pacific whiting fishery described at § 660.131(b), before the sector's Pacific whiting allocation is achieved if the applicable bycatch limit is reached. Bycatch limit amounts are specified at § 660.131(b)(5), subpart D.

(iii) *Type of limited entry trawl gear on board.* Limits on the type of limited entry trawl gear on board a vessel may be imposed on a biennial or more frequent basis. Requirements and restrictions on limited entry trawl gear type are found at § 660.130, subpart D.

(2) *Recreational fisheries all gear types.* Routine management measures for all groundfish species, separately or in any combination, include bag limits, size limits, time/area closures, boat limits, hook limits, and dressing requirements. All routine management measures on recreational fisheries are intended to keep landings within the harvest levels announced by NMFS, to rebuild and protect overfished or depleted species, and to maintain consistency with State regulations, and for the other purposes set forth in this section.

(i) *Bag limits.* To spread the available catch over a large number of anglers; to protect and rebuild overfished species; to avoid waste.

(ii) *Size limits.* To protect juvenile fish; to protect and rebuild overfished species; to enhance the quality of the recreational fishing experience.

(iii) *Season duration restrictions.* To spread the available catch over a large number of anglers; to protect and rebuild overfished species; to avoid waste; to enhance the quality of the recreational fishing experience.

(3) *All fisheries, all gear types, depth-based management measures.* Depth-based management measures, particularly the setting of closed areas known as Groundfish Conservation Areas, may be implemented in any fishery that takes groundfish directly or incidentally. Depth-based management measures are set using specific boundary lines that approximate depth contours with latitude/longitude waypoints found at § 660.70 through 660.74. Depth-based management measures and the setting of closed areas may be used: to protect and rebuild overfished stocks, to prevent the overfishing of any groundfish species by minimizing the direct or incidental catch of that species, to minimize the incidental harvest of any protected or prohibited species taken in the groundfish fishery, to extend the fishing season; for the commercial fisheries, to minimize disruption of traditional fishing and marketing patterns; for the recreational fisheries, to spread the available catch over a large number of

anglers; to discourage target fishing while allowing small incidental catches to be landed; and to allow small fisheries to operate outside the normal season.

(d) *Automatic actions.* Automatic management actions may be initiated by the NMFS Regional Administrator without prior public notice, opportunity to comment, or a Council meeting. These actions are nondiscretionary, and the impacts must have been taken into account prior to the action. Unless otherwise stated, a single notice will be published in the **Federal Register** making the action effective if good cause exists under the APA to waive notice and comment.

(1) Automatic actions are used in the Pacific whiting fishery to:

(i) Close sectors of the fishery or to reinstate trip limits in the shorebased fishery when a whiting harvest guideline, commercial harvest guideline, or a sector's allocation is reached, or is projected to be reached;

(ii) Close all sectors or a single sector of the fishery when a bycatch limit is reached or projected to be reached;

(iii) Reapportion unused Pacific whiting allocation to other sectors of the fishery;

(iv) Reapportion unused bycatch limit species to other sectors of the Pacific whiting fishery.

(v) Implement the Ocean Salmon Conservation Zone, described at § 660.131(c)(3), subpart D, when NMFS projects the Pacific whiting fishery may take in excess of 11,000 Chinook within a calendar year.

(vi) Implement Pacific Whiting Bycatch Reduction Areas, described at § 660.131(c)(4) Subpart D, when NMFS projects a sector-specific bycatch limit will be reached before the sector's whiting allocation.

(2) [Reserved]

(e) *Prohibited species.* Groundfish species or species groups under the PCGFMP for which quotas have been achieved and/or the fishery closed are prohibited species. In addition, the following are prohibited species:

(1) Any species of salmonid.

(2) Pacific halibut.

(3) Dungeness crab caught seaward of Washington or Oregon.

(f) *Exempted fishing permits (EFP).* (1) The Regional Administrator may issue EFPs under regulations at § 660.30, subpart C, for compensation with fish for collecting resource information. Such EFPs may include the collecting of scientific samples of groundfish species that would otherwise be prohibited for retention.

(2) The Regional Administrator may also issue EFPs under regulations at 50 CFR part § 600.745 for limited testing, public display, data collection, exploratory, health and safety, environmental cleanup, and/or hazard removal purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited.

(3) U.S. vessels operating under an EFP are subject to restrictions in §§ 660.10 through 660.79, unless otherwise provided in the permit.

(g) *Applicability.* Groundfish species harvested in the territorial sea (0–3 nm) will be counted toward the catch limitations in Tables 1a through 2d of this subpart, and those specified in subparts D through G, including Tables 1 (North) and 1 (South) of subpart D, Tables 2 (North) and 2 (South) of subpart E, Tables 3 (North) and 3 (South) of subpart F.

(h) *Fishery restrictions*—(1) *Commercial trip limits and recreational bag and boat limits.* Commercial trip limits and recreational bag and boat limits defined in Tables 1a through 2d of this subpart, and those specified in subparts D through G of this part, including Tables 1 (North) and 1 (South) of subpart D, Tables 2 (North) and 2 (South) of subpart E, Tables 3 (North) and 3 (South) of subpart F must not be exceeded.

(2) *Landing.* As stated at § 660.11, subpart C (in the definition of "Landing"), once the offloading of any species begins, all fish aboard the vessel are counted as part of the landing and must be reported as such. Transfer of fish at sea is prohibited under § 660.12, subpart C, unless a vessel is participating in the primary whiting fishery as part of the mothership or catcher/processor sectors, as described at § 660.131(a), subpart D.

(3) *Fishing ahead.* Unless the fishery is closed, a vessel that has landed its cumulative or daily limit may continue to fish on the limit for the next legal period, so long as no fish (including, but not limited to, groundfish with no trip limits, shrimp, prawns, or other nongroundfish species or shellfish) are landed (offloaded) until the next legal period. Fishing ahead is not allowed during or before a closed period.

(4) *Weights and percentages.* All weights are round weights or round-weight equivalents unless otherwise specified. Percentages are based on round weights, and, unless otherwise specified, apply only to legal fish on board.

(5) *Size limits, length measurement, and weight limits.* (i) *Size limits and length measurement.* Unless otherwise specified, size limits in the commercial and recreational groundfish fisheries apply to the "total length," which is the longest measurement of the fish without mutilation of the fish or the use of force to extend the length of the fish. No fish with a size limit may be retained if it is in such condition that its length has been extended or cannot be determined by these methods. For conversions not listed here, contact the state where the fish will be landed. Washington state regulations require all fish with a size limit landed into Washington to be landed with the head on.

(A) *Whole fish.* For a whole fish, total length is measured from the tip of the snout (mouth closed) to the tip of the tail in a natural, relaxed position.

(B) "*Headed*" *fish.* For a fish with the head removed ("headed"), the length is measured from the origin of the first dorsal fin (where the front dorsal fin meets the dorsal surface of the body closest to the head) to the tip of the upper lobe of the tail; the dorsal fin and tail must be left intact.

(C) *Filets.* A filet is the flesh from one side of a fish extending from the head to the tail, which has been removed from the body (head, tail, and backbone) in a single continuous piece. Filet lengths may be subject to size limits for some groundfish taken in the recreational fishery off California (see subpart G of this part). A filet is measured along the length of the longest part of the filet in a relaxed position; stretching or otherwise manipulating the filet to increase its length is not permitted.

(ii) *Weight limits and conversions.* The weight limit conversion factor established by the state where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. Weight conversions provided herein are those conversions currently in use by the States of Washington, Oregon and California and may be subject to change by those states. Fishery participants should contact fishery enforcement officials in the state where the fish will be landed to determine that state's official conversion factor. To determine the round weight, multiply the processed weight times the conversion factor.

(iii) *Sablefish.* The following conversion applies to both the limited entry and open access fisheries when trip limits are in effect for those fisheries. For headed and gutted (eviscerated) sablefish the weight conversion factor is 1.6 (multiply the headed and gutted weight by 1.6 to determine the round weight).

(iv) *Lingcod.* The following conversions apply in both limited entry and open access fisheries.

(A) North of 42° N. lat., for lingcod with the head removed, the minimum size limit is 18 inches (46 cm), which corresponds to 22 inches (56 cm) total length for whole fish.

(B) South of 42° N. lat., for lingcod with the head removed, the minimum size limit is 19.5 inches (49.5 cm), which corresponds to 24 inches (61 cm) total length for whole fish.

(C) The weight conversion factor for headed and gutted lingcod is 1.5. The conversion factor for lingcod that has only been gutted with the head on is 1.1.

(6) *Sorting.* Trawl fishery sorting requirements are specified at § 660.130(d), subpart D. Limited entry fixed gear fishery sorting requirements are specified at § 660.230(c), subpart E, and Open access fishery sorting requirements are specified at § 660.330(c), subpart F.

(7) *Crossover provisions.* NMFS uses different types of management areas for West Coast groundfish management. One type of management area is the north-south management area, a large ocean area with northern and southern boundary lines wherein trip limits, seasons, and conservation areas follow a single theme. Within each north-south management area, there may be one or more conservation areas, defined at § 660.11 and §§ 660.60 through 660.74, subpart C. The provisions within this paragraph apply to vessels operating in different north-south 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) *Operating in north-south management areas with different trip limits.* Trip limits for a species or a species group may differ in different north-south management areas along the coast. The following crossover provisions apply to vessels operating in different geographical areas that have different cumulative or "per trip" trip limits for the same species or species group. Such crossover provisions do not apply to species that are subject only to daily trip limits, or to the trip limits for black rockfish off Washington, as described at § 660.230(d), subpart E and § 660.330(e), subpart F.

(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) *Operating 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) *Operating in both limited entry and open access fisheries.* 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. A vessel that operates 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 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 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.

§ 660.65 Groundfish harvest specifications.

Fishery specifications include ABCs, the designation of OYs (which may be represented by harvest guidelines (HGs) or quotas for species that need individual management,) and the allocation of fishery HGs between the trawl and nontrawl segments of the fishery, and the allocation of commercial HGs between the open access and limited entry segments of the fishery. These specifications include fish caught in state ocean waters (0–3 nm offshore) as well as fish caught in the EEZ (3–200 nm offshore). Harvest specifications are provided at Tables 1a through 2d of this subpart.

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Table 1a. To Part 660, Subpart C-2009, Specifications of ABCs, OYs, and HGs, by Management Area (weights in metric tons).

Species	ABC Specifications						OY	HG b/	
	ABC Contributions by Area					ABC		Commercial	Recreation-al
	Vancouver a/	Columbia	Eureka	Monterey	Conception				
ROUNDFISH:									
Lingcod c/ N of 42 N. lat.	4,473					5,278	5,278		
S of 42 N. lat.			805						
Pacific Cod e/	3,200		d/			3,200	1,600	1,200	
Pacific Whiting f/	187,346					187,346	135,939	81,939	
Sablefish g/ N of 36 N. lat.	9,914					9,914	7,052	6,347	
S of 36 N. lat.							1,371	1,371	
Cabezon h/ S of 42 N. lat.	d/		81		25	106	69		
FLATFISH:									
Dover sole i/	29,453					29,453	16,500		
English sole j/	14,326					14,326	14,326	-	
Petrale sole k/	1,509		1,302			2,811	2,433	-	
Arrowtooth flounder l/	11,267					11,267	11,267	-	
Starry Flounder m/	1,509					1,509	1,004		
Other flatfish n/	6,731					6,731	4,884	-	
ROCKFISH:									
Pacific Ocean Perch o/	1,160					1,160	189	187	

Species	ABC Specifications						OY	HG b/	
	ABC Contributions by Area					ABC		Commercial	Recreation-al
	Vancouver a/	Columbia	Eureka	Monterey	Conception				
Shortbelly p/	6,950					6,950	6,950		
Widow q/	7,728					7,728	522	460.4	7.2
Canary r/	937					937	105	42.3	43.8
Chilipepper s/	d/			3,037		3,037	2,885	2,885	
Bocaccio t/	d/			793		793	288	206.4	67.3
Splitnose u/	d/			615		615	461		
Yellowtail v/	4,562			d/		4,562	4,562		
Shortspine thornyhead w/ N of 34 27' N. lat.	2,437					2,437	1,608	1,608	
S of 34 27' N. lat.							414		
Longspine thornyhead x/ N of 34 27' N. lat.	3,766					3,766	2,231		
S of 34 27' N. lat.							395		
Cowcod y/	d/			13		13	4		
Darkblotched z/	437					437	285	282.05	
Yelloweye aa/	31					31	17	3.1	8
California Scorpionfish bb/					175	175	175		
Black cc/ N of 46 16' N. lat.	490					490	490		
S of 46 16' N. lat.			1,469			1,469	1,000		

Species	ABC Specifications						OY	HG b/	
	ABC Contributions by Area					ABC		Commercial	Recreation-al
	Vancouver a/	Columbia	Eureka	Monterey	Conception				
Minor Rockfish dd/ N of 40 10' N. lat.	3,678			--		3,678	2,283		
Minor Rockfish ee/ S of 40 10' N. lat.	--			3,384		3,384	1,990		
Remaining	1,640			1,318					
bank ff/	d/			350					
blackgill gg/	d/			292					
blue	28			213					
bocaccio north	318			--					
chilipepper north	32			--					
redstripe	576			d/					
sharpchin	307			45					
silvergrey	38			d/					
splitnose north	242			--					
yellowmouth	99			d/					
yellowtail	--			116					
gopher	d/			302					
Other rockfish hh/	2,038			2,066					
SHARKS/SKATES/RATFISH/MORIDS/GRENADIERS/KELP GREENLING:									
Longnose Skate ii/	3,428					3,428	1,349		
Other fish jj/	11,200					11,200	5,600		

Table 1b. To Part 660, Subpart C-2009, Harvest Guidelines for Minor Rockfish by Depth Sub-groups (weights in metric tons).

Species	Total Catch ABC	Total Catch OY	Recreational HG	Commercial HG	Limited Entry HG		Open Access HG	
					Mt	%	Mt	%
Minor Rockfish dd/ N of 40°10' N. lat.	3,678	2,283	--	--	--	91.7	--	8.3
Nearshore		155	--	--				
Shelf		968	--	--				
Slope		1,160	--	--				
Minor Rockfish ee/ S of 40°10' N. lat.	3,384	1,990	--	--	--	55.7	--	44.3
Nearshore		650	--	--				
Shelf		714	--	--				
Slope		626	--	--				

Table 1c. To Part 660, Subpart C-2009, Open Access and Limited Entry Allocations by Species or Species Group. (Weights in Metric Tons)

Species	Commercial Total Catch HGs	Commercial Total Catch HGs			
		Limited Entry		Open Access	
		Mt	%	Mt	%
Lingcod N of 42° N. lat.	--	--	81.0	--	19.0
S of 42° N. lat.					
Sablefish kk/ N of 36° N. lat.	6,347	5,750	90.6	597	9.4
Widow ll/	460.4	--	97.0	--	3.0
Canary ll/	42.3	--	87.7	--	12.3
Chilipepper	2,885	1,607	55.7	1,278	44.3
Bocaccio ll/	206.4	--	55.7	--	44.3
Yellowtail	--	--	91.7	--	8.3
Shortspine thornyhead N of 34°27' N. lat.	1,608	1,603	99.7	5	0.27
Minor Rockfish N of 40°10' N. lat.	--	--	91.7	--	8.3
S of 40°10' N. lat.	--	--	55.7	--	44.3

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[a] ABCs apply only to the U.S. portion of the Vancouver area.

[b] Optimum Yields (OYs) and Harvest Guidelines (HGs) are specified as total catch values. A harvest guideline is a specified harvest target and not a quota. The use of this term may differ from the use of similar terms in state regulation.

[c] Lingcod—A coastwide lingcod stock assessment was prepared in 2005. The lingcod biomass was estimated to be at 64 percent of its unfished biomass coastwide in 2005. The ABC of 5,278 mt was calculated using an FMSY proxy of F45%. Because the stock is above B40% coastwide, the coastwide OY was set equal to the ABC. The tribal harvest guideline is 250 mt.

[d] "Other species"—these species are neither common nor important to the commercial and recreational fisheries in the areas footnoted. Accordingly, these species are included in the harvest guidelines of "other

fish", "other rockfish" or "remaining rockfish".

[e] Pacific Cod—The 3,200 mt ABC for the Vancouver-Columbia area is based on historical landings data. The 1,600 mt OY is the ABC reduced by 50 percent as a precautionary adjustment. A tribal harvest guideline of 400 mt is deducted from the OY resulting in a commercial OY of 1,200 mt.

[f] Pacific whiting—The most recent stock assessment was prepared in February 2009. The stock assessment base model estimated the Pacific whiting biomass to be at 32 percent (50th percentile estimate of depletion) of its unfished biomass in 2009. The U.S Canada coastwide ABC is 253,582 mt, the U.S. share of the ABC is 187,346 mt (73.88 percent of the coastwide ABC). The U.S.-Canada coastwide OY is 184,000 mt with a corresponding U.S. OY of 135,939 mt. The tribal set aside is 50,000 mt. The amount estimated to be taken as research catch and in non-groundfish fisheries is 4,000 mt. The commercial OY is 81,939 mt. Each sector receives a portion of the commercial OY, with the catcher/processors getting 34 percent (27,859 mt), motherships getting 24 percent (19,665 mt), and the shore-based sector getting 42 percent (34,414 mt). The allocation for the fishery south of 42°N. lat. is 1,721 mt.

[g] Sablefish—A coastwide sablefish stock assessment was prepared in 2007. The sablefish biomass was estimated to be at 38.3 percent of its unfished biomass in 2007. The coastwide ABC of 9,914 mt was based on the new stock assessment with a FMSY proxy of F45%. The 40–10 harvest policy was applied to the ABC then apportion between the northern and southern areas with 72 percent going to the area north of 36° N. lat. and 28 percent going to the area south of 36° N. lat. The OY for the area north of 36° N. lat. is 7,052 mt. When establishing the OY for the area south of 36° N. lat. a 50 percent reduction was made resulting in a Conception area OY of 1,371 mt. The coastwide OY of 8,423 mt is the sum of the northern and southern area OYs. The tribal allocation for the area north of 36° N. lat. is 705 mt (10 percent of the OY north of 36° N. lat.), which is further reduced by 1.6 percent (11 mt) to account for discard mortality. The tribal landed catch value is 694 mt.

[h] Cabezon south of 42° N. lat. was assessed in 2005. The Cabezon stock was estimated to be at 40 percent of its unfished biomass north of 34° 27′N. lat. and 28 percent of its unfished biomass south of 34° 27′N. lat. in 2005. The ABC of 106 mt is based on the 2005 stock assessment with a harvest rate proxy of F45%. The OY of 69 mt is consistent with the application of a 60–20 harvest rate policy specified in the California Nearshore Fishery Management Plan.

[i] Dover sole north of 34° 27' N. lat. was assessed in 2005. The Dover sole biomass was estimated to be at 59.8 percent of its unfished biomass in 2005 and was projected to be increasing. The ABC of 29,453 mt is based on the results of the 2005 assessment with an FMSY proxy of F40%. Because the stock is above B40%coastwide, the OY could be set equal to the ABC. The OY of 16,500 mt is less than the ABC. The OY is set at the MSY harvest level which is considerably larger than the coastwide catches in any recent years.

[j] A coastwide English sole stock assessment was prepared in 2005 and updated in 2007. The stock was estimated to be at 116 percent of its unfished biomass in 2007. The stock biomass is believed to be declining. The ABC of 14,326 mt is based on the results of the 2007 assessment update with an FMSY proxy of F40%. Because the stock is above B40%, the OY was set equal to the ABC.

[k] A petrale sole stock assessment was prepared for 2005. In 2005 the petrale sole stock was estimated to be at 32 percent of its unfished biomass coastwide (34 percent in the northern assessment area and 29 percent of in the southern assessment area). The ABC of 2,811 mt is based on the 2005 stock assessment with a F40%FMSYproxy. To derive the OY, the 40–10 harvest policy was applied to the ABC for both the northern and southern assessment areas. As a precautionary measure, an additional 25 percent reduction was made in the OY contribution for the southern area due assessment uncertainty. The coastwide OY is 2,433 mt in 2009.

[l] Arrowtooth flounder was assessed in 2007 and was estimated to be at 79 percent of its unfished biomass in 2007. Because the stock is above B40%, the OY is set equal to the ABC.

[m] Starry Flounder was assessed for the first time in 2005 and was estimated to be above 40 percent of its unfished biomass in 2005. However, the stock was projected to decline below 40 percent in both the northern and southern areas after 2008. The starry flounder assessment was considered to be a data-poor assessment relative to other groundfish assessments. For 2009, the coastwide ABC of 1,509 mt is based on the 2005 assessment with a FMSY proxy of F40%. To derive the OY (1,004 mt), the 40–10 harvest policy was applied to the ABC for both the northern and southern assessment areas then an additional 25 percent reduction was made due to assessment uncertainty.

[n] "Other flatfish" are those flatfish species that do not have individual ABC/OYs and include butter sole, curlfin sole, flathead sole, Pacific sand dab, rex sole, rock sole, and sand sole. The other flatfish ABC is based on historical catch levels. The ABC of 6,731 mt is based on the highest landings for sanddabs (1995) and rex sole (1982) for the 1981–2003 period and on the average landings from the 1994–1998 period for the remaining other flatfish species. The OY of 4,884 mt is based on the ABC with a 25 percent precautionary adjustment for sanddabs and rex sole and a 50 percent precautionary adjustment for the remaining species.

[o] A POP stock assessment was prepared in 2005 and was updated in 2007. The stock assessment update estimated the stock to be at 27.5 percent of its unfished biomass in 2007. The ABC of 1,160 mt for the Vancouver and Columbia areas is based on the 2007 stock assessment update with an FMSY proxy of F50%. The OY of 189 mt is based on a rebuilding plan with a target year to rebuild of 2017 and an SPR harvest rate of 86.4 percent. The OY is reduced by 2.0 mt for the amount anticipated to be taken during research activity and 0.14 mt for the amount expected to be taken during EFP fishing.

[p] Shortbelly rockfish remains an unexploited stock and is difficult to assess quantitatively. To understand the potential environmental determinants of fluctuations in the recruitment and abundance of an unexploited rockfish population in the California Current ecosystem, a non-quantitative assessment was conducted in 2007. The results of the assessment indicated the shortbelly stock was healthy with an estimated spawning stock biomass at 67 percent of its unfished biomass in 2005. The ABC and OY are being set at 6,950 mt which is 50 percent of the 2008 ABC and OY values. The stock is expected to remain at its current equilibrium with these harvest specifications.

[q] Widow rockfish was assessed in 2005 and an update was prepared in 2007. The stock assessment update estimated the stock to be at 36.2 percent of its unfished biomass in 2006. The ABC of 7,728 mt is based on the stock assessment update with an F50%FMSYproxy. The OY of 522 mt is based on a rebuilding plan with a target year to rebuild of 2015 and an SPR harvest rate of 95 percent. To derive the commercial harvest guideline of 460.4 mt the OY is reduced by 1.1 mt for the amount anticipated to be taken during research activity, 45.5 mt for the tribal set-aside, 7.2 mt the amount estimated to be taken in the recreational fisheries, 0.4 mt for the amount expected to be taken incidentally in non-groundfish fisheries, and 7.4 mt for the amount projected to be taken during EFP fishing. The following are the sector specific bycatch limits established for the Pacific whiting fishery: 85.0 mt for catcher/processors, 60.0 mt for motherships, and 105.0 mt for shore-based.

[r] Canary rockfish—A canary rockfish stock assessment was completed in 2007 and the stock was estimated to be at 32.7 percent of its unfished biomass coastwide in 2007. The coastwide ABC of 937 mt based on the 2007 rebuilding plan. The OY of 105 mt is based on a rebuilding plan with a target year to rebuild of 2021 and a SPR harvest rate of 88.7 percent. To derive the commercial harvest guideline of 42.3 mt, the OY is reduced by 8.0 mt for the amount anticipated to be taken during research activity, 7.3 mt the tribal set-aside, 43.8 mt the amount estimated to be taken in the recreational fisheries, 0.9 mt for the amount expected to be taken incidentally in non-groundfish fisheries, and 2.7 mt for the amount expected to be taken during EFP fishing. The following harvest guidelines are being specified for catch sharing in 2009: 19.7 mt for limited entry Non-Whiting Trawl, 18.0 mt for limited entry Whiting Trawl, 2.2 mt for limited entry fixed gear, 2.5 mt for directed open access, 4.9 mt for Washington recreational, 16.0 mt for Oregon recreational, and 22.9 mt for California recreational.

[s] Chilipepper rockfish was assessed in 2007 and the stock was estimated to be at 71 percent of its unfished biomass coastwide in 2007. The ABC of 3,037 mt is based on a FMSY proxy of F50%. Because the unfished biomass is estimated to be above 40 percent the unfished biomass, the default OY could be set equal to the ABC. However, the OY of 2,885 mt was the ABC reduced by 5 percent as a precautionary measure for uncertainty in the stock assessment. Open access is allocated 44.3 percent (1,278 mt) of the

commercial HG and limited entry is allocated 55.7 percent (1,607 mt) of the commercial HG.

[t] A bocaccio stock assessment and a rebuilding analysis were prepared in 2007. The bocaccio stock was estimated to be at 13.8 percent of its unfished biomass in 2007. The ABC of 793 mt for the Monterey-Conception area is based on the new assessment with an FMSY proxy of F50%. The OY of 288 mt is based on a rebuilding plan with a target year to rebuild of 2026 and a SPR harvest rate of 77.7 percent. To derive the commercial harvest guideline of 206.4 mt, the OY is reduced by 2.0 mt for the amount anticipated to be taken during research activity, 67.3 mt for the amount estimated to be taken in the recreational fisheries, 1.3 mt for the amount expected to be taken incidentally in non-groundfish fisheries, and 11.0 mt for the amount expected to be taken during EFP fishing.

[u] Splitnose rockfish—The ABC is 615 mt in the Monterey-Conception area. The 461 mt OY for the area reflects a 25 percent precautionary adjustment because of the less rigorous stock assessment for this stock. In the north (Vancouver, Columbia and Eureka areas), splitnose is included within the minor slope rockfish OY. Because the harvest assumptions used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 2009 was considered to be conservative and based on the best available data.

[v] Yellowtail rockfish—A yellowtail rockfish stock assessment was prepared in 2005 for the Vancouver, Columbia, Eureka areas. Yellowtail rockfish was estimated to be above 40 percent of its unfished biomass in 2005. The ABC of 4,562 mt is based on the 2005 stock assessment with the FMSY proxy of F50%. The OY of 4,562 mt was set equal to the ABC, because the stock is above the precautionary threshold of B40%.

[w] Shortspine thornyhead was assessed in 2005 and the stock was estimated to be at 63 percent of its unfished biomass in 2005. The ABC of 2,437 mt is based on a F50%FMSYproxy. For that portion of the stock (66 percent of the biomass) north of Point Conception (34°27′N. lat.), the OY of 1,608 mt was set at equal to the ABC because the stock is estimated to be above the precautionary threshold. For that portion of the stock south of 34°27′N. lat. (34 percent of the biomass), the OY of 414 mt was the portion of the ABC for the area reduced by 50 percent as a precautionary adjustment due to the short duration and amount of survey data for that area.

[x] Longspine thornyhead was assessed coastwide in 2005 and the stock was estimated to be at 71 percent of its unfished biomass in 2005. The coastwide ABC of 3,766 mt is based on a F50%FMSYproxy. The OY is set equal to the ABC because the stock is above the precautionary threshold. Separate OYs are being established for the areas north and south of 34°27′N. lat. (Point Conception). The OY of 2,231 mt for that portion of the stock in the northern area (79 percent) the ABC reduced by 25 percent as a precautionary adjustment. For that portion of the stock in the south of 34°27′N. lat. (21 percent), the OY of 395 mt was the portion of the ABC for the area reduced by 50 percent as a precautionary adjustment due to the short duration and amount of survey data for that area.

[y] Cowcod in the Conception area was assessed in 2007 and the stock was estimated to be between 3.4 to 16.3 percent of its unfished biomass. The ABC for the area south of 36°N. lat., the Conception and Monterey areas, is 13 mt and is based on the 2007 rebuilding analysis in which the Conception area stock assessment projection was doubled to account for both areas. A single OY of 4 mt is being set for both areas. The OY of 4 mt is based on a rebuilding plan with a target year to rebuild of 2072 and an SPR rate of 82.1 percent. The amount anticipated to be taken during research activity is 0.2 mt and the amount expected to be taken during EFP activity is 0.24 mt.

[z] Darkblotched rockfish was assessed in 2007 and a rebuilding analysis was prepared. The new stock assessment estimated the stock to be at 22.4 percent of its unfished biomass in 2007. The ABC is projected to be 437 mt and is based on the 2007 stock assessment with an FMSYproxy of F50%. The OY of 285 mt is based on a rebuilding plan with a target year to rebuild of 2028 and an SPR harvest rate of 62.1 percent. The commercial OY of 282.05 mt is the OY reduced by 2.0 mt for the amount anticipated to be taken during research activity and 0.95 mt for the amount projected to be taken during EFP activity.

[aa] Yelloweye rockfish was fully assessed in 2006 and an assessment update was completed in 2007. The 2007 stock assessment update estimated the spawning stock biomass in 2006 to be at 14 percent of its unfished biomass coastwide. The 31 mt coastwide ABC was derived from the base model in the new stock assessment with an FMSY proxy of F50%. The 17 mt OY is based on a rebuilding plan with a target year to rebuild of 2084 and an SPR harvest rate of 66.3 percent in 2009 and 2010 and an SPR harvest rate of 71.9 percent for 2011 and beyond. The OY is reduced by 2.8 mt for the amount anticipated to be taken during research activity, 2.3 mt the amount estimated to be taken in the tribal fisheries and 0.3 mt for the amount expected to be taken incidentally in non-groundfish fisheries. The catch sharing harvest guidelines for yelloweye rockfish in 2009 are: limited entry non-whiting trawl 0.6 mt, limited entry whiting 0.0 mt, limited entry fixed gear 1.4 mt, directed open access 1.1 mt, Washington recreational 2.7 mt, Oregon recreational 2.4 mt, California recreational 2.8 mt, and 0.3 mt for exempted fishing.

[bb] California Scorpionfish south of 34°27′N. lat. was assessed in 2005 and was estimated to be above 40 percent of its unfished biomass in 2005. The ABC of 175 mt is based on the new assessment with a harvest rate proxy of F50%. Because the stock is above B40%coastwide, the OY is set equal to the ABC.

[cc] New assessments were prepared for black rockfish south of 45°56.00 N. lat. (Cape Falcon, Oregon) and for black rockfish north of Cape Falcon. The ABC for the area north of 46°16′N. lat. (Washington) is 490 mt (97 percent) of the 505 mt ABC contribution from the northern assessment area. The ABC for the area south of 46°16′N. lat. (Oregon and California) is 1,469 mt which is the sum of a contribution of 15 mt (3 percent) from the northern area assessment, and 1,454 mt from the southern area assessment. The ABCs were based on the results of the new assessment and derived using an FMSYproxy of F50%. Because both portions of the stock are above 40 percent, the OYs could be set equal to the ABCs. For the area north of 46°16′N. lat., the OY of 490 mt is set equal to the ABC. The following tribal harvest guidelines are being set: 20,000 lb (9.1 mt) north of Cape Alava, WA (48°09.50′N. lat.) and 10,000 lb (4.5 mt) between Destruction Island, WA (47°40′N. lat.) and Leadbetter Point, WA (46°38.17′N. lat.) The OY for the area south of 46°16′N. lat. is being set at 1,000 mt which is a constant harvest level. The black rockfish OY in the area south of 46°16′N. lat., is subdivided with separate HGs being set for the area north of 42° N. lat. (580 mt/58 percent) and for the area south of 42° N. lat. (420 mt/42 percent).

[dd] Minor rockfish north includes the "remaining rockfish" and "other rockfish" categories in the Vancouver, Columbia, and Eureka areas combined. These species include "remaining rockfish", which generally includes species that have been assessed by less rigorous methods than stock assessments, and "other rockfish", which includes species that do not have quantifiable stock assessments. Blue rockfish has been removed from the "other rockfish" and added to the remaining rockfish. The ABC of 3,678 mt is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent (F = 0.75M) as a precautionary adjustment. To obtain the total catch OY of 2,283 mt, the remaining rockfish ABCs were further reduced by 25 percent and other rockfish ABCs were reduced by 50 percent. This was a precautionary measure to address limited stock assessment information.

[ee] Minor rockfish south includes the "remaining rockfish" and "other rockfish" categories in the Monterey and Conception areas combined. These species include "remaining rockfish" which generally includes species that have been assessed by less rigorous methods than stock assessment, and "other rockfish" which includes species that do not have quantifiable stock assessments. Blue rockfish has been removed from the "other rockfish" and added to the remaining rockfish. The ABC of 3,384 mt is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent (F = 0.75M) as a precautionary adjustment. The remaining rockfish ABCs are further reduced by 25 percent, with the exception of blackgill rockfish (see footnote gg). The other rockfish ABCs were reduced by 50 percent. This was a precautionary measure due to limited stock assessment information. The resulting minor rockfish OY is 1,990 mt.

[ff] Bank rockfish—The ABC is 350 mt which is based on a 2000 stock assessment for the Monterey and Conception areas. This stock contributes 263 mt towards the minor rockfish OY in the south.

[gg] Blackgill rockfish in the Monterey and Conception areas was assessed in 2005 and is estimated to be at 49.9 percent of its unfished biomass in 2008. The ABC of 292 mt for the Monterey and Conception areas is based on the 2005 stock assessment with an FMSY proxy of F50%and is the two year average ABC for the 2007 and 2008 periods. This stock contributes 292 mt towards minor rockfish south.

[hh] "Other rockfish" includes rockfish species listed in 50 CFR 660.302. A new stock assessment was conducted for blue rockfish in 2007. As a result of the new stock assessment, the blue rockfish contribution to the other rockfish group, of 30 mt in the north and 232 mt in the south, are removed. A new contribution of 28 mt contribution in the north and 202 mt contribution in the south is added to the remaining rockfish. The ABC for the remaining species is based on historical data from a 1996 review landings and includes an estimate of recreational landings. Most of these species have never been assessed quantitatively.

[ii] Longnose skate was fully assessed in 2006 and an assessment update was completed in 2007. The ABC of 3,428 is based on the 2007 with an FMSYproxy of F45%. Longnose skate was previously managed as part of the Other Fish complex. The 2009 OY of 1,349 mt is a precautionary OY based on historical total catch increased by 50 percent.

[jj] "Other fish" includes sharks, skates, rays, ratfish, morids, grenadiers, kelp greenling, and other groundfish species noted above in footnote d/. The longnose skate contribution is being removed from this complex.

[kk] Sablefish allocation north of 36° N. lat.—The limited entry allocation is further divided with 58 percent allocated to the trawl fishery and 42 percent allocated to the fixed-gear fishery.

[ll] Specific open access/limited entry allocations specified in the FMP have been suspended during the rebuilding period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks.

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Table 1d to Part 660, Subpart C—At-Sea Whiting Fishery Annual Set-Asides, 2011 and 2012.

Species or Species Complex	Set-aside (mt)
Lingcod	6
Pacific Cod	5
Pacific Whiting	NA
Sablefish N. of 36°	50
Sablefish S. of 36°	NA
PACIFIC OCEAN PERCH	Allocation
WIDOW ROCKFISH	Allocation
Chilipepper S. of 40°10'	NA
Splitnose S. of 40°10'	NA
Yellowtail N. of 40°10'	300
Shortspine Thornyhead N. of 34°27'	20
Shortspine Thornyhead S. of 34°27'	NA
Longspine Thornyhead N. of 34°27'	5
Longspine Thornyhead S. of 34°27'	NA
DARKBLOTCHED	Allocation
Minor Slope RF N.	55
Minor Slope RF S.	NA
Dover Sole	5
English Sole	5
Petrale Sole - coastwide	5
Arrowtooth Flounder	10
Starry Flounder	5
Other Flatfish	20
CANARY ROCKFISH	Allocation
BOCACCIO	NA
COWCOD	NA
YELLOWEYE	0
Black Rockfish	NA

Blue Rockfish (CA)	NA
Minor Nearshore RF N.	NA
Minor Nearshore RF S.	NA
Minor Shelf RF N.	35
Minor Shelf RF S.	NA
California scorpionfish	NA
Cabezon (off CA only)	NA
Other Fish	520
Longnose Skate	5
Pacific Halibut	10 [a/]
a/ As stated in § 660.55(m), the Pacific halibut set-aside is 10 mt, to accommodate bycatch in the at-sea Pacific whiting fisheries and in the shorebased trawl sector south of 40°10' N lat. (estimated to be approximately 5 mt each).	

Table 2a. To Part 660, Subpart C - 2010, Specifications of ABCs, OYs, and HGs, by Management Area (weights in metric tons).

Species	ABC Specifications						OY	HG b/	
	ABC Contributions by Area					ABC			
	Vancouver a/	Columbia	Eureka	Monterey	Conception			Commercial	Recreation-al
ROUNDFISH:									
Lingcod c/									
N of 42 N. lat.	4,058		771			4,829	4,829		
S of 42 N. lat.									
Pacific Cod e/	3,200		d/			3,200	1,600		
Pacific Whiting f/	336,560					336,560	193,935		
Sablefish g/									
N of 36 N. lat.	9,217					9,217	6,471		
S of 36 N. lat.							1,258		
Cabezon h/									
S of 42 N. lat.	d/		86		25	111	79		
FLATFISH:									
Dover sole i/	28,582					28,582	16,500		
English sole j/	9,745					9,745	9,745	-	
Petrale sole k/	1,514		1,237			2,751	1,200	-	
Arrowtooth flounder l/	10,112					10,112	10,112	-	
Starry Flounder m/	1,578					1,578	1,077		
Other flatfish n/	6,731					6,731	4,884	-	
ROCKFISH:									
Pacific Ocean Perch o/	1,173					1,173	200	198	

Species	ABC Specifications						OY	HG b/	
	ABC Contributions by Area					ABC			
	Vancouver a/	Columbia	Eureka	Monterey	Conception			Commercial	Recreation-al
Shortbelly p/	6,950					6,950	6,950		
Widow q/	6,937					6,937	509	447.4	7.2
Canary r/	940					940	105		
Chilipepper s/	d/			2,576		2,576	2,447	2,447	
Bocaccio t/	d/			793		793	288	206.4	67.3
Splitnose u/	d/			615		615	461		
Yellowtail v/	4,562			d/		4,562	4,562		
Shortspine thornyhead w/ N of 34 27' N. lat.	2,411					2,411	1,591	1,591	
S of 34 27' N. lat.							410		
Longspine thornyhead x/ N of 34 27' N. lat.	3,671					3,671	2,175		
S of 34 27' N. lat.							385		
Cowcod y/	d/			14		14	4		
Darkblotched z/	440					440	330	288.05	
Yelloweye aa/						32	14	1.9	7.6
California Scorpionfish bb/					155	155	155		
Black cc/ N of 46 16' N. lat.	464					464	464		
S of 46 16' N. lat.			1,317			1,317	1,000		

Species	ABC Specifications						OY	HG b/	
	ABC Contributions by Area					ABC			
	Vancouver a/	Columbia	Eureka	Monterey	Conception			Commercial	Recreation-al
Minor Rockfish dd/ N of 40 10' N. lat.	3,678			--		3,678	2,283		
Minor Rockfish ee/ S of 40 10' N. lat.	--			3,382		3,382	1,990		
Remaining	1,640			1,318					
bank ff/	d/			350					
blackgill gg/	d/			292					
blue	28			211					
bocaccio north	318			--					
chilipepper north	32			--					
redstripe	576			d/					
sharpchin	307			45					
silvergrey	38			d/					
splitnose north	242			--					
yellowmouth	99			d/					
yellowtail	--			116					
gopher	d/			302					
Other rockfish hh/	2,038			2,066					
SHARKS/SKATES/RATFISH/MORIDS/GRENADIERS/KELP GREENLING:									
Longnose Skate ii/	3,269					3,269	1,349		
Other fish jj/	11,200					11,200	5,600		

Table 2b. To Part 660, Subpart C-2010, and beyond, Harvest Guidelines for Minor Rockfish by Depth Sub-groups (weights in metric tons).

Species	Total Catch ABC	Total Catch OY	Recreational HG	Commercial HG	Limited Entry HG		Open Access HG	
					Mt	%	Mt	%
Minor Rockfish dd/ N of 40° 10' N. lat.	3,678	2,283	--	--	--	91.7	--	8.3
Nearshore		155	--	--				
Shelf		968	--	--				
Slope		1,160	--	--				
Minor Rockfish ee/ S of 40° 10' N. lat.	3,382	1,990	--	--	--	55.7	--	44.3
Nearshore		650	--	--				
Shelf		714	--	--				
Slope		626	--	--				

Table 2c. To Part 660, Subpart C 2010, and beyond, Open Access and Limited Entry Allocations by Species or Species Group. (Weights in Metric Tons)

Species	Commercial Total Catch HGs	Commercial Total Catch HGs			
		Limited Entry		Open Access	
		Mt	%	Mt	%
Lingcod N of 42° N. lat.	--	--	81.0	--	19.0
S of 42° N. lat.					
Sablefish kk/ N of 36° N. lat.	6,471	5,863	90.6	608	9.4
Widow ll/	--	--	97.0	--	3.0
Canary ll/	42.3	--	87.7	--	12.3
Chilipepper	2,447	1,363	55.7	1,084	44.3
Bocaccio ll/	206.4	--	55.7	--	44.3
Yellowtail	-	--	91.7	--	8.3
Shortspine thornyhead N of 34°27' N. lat.	1,591	1,586	99.7	5	0.27
Minor Rockfish N of 40°10' N. lat.	--	--	91.7	--	8.3
S of 40°10' N. lat.	--	--	55.7	--	44.3

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[a] ABCs apply only to the U.S. portion of the Vancouver area.

[b] Optimum Yields (OYs) and Harvest Guidelines (HGs) are specified as total catch values. A harvest guideline is a specified harvest target and not a quota. The use of this term may differ from the use of similar terms in state regulation.

[c] Lingcod—A coastwide lingcod stock assessment was prepared in 2005. The lingcod biomass was estimated to be at 64 percent of its unfished biomass coastwide in 2005. The ABC of 4,829 mt was calculated using an FMSY proxy of F45%. Because the stock is above B40% coastwide, the coastwide OY was set equal to the ABC. The tribal harvest guideline is 250 mt.

[d] "Other species"—these species are neither common nor important to the commercial and recreational fisheries in the areas footnoted. Accordingly, these species are included in the harvest guidelines of "other fish", "other rockfish" or "remaining rockfish".

[e] Pacific Cod—The 3,200 mt ABC for the Vancouver-Columbia area is based on historical landings data. The 1,600 mt OY is the ABC reduced by 50 percent as a precautionary adjustment. A tribal harvest guideline of 400 mt is deducted from the OY resulting in a commercial OY of 1,200 mt.

[f] Pacific whiting—The most recent stock assessment was prepared in January 2010. The stock assessment base model estimated the Pacific whiting biomass to be at 31 percent (50th percentile estimate of depletion) of its unfished biomass in 2010. The U.S.-Canada coastwide ABC is 455,550 mt, the U.S. share of the ABC is 336,560 mt (73.88 percent of the coastwide ABC). The U.S.-Canada coastwide Pacific whiting OY is 262,500 mt, with a corresponding U.S. OY of 193,935 mt. The tribal allocation is 49,939 mt. The amount estimated to be taken as research catch and in non-groundfish fisheries is 3,000 mt. The commercial OY is 140,996 mt. Each sector receives a portion of the commercial OY, with the catcher/processors getting 34 percent (47,939 mt), motherships getting 24 percent (33,839 mt), and the shore-based sector getting 42 percent (59,218 mt). No more than 2,961 mt (5 percent of the shore-based allocation) may be taken in the fishery south of 42° N. lat. prior to the start of the primary season for the shorebased fishery north of 42° N. lat.

[g] Sablefish—A coastwide sablefish stock assessment was prepared in 2007. The coastwide sablefish biomass was estimated to be at 38.3 percent of its unfished biomass in 2007. The coastwide ABC of 9,217 mt was based on the new stock assessment with a FMSY proxy of F45%. The 40–10 harvest policy was applied to the ABC then apportion between the northern and southern areas with 72 percent going to the area north of 36* N. lat. and 28 percent going to the area south of 36* N. lat. The OY for the area north of 36* N. lat. is 6,471 mt. When establishing the OY for the area south of 36* N. lat. a 50 percent reduction was made resulting in a Conception area OY of 1,258 mt. The Coastwide OY of 7,729 mt is the sum of the northern and southern area OYs. The tribal allocation for the area north of 36* N. lat. is 647 mt (10 percent of the OY north of 36* N. lat.), which is further reduced by 1.6 percent (10 mt) to account for discard mortality. The tribal landed catch value is 637 mt.

[h] Cabezon south of 42* N. lat. was assessed in 2005. The Cabezon stock was estimated to be at 40 percent of its unfished biomass north of 34* 27 ′N. lat. and 28 percent of its unfished biomass south of 34* 27 ′N. lat. in 2005. The ABC of 111 mt is based on the 2005 stock assessment with a harvest rate proxy of F45%. The OY of 79 mt is consistent with the application of a 60–20 harvest rate policy specified in the California Nearshore Fishery Management Plan.

[i] Dover sole north of 34* 27′ N. lat. was assessed in 2005. The Dover sole biomass was estimated to be at 59.8 percent of its unfished biomass in 2005 and was projected to be increasing. The ABC of 28,582 mt is based on the results of the 2005 assessment with an FMSY proxy of F40%. Because the stock is above B40% coastwide, the OY could be set equal to the ABC. The OY of 16,500 mt is less than the ABC. The OY is set at the MSY harvest level which is considerably larger than the coastwide catches in any recent years.

[j] A coastwide English sole stock assessment was prepared in 2005 and updated in 2007. The stock was estimated to be at 116 percent of its unfished biomass in 2007. The stock biomass is believed to be declining. The ABC of 9,745 mt is based on the results of the 2007 assessment update with an FMSY proxy of F40%. Because the stock is above B40%, the OY was set equal to the ABC.

[k] A petrale sole stock assessment was prepared for 2005. In 2005 the petrale sole stock was estimated to be at 32 percent of its unfished biomass coastwide (34 percent in the northern assessment area and 29 percent in the southern assessment area). The 2010 ABC of 2,751 mt is based on the 2005 assessment with a F40% FMSY proxy. To derive the 2010 OY, the 40 10 harvest policy was applied to the ABC for both the northern and southern assessment areas. As a precautionary measure, an additional 25 percent reduction was made in the OY contribution for the southern area due to assessment uncertainty. As another precautionary measure, an additional 1,193 mt reduction was made in the coastwide OY due to preliminary results of the more pessimistic 2009 stock assessment. The coastwide OY is 1,200 mt in 2010.

[l] Arrowtooth flounder was assessed in 2007 and was estimated to be at 79 percent of its unfished biomass in 2007. Because the stock is above B40%, the OY is set equal to the ABC.

[m] Starry Flounder was assessed for the first time in 2005 and was estimated to be above 40 percent of its unfished biomass in 2005. However, the stock was projected to decline below 40 percent in both the northern and southern areas after 2008. For 2010, the coastwide ABC of 1,578 mt is based on the 2005 assessment with a FMSY proxy of F40%. To derive the OY of 1,077 mt, the 40–10 harvest policy was applied to the ABC for both the northern and southern assessment areas then an additional 25 percent reduction was made due to assessment uncertainty.

[n] "Other flatfish" are those flatfish species that do not have individual ABC/OYs and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole. The other flatfish ABC is based on historical catch levels. The ABC of 6,731 mt is based on the highest landings for sanddabs (1995) and rex sole (1982) for the 1981–2003 period and on the average landings from the 1994–1998 period for the remaining other flatfish species. The OY of 4,884 mt is based on the ABC with a 25 percent precautionary adjustment for sanddabs and rex sole and a 50 percent precautionary adjustment for the remaining species.

[o] A POP stock assessment was prepared in 2005 and was updated in 2007. The stock assessment update estimated the stock to be at 27.5 percent of its unfished biomass in 2007. The ABC of 1,173 mt for the Vancouver and Columbia areas is based on the 2007 stock assessment update with an FMSY proxy of F50%. The OY of 200 mt is based on a rebuilding plan with a target year to rebuild of 2017 and an SPR harvest rate of 86.4 percent. The OY is reduced by 2.0 mt for the amount anticipated to be taken during research activity and 0.14 mt for the amount expected to be taken during EFP fishing.

[p] Shortbelly rockfish remains an unexploited stock and is difficult to assess quantitatively. To understand the potential environmental determinants of fluctuations in the recruitment and abundance of an unexploited rockfish population in the California Current ecosystem, a non-quantitative assessment was conducted in 2007. The results of the assessment indicated the shortbelly stock was healthy with an estimated spawning stock biomass at 67 percent of its unfished biomass in 2005. The ABC and OY are being set at 6,950 mt which is 50 percent of the 2008 ABC and OY values. The stock is expected to remain at its current equilibrium with these harvest specifications.

[q] Widow rockfish was assessed in 2005, and an update was prepared in 2007. The stock assessment update estimated the stock to be at 36.2 percent of its unfished biomass in 2006. The ABC of 6,937 mt is based on the stock assessment update with an F50% FMSY proxy. The OY of 509 mt is based on a rebuilding plan with a target year to rebuild of 2015 and an SPR harvest rate or 95 percent. To derive the commercial harvest guideline of 447.4 mt, the OY is reduced by 1.1 mt for the amount anticipated to be taken during research activity, 45.5 mt for the tribal set-aside, 7.2 mt the amount estimated to be taken in the recreational fisheries, 0.4 mt for the amount expected to be taken incidentally in non-groundfish fisheries, and 7.4 mt for EFP fishing activities.

[r] Canary rockfish—A canary rockfish stock assessment was completed in 2007 and the stock was estimated to be at 32.7 percent of its unfished biomass coastwide in 2007. The coastwide ABC of 940 mt is based on a FMSY proxy of F50%. The OY of 105 mt is based on a rebuilding plan with a target year to rebuild of 2021 and a SPR harvest rate of 88.7 percent. To derive the commercial harvest guideline of 42.3 mt, the OY is reduced by 8.0 mt for the amount anticipated to be taken during research activity, 7.3 mt the tribal set-aside, 43.8 mt the amount estimated to be taken in the recreational fisheries, 0.9 mt for the amount expected to be taken incidentally

in non-groundfish fisheries, and 2.7 mt for the amount expected to be taken during EFP fishing. The following harvest guidelines are being specified for catch sharing in 2009: 19.7 mt for limited entry Non-Whiting Trawl, 18.0 mt for limited entry Whiting Trawl, 2.2 mt for limited entry fixed gear, 2.5 mt for directed open access, 4.9 mt for Washington recreational, 16.0 mt for Oregon recreational, and 22.9 mt for California recreational.

[s] Chilipepper rockfish was assessed in 2007 and the stock was estimated to be at 71 percent of its unfished biomass coastwide in 2007. The ABC of 2,576 mt is based on the new assessment with an FMSY proxy of F50%. Because the unfished biomass is estimated to be above 40 percent of the unfished biomass, the default OY could be set equal to the ABC. However, the OY of 2,447 mt was the ABC reduced by 5 percent as a precautionary measure. Open access is allocated 44.3 percent (1,084 mt) of the commercial HG and limited entry is allocated 55.7 percent (1,363 mt) of the commercial HG.

[t] A bocaccio stock assessment and a rebuilding analysis were prepared in 2007. The bocaccio stock was estimated to be at 13.8 percent of its unfished biomass in 2007. The ABC of 793 mt for the Monterey-Conception area is based on the new stock assessment with an FMSY proxy of F50%. The OY of 288 is based on a rebuilding plan with a target year to rebuild of 2026 and a SPR harvest rate of 77.7 percent. To derive the commercial harvest guideline of 206.4 mt, the OY is reduced by 2.0 mt for the amount anticipated to be taken during research activity, 67.3 mt for the amount estimated to be taken in the recreational fisheries, 1.3 mt for the amount expected to be taken incidentally in non-groundfish fisheries, and 11.0 mt for the amount expected to be taken during EFP fishing.

[u] Splitnose rockfish—The ABC is 615 mt in the Monterey-Conception area. The 461 mt OY for the area reflects a 25 percent precautionary adjustment because of the less rigorous stock assessment for this stock. In the north (Vancouver, Columbia and Eureka areas), splitnose is included within the minor slope rockfish OY. Because the harvest assumptions used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 2010 was considered to be conservative and based on the best available data.

[v] Yellowtail rockfish—A yellowtail rockfish stock assessment was prepared in 2005 for the Vancouver, Columbia, Eureka areas. Yellowtail rockfish was estimated to be above 40 percent of its unfished biomass in 2005. The ABC of 4,562 mt is based on the 2005 stock assessment with the FMSY proxy of F50%. The OY of 4,562 mt was set equal to the ABC, because the stock is above the precautionary threshold of B40%.

[w] Shortspine thornyhead was assessed in 2005 and the stock was estimated to be at 63 percent of its unfished biomass in 2005. The ABC of 2,411 mt is based on a F50%FMSYproxy. For that portion of the stock (66 percent of the biomass) north of Point Conception (34°27′ N. lat.), the OY of 1,591 mt was set at equal to the ABC because the stock is estimated to be above the precautionary threshold. For that portion of the stock south of 34°27′ N. lat. (34 percent of the biomass), the OY of 410 mt was the portion of the ABC for the area reduced by 50 percent as a precautionary adjustment due to the short duration and amount of survey data for that area.

[x] Longspine thornyhead was assessed coastwide in 2005 and the stock was estimated to be at 71 percent of its unfished biomass in 2005. The coastwide ABC of 3,671 mt is based on a F50%FMSYproxy. The OY is set equal to the ABC because the stock is above the precautionary threshold. Separate OYs are being established for the areas north and south of 34°27′ N. lat. (Point Conception). The OY of 2,175 mt for that portion of the stock in the northern area (79 percent) was the ABC reduced by 25 percent as a precautionary adjustment. For that portion of the stock in the southern area (21 percent), the OY of 385 mt was the portion of the ABC for the area reduced by 50 percent as a precautionary adjustment due to the short duration and amount of survey data for that area.

[y] Cowcod in the Conception area was assessed in 2007 and the stock was estimated to be between 3.4 to 16.3 percent of its unfished biomass. The ABC for the Monterey and Conception areas is 14 mt and is based on the 2007 rebuilding analysis in which the Conception area stock assessment projection was doubled to account for both areas. A single OY of 4 mt is being set for both areas. The OY of 4 mt is based on the need to conform the 2010 cowcod harvest specifications to the Court's Order in *Natural Resources Defense Council* v. *Locke*, Civil Action No. C 01–0421 JL. The amount anticipated to be taken during scientific research activity is 0.2 mt and the amount expected to be taken during EFP activity is 0.24 mt.

[z] Darkblotched rockfish was assessed in 2007 and a rebuilding analysis was prepared. The new stock assessment estimated the stock to be at 22.4 percent of its unfished biomass in 2007. The ABC is projected to be 440 mt and is based on the 2007 stock assessment with an FMSY proxy of F50%. The OY of 330 mt is based on the need to conform the 2010 darkblotched rockfish harvest specifications to the Court's Order in Natural Resources Defense Council v. Locke, Civil Action No. C 01–0421 JL. The amount anticipated to be taken during scientific research activity is 2.0 mt and the amount anticipated to be taken during EFP activity is 0.95 mt.

[aa] Yelloweye rockfish was fully assessed in 2006 and an assessment update was completed in 2007. The 2007 stock assessment update estimated the spawning stock biomass in 2006 to be at 14 percent of its unfished biomass coastwide. The 32 mt coastwide ABC was derived from the base model in the new stock assessment with an FMSY proxy of F50%. The 14 mt OY is based on the need to conform the 2010 yelloweye rockfish harvest specifications to the Court's Order in *Natural Resources Defense Council* v. *Locke*, Civil Action No. C 01–0421 JL. The amount anticipated to be taken during scientific research activity is 1.3 mt, the amount anticipated to be taken in the tribal fisheries is 2.3 mt, and the amount anticipated to be taken incidentally in non-groundfish fisheries is 0.3 mt. The catch sharing harvest guidelines for yelloweye rockfish in 2010 are: Limited entry non-whiting trawl 0.3 mt, limited entry whiting 0.0 mt, limited entry fixed gear 0.8 mt, directed open access 1.2 mt, Washington recreational 2.6 mt, Oregon recreational 2.3 mt, California recreational 2.7 mt, and 0.2 mt for exempted fishing.

[bb] California Scorpionfish south of 34°27′N. lat. (point Conception) was assessed in 2005 and was estimated to be above 40 percent of its unfished biomass in 2005. The ABC of 155 mt is based on the new assessment with a harvest rate proxy of F50%. Because the stock is above B40% coastwide, the OY is set equal to the ABC.

[cc] New assessments were prepared for black rockfish south of 45°56.00 N. lat. (Cape Falcon, Oregon) and for black rockfish north of Cape Falcon. The ABC for the area north of 46°16′N. lat. (Washington) is 464 mt (97 percent) of the 478 mt ABC contribution from the northern assessment area. The ABC for the area south of 46°16′N. lat. (Oregon and California) is 1,317 mt which is the sum of a contribution of 14 mt (3 percent) from the northern area assessment, and 1,303 mt from the southern area assessment. The ABCs were derived using an FMSY proxy of F50%. Because both portions of the stock are above 40 percent, the OYs could be set equal to the ABCs. For the area north of 46°16′N. lat., the OY of 490 mt is set equal to the ABC. The following tribal harvest guidelines are being set: 30,000 lb (13.6 mt) north of Cape Alava, WA (48°09.50′N. lat.) and 10,000 lb (4.5 mt) between Destruction Island, WA (47°40′N. lat.) and Leadbetter Point, WA (46°38.17′N. lat.) For the area south of 46°16′N. lat., the OY of 1,000 mt is a constant harvest level. The black rockfish OY in the area south of 46°16′N. lat., is subdivided with separate HGs being set for the area north of 42° N. lat. (580 mt/58 percent) and for the area south of 42° N. lat. (420 mt/42 percent).

[dd] Minor rockfish north includes the "remaining rockfish" and "other rockfish" categories in the Vancouver, Columbia, and Eureka areas combined. These species include "remaining rockfish", which generally includes species that have been assessed by less rigorous methods than stock assessments, and "other rockfish", which includes species that do not have quantifiable stock assessments. Blue rockfish has been removed from the "other rockfish" and added to the remaining rockfish. The ABC of 3,678 mt is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent (F = 0.75M) as a precautionary adjustment. To obtain the total catch OY of 2,283 mt, the remaining rockfish ABCs were further reduced by 25 percent and other rockfish ABCs were reduced by 50 percent. This was a precautionary measure to address limited stock assessment information.

[ee] Minor rockfish south includes the "remaining rockfish" and "other rockfish" categories in the Monterey and Conception areas combined. These species include "remaining rockfish" which generally

includes species that have been assessed by less rigorous methods than stock assessment, and "other rockfish" which includes species that do not have quantifiable stock assessments. Blue rockfish has been removed from the "other rockfish" and added to the remaining rockfish. The ABC of 3,382 mt is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent (F = 0.75M) as a precautionary adjustment. The remaining rockfish ABCs are further reduced by 25 percent, with the exception of blackgill rockfish (see footnote gg). The other rockfish ABCs were reduced by 50 percent. This was a precautionary measure due to limited stock assessment information. The resulting minor rockfish OY is 1,990 mt.

[ff] Bank rockfish—The ABC is 350 mt which is based on a 2000 stock assessment for the Monterey and Conception areas. This stock contributes 263 mt towards the minor rockfish OY in the south.

[gg] Blackgill rockfish in the Monterey and Conception areas was assessed in 2005 and is estimated to be at 49.9 percent of its unfished biomass in 2008. The ABC of 292 mt for the Monterey and Conception areas is based on the 2005 stock assessment with an FMSY proxy of F50%and is the two year average ABC for the 2007 and 2008 periods. This stock contributes 292 mt towards minor rockfish south.

[hh] "Other rockfish" includes rockfish species listed in 50 CFR 660.302. A new stock assessment was conducted for blue rockfish in 2007. As a result of the new stock assessment, the blue rockfish contribution to the other rockfish group, of 30 mt in the north and 232 mt in the south, are removed. A new contribution of 28 mt contribution in the north and 202 mt contribution in the south is added to the remaining rockfish. The ABC for the remaining species is based on historical data from a 1996 review landings and includes an estimate of recreational landings. Most of these species have never been assessed quantitatively.

[ii] Longnose skate was fully assessed in 2006 and an assessment update was completed in 2007. The ABC of 3,428 is based on the 2007 with an FMSY proxy of F45%. Longnose skate was previously managed as part of the Other Fish complex. The 2009 OY of 1,349 mt is a precautionary OY based on historical total catch increased by 50 percent.

[jj] "Other fish" includes sharks, skates, rays, ratfish, morids, grenadiers, kelp greenling, and other groundfish species noted above in footnote d/. The longnose skate contribution is being removed from this complex.

[kk] Sablefish allocation north of 36* N. lat.—The limited entry allocation is further divided with 58 percent allocated to the trawl fishery and 42 percent allocated to the fixed-gear fishery.

[ll] Specific open access/limited entry allocations specified in the FMP have been suspended during the rebuilding period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks.

Subpart D—West Coast Groundfish—Limited Entry Trawl Fisheries

§ 660.100 Purpose and scope.

This subpart covers the Pacific Coast Groundfish limited entry trawl fishery. Under the trawl rationalization program, the limited entry trawl fishery consists of the Shorebased IFQ Program, the MS Coop Program, and the C/P Coop Program.

§ 660.111 Trawl fishery—definitions.

These definitions are specific to the limited entry trawl fisheries covered in this subpart. General groundfish definitions are found at § 660.11, subpart C.

Catch history assignment 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.

Catcher/processor coop or C/P coop means a harvester group that includes all eligible catcher/processor at-sea Pacific whiting endorsed permit owners who voluntarily form a coop and who manage the catcher/processor-specified allocations through private agreements and contracts.

Catcher/Processor Coop Program or C/P Coop Program means the C/P Coop Program described at § 660.160, subpart D.

Coop agreement means a private agreement between a group of MS/CV-endorsed limited entry permit owners or C/P-endorsed permit owners that contains all information specified at §§ 660.150 and 660.160, subpart D.

Coop member means a permit owner of an MS/CV-endorsed permit for the MS Coop Program that is a party to an MS coop agreement, or a permit owner of a C/P-endorsed permit for the C/P Coop Program that is legally obligated to the C/P coop.

Coop permit means a Federal permit required to participate as a Pacific whiting coop in the catcher/processor or mothership sectors.

Designated coop manager means an individual appointed by a permitted coop that is identified in the coop agreement and is responsible for actions described at §§ 660.150 (for an MS coop) or 660.160 (for a C/P coop), subpart D.

IBQ pounds means the quotas, expressed in round weight of fish, that are issued annually to each QS permit owner in the Shorebased IFQ Program based on the amount of IBQ they own and the amount of allowable bycatch mortality allocated to the Shorebased IFQ Program. IBQ pounds have the same species/species group and area designations as the IBQ from which they are issued.

IFQ first receivers mean persons who first receive, purchase, or take custody, control, or possession of catch onshore directly from a vessel that harvested the catch while fishing under the Shorebased IFQ Program described at § 660.140, subpart D.

IFQ landing means an offload of fish harvested under the Shorebased IFQ Program described at § 660.140, subpart D.

Individual bycatch quota (IBQ) means the amount of bycatch quota for an individual species/species group and area expressed as a percentage of the annual allocation of allowable bycatch mortality to the Shorebased IFQ Program. IBQ is used as the basis for the annual calculation and allocation of a QS permit owner's IBQ pounds in the Shorebased IFQ Program. Both IBQ and QS may be listed on a QS permit and in the associated QS account. Species for which IBQ will be issued for the Shorebased IFQ Program are listed at § 660.140, subpart D.

Individual fishing quota (IFQ) means a Federal permit to harvest a quantity of fish, expressed as a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person. An IFQ is a harvest privilege that may be revoked at any time in accordance with the Magnuson-Stevens Act. IFQ species for the Shorebased IFQ Program are listed at § 660.140, subpart D.

Inter-coop means two or more permitted coops that have submitted an accepted inter-coop agreement to NMFS that specifies a coordinated strategy for harvesting pooled allocations of Pacific whiting and non-whiting groundfish.

Inter-coop agreement means a written agreement between two or more permitted mothership coops and which contains private contractual arrangements for sharing catch and/or bycatch with one another.

Material change means, for the purposes of a coop agreement, a change to any of the required components of the coop agreement, defined at §§ 660.150 and 660.160, subpart D, which was submitted to NMFS during the application process for the coop permit.

Mothership coop or MS coop means a group of MS/CV-endorsed limited entry permit owners that are authorized by means of a coop permit to jointly harvest and process from a single coop allocation.

Mothership Coop Program or MS Coop Program means the MS Coop Program described at § 660.150, subpart D, and includes both the coop and non-coop fisheries.

Mutual agreement exception means, for the purpose of § 660.150, subpart D, an agreement that allows the owner of an MS/CV-endorsed limited entry permit to withdraw the permit's obligation of its catch history assignment to a permitted mothership processor, when mutually agreed to with the mothership processor, and to obligate to a different permitted mothership processor.

Pacific halibut set-aside means an amount of Pacific halibut annually set aside for the at-sea whiting fisheries (mothership and C/P sectors) and which is based on the trawl allocation of Pacific whiting.

Pacific whiting IFQ fishery means a trip in which a vessel registered to a trawl-endorsed limited entry permit uses legal midwater groundfish trawl gear with a valid declaration for limited entry midwater trawl, Pacific whiting IFQ, as specified at § 660.13(d)(5), subpart C, during the dates what the midwater Pacific whiting season is open.

Pacific whiting shoreside first receivers means persons who first receive, purchase, or take custody, control, or possession of Pacific whiting onshore directly from a Pacific whiting shoreside vessel.

Pacific whiting shoreside or shorebased fishery means Pacific whiting shoreside vessels and Pacific whiting shoreside first receivers.

Pacific whiting shoreside vessel means any vessel that fishes using midwater trawl gear to take, retain, possess and land 4,000-lb (1,814 kg) or more of Pacific whiting per fishing trip from the Pacific whiting shorebased sector allocation for delivery to a Pacific whiting shoreside first receiver during the primary season.

Processor obligation means an annual requirement for an MS/CV-endorsed limited entry permit to assign the amount of catch available from the permit's catch history assignment to a particular MS permit.

Quota pounds (QP) means the quotas, expressed in round weight of fish, that are issued annually to each QS permit owner in the Shorebased IFQ Program based on the amount of QS they own and the amount of fish allocated to the Shorebased IFQ Program. QP have the same species/species group and area designations as the QS from which they are issued.

Quota share (QS) means the amount of fishing quota for an individual species/species group and area expressed as a percentage of the annual allocation of fish to the Shorebased IFQ Program. The QS is used as the basis for the annual calculation and allocation of a QS permit owner's QP in the Shorebased IFQ Program. Both QS and IBQ may be listed on a QS permit and in the associated QS account. Species for which QS will be issued for the Shorebased IFQ Program are listed at § 660.140, subpart D.

Shorebased IFQ Program means the Shorebased IFQ Program described at § 660.140, subpart D.

Vessel account means an account held by the vessel owner where QP and IBQ pounds are registered for use by a vessel in the Shorebased IFQ Program.

Vessel limits means the maximum amount of QP or IBQ pounds a vessel owner can hold, acquire, and/or use during a calendar year. Vessel limits specify the maximum amount of QP or IBQ pounds that may be registered to a single vessel account during the year (QP Vessel Limit) and, for some species, the maximum amount of unused QP or IBQ pounds registered to a vessel account at any one time (Unused QP Vessel Limit).

§ 660.112 Trawl fishery—prohibitions.

These prohibitions are specific to the limited entry trawl fisheries. General groundfish prohibitions are defined at § 660.12, subpart C. In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person or vessel to:

(a) *General*—(1) *Trawl gear endorsement.* Fish with groundfish trawl gear, or carry groundfish trawl gear on board a vessel that also has groundfish on board, unless the vessel is registered for use with a valid limited entry permit with a trawl gear endorsement, with the following exception.

(i) The vessel is in continuous transit from outside the fishery management area to a port in Washington, Oregon, or California;

(ii) The vessel is registered to a limited entry MS permit with a valid mothership fishery declaration, in which case trawl nets and doors must be stowed in a secured and covered manner, and detached from all towing lines, so as to be rendered unusable for fishing.

(2) *Sorting.* [Reserved]

(3) *Recordkeeping and reporting.* (i) Fail to comply with all recordkeeping and reporting requirements at § 660.13, subpart C; including failure to submit information, submission of inaccurate information, or intentionally submitting false information on any report required at § 660.13(d), subpart C.

(ii) Falsify or fail to make and/or file, retain or make available any and all reports of groundfish landings, containing all data, and in the exact manner, required by the regulation at § 660.13, subpart C, or § 660.113, subpart D.

(4) *Fishing in conservation areas with trawl gear.* (i) Operate any vessel registered to a limited entry permit with a trawl endorsement and trawl gear on board in a applicable GCA (defined at § 660.11, subpart C and § 660.130(e), subpart D), except for purposes of continuous transiting, with all groundfish trawl gear stowed in accordance with § 660.130(e)(4), subpart D or except as authorized in the groundfish management measures published at § 660.130, subpart D.

(ii) Fish with bottom trawl gear (defined at § 660.11, subpart C) anywhere within EFH seaward of a line approximating the 700-fm (1280-m) depth contour, as defined in § 660.76, subpart C. For the purposes of regulation, EFH seaward of 700-fm (1280-m) within the EEZ is described at § 660.75, subpart C.

(iii) Fish with bottom trawl gear (defined at § 660.11, subpart C) with a footrope diameter greater than 19 inches (48 cm) (including rollers, bobbins or other material encircling or tied along the length of the footrope) anywhere within EFH within the EEZ. For the purposes of regulation, EFH within the EEZ is described at § 660.75, subpart C.

(iv) Fish with bottom trawl gear (defined at § 660.11, subpart C) with a footrope diameter greater than 8 inches (20 cm) (including rollers, bobbins or other material encircling or tied along the length of the footrope) anywhere within the EEZ shoreward of a line approximating the 100-fm (183-m) depth contour (defined at § 660.73, subpart C).

(v) Fish with bottom trawl gear (defined at § 660.11, subpart C), within the EEZ in the following areas (defined at §§ 660.77 and 660.78, Subpart C): Olympic 2, Biogenic 1, Biogenic 2, Grays Canyon, Biogenic 3, Astoria Canyon, Nehalem Bank/Shale Pile, Siletz Deepwater, Daisy Bank/Nelson Island, Newport Rockpile/Stonewall Bank, Heceta Bank, Deepwater off Coos Bay, Bandon High Spot, Rogue Canyon.

(vi) Fish with bottom trawl gear (defined at § 660.11, subpart C), other than demersal seine, unless otherwise specified in this section or § 660.381, within the EEZ in the following areas (defined at § 660.79, subpart C): Eel River Canyon, Blunts Reef, Mendocino Ridge, Delgada Canyon, Tolo Bank, Point Arena North, Point Arena South Biogenic Area, Cordell Bank/Biogenic Area, Farallon Islands/Fanny Shoal, Half Moon Bay, Monterey Bay/Canyon, Point Sur Deep, Big Sur Coast/Port San Luis, East San Lucia Bank, Point

Conception, Hidden Reef/Kidney Bank (within Cowcod Conservation Area West), Catalina Island, Potato Bank (within Cowcod Conservation Area West), Cherry Bank (within Cowcod Conservation Area West), and Cowcod EFH Conservation Area East.

(vii) Fish with bottom contact gear (defined at § 660.11, subpart C) within the EEZ in the following areas (defined at §§ 660.78 and 660.79, subpart C): Thompson Seamount, President Jackson Seamount, Cordell Bank (50–fm (91-m) isobath), Harris Point, Richardson Rock, Scorpion, Painted Cave, Anacapa Island, Carrington Point, Judith Rock, Skunk Point, Footprint, Gull Island, South Point, and Santa Barbara.

(viii) Fish with bottom contact gear (defined at § 660.11, subpart C), or any other gear that is deployed deeper than 500-fm (914-m), within the Davidson Seamount area (defined at § 660.79, subpart C).

(b) *Shorebased IFQ Program.* [Reserved]

(c) *MS and C/P Coop Programs.* [Reserved]

(d) *MS Coop Program (coop and non-coop fisheries).* [Reserved]

(e) *C/P Coop Program.* [Reserved]

(f) *Pacific Whiting Fisheries*—(1) *Pacific whiting vessel license requirements prior to trawl rationalization.* Fish in any of the sectors of the whiting fishery described at § 660.131(a), subpart D, after May 11, 2009 using a vessel that is not registered for use with a sector-appropriate Pacific whiting vessel license under § 660.26, subpart C. After May 11, 2009, vessels are prohibited from fishing, landing, or processing primary season Pacific whiting with a catcher/processor, mothership or mothership catcher vessel that has no history of participation within that specific sector of the whiting fishery during the period from January 1, 1997, through January 1, 2007, or with a shoreside catcher vessels that has no history of participation within the shorebased sector of the whiting fishery during the period from January 1, 1994 through January 1, 2007, as specified in § 660.26(c), subpart C. For the purpose of this paragraph, "historic participation" for a specific sector is the same as the qualifying criteria listed in § 660.26(c), subpart C.

(i) If a Pacific whiting vessel license is registered for use with a vessel, fail to carry that license onboard the vessel registered for use with the license at any time the vessel is licensed. A photocopy of the license may not substitute for the license itself.

(ii) [Reserved]

(2) Process whiting in the fishery management area during times or in areas where at-sea processing is prohibited for the sector in which the vessel participates, unless:

(i) The fish are received from a member of a Pacific Coast treaty Indian tribe fishing under § 660.50, subpart C;

(ii) The fish are processed by a waste-processing vessel according to § 660.131(j), subpart D; or

(iii) The vessel is completing processing of whiting taken on board during that vessel's primary season.

(3) During times or in areas where at-sea processing is prohibited, take and retain or receive whiting, except as cargo or fish waste, on a vessel in the fishery management area that already has processed whiting on board. An exception to this prohibition is provided if the fish are received within the tribal U&A from a member of a Pacific Coast treaty Indian tribe fishing under § 660.50, subpart C.

(4) Fish as a mothership if that vessel operates in the same calendar year as a catcher/processor in the whiting fishery, according to § 660.131, subpart D.

(5) Operate as a waste-processing vessel within 48 hours of a primary season for whiting in which that vessel operates as a catcher/processor or mothership, according to § 660.131(j), subpart D.

(6) On a vessel used to fish for whiting, fail to keep the trawl doors on board the vessel, when taking and retention is prohibited under § 660.131(f), subpart D.

(7) Sort or discard any portion of the catch taken by a catcher vessel in the mothership sector prior to the catch being received on a mothership, and prior to the observer being provided access to the unsorted catch, with the exception of minor amounts of catch that are lost when the codend is separated from the net and prepared for transfer.

(8) *Pacific whiting shoreside first receivers.* (i) [Reserved]

(ii) Fail to sort fish received from a Pacific whiting shoreside vessel prior to first weighing after offloading as specified at § 660.131(k)(2), subpart D for the Pacific whiting fishery.

(iii) Process, sell, or discard any groundfish received from a Pacific whiting shoreside vessel that has not been weighed on a scale that is in compliance with requirements at § 660.131 (k)(1)(i), subpart D, and accounted for on an electronic fish ticket with the identification number for the Pacific whiting shoreside vessel that delivered the fish.

(iv) Fail to weigh fish landed from a Pacific whiting shoreside vessel prior to transporting any fish from that landing away from the point of landing.

§ 660.113 Trawl fishery—recordkeeping and reporting.

General groundfish recordkeeping and reporting requirements are defined at § 660.13, subpart C. The following recordkeeping and reporting requirements are in addition to those and are specific to the limited entry trawl fisheries.

(a) *Shorebased IFQ Program.* [Reserved]

(b) *MS Coop Program (coop and non-coop fisheries).* [Reserved]

(c) *C/P Coop Program.* [Reserved]

(d) *Participants in the Pacific whiting shoreside fishery prior to trawl rationalization.* Reporting requirements defined in the following section are in addition to reporting requirements under applicable state law and requirements described at § 660.13, subpart C.

(1) *Reporting requirements for any Pacific whiting shoreside first receiver.*

(i) *Responsibility for compliance.* The Pacific whiting shoreside first receiver is responsible for compliance with all reporting requirements described in this paragraph.

(ii) *General requirements.* All records or reports required by this paragraph must: Be maintained in English, be accurate, be legible, be based on local time, and be submitted in a timely manner as required in paragraph (d)(1)(iv)(E) of this section.

(iii) *Required information.* All Pacific whiting shoreside first receivers must provide the following types of information: Date of landing, Pacific whiting shoreside vessel that made the delivery, gear type used, first receiver, round weights of species landed listed by species or species group including species with no value, number of salmon by species, number of Pacific halibut, and any other information deemed necessary by the Regional Administrator as specified on the appropriate electronic fish ticket form.

(iv) *Electronic fish ticket submissions.* The Pacific whiting shoreside first receiver must:

(A) Sort all fish, prior to first weighing, by species or species groups as specified at § 660.131(l)(2)(ii), subpart D.

(B) Include as part of each electronic fish ticket submission, the actual scale weight for each groundfish species as specified by requirements at § 660.131(l)(i), subpart D, and the Pacific whiting shoreside vessel identification number.

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

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

(E) Submit a completed electronic fish ticket for every landing that includes 4,000-lb (1,814 kg) or more of Pacific whiting (round weight equivalent) no later than 24 hours after the date the fish are received, unless a waiver of this requirement has been granted under provisions specified below at paragraph (d)(1)(vii) of this section.

(v) *Revising a submitted electronic fish ticket submission.* In the event that a data error is found, electronic fish ticket submissions may be revised by resubmitting the revised form. Electronic fish tickets are to be used for the submission of final data. Preliminary data, including estimates of fish weights or species composition, shall not be submitted on electronic fish tickets.

(vi) *Retention of Records.* [Reserved]

(vii) *Waivers for submission of electronic fish tickets upon written request.* On a case-by-case basis, a temporary written waiver of the requirement to submit electronic fish tickets may be granted by the Assistant Regional Administrator or designee if he/she determines that circumstances beyond the control of a Pacific whiting shoreside first receiver would result in inadequate data submissions using the electronic fish ticket system. The duration of the waiver will be determined on a case-by-case basis.

(viii) Reporting requirements when a temporary waiver has been granted. Pacific whiting shoreside first receivers that have been granted a temporary waiver from the requirement to submit electronic fish tickets must submit on paper the same data as is required on electronic fish tickets within 24 hours of the date received during the period that the waiver is in effect. Paper state landing receipts must be sent by facsimile to NMFS, Northwest Region, Sustainable Fisheries Division, 206–526–6736 or by delivering it in person to 7600 Sand Point Way NE., Seattle, WA 98115. The requirements for submissions of paper tickets in this paragraph are separate from, and in addition to existing state requirements for landing receipts or fish receiving tickets.

(2) [Reserved]

§ 660.116 Trawl fishery—observer requirements.

(a) *Observer coverage requirements*—(1) *NMFS-certified observers.*

(i) A catcher/processor or mothership 125-ft (38.1-m) LOA or longer must carry two NMFS-certified observers, and a catcher/processor or mothership shorter than 125-ft (38.1-m) LOA must carry one NMFS-certified observer, each day that the vessel is used to take, retain, receive, land, process, or transport groundfish.

(ii) A Pacific whiting shoreside vessel that sorts catch at sea must carry one NMFS-certified observer, from the time the vessel leaves port on a trip in which the catch is sorted at sea to the time that all catch from that trip has been offloaded.

(2) *Catcher vessels.* When NMFS notifies the owner, operator, permit holder, or the manager of a catcher vessel, specified at § 660.16(c), Subpart C of any requirement to carry an observer, the catcher vessel may not be used to fish for groundfish without carrying an observer.

(i) *Notice of departure—basic rule.* At least 24 hours (but not more than 36 hours) before departing on a fishing trip, a vessel that has been notified by NMFS that it is required to carry an observer, or that is operating in an active sampling unit, must notify NMFS (or its designated agent) of the vessel's intended time of departure. Notice will be given in a form to be specified by NMFS.

(A) *Optional notice—weather delays.* A vessel that anticipates a delayed departure due to weather or sea conditions may advise NMFS of the anticipated delay when providing the basic notice described in paragraph (a)(2)(i) of this section. If departure is delayed beyond 36 hours from the time the original notice is given, the vessel must provide an additional notice of departure not less than 4 hours prior to departure, in order to enable NMFS to place an observer.

(B) *Optional notice—back-to-back fishing trips.* A vessel that intends to make back-to-back fishing trips (*i.e.,* trips with less than 24 hours between offloading from one trip and beginning another), may provide the basic notice described in paragraph (a)(2)(i) of this section for both trips, prior to making the first trip. A vessel that has given such notice is not required to give additional notice of the second trip.

(ii) *Cease fishing report.* Within 24 hours of ceasing the taking and retaining of groundfish, vessel owners, operators, or managers must notify NMFS or its designated agent that fishing has ceased. This requirement applies to any vessel that is required to carry an observer, or that is operating in a segment of the fleet that NMFS has identified as an active sampling unit.

(b) *Waiver.* The Northwest Regional Administrator may provide written notification to the vessel owner stating that a determination has been made to temporarily waive coverage requirements because of circumstances that are deemed to be beyond the vessel's control.

(c) *Procurement of observer services by catcher/processors, motherships, and Pacific whiting shoreside vessels that sort at sea.* Owners of vessels required to carry observers under provisions at paragraph (a)(1)(i) or (ii) of this section must arrange for observer services from an observer provider permitted by the North Pacific Groundfish Observer Program under 50 CFR 679.50(i), except that:

(1) Vessels are required to procure observer services directly from NMFS when NMFS has determined and given notification that the vessel must carry NMFS staff or an individual authorized by NMFS in lieu of an observer provided by a permitted observer provider.

(2) Vessels are required to procure observer services directly from NMFS and a permitted observer provider when NMFS has determined and given notification that the vessel must carry NMFS staff or individuals authorized by NMFS, in addition to an observer provided by a permitted observer provider.

(d) *Vessel responsibilities.* An operator of a vessel required to carry one or more observer(s) must provide:

(1) *Accommodations and food.* Provide accommodations and food that are:

(i) *At-sea processors.* Equivalent to those provided for officers, engineers, foremen, deck-bosses or other management level personnel of the vessel.

(ii) *Catcher vessels.* Equivalent to those provided to the crew.

(2) *Safe conditions.* Maintain safe conditions on the vessel for the protection of observer(s) including adherence to all USCG and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel, and provisions at §§ 600.725 and 600.746 of this chapter.

(3) *Observer communications.* Facilitate observer communications by:

(i) *Observer use of equipment.* Allowing observer(s) to use the vessel's communication equipment and personnel, on request, for the entry, transmission, and receipt of work-related messages, at no cost to the observer(s) or the U.S. or designated agent.

(ii) *Functional equipment.* Ensuring that the vessel's communications equipment, used by observers to enter and transmit data, is fully functional and operational.

(iii) *Hardware and software.* Pacific whiting vessels that are required to carry one or more NMFS-certified observers under provisions at paragraphs (a)(1)(i) or (ii) of this section must provide hardware and software pursuant to regulations at 50 CFR 679.50(g)(1)(iii)(B) and 50 CFR 679.50(g)(2)(iii), as follows:

(A) Providing for use by the observer a personal computer in working condition that contains a full Pentium 120 Mhz or greater capacity processing chip, at least 32 megabytes of RAM, at least 75 megabytes of free hard disk storage, a Windows 9x or NT compatible operating system, an operating mouse, and a 3.5-inch (8.9 cm) floppy disk drive. The associated computer monitor must have a viewable screen size of at least 14.1 inches (35.8 cm) and minimum display settings of 600 x 800 pixels. The computer equipment specified in this paragraph (A) must be connected to a communication device that provides a modem connection to the NMFS host computer and supports one or more of the following protocols: ITU V.22, ITU V.22bis, ITU V.32, ITU V.32bis, or ITU V.34. Processors that use a modem must have at least a 28.8kbs Hayes-compatible modem. The above-specified hardware and software requirements do not apply to processors that do not process groundfish.

(B) NMFS-supplied software. Ensuring that each vessel that is required to carry a NMFS-certified observer obtains the data entry software provided by the NMFS for use by the observer.

(4) *Vessel position.* Allow observer(s) access to, and the use of, the vessel's navigation equipment and personnel, on request, to determine the vessel's position.

(5) *Access.* Allow observer(s) free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(6) *Prior notification.* Notify observer(s) at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer, unless the observer specifically requests not to be notified.

(7) *Records.* Allow observer(s) to inspect and copy any state or Federal logbook maintained voluntarily or as required by regulation.

(8) *Assistance.* Provide all other reasonable assistance to enable observer(s) to carry out their duties, including, but not limited to:

(i) Measuring decks, codends, and holding bins.

(ii) Providing the observer(s) with a safe work area.

(iii) Collecting bycatch when requested by the observer(s).

(iv) Collecting and carrying baskets of fish when requested by the observer(s).

(v) Allowing the observer(s) to collect biological data and samples.

(vi) Providing adequate space for storage of biological samples.

(9) *At-sea transfers to or from processing vessels.* Processing vessels must:

(i) Ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours, under safe conditions, and with the agreement of observers involved.

(ii) Notify observers at least 3 hours before observers are transferred, such that the observers can collect personal belongings, equipment, and scientific samples.

(iii) Provide a safe pilot ladder and conduct the transfer to ensure the safety of observers during transfers.

(iv) Provide an experienced crew member to assist observers in the small boat or raft in which any transfer is made.

(e) *Sample station and operational*—(1) *Observer sampling station.* This paragraph contains the requirements for observer sampling stations. The vessel owner must provide an observer sampling station that complies with this section so that the observer can carry out required duties.

(i) *Accessibility.* The observer sampling station must be available to the observer at all times.

(ii) *Location.* The observer sampling station must be located within 4 m of the location from which the observer samples unsorted catch. Unobstructed passage must be provided between the observer sampling station and the location where the observer collects sample catch.

(iii) *Minimum work space aboard at-sea processing vessels.* The observer must have a working area of 4.5 square meters, including the observer's sampling table, for sampling and storage of fish to be sampled. The observer must be able to stand upright and have a work area at least 0.9 m deep in the area in front of the table and scale.

(iv) *Table aboard at-sea processing vessels.* The observer sampling station must include a table at least 0.6 m deep, 1.2 m wide and 0.9 m high and no more than 1.1 m high. The entire surface area of the table must be available for use by the observer. Any area for the observer sampling scale is in addition to the minimum space requirements for the table. The observer's sampling table must be secured to the floor or wall.

(v) *Diverter board aboard at-sea processing vessels.* The conveyor belt conveying unsorted catch must have a removable board (diverter board) to allow all fish to be diverted from the belt directly into the observer's sampling baskets. The diverter board must be located downstream of the scale used to weigh total catch. At least 1 m of accessible belt space, located downstream of the scale used to weigh total catch, must be available for the observer's use when sampling.

(vi) *Other requirement for at-sea processing vessels.* The sampling station must be in a well-drained area that includes floor grating (or other material that prevents slipping), lighting adequate for day or night sampling, and a hose that supplies fresh or sea water to the observer.

(vii) *Observer sampling scale.* The observer sample station must include a NMFS-approved platform scale (pursuant to requirements at 50 CFR 679.28(d)(5)) with a capacity of at least 50 kg located within 1 m of the observer's sampling table. The scale must be mounted so that the weighing surface is no more than 0.7 m above the floor.

(2) [Reserved]

§ 660.120 Trawl fishery—crossover provisions.

(a) *General.* In addition to the General provisions listed at § 660.60, subpart C, the crossover provisions of this section apply to vessels operating in the limited entry trawl fishery.

(b) *Operating in north-south management areas with different trip limits*—(1) *Minor Rockfish.*

(i) If a trawl vessel takes and retains minor shelf rockfish south of 40°10′N. lat., that vessel is also permitted to take and retain, possess, or land yellowtail rockfish up to its cumulative limits north of 40°10′N. lat., even if yellowtail rockfish is part of the landings from minor shelf rockfish taken and retained south of 40°10′N. lat. Widow rockfish is included in overall shelf rockfish limits for all gear groups.

(ii) If a trawl vessel takes and retains minor shelf rockfish north of 40°10′N. lat., that vessel is also permitted to take and retain, possess, or land chilipepper rockfish up to its cumulative limits south of 40°10′ N. lat., even if chilipepper rockfish is part of the landings from minor shelf rockfish taken and retained north of 40°10′ N. lat.

(2) *DTS complex.* Differential trawl trip limits for the "DTS complex" north

and south of latitudinal management lines may be specified in trip limits, Table 1 (North) and Table 1 (South) of this subpart. Vessels operating in the limited entry trawl fishery are subject to the crossover provisions in this paragraph when making landings that include any one of the four species in the "DTS complex."

(3) *Flatfish complex.* There are often differential trip limits for the flatfish complex (butter, curlfin, English, flathead, petrale, rex, rock, and sand soles, Pacific sanddab, and starry flounder) north and south of latitudinal management lines. Vessels operating in the limited entry trawl fishery are subject to the crossover provisions in this paragraph when making landings that include any one of the species in the flatfish complex.

§ 660.130 Trawl fishery—management measures.

(a) *General.* Limited entry trawl vessels include those vessels registered to a limited entry permit with a trawl endorsement. Most species taken in limited entry trawl fisheries will be managed with cumulative trip limits (*see* trip limits in Tables 1 (North) and 1 (South) of this subpart), size limits (*see* § 660.60(h)(5), subpart C), seasons (see Pacific whiting at § 660.131(b), subpart D), gear restrictions (see paragraph (b) of this section) and closed areas (*see* paragraph (e) of this section and §§ 660.70 through 660.79, subpart C). The trawl fishery has gear requirements and trip limits that differ by the type of trawl gear on board and the area fished. Cowcod retention is prohibited in all fisheries and groundfish vessels operating south of Point Conception must adhere to CCA restrictions (*see* paragraph (e)(1) of this section and § 660.70, subpart C). The trip limits in Tables 1 (North) and 1 (South) of this subpart apply to vessels participating in the limited entry groundfish trawl fishery and may not be exceeded. Federal commercial groundfish regulations are not intended to supersede any more restrictive state commercial groundfish regulations relating to federally-managed groundfish.

(b) *Trawl gear requirements and restrictions.* Trawl nets may be fished with or without otter boards, and may use warps or cables to herd fish.

(1) *Codends.* Only single-walled codends may be used in any trawl. Double-walled codends are prohibited.

(2) *Mesh size.* Groundfish trawl gear must meet the minimum mesh size requirements in this paragraph. Mesh size requirements apply throughout the net. Minimum trawl mesh sizes are: Bottom trawl, 4.5 inches (11.4 cm); midwater trawl, 3.0 inches (7.6 cm). Minimum trawl mesh size requirements are met if a 20-gauge stainless steel wedge, less one thickness of the metal wedge, can be passed with only thumb pressure through at least 16 of 20 sets of two meshes each of wet mesh.

(3) *Chafing gear.* Chafing gear may encircle no more than 50 percent of the net's circumference. No section of chafing gear may be longer than 50 meshes of the net to which it is attached. Chafing gear may be used only on the last 50 meshes, measured from the terminal (closed) end of the codend. Except at the corners, the terminal end of each section of chafing gear on all trawl gear must not be connected to the net. (The terminal end is the end farthest from the mouth of the net.) Chafing gear must be attached outside any riblines and restraining straps. There is no limit on the number of sections of chafing gear on a net.

(4) *Large footrope trawl gear.* Large footrope gear is bottom trawl gear with a footrope diameter larger than 8 inches (20 cm) (including rollers, bobbins or other material encircling or tied along the length of the footrope). Fishing with bottom trawl gear with a footrope diameter greater than 19 inches (48 cm) (including rollers, bobbins, or other material encircling or tied along the length of the footrope) is prohibited anywhere in EFH within the EEZ, as defined by latitude/longitude coordinates at § 660.75, subpart C.

(5) *Small footrope trawl gear.* Small footrope gear is bottom trawl gear with a footrope diameter of 8 inches (20 cm) or smaller (including rollers, bobbins or other material encircling or tied along the length of the footrope). Other lines or ropes that run parallel to the footrope may not be augmented with material encircling or tied along their length such that they have a diameter larger than 8 inches (20 cm). For enforcement purposes, the footrope will be measured in a straight line from the outside edge to the opposite outside edge at the widest part on any individual part, including any individual disk, roller, bobbin, or any other device.

(i) *Selective flatfish trawl gear.* Selective flatfish trawl gear is a type of small footrope trawl gear. The selective flatfish trawl net must be a two-seamed net with no more than two riblines, excluding the codend. The breastline may not be longer than 3 ft (0.92 m) in length. There may be no floats along the center third of the headrope or attached to the top panel except on the riblines. The footrope must be less than 105 ft (32.26 m) in length. The headrope must be not less than 30 percent longer than the footrope. An explanatory diagram of a selective flatfish trawl net is provided as Figure 1 of part 660, subpart D.

(ii) [Reserved]

(6) *Midwater (or pelagic) trawl gear.* Midwater trawl gear must have unprotected footropes at the trawl mouth, and must not have rollers, bobbins, tires, wheels, rubber discs, or any similar device anywhere on any part of the net. The footrope of midwater gear may not be enlarged by encircling it with chains or by any other means. Ropes or lines running parallel to the footrope of midwater trawl gear must be bare and may not be suspended with chains or any other materials. Sweep lines, including the bottom leg of the bridle, must be bare. For at least 20 ft (6.15 m) immediately behind the footrope or headrope, bare ropes or mesh of 16-inch (40.6-cm) minimum mesh size must completely encircle the net. A band of mesh (a "skirt") may encircle the net under transfer cables, lifting or splitting straps (chokers), but must be: over riblines and restraining straps; the same mesh size and coincide knot-to-knot with the net to which it is attached; and no wider than 16 meshes.

(c) *Cumulative trip limits and prohibitions 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 cumulative and/or 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.

(1) *Fishing with large footrope trawl gear.* It is unlawful for any vessel using large footrope gear to fish for groundfish shoreward of the RCAs defined at paragraph (e)(4) of this section and at §§ 660.70 through 660.74, subpart C. The use of large footrope gear is permitted seaward of the RCAs coastwide.

(2) *Fishing with small footrope trawl gear.* North of 40°10′ N. lat., it is unlawful for any vessel using small footrope gear (except selective flatfish gear) to fish for groundfish or have small footrope trawl gear (except selective

flatfish gear) onboard while fishing shoreward of the RCA defined at paragraph (d) of this section and at §§ 660.70 through 660.74, subpart C. South of 40°10′ N. lat., small footrope gear is required shoreward of the RCA. Small footrope gear is permitted seaward of the RCA coastwide.

(i) North of 40°10′ N. lat., selective flatfish gear is required shoreward of the RCA defined at paragraph (d) of this section and at §§ 660.70, through 660.74, subpart C. South of 40°10′N. lat., selective flatfish gear is permitted, but not required, shoreward of the RCA. The use of selective flatfish trawl gear is permitted seaward of the RCA coastwide.

(ii) [Reserved]

(3) *Fishing with midwater trawl gear.* North of 40°10′ N. lat., midwater trawl gear is permitted only for vessels participating in the primary Pacific whiting fishery (for details on the Pacific whiting fishery see § 660.131, subpart D.) South of 40°10′ N. lat., the use of midwater trawl gear is prohibited shoreward of the RCA and permitted seaward of the RCA.

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

(i) The following restrictions apply to vessels operating north of 40°10′ N. lat.:

(A) A vessel may not have both groundfish trawl gear and non-groundfish trawl gear onboard simultaneously. A vessel may not have both bottom trawl gear and midwater trawl gear onboard simultaneously. A vessel may have more than one type of limited entry bottom trawl gear on board, either simultaneously or successively, during a cumulative limit period.

(B) If a vessel fishes exclusively with large or small footrope trawl gear during an entire cumulative limit period, the vessel is subject to the small or large footrope trawl gear cumulative limits and that vessel must fish seaward of the RCA during that limit period.

(C) If a vessel fishes exclusively with selective flatfish trawl gear during an entire cumulative limit period, then the vessel is subject to the selective flatfish trawl gear-cumulative limits during that limit period, regardless of whether the vessel is fishing shoreward or seaward of the RCA.

(D) If more than one type of bottom trawl gear (selective flatfish, large footrope, or small footrope) is on board, either simultaneously or successively, at any time during a cumulative limit period, then the most restrictive cumulative limit associated with the bottom trawl gear on board during that cumulative limit period applies for the entire cumulative limit period, regardless of whether the vessel is fishing shoreward or seaward of the RCA.

(E) If a vessel fishes both north and south of 40°10′ N. lat. with any type of small footrope gear onboard the vessel at any time during the cumulative limit period, the most restrictive trip limit associated with the gear on board applies for that trip and will count toward the cumulative trip limit for that gear (*See* crossover provisions at § 660.120, subpart D.)

(F) Midwater trawl gear is allowed only for vessels participating in the primary whiting season.

(ii) The following restrictions apply to vessels operating south of 40°10′ N. lat.:

(A) A vessel may not have both groundfish trawl gear and non-groundfish trawl gear onboard simultaneously. A vessel may not have both bottom trawl gear and midwater trawl gear onboard simultaneously. A vessel may not have small footrope trawl gear and any other type of bottom trawl gear onboard simultaneously.

(B) For vessels using more than one type of trawl gear during a cumulative limit period, limits are additive up to the largest limit for the type of gear used during that period. (Example: If a vessel harvests 300-lb (136 kg) of chilipepper rockfish with small footrope-gear, it may harvest up to 11,700–lb (5,209 kg) of chilipepper rockfish with large footrope gear during the July and August cumulative period, because the largest cumulative limit for chilipepper rockfish during that period is 12,000–lb (5,443 kg) for large footrope gear.)

(C) If a vessel fishes both north and south of 40°10′ N. lat. with any type of small footrope gear onboard the vessel at any time during the cumulative limit period, the most restrictive trip limit associated with the gear on board applies for that trip and will count toward the cumulative trip limit for that gear (*See* crossover provisions at § 660.120, subpart D.)

(d) *Sorting.* Under § 660.12 (a)(8), subpart C, 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, 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, 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.

(1) *Coastwide.* Widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, shortbelly rockfish, black rockfish, blue rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, shortspine and longspine thornyhead, Dover sole, arrowtooth flounder, petrale sole, starry flounder, English sole, other flatfish, lingcod, sablefish, Pacific cod, spiny dogfish, other fish, longnose skate, and Pacific whiting;

(2) *North of 40°10′ N. lat.* POP, yellowtail rockfish;

(3) *South of 40°10′ N. lat.* Minor shallow nearshore rockfish, minor deeper nearshore rockfish, California scorpionfish, chilipepper rockfish, bocaccio rockfish, splitnose rockfish, Pacific sanddabs, cowcod, bronzespotted rockfish and cabezon.

(e) *Groundfish conservation areas (GCAs) applicable to trawl vessels.* A GCA, a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude. The latitude and longitude coordinates of the GCA boundaries are specified at §§ 660.70 through 660.74, subpart C. A vessel that is fishing within a GCA listed in this paragraph (d) with trawl gear authorized for use within a GCA may not have any other type of trawl gear on board the vessel. The following GCAs apply to vessels participating in the limited entry trawl fishery. Additional closed areas that specifically apply to the Pacific whiting fisheries are described at § 660.131(c), subpart D.

(1) *Cowcod conservation areas (CCAs).* Vessels using limited entry trawl gear are prohibited from fishing within the CCAs. *See* § 660.70 for the coordinates that define the CCAs. Limited entry trawl vessels may transit through the Western CCA with their gear stowed and groundfish on board only in a corridor through the Western CCA bounded on the north by the latitude line at 33°00.50′ N. lat., and bounded on the south by the latitude line at 32°59.50′ N. lat. It is unlawful to take and retain, possess, or land groundfish within the CCAs, except as authorized in this paragraph, when those waters are open to fishing.

(2) *Farallon islands.* Under California law, commercial fishing for all groundfish is prohibited between the shoreline and the 10 fm (18 m) depth contour around the Farallon Islands. (See § 660.70, subpart C)

(3) *Cordell Banks.* Commercial fishing for groundfish is prohibited in waters of depths less than 100-fm (183-m) around Cordell Banks as defined by specific latitude and longitude coordinates at § 660.70, subpart C.

(4) *Trawl rockfish conservation areas.* The trawl RCAs are closed areas, defined by specific latitude and longitude coordinates which are specified at §§ 660.70 through 660.74, subpart C. Boundaries for the trawl RCAs applicable to groundfish trawl vessels throughout the year are provided in the header to Table 1 (North) and Table 1 (South) of this subpart and may be modified by NMFS inseason pursuant to § 660.60(c), subpart C.

(i) It is unlawful to operate a vessel with trawl gear onboard within the trawl RCA, except for the purpose of continuous transiting, or when the use of trawl gear is authorized in this section. It is lawful to fish with groundfish trawl gear within the trawl RCA only under the following conditions: vessels fishing with midwater trawl gear on Pacific whiting trips during the primary whiting season, provided a valid declaration report has been filed with NMFS OLE, as required at § 660.12(d), subpart C; and vessels fishing with demersal seine gear between 38° N. lat. and 36° N. lat. shoreward of a boundary line approximating the 100 fm (183 m) depth contour as defined at § 660.73, subpart C, provided a valid declaration report has been filed.

(ii) Trawl vessels may transit through an applicable GCA, with or without groundfish on board, provided all groundfish trawl gear is stowed either: below deck; or if the gear cannot readily be moved, in a secured and covered manner, detached from all towing lines, so that it is rendered unusable for fishing; or remaining on deck uncovered if the trawl doors are hung from their stanchions and the net is disconnected from the doors. These restrictions do not apply to vessels fishing with midwater trawl gear for whiting during a primary season.

(iii) It is unlawful to take and retain, possess, or land groundfish taken with limited entry trawl gear within the trawl RCA, unless otherwise authorized in this section.

(iv) If a vessel fishes in the trawl RCA, it may not participate in any fishing on that trip that is prohibited within the trawl RCA. [For example, if a vessel fishes in the pink shrimp fishery within the RCA, the vessel cannot on the same trip fish in the DTS fishery seaward of the RCA.] Nothing in these Federal regulations supersedes any state regulations that may prohibit trawling shoreward of the fishery management area (3–200 nm).

(5) *Essential fish habitat conservation areas.* An EFHCA, a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude at §§ 660.75 through 660.79, subpart C, where specified types of fishing are prohibited in accordance with § 660.12, subpart C. EFHCAs apply to vessels using bottom trawl gear or to vessels using "bottom contact gear," which is defined at § 660.11, subpart C, to include bottom trawl gear, among other gear types.

(i) The following EFHCAs apply to vessels operating within the West Coast EEZ with bottom trawl gear:

(A) *Seaward of a boundary line approximating the 700-fm (1280-m) depth contour.* Fishing with bottom trawl gear is prohibited in waters of depths greater than 700 fm (1280 m) within the EFH, as defined by specific latitude and longitude coordinates at §§ 660.75 and 660.76, subpart C.

(B) *Shoreward of a boundary line approximating the 100-fm (183-m) depth contour.* Fishing with bottom trawl gear with a footrope diameter greater than 8 inches (20 cm) is prohibited in waters shoreward of a boundary line approximating the 100-fm (183-m) depth contour, as defined by specific latitude and longitude coordinates at § 660.73, subpart C.

(C) *EFHCAs for all bottom trawl gear.* Fishing with bottom trawl gear is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at §§ 660.77 through 660.78, subpart C: Olympic 2, Biogenic 1, Biogenic 2, Grays Canyon, Biogenic 3, Astoria Canyon, Nehalem Bank/Shale Pile, Siletz Deepwater, Daisy Bank/Nelson Island, Newport Rockpile/Stonewall Bank, Heceta Bank, Deepwater off Coos Bay, Bandon High Spot, Rogue Canyon.

(D) *EFHCAs for all bottom trawl gear, except demersal seine gear.* Fishing with bottom trawl gear except demersal seine gear (defined at § 660.11, subpart C) is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at § 660.79, subpart C: Eel River Canyon, Blunts Reef, Mendocino Ridge, Delgada Canyon, Tolo Bank, Point Arena North, Point Arena South Biogenic Area, Cordell Bank/Biogenic Area, Farallon Islands/Fanny Shoal, Half Moon Bay, Monterey Bay/Canyon, Point Sur Deep, Big Sur Coast/Port San Luis, East San Lucia Bank, Point Conception, Hidden Reef/Kidney Bank (within Cowcod Conservation Area West), Catalina Island, Potato Bank (within Cowcod Conservation Area West), Cherry Bank (within Cowcod Conservation Area West), and Cowcod EFH Conservation Area East.

(ii) *EFHCAs for bottom contact gear, which includes bottom trawl gear.* Fishing with bottom contact gear, including bottom trawl gear is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at §§ 660.75 through 660.79, subpart C: Thompson Seamount, President Jackson Seamount, Cordell Bank (50 fm (91 m) isobath), Harris Point, Richardson Rock, Scorpion, Painted Cave, Anacapa Island, Carrington Point, Judith Rock, Skunk Point, Footprint, Gull Island, South Point, and Santa Barbara. Fishing with bottom contact gear is also prohibited within the Davidson Seamount EFH Area, which is defined with specific latitude and longitude coordinates at § 660.75, subpart C.

§ 660.131 Pacific whiting fishery management measures.

(a) *Sectors.* In order for a vessel to fish in a particular whiting fishery sector after May 11, 2009, that vessel must be registered for use with a sector-specific Pacific whiting vessel license under § 660.26, subpart C.

(1) The catcher/processor sector is composed of catcher/processors, which are vessels that harvest and process whiting during a calendar year.

(2) The mothership sector is composed of motherships and catcher vessels that harvest whiting for delivery to motherships. Motherships are vessels that process, but do not harvest, whiting during a calendar year.

(3) The shorebased sector is composed of vessels that harvest whiting for delivery to Pacific whiting shoreside first receivers. Notwithstanding the other provisions of 50 CFR part 660, subpart C or D, a vessel that is 75 feet or less LOA that harvests whiting and, in addition to heading and gutting, cuts the tail off and freezes the whiting, is not considered to be a catcher/processor nor is it considered to be processing fish. Such a vessel is considered a participant in the shorebased whiting sector, and is subject to regulations and allocations for that sector.

(b) *Pacific whiting seasons.*

(1) *Primary seasons.* The primary seasons for the whiting fishery are:

(i) For the shorebased sector, the period(s) when the large-scale target fishery is conducted (when trip limits under paragraph (b) of this section are not in effect);

(ii) For catcher/processors, the period(s) when at-sea processing is allowed and the fishery is open for the catcher/processor sector; and

(iii) For vessels delivering to motherships, the period(s) when at-sea processing is allowed and the fishery is open for the mothership sector.

(2) *Before and after the primary seasons.* Before and after the primary

seasons, trip landing or frequency limits may be imposed under § 660.60(c). The sectors are defined at § 660.60(a).

(3) *Different primary season start dates.* North of 40°30′ N. lat., different starting dates may be established for the catcher/processor sector, the mothership sector, catcher vessels delivering to shoreside processors north of 42° N. lat., and catcher vessels delivering to shoreside processors between 42° N. lat. through 40°30′ N. lat.

(i) *Procedures.* The primary seasons for the whiting fishery north of 40°30′ N. lat. generally will be established according to the procedures of the PCGFMP for developing and implementing harvest specifications and apportionments. The season opening dates remain in effect unless changed, generally with the harvest specifications and management measures.

(ii) *Criteria.* The start of a primary season may be changed based on a recommendation from the Council and consideration of the following factors, if applicable: Size of the harvest guidelines for whiting and bycatch species; age/size structure of the whiting population; expected harvest of bycatch and prohibited species; availability and stock status of prohibited species; expected participation by catchers and processors; environmental conditions; timing of alternate or competing fisheries; industry agreement; fishing or processing rates; and other relevant information.

(iii) *Primary whiting season start dates and duration.* After the start of a primary season for a sector of the whiting fishery, the season remains open for that sector until the quota is taken or a bycatch limit is reached and the fishery season for that sector is closed by NMFS. The starting dates for the primary seasons for the whiting fishery are as follows:

(A) Catcher/processor sector—May 15.

(B) Mothership sector—May 15.

(C) Shorebased sector

(*1*) North of 42° N. lat.—June 15;

(*2*) Between 42°–40°30′ N. lat.—April 1; and

(*3*) South of 40°30′ N. lat.—April 15.

(4) *Trip limits in the whiting fishery.* The "per trip" limit for whiting before and after the regular (primary) season for the shorebased sector is announced in Table 1 of this subpart, and is a routine management measure under § 660.60(c). This trip limit includes any whiting caught shoreward of 100-fm (183-m) in the Eureka, CA area. The "per trip" limit for other groundfish species before, during, and after the regular (primary) season are announced in Table 1 (North) and Table 1 (South) of this subpart and apply as follows:

(i) During the groundfish cumulative limit periods both before and after the primary whiting season, vessels may use either small and/or large footrope gear, but are subject to the more restrictive trip limits for those entire cumulative periods.

(ii) If, during a primary whiting season, a whiting vessel harvests a groundfish species other than whiting for which there is a midwater trip limit, then that vessel may also harvest up to another footrope-specific limit for that species during any cumulative limit period that overlaps the start or end of the primary whiting season.

(5) *Bycatch limits in the whiting fishery.* The bycatch limits for the whiting fishery may be established, adjusted, and used inseason to close a sector or sectors of the whiting fishery to achieve the rebuilding of an overfished or depleted stock. These limits are routine management measures under § 660.60(c), subpart C, and, as such, may be adjusted inseason or may have new species added to the list of those with bycatch limits. Closure of a sector or sectors when a bycatch limit is projected to be reached is an automatic action under § 660.60(d), subpart C.

(i) The whiting fishery bycatch limit is apportioned among the sectors identified in paragraph (a) of this section based on the same percentages used to allocate whiting among the sectors, established in § 660.55(i)(2), subpart C. The sector specific bycatch limits are: For catcher/processors 4.8 mt of canary rockfish, 95 mt of widow rockfish, and 8.5 mt of darkblotched rockfish; for motherships 3.3 mt of canary rockfish, 67 mt of widow rockfish, and 6.0 mt of darkblotched rockfish; and for shorebased 5.9 mt of canary rockfish, 117 mt of widow rockfish, and 10.5 mt of darkblotched rockfish.

(ii) The Regional Administrator may make available for harvest to the other sectors of the whiting fishery identified in § 660.131(a) of this subpart, the amounts of a sector's bycatch limit species remaining when a sector is closed because its whiting allocation or a bycatch limit has been reached or is projected to be reached. The remaining bycatch limit species shall be redistributed in proportion to each sector's initial whiting allocation. When considering redistribution of bycatch limits between the sectors of the whiting fishery, the Regional Administrator will take into consideration the best available data on total projected fishing impacts on the bycatch limit species, as well as impacts on other groundfish species.

(iii) If a bycatch limit is reached or is projected to be reached, the following action, applicable to the sector may be taken.

(A) Catcher/processor sector. Further taking and retaining, receiving, or at-sea processing of whiting by a catcher/processor is prohibited. No additional unprocessed whiting may be brought on board after at-sea processing is prohibited, but a catcher/processor may continue to process whiting that was on board before at-sea processing was prohibited.

(B) Mothership sector. Further receiving or at-sea processing of whiting by a mothership is prohibited. No additional unprocessed whiting may be brought on board after at-sea processing is prohibited, but a mothership may continue to process whiting that was on board before at-sea processing was prohibited. Whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the mothership sector.

(C) Shorebased sector. Whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the shorebased sector except as authorized under a trip limit specified under § 660.60(c), subpart C.

(iv) The Regional Administrator will announce in the **Federal Register** when a bycatch limit is reached, or is projected to be reached, specifying the action being taken as specified under paragraph (b)(5) of this section. The Regional Administrator will announce in the **Federal Register** any reapportionment of bycatch limit species. In order to prevent exceeding the bycatch limits or to avoid underutilizing the Pacific whiting resource, prohibitions against further taking and retaining, receiving, or at-sea processing of whiting, or reapportionment of bycatch limits species may be made effective immediately by actual notice to fishers and processors, by e-mail, Internet (*http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Whiting-Management/index.cfm*), phone, fax, letter, press release, and/or USCG Notice to Mariners (monitor channel 16 VHF), followed by publication in the **Federal Register.**

(6) *Pacific whiting allocation attainment and inseason allocation reapportionment.* (i) *Reaching an allocation.* If the whiting harvest guideline, commercial harvest guideline, or a sector's allocation is reached, or is projected to be reached, the following action(s) for the applicable sector(s) may be taken as provided under paragraph (b)(6)(iv) of this section and will remain in effect until

additional amounts are made available the next calendar year or under paragraph (b)(6)(ii) of this section.

(A) *Catcher/processor sector.* Further taking and retaining, receiving, or at-sea processing of whiting by a catcher/processor is prohibited. No additional unprocessed whiting may be brought on board after at-sea processing is prohibited, but a catcher/processor may continue to process whiting that was on board before at-sea processing was prohibited.

(B) *Mothership sector.* Further receiving or at-sea processing of whiting by a mothership is prohibited. No additional unprocessed whiting may be brought on board after at-sea processing is prohibited, but a mothership may continue to process whiting that was on board before at-sea processing was prohibited. Whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the mothership sector.

(C) *Shore-based sector coastwide.* Whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the shore-based sector except as authorized under a trip limit specified under § 660.60(c).

(D) *Shore-based south of 42° N. lat.* If 5 percent of the shore-based allocation for whiting is taken and retained south of 42° N. lat. before the primary season for the shore-based sector begins north of 42° N. lat., then a trip limit specified under § 660.60(c) may be implemented south of 42° N. lat. until the northern primary season begins, at which time the southern primary season would resume.

(ii) *Reapportionments.* That portion of a sector's allocation that the Regional Administrator determines will not be used by the end of the fishing year shall be made available for harvest by the other sectors, if needed, in proportion to their initial allocations, on September 15 or as soon as practicable thereafter. NMFS may release whiting again at a later date to ensure full utilization of the resource. Whiting not needed in the fishery authorized under § 660.50 may also be made available.

(iii) *Estimates.* Estimates of the amount of whiting harvested will be based on actual amounts harvested, projections of amounts that will be harvested, or a combination of the two. Estimates of the amount of Pacific whiting that will be used by shore-based processors by the end of the calendar year will be based on the best information available to the Regional Administrator from state catch and landings data, the testimony received at Council meetings, and/or other relevant information.

(iv) *Announcements.* The Regional Administrator will announce in the **Federal Register** when a harvest guideline, commercial harvest guideline, or an allocation of whiting is reached, or is projected to be reached, specifying the appropriate action being taken under paragraph (b)(6)(i) of this section. The Regional Administrator will announce in the **Federal Register** any reapportionment of surplus whiting to others sectors on September 15, or as soon as practicable thereafter. In order to prevent exceeding the limits or to avoid underutilizing the resource, prohibitions against further taking and retaining, receiving, or at-sea processing of whiting, or reapportionment of surplus whiting may be made effective immediately by actual notice to fishers and processors, by e-mail, internet (*http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Whiting-Management/index.cfm*), phone, fax, letter, press release, and/or USCG Notice to Mariners (monitor channel 16 VHF), followed by publication in the **Federal Register**, in which instance public comment will be sought for a reasonable period of time thereafter.

(c) *Closed areas.* Pacific whiting may not be taken and retained in the following portions of the fishery management area:

(1) *Klamath river salmon conservation zone.* The ocean area surrounding the Klamath River mouth bounded on the north by 41°38.80′ N. lat. (approximately 6 nm north of the Klamath River mouth), on the west by 124°23′ W. long. (approximately 12 nm from shore), and on the south by 41°26.80′ N. lat. (approximately 6 nm south of the Klamath River mouth).

(2) *Columbia river salmon conservation zone.* The ocean area surrounding the Columbia River mouth bounded by a line extending for 6 nm due west from North Head along 46°18′ N. lat. to 124°13.30′ W. long., then southerly along a line of 167 True to 46°11.10′ N. lat. and 124°11′ W. long. (Columbia River Buoy), then northeast along Red Buoy Line to the tip of the south jetty.

(3) *Ocean salmon conservation zone.* All waters shoreward of a boundary line approximating the 100 fm (183 m) depth contour. Latitude and longitude coordinates defining the boundary line approximating the 100 fm (183 m) depth contour are provided at § 660.73, subpart C. This closure will be implemented through automatic action, defined at § 660.60(d), subpart C, when NMFS projects the Pacific whiting fishery may take in excess of 11,000 Chinook within a calendar year.

(4) *Pacific whiting bycatch reduction areas (BRAs).* Vessels using limited entry midwater trawl gear during the primary whiting season may be prohibited from fishing shoreward of a boundary line approximating the 75-fm (137-m), 100-fm (183-m) or 150-fm (274-m) depth contours. Latitude and longitude coordinates for the boundary lines approximating the depth contours are provided at § 660.73, subpart C. Closures may be implemented inseason for a sector(s) through automatic action, defined at § 660.60(d), subpart C, when NMFS projects that a sector will exceed a bycatch limit specified for that sector before the sector's whiting allocation is projected to be reached.

(d) *Eureka area trip limits.* Trip landing or frequency limits may be established, modified, or removed under § 660.60, subpart C, or § 660.131, subpart D, specifying the amount of Pacific whiting that may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished in the fishery management area shoreward of the 100 fathom (183 m) contour (as shown on NOAA Charts 18580, 18600, and 18620) in the Eureka area (from 43 00′ to 40 30′ N. lat.). Unless otherwise specified, no more than 10,000-lb (4,536 kg) of whiting may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished in the fishery management area shoreward of the 100 fm (183 m) contour (as shown on NOAA Charts 18580, 18600, and 18620) in the Eureka management area (defined at § 660.11, subpart C).

(e) *At-sea processing.* Whiting may not be processed at sea south of 42°00′ N. lat. (Oregon-California border), unless by a waste-processing vessel as authorized under paragraph (i) of this section.

(f) *Time of day.* Pacific whiting may not be taken and retained by any vessel in the fishery management area south of 42°00′ N. lat. between 0001 hours to one-half hour after official sunrise (local time). During this time south of 42°00′ N. lat., trawl doors must be on board any vessel used to fish for whiting and the trawl must be attached to the trawl doors. Official sunrise is determined, to the nearest 5° lat., in The Nautical Almanac issued annually by the Nautical Almanac Office, U.S. Naval Observatory, and available from the U.S. Government Printing Office.

(g) *Additional restrictions on catcher/processors.* (1) A catcher/processor may receive fish from a catcher vessel, but that catch is counted against the catcher/processor allocation unless the catcher/processor has been declared as

a mothership under paragraph (g)(3) of this section.

(2) A catcher/processor may not also act as a catcher vessel delivering unprocessed whiting to another processor in the same calendar year.

(3) When renewing its limited entry permit each year under § 660.25, subpart C, the owner of a catcher/processor used to take and retain whiting must declare if the vessel will operate solely as a mothership in the whiting fishery 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 transferred during the year, unless it is rescinded in response to a written request from the permit holder. Any request to rescind a declaration must be made by the permit holder and granted in writing by the Regional Administrator before any unprocessed whiting has been taken on board the vessel that calendar year.

(h) *Pacific whiting first receivers.* (1) Pacific whiting shoreside first receivers and processors may receive groundfish species, other than Pacific Whiting, that is in excess of trip limits from a Pacific whiting shoreside vessel that is fishing under an EFP that authorizes the vessel to possess the catch.

(i) *Bycatch reduction and full utilization program for at-sea processors (optional).* If a catcher/processor or mothership in the whiting fishery carries more than one NMFS-approved observer for at least 90 percent of the fishing days during a cumulative trip limit period, then groundfish trip limits may be exceeded without penalty for that cumulative trip limit period, if the conditions in paragraph (h)(2) of this section are met. For purposes of this program, "fishing day" means a 24-hour period, from 0001 hours through 2400 hours, local time, in which fishing gear is retrieved or catch is received by the vessel, and will be determined from the vessel's observer data, if available. Changes to the number of observers required for a vessel to fish under in the bycatch reduction program will be announced prior to the start of the fishery, generally concurrent with the harvest specifications and management measures. Groundfish consumed on board the vessel must be within any applicable trip limit and recorded as retained catch in any applicable logbook or report. [**Note:** For a mothership, non-whiting groundfish landings are limited by the cumulative landings limits of the catcher vessels delivering to that mothership.]

(ii) [Reserved]

(2) *Conditions.* Conditions for participating in the voluntary full utilization program are as follows:

(i) All catch must be made available to the observers for sampling before it is sorted by the crew.

(ii) Any retained catch in excess of cumulative trip limits must either be: Converted to meal, mince, or oil products, which may then be sold; or donated to a bona fide tax-exempt hunger relief organization (including food banks, food bank networks or food bank distributors), and the vessel operator must be able to provide a receipt for the donation of groundfish landed under this program from a tax-exempt hunger relief organization immediately upon the request of an authorized officer.

(iii) No processor or catcher vessel may receive compensation or otherwise benefit from any amount in excess of a cumulative trip limit unless the overage is converted to meal, mince, or oil products. Amounts of fish in excess of cumulative trip limits may only be sold as meal, mince, or oil products.

(iv) The vessel operator must contact the NMFS enforcement office nearest to the place of landing at least 24 hours before landing groundfish in excess of cumulative trip limits for distribution to a hunger relief agency. Cumulative trip limits and a list of NMFS enforcement offices are found on the NMFS, Northwest Region homepage at *http://www.nwr.noaa.gov.*

(v) If the meal plant on board the whiting processing vessel breaks down, then no further overages may be retained for the rest of the cumulative trip limit period unless the overage is donated to a hunger relief organization.

(vi) Prohibited species may not be retained.

(vii) Donation of fish to a hunger relief organization must be noted in the transfer log (Product Transfer/Offloading Log (PTOL)), in the column for total value, by entering a value of "0" or "donation," followed by the name of the hunger relief organization receiving the fish. Any fish or fish product that is retained in excess of trip limits under this rule, whether donated to a hunger relief organization or converted to meal, must be entered separately on the PTOL so that it is distinguishable from fish or fish products that are retained under trip limits. The information on the Mate's Receipt for any fish or fish product in excess of trip limits must be consistent with the information on the PTOL. The Mate's Receipt is an official document that states who takes possession of offloaded fish, and may be a Bill of Lading, Warehouse Receipt, or other official document that tracks the transfer of offloaded fish or fish product. The Mate's Receipt and PTOL must be made available for inspection upon request of an authorized officer throughout the cumulative limit period during which such landings occurred and for 15 days thereafter.

(j) *Processing fish waste at sea.* A vessel that processes only fish waste (a "waste-processing vessel") is not considered a whiting processor and therefore is not subject to the allocations, seasons, or restrictions for catcher/processors or motherships while it operates as a waste-processing vessel. However, no vessel may operate as a waste-processing vessel 48 hours immediately before and after a primary season for whiting in which the vessel operates as a catcher/processor or mothership. A vessel must meet the following conditions to qualify as a waste-processing vessel:

(1) The vessel makes meal (ground dried fish), oil, or minced (ground flesh) product, but does not make, and does not have on board, surimi (fish paste with additives), fillets (meat from the side of the fish, behind the head and in front of the tail), or headed and gutted fish (head and viscera removed).

(2) The amount of whole whiting on board does not exceed the trip limit (if any) allowed under § 660.60(c), subpart C, or Tables 1 (North) or 1 (South) in subpart D.

(3) Any trawl net and doors on board are stowed in a secured and covered manner, and detached from all towing lines, so as to be rendered unusable for fishing.

(4) The vessel does not receive codends containing fish.

(5) The vessel's operations are consistent with applicable state and Federal law, including those governing disposal of fish waste at sea.

(k) *Additional requirements for participants in the Pacific whiting shoreside fishery*—(1) *Pacific whiting shoreside first receiver responsibilities*—(i) *Weights and measures.* All groundfish weights reported on electronic fish tickets must be recorded from scales with appropriate weighing capacity that ensures accuracy for the amount of fish being weighed. For example: amounts of fish less than 1,000-lb (454 kg) should not be weighed on scales that have an accuracy range of 1,000-lb to 7,000-lb (454—3,175 kg) and are therefore not capable of accurately weighing amounts less than 1,000-lb (454 kg).

(ii) [Reserved]

(2) *Sorting requirements for the Pacific whiting shoreside fishery.* Fish delivered to Pacific whiting shoreside 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, to the species groups specified in § 660.60(h)(6), subpart C, for vessels with limited entry permits. Prohibited species must be sorted according to the following species groups: Dungeness crab, Pacific halibut, Chinook salmon, Other salmon. Non-groundfish species must be sorted as required by the state of landing.

§ 660.140 Shorebased IFQ Program.

(a) *General.* The Shorebased IFQ Program requirements in § 660.140 will be effective beginning January 1, 2011, except for paragraphs (d)(4), (d)(6), and (d)(8) of this section, which are effective immediately. 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. The IFQ Program is subject to area restrictions (GCAs, RCAs, and EFHCAs) listed at §§ 660.70 through 660.79, subpart C. The Shorebased IFQ Program may be restricted or closed as a result of projected overages within the Shorebased IFQ Program, the MS Coop Program, or the C/P Coop Program. As determined necessary by the Regional Administrator, area restrictions, season closures, or other measures will be used to prevent the trawl sector in aggregate or the individual trawl sectors (Shorebased IFQ, MS Coop, or C/P Coop) from exceeding an OY, or formal allocation specified in the PCGFMP or regulation at § 660.55, subpart C, or §§ 660.140, 660.150, or 660.160, subpart D.

(b) *Participation requirements.* [Reserved]

(1) *QS permit owners.* [Reserved]

(2) *IFQ vessels.* [Reserved]

(c) *IFQ species and allocations.*

(1) *IFQ species.* IFQ species are those groundfish species and Pacific halibut in the exclusive economic zone or adjacent state waters off Washington, Oregon and California, under the jurisdiction of the Pacific Fishery Management Council, for which QS and IBQ will be issued. QS and IBQ will specify designations for the species/species groups and area to which it applies. QS and QP species groupings and area subdivisions will be those for which OYs are specified in the Tables 1a through 2d, subpart C, and those for which there is an area-specific precautionary harvest policy. QS for remaining minor rockfish will be aggregated for the shelf and slope depth strata (nearshore species are excluded). The following are the IFQ species:

IFQ SPECIES

Roundfish
Lingcod.
Pacific cod.
Pacific whiting.
Sablefish north of 36° N. lat.
Sablefish south of 36° N. lat.

Flatfish
Dover sole.
English sole.
Petrale sole.
Arrowtooth flounder.
Starry flounder.
Other Flatfish stock complex.
Pacific halibut (IBQ) north of 40°10′.

Rockfish
Pacific ocean perch.
Widow rockfish.
Canary rockfish.
Chilipepper rockfish.
Bocaccio.
Splitnose rockfish.
Yellowtail rockfish.
Shortspine thornyhead north of 34°27′ N. lat.
Shortspine thornyhead south of 34°27′ N. lat.
Longspine thornyhead north of 34°27′ N. lat.
Cowcod.
Darkblotched.
Yelloweye.
Minor Rockfish North slope species complex.
Minor Rockfish North shelf species complex.
Minor Rockfish South slope species complex.
Minor Rockfish South shelf species complex.

(2) *IFQ program allocations.* Allocations for the Shorebased IFQ Program are determined for IFQ species as follows:

(i) For Pacific whiting, the Shorebased IFQ Program allocation is specified at § 660.55(i)(2), subpart C, 42 percent.

(ii) For Sablefish N. of 36° N. lat., the Shorebased IFQ Program allocation is the limited entry trawl allocation specified at § 660.55(h), subpart C, minus any set-asides for the mothership and C/P sectors for that species.

(iii) For IFQ species listed in the trawl/nontrawl allocation table, specified at § 660.55(c), subpart C, allocations are determined by applying the trawl column percent to the fishery harvest guideline minus any set-asides for the mothership and C/P sectors for that species and minus allocations for darkblotched rockfish, POP, and widow rockfish.

(iv) The remaining IFQ species (canary rockfish, bocaccio, cowcod, yelloweye rockfish, minor shelf rockfish N. of 40°10′ N. lat., and minor shelf rockfish S. of 40°10′ N. lat., and minor slope rockfish S. of 40°10′ N. lat.) are allocated through the biennial specifications and management measures process minus any set-asides for the mothership and C/P sectors for that species.

(v) For Pacific halibut N. of 40°10′ N. lat., the Shorebased IFQ Program allocation is specified at 660.55(m).

(vi) Annual sub-allocations of IFQ species to individual QS permits and QS accounts are based on the percent of QS or IBQ registered to the account and the amount of fish or bycatch mortality allocated to the Shorebased IFQ Program.

(d) *QS permits and QS accounts*—(1) *General.* In order to obtain QS or IBQ, a person must apply for a QS permit. NMFS will determine if the applicant is eligible to acquire QS or IBQ in compliance with the accumulation limits found at paragraph (d)(4) of this section. For those persons that are found to be eligible for a QS permit, NMFS will issue QS or IBQ and establish a QS account. QP or IBQ pounds will be issued annually at the start of the calendar year to a QS account based on the percent of QS or IBQ registered to the account and the amount of fish or bycatch mortality allocated to the Shorebased IFQ Program. QP or IBQ pounds will be issued to the nearest whole pound using standard rounding rules (i.e. decimal amounts from zero up to 0.5 round down and 0.5 up to 1.0 round up), except that issuance of QP for overfished species greater than zero but less than one pound will be rounded up to one pound in the first year of the Shorebased IFQ Program. QS or IBQ owners must transfer their QP or IBQ pounds from their QS account to a vessel account in order for those QP or IBQ pounds to be fished. QP or IBQ pounds must be transferred in whole pounds (i.e. no fraction of a QP or IBQ pound can be transferred). All QP or IBQ pounds in a QS account must be transferred to a vessel account by September 1 of each year.

(2) *Eligibility and registration.* [Reserved]

(3) *Renewal, change of permit ownership, and transfer.* [Reserved]

(4) *Accumulation limits*—(i) *QS and IBQ control limits.* QS and IBQ control limits are accumulation limits and are the amount of QS and IBQ that a person, individually or collectively, may own or control. QS and IBQ control limits are expressed as a percentage of the Shorebased IFQ Program's allocation.

(A) *Control limits for individual species.* No person may own or control, or have a controlling influence over, by

any means whatsoever an amount of QS or IBQ for any individual species that exceeds the Shorebased IFQ Program accumulation limits.

(B) *Control limit for aggregate nonwhiting QS holdings.* To determine how much aggregate nonwhiting QS a person holds, NMFS will convert the person's QS to pounds. This conversion will always be conducted using the trawl allocations applied to the 2010 OYs, until such time as the Council recommends otherwise. Specifically, NMFS will multiply each person's QS for each species by the shoreside trawl allocation for that species. The person's pounds for all nonwhiting species will be summed and divided by the shoreside trawl allocation of all nonwhiting species to calculate the person's share of the aggregate nonwhiting trawl quota. To determine the shoreside trawl allocation for the purpose of determining compliance with the aggregate nonwhiting control limit, for species that have specific trawl allocation percentages in Amendment 21, NMFS will apply the Amendment 21 trawl allocation percentages to (set forth at § 660.55) the 2010 OYs, and where applicable, will deduct the preliminary set-asides for the at-sea sectors from Amendment 21. For species that do not have specific trawl allocation percentages in Amendment 21, NMFS will apply a percentage based on the Northwest Fishery Science Center final report on 2010 estimated total fishing mortality of groundfish by sector, or, if the final report for 2010 is not available, based on the most recent report available.

(C) The Shorebased IFQ Program accumulation limits are as follows:

Species category	QS control limit (percent)
Non-whiting Groundfish Species	2.7
Lingcod—coastwide	2.5
Pacific Cod	12.0
Pacific whiting (shoreside)	10.0
Sablefish:	
N. of 36° (Monterey north)	3.0
S. of 36° (Conception area)	10.0
PACIFIC OCEAN PERCH	4.0
WIDOW ROCKFISH	5.1
CANARY ROCKFISH	4.4
Chilipepper Rockfish	10.0
BOCACCIO	13.2
Splitnose Rockfish	10.0
Yellowtail Rockfish	5.0
Shortspine Thornyhead:	
N. of 34°27′	6.0
S. of 34°27′	6.0
Longspine Thornyhead:	
N. of 34°27′	6.0
COWCOD	17.7
DARKBLOTCHED	4.5
YELLOWEYE	5.7
Minor Rockfish North:	
Shelf Species	5.0
Slope Species	5.0
Minor Rockfish South:	
Shelf Species	9.0
Slope Species	6.0
Dover sole	2.6
English Sole	5.0
Petrale Sole	3.0
Arrowtooth Flounder	10.0
Starry Flounder	10.0
Other Flatfish	10.0
Pacific Halibut (IBQ) N. of 40°10′	5.4

(ii) *Ownership—individual and collective rule.* The QS or IBQ that counts toward a person's accumulation limit will include:

(A) The QS or IBQ owned by that person, and

(B) That portion of the QS or IBQ owned by an entity in which that person has an economic or financial interest, where the person's share of interest in that entity will determine the portion of that entity's QS or IBQ that counts toward the person's limit.

(iii) *Control.* Control means, but is not limited to, the following:

(A) The person has the right to direct, or does direct, in whole or in part, the business of the entity to which the QS or IBQ are registered;

(B) The person has the right to limit the actions of or replace, or does limit the actions of or replace, the chief executive officer, a majority of the board of directors, any general partner, or any person serving in a management capacity of the entity to which the QS or IBQ are registered;

(C) The person has the right to direct, or does direct, and/or the right to prevent or delay, or does prevent or delay, the transfer of QS or IBQ, or the resulting QP or IBQ pounds;

(D) The person, through loan covenants or any other means, has the right to restrict, or does restrict, and/or has a controlling influence over the day to day business activities or management policies of the entity to which the QS or IBQ are registered;

(E) The person, excluding banks and other financial institutions that rely on QS or IBQ as collateral for loans, through loan covenants or any other means, has the right to restrict, or does restrict, any activity related to QS or IBQ or QP or IBQ pounds, including,

but not limited to, use of QS or IBQ, or the resulting QP or IBQ pounds, or disposition of fish harvested under the resulting QP or IBQ pounds;

(F) The person, excluding banks and other financial institutions that rely on QS or IBQ as collateral for loans, has the right to control, or does control, the management of, or to be a controlling factor in, the entity to which the QS or IBQ, or the resulting QP or IBQ pounds, are registered;

(G) The person, excluding banks and other financial institutions that rely on QS or IBQ as collateral for loans, has the right to cause or prevent, or does cause or prevent, the sale, lease or other disposition of QS or IBQ, or the resulting QP or IBQ pounds; and

(H) The person has the ability through any means whatsoever to control or have a controlling influence over the entity to which QS or IBQ is registered.

(iv) *Trawl identification of ownership interest form.* Any person that owns a limited entry trawl permit and is applying for a QS permit shall document those persons that have an ownership interest in the limited entry trawl or QS permit greater than or equal to 2 percent. This ownership interest must be documented with SFD via the Trawl Identification of Ownership Interest Form. SFD will not issue a QS permit unless the Trawl Identification of Ownership Interest Form has been completed. Further, if SFD discovers through review of the Trawl Identification of Ownership Interest Form that a person owns or controls more than the accumulation limits and is not authorized to do so under paragraph (d)(4)(v) of this section, the person will be notified and the QS permit will be issued up to the accumulation limit specified in the QS or IBQ control limit table from paragraph (d)(4)(i) of this section. NMFS may request additional information of the applicant as necessary to verify compliance with accumulation limits.

(v) *Divestiture.* Accumulation limits will be calculated by first calculating the aggregate nonwhiting 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 transferred to them by November 8, 2008, if such transfers of ownership have been registered with NMFS by November 30, 2008. The owner of any permit transferred after November 8, 2008, or if transferred 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 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.

(5) *Appeals.* [Reserved]

(6) *Fees.* The Regional Administrator is authorized to charge fees for administrative costs associated with the issuance of a QS permit consistent with the provisions given at § 660.25(f), subpart C.

(7) [Reserved]

(8) *Application requirements and initial issuance for QS permit and QS/IBQ*—(i) *Additional definitions.* The following definitions are applicable to paragraph (d)(8) of this section and apply to terms used for the purposes of application requirements and initial issuance of QS permits and QS/IBQ:

(A) *Nonwhiting trip* means a fishing trip where less than 50 percent by weight of all fish reported on the state landing receipt is whiting.

(B) *PacFIN* means the Pacific Fisheries Information Network of the Pacific States Marine Fisheries Commission.

(C) *Relative history* means the landings history of a permit for a species, year, and area subdivision, divided by the total fleet history of the sector for that species, year, and area subdivision, as appropriate, or, in the case of shoreside processors, the annual sum of the shoreside processor's whiting receipts divided by the aggregate annual sum of whiting received by all shoreside processors in that year. Relative history is expressed as a percent.

(D) *Shoreside processor* means an operation, working on U.S. soil, that takes delivery of trawl caught groundfish that has not been processed; and that thereafter engages that fish in shoreside processing. Entities that received fish that have not undergone at-sea processing or shoreside processing and sell that fish directly to consumers shall not be considered a processor for purposes of QS allocations. Shoreside processing is defined as either of the following:

(*1*) Any activity that takes place shoreside; and that involves: Cutting groundfish into smaller portions; or freezing, cooking, smoking, drying groundfish; or packaging that groundfish for resale into 100 pound units or smaller for sale or distribution into a wholesale or retail market.

(*2*) The purchase and redistribution in to a wholesale or retail market of live groundfish from a harvesting vessel.

(E) *Whiting trip* means a fishing trip where greater than or equal to 50 percent by weight of all fish reported on the state landing receipt is whiting.

(ii) *Eligibility criteria for QS permit and QS/IBQ.* Only the following persons are eligible to receive a QS permit or QS/IBQ:

(A) The owner of a valid trawl limited entry permit is eligible to receive a QS permit and its associated QS or IBQ amount. Any past landings history associated with the current limited entry trawl permit accrues to the current permit owner. NMFS will not recognize any person as the limited entry permit owner other than the person listed as limited entry permit owner in NMFS permit database. If a limited entry permit has history on state landing receipts and has been combined with a permit that has received or will receive a C/P endorsement, the trawl limited entry permit does not qualify for QS or IBQ.

(B) Shoreside processors that meet the recent participation requirement of having received deliveries of 1 mt or more of whiting from whiting trips in each of any two years from 1998 through 2004 are eligible for an initial issuance of whiting QS. NMFS will initially identify shoreside processors by reference to Pacific whiting shoreside first receivers recorded on fish tickets in the relevant PacFIN dataset on July 1, 2010, subject to correction as described in paragraph (d)(8)(iv)(G) of this section.

(iii) *Steps for QS and IBQ allocation formulas.* The QS and IBQ allocation

formulas are applied in the following steps:

(A) First, for each limited entry trawl permit owner, NMFS will determine a preliminary QS allocation for non-whiting trips.

(B) Second, for each limited entry trawl permit owner, NMFS will determine a preliminary QS allocation for whiting trips.

(C) Third, for each limited entry trawl permit owner, NMFS will combine the amounts resulting from paragraphs (d)(8)(iii)(A) and (B) of this section.

(D) Fourth, NMFS will reduce the results for limited entry trawl permit owners by 10 percent of non-whiting species as a set aside for Adaptive Management Program (AMP) and by 20 percent of whiting for the initial issuance of QS allocated to qualifying shoreside processors.

(E) Fifth, NMFS will determine the whiting QS allocation for qualifying shoreside processors from the 20 percent of whiting QS allocated to qualifying shoreside processors at initial issuance of QS.

(F) Sixth, for each limited entry trawl permit owner, NMFS will determine the Pacific halibut IBQ allocation.

(G) Seventh, for limited entry trawl permits transferred after November 8, 2008, or if transferred earlier, not registered with NMFS by November 30, 2008, for which NMFS determines the owners of such permits would exceed the accumulation limits specified at paragraph (d)(4) of this section based on the previous steps, NMFS will redistribute the excess QS or IBQ to other qualified QS permit owners within the accumulation limits.

(iv) *Allocation formula for specific QS and IBQ amounts*—(A) *Allocation formula rules.* Unless otherwise specified, the following rules will be applied to data for the purpose of calculating an initial allocation of QS and IBQ:

(*1*) For limited entry trawl permit owners, a permit will be assigned catch history or relative history based on the landing history of the vessel(s) associated with the permit at the time the landings were made.

(*2*) The relevant PacFIN dataset includes species compositions based on port sampled data and applied to data at the vessel level.

(*3*) Only landings of IFQ species which are caught in the exclusive economic zone or adjacent state waters off Washington, Oregon and California will be used for calculation of allocation formulas. For the purpose of allocation of IFQ species for which the QS or IBQ will be subdivided by area, catch areas have been assigned to landings of IFQ species reported on state landing receipts based on port of landing.

(*4*) History from limited entry permits that have been combined with a permit that may qualify for a C/P endorsement and which has shorebased permit history will not be included in the preliminary QS and IBQ allocation formula, other than in the determination of fleet history used in the calculation of relative history for permits that do not have a C/P endorsement.

(*5*) History of illegal landings and landings made under non-whiting EFPs that are in excess of the cumulative limits in place for the non-EFP fishery will not count toward the allocation of QS or IBQ.

(*6*) The limited entry permit's landings history includes the landings history of permits that have been previously combined with that permit.

(*7*) If two or more limited entry trawl permits have been simultaneously registered to the same vessel, NMFS will split the landing history evenly between all such limited entry trawl-endorsed permits during the time they were simultaneously registered to the vessel.

(*8*) Unless otherwise noted, the calculation for QS or IBQ allocation under paragraph (d)(8) of this section will be based on state landing receipts (fish tickets) as recorded in the relevant PacFIN dataset on July 1, 2010.

(*9*) For limited entry trawl permits, landings under provisional "A" permits that did not become "A" permits and "B" permits will not count toward the allocation of QS or IBQ, other than in the determination of fleet history used in the calculation of relative history for permits that do not have a C/P endorsement.

(*10*) For limited entry trawl permits, NMFS will calculate initial issuance of QS separately based on whiting trips and non-whiting trips, and will weigh each calculation according to initial issuance allocations between whiting trips and non-whiting trips, which are one-time allocations necessary for the formulas used during the initial issuance of QS to create a single Shorebased IFQ Program. The initial issuance allocations between whiting and non-whiting trips for canary rockfish, bocaccio, cowcod, yelloweye rockfish, minor shelf rockfish N. of 40°10′, minor shelf rockfish S. of 40°10′, and minor slope rockfish S. of 40°10′ will be determined through the biennial specifications process. The initial issuance allocations for the remaining IFQ species are as follows:

Species	Initial issuance allocation percentage	
	Non-whiting	Whiting
Lingcod	99.7%	0.3%
Pacific Cod	99.9%	0.1%
Pacific Whiting	0.1%	99.9%
Sablefish N. of 36° N. lat.	98.2%	1.8%
Sablefish S. of 36° N. lat.	100.0%	0.0%
PACIFIC OCEAN PERCH	remaining	17% or 30 mt, whichever is greater, to shorebased + at-sea whiting. If under rebuilding, 52% to shorebased + at-sea whiting.
WIDOW	remaining	If stock rebuilt, 10% or 500 mt, whichever is greater, to shorebased + at-sea whiting.
Chilipepper S. of 40°10′ N. lat.	100.0%	0.0%
Splitnose S. of 40°10′ N. lat.	100.0%	0.0%
Yellowtail N. of 40°10′ N. lat.	remaining	300 mt.
Shortspine N. of 34°27′ N. lat.	99.9%	0.1%
Shortspine S. of 34°27′ N. lat.	100.0%	0.0%
Longspine N. of 34°27′ N. lat.	100.0%	0.0%
DARKBLOTCHED	remaining	9% or 25 mt, whichever is greater, to shorebased + at-sea whiting.
Minor Slope Rockfish N. of 40°10′ N. lat	98.6%	1.4%
Dover Sole	100.0%	0.0%
English Sole	99.9%	0.1%

Species	Initial issuance allocation percentage	
	Non-whiting	Whiting
Petrale Sole	100.0%	0.0%
Arrowtooth Flounder	100.0%	0.0%
Starry Flounder	100.0%	0.0%
Other Flatfish	99.9%	0.1%

(B) *Preliminary QS allocation for nonwhiting trips.* NMFS will calculate the non-whiting preliminary QS allocation differently for different species groups, Groups 1 through 3.

(*1*) *Allocation formula species groups.* For the purposes of preliminary QS allocation, IFQ species will be grouped as follows:

(*i*) Group 1 includes lingcod, Pacific cod, Pacific whiting, sablefish north of 36° N. lat., sablefish south of 36° N. lat., Dover sole, English sole, petrale sole, arrowtooth flounder, starry flounder, other flatfish stock complex, chilipepper rockfish, splitnose rockfish, yellowtail rockfish, shortspine thornyhead north of 34°27′ N. lat., shortspine thornyhead south of 34°27′ N. lat., longspine thornyhead north of 34°27′ N. lat., minor rockfish north slope species complex, minor rockfish south slope species complex, minor rockfish north shelf species complex, and minor rockfish south shelf species complex.

(*ii*) Group 2 includes bocaccio, cowcod, darkblotched rockfish, Pacific ocean perch, widow rockfish, and yelloweye rockfish.

(*iii*) Group 3 includes canary rockfish.

(*2*) *Group 1 species:* The preliminary QS allocation process indicated in paragraph (d)(8)(iii)(A) of this section for Group 1 species follows a two-step process, one to allocate a pool of QS equally among all eligible limited entry permits and the other to allocate the remainder of the preliminary QS based on permit history. Through these two processes, preliminary QS totaling 100 percent for each Group 1 species will be allocated. In later steps this amount will be adjusted and reduced as indicated in paragraph (d)(8)(iii)(C) and (D), to determine the QS allocation.

(*i*) *QS to be allocated equally.* The pool of QS for equal allocation will be determined using the landings history from Federal limited entry groundfish permits that were retired through the Federal buyback program (*i.e.,* buyback permit) (70 FR 45695, August 8, 2005). The QS pool associated with the buyback permits will be the buyback permit history as a percent of the total fleet history for the allocation period. The calculation will be based on total absolute pounds with no dropped years and no other adjustments. The QS pool will be divided equally among qualifying limited entry permits for all QS species/species groups and areas in Group 1.

(*ii*) *QS to be allocated based on each permit's history.* The pool for QS allocation based on limited entry trawl permit history will be the QS remaining after subtracting out the QS allocated equally. This pool will be allocated to each qualifying limited entry trawl permit based on the permit's relative history from 1994 through 2003. For each limited entry trawl permit, NMFS will calculate a set of relative histories using the following methodology. First, NMFS will sum the permit's landings by each year for each Group 1 species/species group and area subdivision. Second, NMFS will divide each permit's annual sum for a particular species/species group and area subdivision by the shoreside limited entry trawl fleet's annual sum for the same species/species group and area subdivision. NMFS will then calculate a total relative history for each permit by species/species group and area subdivision by adding all relative histories for the permit together and subtracting the three years with the lowest relative history for the permit. The result for each permit by species/species group and areas subdivision will be divided by the aggregate sum of all total relative histories of all qualifying limited entry trawl permits for that species/species group and area subdivision. NMFS will then multiply the result from this calculation by the amount of QS in the pool to be allocated based on each permit's history.

(*3*) *Group 2 species:* The preliminary QS allocation step indicated in paragraph (d)(8)(iii)(A) of this section will be calculated for each limited entry trawl permit using a formula based on QS allocations for each limited entry trawl permit for 11 target species, areas of distribution of fishing effort as determined from 2003–2006 target species catch data from the PacFIN Coastwide Trawl Logbook Database, average bycatch ratios for each area as derived from West Coast Groundfish Observer Program (WCGOP) data from 2003 through 2006, and the non-whiting initial issuance allocation of the limited entry trawl allocation amounts for 2011 for each of the 11 target species. These data are used in a series of sequential steps to estimate the allocation of Group 2 species to each limited entry trawl permit. Paragraphs (d)(8)(iv)(B)(*3*)(*iii*) to (*vi*) of this section estimate the permit's total 2003–2006 target species by area. Paragraphs (d)(8)(iv)(B)(*3*)(*vii*) to (*xii*) of this section project Group 2 species bycatch amounts using 2003–2006 WCGOP observer ratios and the initial issuance allocation applied to the 2011 limited entry trawl allocation. Paragraphs (d)(8)(iv)(B)(*3*)(*xiv*) to (*xvii*) of this section convert these amounts into QS. As with Group 1 species, preliminary QS totaling 100 percent for each Group 2 species unit will be allocated and the amount of the allocations will be adjusted and reduced as indicated in paragraph (d)(8)(iii)(C) and (D) of this section to determine the QS allocation.

(*i*) The 11 target species are arrowtooth flounder, starry flounder, other flatfish, Dover sole, English sole, petrale sole, minor slope rockfish, shortspine thornyheads, longspine thornyheads, sablefish, and Pacific cod.

(*ii*) The 8 areas of distribution of fishing effort are defined latitudinally and by depth. The latitudinal areas are (a) north of 47°40 N. lat.; (b) between 47°40 N. lat. and 43°55′ N. lat.; (c) 43°55′ N. lat. and 40°10′ N. lat.; and (d) south of 40°10′ N. lat. Each latitudinal area is further divided by depth into areas shoreward and seaward of the trawl Rockfish Conservation Area as defined at § 660.130(e)(4) of this subpart.

(*iii*) For each limited entry trawl permit, NMFS will review the permit logbook data for that permit and sum target species catch recorded for the years 2003–2006, resulting in total target species catch in each area for each permit for the years 2003 through 2006 for all 11 target species in aggregate.

(*iv*) For each limited entry trawl permit, NMFS will also sum target species catch by area into total coastwide target species catch for each permit for the years 2003 through 2006 for all 11 target species in aggregate. For practicability, seaward or shoreward of the RCA as identified in the logbook data is defined as being deeper than or shallower than 115 fathoms, respectively.

(*v*) For each limited entry trawl permit, NMFS will divide logbook aggregate target species catch in each area (paragraph (d)(8)(iv)(B)(*3*)(*iii*) of this section) by the permit's total coastwide target species catch (paragraph (d)(8)(iv)(B)(*3*)(*iv*) of this section) to create a set of 8 area catch ratios for each permit. (Note: The sum of all area catch ratios equals 1 for each permit).

(*vi*) For limited entry trawl permits where the vessel registered to the permit did not submit logbooks showing any catch of the 11 target species for any of the years 2003 through 2006, NMFS will use the following formula to calculate area target catch ratios: (a) NMFS will sum by area all limited entry trawl permits' total logbook area target catches from paragraph (d)(8)(iv)(B)(*3*)(*iii*) of this section, (b) NMFS will sum coastwide all limited entry trawl permits' total logbook target catches across all areas from paragraph (d)(8)(iv)(B)(*3*)(*iv*) of this section, and (c) NMFS will divide these sums (i.e., a/b) to create average permit logbook area target catch ratios.

(*vii*) NMFS will calculate the 2011 non-whiting short term allocation amount for each of the 11 target species by multiplying the limited entry trawl allocation amounts for 2011 for each by the corresponding initial issuance allocation percentage for the non-whiting sector given in paragraph (d)(8)(iii)(A)(*10*) of this section or determined through the biennial specifications process, as applicable.

(*viii*) For each limited entry trawl permit, NMFS will obtain the percentage of the limited entry trawl permit initial QS allocation for each of the 11 target species resulting from paragraph (d)(8)(iv)(B)(*2*) of this section.

(*ix*) NMFS will calculate each limited entry trawl permit's projected non-whiting sector quota pounds for 2011 by multiplying the 2011 non-whiting sector initial issuance allocation amounts for each of the 11 target species from paragraph (d)(8)(iv)(B)(*3*)(*vii*) of this section by each permit's target species QS allocation percentage from paragraph (d)(8)(iv)(B)(*3*)(*viii*) of this section.

(*x*) For each limited entry trawl permit, NMFS will sum the projected quota pounds for the 11 target species from paragraph (d)(8)(iv)(B)(*3*)(*ix*) of this section to get a total projected weight of all 11 target species for the limited entry trawl permit.

(*xi*) For each limited entry trawl permit, NMFS will estimate the permit's total incidental catch of Group 2 species by area by multiplying the projected 2011 total weight of all 11 target species by the applicable area catch ratio for each area as calculated in either paragraph (d)(8)(iv)(B)(*3*)(*v*) of this section (permits with logbook data) or paragraph (d)(8)(iv)(B)(*3*)(*vi*) of this section (permits without logbook data).

(*xii*) NMFS will apply WCGOP average bycatch ratios for each Group 2 species (observed Group 2 species catch/total target species catch) by area. The WCGOP average bycatch ratios are as follows:

Area	Shoreward	Seaward
Bocaccio		
N. of 47°40′ N. lat.	.....	.....
43°55′ N. lat. to 47°40′ N. lat.	.....	.....
40°10′ N. lat. to 43°55′ N. lat.	.....	.....
S. of 40°10′ N. lat.	0.019013759	0.001794203
Cowcod		
N. of 47°40′ N. lat.	.....	.....
43°55′ N. lat. to 47°40′ N. lat.	.....	.....
40°10′ N. lat. to 43°55′ N. lat.	.....	.....
S. of 40°10′ N. lat.	0.001285088	0.000050510
Darkblotched		
N. of 47°40′ N. lat.	0.001560461	0.009950330
43°55′ N. lat. to 47°40′ N. lat.	0.002238054	0.018835786
40°10′ N. lat. to 43°55′ N. lat.	0.002184788	0.015025697
S. of 40°10′ N. lat.	0.000006951	0.004783988
Pacific ocean perch		
N. of 47°40′ N. lat.	0.001069954	0.019848047
43°55′ N. lat. to 47°40′ N. lat.	0.000110802	0.015831815
40°10′ N. lat. to 43°55′ N. lat.	0.000148715	0.001367645
S. of 40°10′ N. lat.	.....	.....
Widow		
N. of 47°40′ N. lat.	0.000132332	0.000065291
43°55′ N. lat. to 47°40′ N. lat.	0.000387346	0.000755163
40°10′ N. lat. to 43°55′ N. lat.	0.000175128	0.000008118
S. of 40°10′ N. lat.	0.001049485	0.000676828
Yelloweye		
N. of 47°40′ N. lat.	0.000334697	0.000006363
43°55′ N. lat. to 47°40′ N. lat.	0.000083951	0.000010980
40°10′ N. lat. to 43°55′ N. lat.	0.000128942	0.000006300
S. of 40°10′ N. lat.	0.000094029	.....

(*xiii*) For each limited entry trawl permit, NMFS will calculate projected Group 2 species amounts by area by multiplying the limited entry trawl permit's projected 2011 total weight of all target species by area from paragraph (d)(8)(iv)(B)(*3*)(*xi*) of this section by the applicable average bycatch ratio for each Group 2 species and corresponding area of paragraph (d)(8)(iv)(B)(*3*)(*xii*) of this section.

(*xiv*) For each limited entry trawl permit, NMFS will sum all area amounts for each Group 2 species from paragraph (d)(8)(iv)(B)(*3*)(*xiii*) of this section to calculate the total projected amounts of each Group 2 species for each limited entry trawl permit.

(*xv*) NMFS will sum all limited entry trawl permits' projected Group 2 species amounts from paragraph (d)(8)(iv)(B)(*3*)(*xiv*) of this section to calculate coastwide total projected amounts for each Group 2 species.

(*xvi*) NMFS will estimate preliminary QS for each limited entry trawl permit for each Group 2 species by dividing each limited entry trawl permit's total projected amount of each Group 2 species from paragraph (d)(8)(iv)(B)(*3*)(*xiv*) of this section by the coastwide total projected amount for that species from paragraph (d)(8)(iv)(B)(*3*)(*xv*) of this section.

(*4*) *Group 3 Species:* (*i*) The preliminary QS allocation step indicated in paragraph (d)(8)(iii)(A) of this section will be performed in two calculations that result in the division of preliminary QS allocation into two pools, one to allocate QS equally among all eligible limited entry permits, using the approach identified for Group 1 species in paragraph (d)(8)(iv)(B)(*2*)(*i*) of this section, and the other to allocate QS using a formula based on QS allocations for target species and areas fished, using the approach identified for Group 2 species in paragraph (d)(8)(iv)(B)(*3*) of this section, using the following WCGOP average bycatch rates:

CANARY

Area	Shoreward	Seaward
N. of 47°40′ N. lat.	0.008041898	0.000030522
43°55′ N. lat. to 47°40′ N. lat.	0.003081830	0.000142136
40°10′ N. lat. to 43°55′ N. lat.	0.008716148	0.000021431
S. of 40°10′ N. lat.	0.001581194	0.000009132

(*ii*) Through these two processes, preliminary QS totaling 100 percent for each species will be allocated. In later steps, this amount will be adjusted and reduced as indicated in paragraphs (d)(8)(iii)(C) and (D) of this section to determine the QS allocation. In combining the two QS pools for each permit, the equal allocation portion is weighted according to the process in paragraph (d)(8)(iv)(B)(*2*)(*i*) of this section, and the portion calculated based on allocations for target species and areas fished is weighted according to the process in (d)(8)(iv)(B)(*2*)(*ii*) of this section.

(C) *Preliminary QS allocation for whiting trips.* The preliminary QS allocation based on whiting trips as indicated in paragraph (d)(8)(iii)(B) of this section for limited entry trawl permits follows a two step process, one to allocate a pool of QS equally among all eligible limited entry permits and the other to allocate the remainder of the preliminary QS based on permit history. Through these two processes, preliminary QS totaling 100 percent for each species will be allocated. In later steps, this amount will be adjusted and reduced, as indicated in paragraphs (d)(8)(iii)(C) and (D) of this section, to determine the QS allocation.

(*1*) *QS to be allocated equally.* The pool of QS for equal allocation will be determined using the whiting trip landings history from Federal limited entry groundfish permits that were retired through the Federal buyback program (*i.e.,* buyback permit) (70 FR 45695, August 8, 2005). For each species, the whiting trip QS pool associated with the buyback permits will be the buyback permit history as a percent of the total fleet history for the allocation period. The calculation will be based on total absolute pounds with no dropped years and no other adjustments. The whiting trip QS pool associated with the buyback permits will be divided equally among all qualifying limited entry permits for each species.

(*2*) *QS to be allocated based on each permit's history.* The pool for QS allocation based on each limited entry trawl permit's history will be the QS remaining after subtracting out the QS associated with the buyback permits allocated equally.

(*i*) *Whiting QS allocated based on each permit's history.* Whiting QS based on each limited entry trawl permit's history will be allocated based on the permit's relative history from 1994 through 2003. For each limited entry trawl permit, NMFS will calculate a whiting relative history for each qualifying year, as follows. First, NMFS will sum the permit's history of landings of whiting from whiting trips for each year. Second, NMFS will divide each permit's annual sum of whiting from whiting trips by the shoreside limited entry trawl fleet's annual sum of whiting. NMFS will then calculate a total relative history for each permit by adding all relative histories for the permit together and subtracting the two years with the lowest relative history. NMFS will then divide the result for each permit by the total relative history for whiting of all qualifying limited entry trawl permits. The result from this calculation will then be multiplied by the amount of whiting QS in the pool to be allocated based on each permit's history.

(*ii*) *Other incidentally caught species QS allocation for eligible limited entry trawl permit owners.* Other incidentally caught species from the QS remaining after subtracting out the QS associated with the buyback permits will be allocated pro-rata based on each limited entry trawl permit's whiting QS from whiting trips. Pro-rata means a percent that is equal to the percent of whiting QS.

(D) *QS from limited entry permits calculated separately for non-whiting trips and whiting trips.* NMFS will calculate the portion of QS for each species which a permit receives based on non-whiting trips and whiting trips separately and will weight each preliminary QS in proportion to the initial issuance allocation percentage between whiting trips and non-whiting trips for that species in paragraph (d)(8)(iv)(A)(*10*) of this section or determined through the biennial specifications process, as applicable.

(*1*) *Nonwhiting trips.* To determine the amount of QS of each species for non-whiting trips for each limited entry trawl permit, NMFS will multiply the preliminary QS for the permit from paragraph (d)(8)(iii)(A) of this section for each species by the initial issuance

allocation percentage for that species for non-whiting trips.

(*2*) *Whiting trips.* To determine the amount of QS of each species for whiting trips for each limited entry trawl permit, NMFS will multiply the preliminary QS from paragraph (d)(8)(iii)(B) of this section for each species by the initial issuance allocation percentage for that species for whiting trips.

(E) *QS for each limited entry trawl permit.* For each limited entry trawl permit, NMFS will add the results for the permit from paragraphs (d)(8)(iv)(D)(*1*) and (D)(*2*) of this section in order to determine the total QS for each species on that permit.

(F) *Adjustment for AMP set-aside and shoreside processor initial issuance allocations.* NMFS will reduce the non-whiting QS allocation to each limited entry trawl permit by 10 percent, for a QS set-aside to AMP. NMFS will reduce the whiting QS allocation to each limited entry trawl permit by 20 percent for the initial QS allocation to shoreside processors.

(G) *Allocation of initial issuance of whiting QS for shoreside processors.* NMFS will calculate the amount of whiting QS available to shoreside processors from the 20 percent adjustment of whiting QS allocations in paragraph (d)(8)(iv)(F) of this section. For each eligible shoreside processor, whiting QS will be allocated based on the eligible shoreside processor's relative history from 1998 through 2004. Only the deliveries for which the shoreside processor is the first processor of the fish will be used in the calculation of whiting relative history.

(*1*) For each shoreside processor which has received deliveries of at least 1 mt of whiting from whiting trips in each of any two years from 1998 through 2004, NMFS will calculate a whiting relative history for each qualifying year, as follows. First, NMFS will sum the shoreside processor's receipts of whiting for each year. Second, NMFS will calculate the relative history for each year by dividing each shoreside processor's annual sum of whiting receipts by the aggregate annual sum of whiting received by all shoreside processors in that year. NMFS will then calculate a total relative history for each shoreside processor by adding all relative histories for the shoreside processor together and subtracting the two years with the lowest relative history. NMFS will then divide the result for each shoreside processor by the aggregate sum of all total relative histories for whiting by all qualifying shoreside processors. The result from this calculation will then be multiplied by 20 percent to determine the shoreside processor's whiting QS.

(*2*) For purposes of making an initial issuance of whiting QS to a shoreside processor, NMFS will attribute landing history to the Pacific whiting shoreside first receiver reported on the landing receipt (the entity responsible for filling out the state landing receipt) as recorded in the relevant PacFIN dataset on July 1, 2010. History may be reassigned to a shoreside processor not on the state landings receipt as described at paragraph (d)(8)(vi)(B) of this section.

(H) *Allocation of Pacific halibut IBQ for each limited entry trawl permit.* For each eligible limited entry trawl permit owner, NMFS will calculate Pacific halibut individual bycatch quota (IBQ) for the area north of 40°10′ N. lat. using a formula based on (a) QS allocations for each limited entry trawl permit for two target species, (b) areas of distribution of fishing effort as determined from 2003–2006 target species catch data from the PacFIN Coastwide Trawl Logbook Database, (c) average bycatch ratios for each area as derived from WCGOP data from 2003 through 2006, and (d) the non-whiting initial issuance allocation of the limited entry trawl allocation amounts for 2011 for arrowtooth and petrale sole. These data are used in a series of sequential steps to determine the allocation of IBQ to each limited entry trawl permit. Paragraphs (d)(8)(iv)(H)(*3*) to (*6*) of this section estimate the permit's total 2003–2006 target species by area. Paragraphs (d)(8)(iv)(H)(*7*) to (*13*) of this section project Pacific halibut bycatch amounts using 2003–2006 WCGOP observer ratios and the 2011 non-whiting initial issuance allocation of the limited entry trawl allocation amounts. Paragraphs (d)(8)(iv)(H)(*14*) to (*16*) of this section convert these amounts into QS.

(*1*) The target species are arrowtooth flounder and petrale sole.

(*2*) The four bycatch areas are defined latitudinally and by depth. The latitudinal areas are (a) north of 47°30′ N. lat., and (b) between 40°10′ N. lat. and 47°30′ N. lat. Each latitudinal area is further divided by depth into areas shoreward and seaward of the trawl Rockfish Conservation Area as defined at § 660.130(e)(4), subpart D.

(*3*) For each limited entry trawl permit, NMFS will review the permit logbook data for that permit and sum target species catch recorded for the years 2003–2006, resulting in total target species catch in each of the four areas for each permit for the years 2003 through 2006 for both target species in aggregate. For practicability, seaward or shoreward of the RCA as identified in the logbook data is defined as being deeper than or shallower than 115 fathoms, respectively.

(*4*) For each limited entry trawl permit, NMFS will also sum the target species catch by area into total aggregate target species catch for each permit for the years 2003 through 2006.

(*5*) For each limited entry trawl permit, NMFS will divide logbook aggregate target species catch in each area (paragraph (d)(8)(iv)(H)(*3*) of this section) by the sum of the permit's catch of each target species in all four bycatch areas (paragraph (d)(8)(iv)(H)(*4*) of this section) to create a set of area catch ratios for each permit. (Note: The sum of all four area catch ratios in aggregate equals 1 for each permit).

(*6*) For limited entry trawl permits where the vessel registered to the permit did not submit logbooks showing any catch of either of the two target species for any of the years 2003 through 2006, NMFS will use the following formula to calculate area target catch ratios: NMFS will sum by area all limited entry trawl permits' total logbook area target catches from paragraph (d)(8)(iv)(H)(*3*) of this section, and sum all limited entry trawl permits' total logbook target catches across all four areas from paragraph (d)(8)(iv)(H)(*4*) of this section; and divide these sums to create average permit logbook area target catch ratios.

(*7*) NMFS will calculate the 2011 non-whiting initial issuance allocation amount for each of the two target species by multiplying the limited entry trawl allocation amounts for 2011 for each by the corresponding initial issuance allocation percentage for the non-whiting sector given in paragraph (d)(8)(iv)(A)(*10*) of this section.

(*8*) For each limited entry trawl permit, NMFS will obtain the non-whiting portion of each limited entry trawl permit's initial QS allocations for each of the two target species resulting from paragraph (d)(8)(iv)(B)(*2*) of this section.

(*9*) NMFS will calculate each limited entry trawl permit's projected non-whiting sector quota pounds for the two target species for 2011 by multiplying the 2011 non-whiting sector short term allocation amounts for each of the target species by the permit's QS allocation percentage for the species from paragraph (d)(8)(iv)(H)(*8*) of this section.

(*10*) For each limited entry trawl permit, NMFS will sum the projected quota pounds for the two target species from paragraph (d)(8)(iv)(H)(*9*) of this section to get a total projected weight of the two target species for the limited entry trawl permit.

(*11*) For each limited entry trawl permit, NMFS will multiply the

projected 2011 total weight of the two target species by the applicable area catch ratio for each area as calculated in either paragraph (d)(8)(iv)(H)(*5*) of this section (permits with logbook data) or paragraph (d)(8)(iv)(H)(*6*) of this section (permits without logbook data).

(*12*) NMFS will apply WCGOP average halibut bycatch ratios (observed halibut catch/total of two target species catch) by area. The WCGOP average halibut bycatch ratios are as follows:

PACIFIC HALIBUT

Area	Shoreward	Seaward
N. of 47°30′ N. lat.	0.225737162	0.084214162
40°10′ N. lat. to 47°30′ N. lat.	0.086250913	0.033887839

(*13*) For each limited entry trawl permit, NMFS will calculate projected Pacific halibut amounts by area by multiplying the limited entry trawl permit's projected 2011 total weight of the two target species by area from paragraph (d)(8)(iv)(H)(*11*) of this section by the average bycatch ratio for the corresponding area of paragraph (d)(8)(iv)(H)(*12*) of this section.

(*14*) For each limited entry trawl permit, NMFS will sum all area amounts from paragraph (d)(8)(iv)(H)(*13*) of this section to calculate the total projected Pacific halibut amount for each limited entry trawl permit.

(*15*) NMFS will sum all limited entry trawl permits' projected Pacific halibut amounts from paragraph (d)(8)(iv)(H)(*14*) of this section to calculate aggregate total amounts of Pacific halibut.

(*16*) NMFS will estimate preliminary Pacific halibut IBQ for each limited entry trawl permit by dividing each limited entry trawl permit's total projected Pacific halibut amount from paragraph (d)(8)(iv)(H)(*14*) of this section by the aggregate total amounts of Pacific halibut from paragraph (d)(8)(iv)(H)(*15*) of this section.

(I) *Redistribution of QS and IBQ.* For each limited entry trawl permit transferred after November 8, 2008, or if transferred earlier, not registered with NMFS by November 30, 2008, for which NMFS determines that the owner of such permit would exceed the accumulation limits specified at paragraph (d)(4)(i) of this section based on calculation of the preceding allocation formulas for all limited entry trawl permits owned by such owner using the individual and collective rule described at § 660.140(d)(4)(ii), NMFS will redistribute the excess QS or IBQ to other qualified QS permit owners within the accumulation limits.

(v) *QS application.* Persons may apply for an initial issuance of QS and IBQ and a QS permit in one of two ways: Complete and submit a prequalified application received from NMFS, or complete and submit an application package. The completed application must be either postmarked or hand-delivered within normal business hours no later than November 1, 2010. If an applicant fails to submit a completed application by the deadline date, they forgo the opportunity to receive consideration for initial issuance of QS and IBQ and a QS permit.

(A) *Prequalified application.* A "prequalified application" is a partially pre-filled application where NMFS has preliminarily determined the landings history that may qualify the applicant for an initial issuance of QS and IBQ. The application package will include a prequalified application (with landings history), a Trawl Identification of Ownership Interest form, and any other documents NMFS believes are necessary to aid the limited entry permit owner in completing the QS application.

(*1*) For current trawl limited entry permit owners, NMFS will mail a prequalified application to all owners, as listed in the NMFS permit database at the time applications are mailed, that NMFS determines may qualify for QS or IBQ. NMFS will mail the application by certified mail to the current address of record in the NMFS permit database. The application will contain the basis of NMFS' calculation of the permit owner's QS and IBQ for each species/species group or area.

(*2*) For shoreside processors, NMFS will mail a prequalified application to those Pacific whiting shoreside first receivers with receipts of 1 mt or more of whiting from whiting trips in each of any two years from 1998 through 2004, as documented on fish tickets in the relevant PacFIN dataset on July 1, 2010. NMFS will mail the prequalified application by certified mail to the current address of record given by the state in which the entity is registered. For all qualified entities who meet the eligibility requirement at paragraph (d)(8)(ii)(B) of this section, the application will provide the basis of NMFS' calculation of the initial issuance of Pacific whiting QS.

(B) *Request for an application.* An owner of a current limited entry trawl permit or a Pacific whiting first receiver or shoreside processor that believes it is qualified for an initial issuance of QS and IBQ and does not receive a prequalified application, must complete an application package and submit the completed application to NMFS by the application deadline. Application packages are available on NMFS' Web site (*http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Permits/index.cfm*) or by contacting SFD. An application must include valid PacFIN data or other credible information that substantiates the applicant's qualification for an initial issuance of QS and IBQ.

(vi) *Corrections to the application.* If an applicant does not accept NMFS' calculation in the prequalified application either in part or whole, the applicant must identify in writing to NMFS which parts the applicant believes to be inaccurate, and must provide specific credible information to substantiate any requested corrections. The completed application and specific credible information must be provided to NMFS in writing by the application deadline. Written communication must either be post-marked or hand-delivered within normal business hours no later than November 1, 2010. Requests for corrections may only be granted for the following reasons:

(A) Errors in NMFS' use or application of data, including:

(*1*) Errors in NMFS' use or application of landings data from PacFIN;

(*2*) Errors in NMFS' use or application of state logbook data from PacFIN;

(*3*) Errors in NMFS' application of the QS or IBQ allocation formula;

(*4*) Errors in identification of the permit owner, permit combinations, or vessel registration as listed in NMFS permit database;

(*5*) Errors in identification of ownership information for the first receiver or the processor that first processed the fish; and

(*6*) Errors in NMFS' use or application of ownership interest information.

(B) *Reassignment of Pacific whiting landings history for shoreside*

processors. For shoreside processors, the landing history may be reassigned from the Pacific whiting shoreside first receive identified in the relevant PacFIN database to a shoreside processor that was in fact the first processor of the fish. In order for an applicant to request that landing history be reassigned, an authorized representative for the Pacific whiting shoreside first receiver identified on the state landing receipt must submit, by the application deadline date specified in paragraph (d)(8)(vii)(B) of this section for initial issuance of QS, a written request that the whiting landings history from the qualifying years be conveyed to a shoreside processor. The letter must be signed and dated by the authorized representative of the Pacific whiting shoreside first receiver named on the state landing receipt and signed and dated by the authorized representative of the shoreside processor to which the Pacific whiting landing history is requested to be reassigned. The letter must identify the dates of the landings history and the associated amounts that are requested to be reassigned, and include the legal name of the shoreside processor to which the Pacific whiting landing history is requested to be reassigned, their date of birth or tax identification number, business address, business phone number, fax number, and e-mail address. If any document exists that demonstrates that the shoreside processor to which the Pacific whiting landing history is requested to be reassigned was in fact the first processor of the fish, such documentation must be provided to NMFS. NMFS will review the information submitted and will make a determination as part of the IAD.

(vii) *Submission of the application and application deadline*—(A) *Submission of the application.* Submission of the complete, certified application includes, but is not limited to, the following:

(*1*) The applicant is required to sign and date the application and have the document notarized by a licensed Notary Public.

(*2*) The applicant must certify that they qualify to own QS and IBQ.

(*3*) The applicant must indicate they accept NMFS' calculation of initial issuance of QS and IBQ provided in the prequalified application, or provide credible information that demonstrates their qualification for QS and IBQ.

(*4*) The applicant is required to provide a complete Trawl Identification of Ownership Interest Form as specified at paragraph (d)(4)(iv) of this section.

(*5*) Business entities may be required to submit a corporate resolution or other credible documentation as proof that the representative of the entity is authorized to act on behalf of the entity; and

(*6*) NMFS may request additional information of the applicant as necessary to make an IAD on initial issuance of QS or IBQ.

(B) *Application deadline.* A complete, certified application must be either postmarked or hand-delivered within normal business hours to NMFS, Northwest Region, Permits Office, Bldg. 1, 7600 Sand Point Way, NE., Seattle, WA 98115, no later than November 1, 2010. NMFS will not accept or review any applications received or postmarked after the application deadline. There are no hardship exemptions for this deadline.

(viii) *Permit transfer during application period.* NMFS will not review or approve any request for a change in limited entry trawl permit owner at any time after either November 1, 2010 or the date upon which the application is received by NMFS, whichever occurs first, until a final decision is made by the Regional Administrator on behalf of the Secretary of Commerce regarding the QS and IBQ to be issued for that permit.

(ix) *Initial Administrative Determination (IAD).* NMFS will issue an IAD for all complete, certified applications received by the application deadline date. If NMFS approves an application for initial issuance of QS and IBQ, the applicant will receive a QS permit specifying the amounts of QS and IBQ for which the applicant has qualified and the applicant will be registered to a QS account. If NMFS disapproves or partially disapproves an application, the IAD will provide the reasons. As part of the IAD, NMFS will indicate whether the QS permit owner qualifies for QS or IBQ in amounts that exceed the accumulation limits and are subject to divestiture provisions given at paragraph (d)(4)(v) of this section, or whether the QS permit owner qualifies for QS or IBQ that exceed the accumulation limits and does not qualify to receive the excess under paragraph (d)(4)(v) of this section. If the applicant does not appeal the IAD within 30 calendar days of the date on the IAD, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(x) *Appeals.* For QS permits and QS/IBQ issued under this section, the appeals process and timelines are specified at § 660.25(g), subpart C. For the initial issuance of QS/IBQ and the QS permits, the bases for appeal are described in paragraph (d)(8)(vi) of this section. An additional basis for appeal for whiting QS based on shoreside processing is an allegation that the shoreside processor or Pacific whiting shoreside first receiver to which a QS permit and whiting QS have been assigned was not in fact the first processor of the fish included in the qualifying landings history. The appellant must submit credible information supporting the allegation that they were in fact the first shoreside processor for the fish in question. Items not subject to appeal include, but are not limited to, the accuracy of permit landings data or Pacific whiting shoreside first receiver landings data in the relevant PacFIN dataset on July 1, 2010.

(e) *Vessel accounts.* [Reserved]

(f) *First receiver site license.* [Reserved]

(g) *Retention requirements (whiting and non-whiting vessels).* [Reserved]

(h) *Observer requirements.* [Reserved]

(i) [Reserved]

(j) *Shoreside catch monitor requirements for IFQ first receivers.* [Reserved]

(k) *Catch weighing requirements.* [Reserved]

(l) *Gear switching.* [Reserved]

(m) *Adaptive management program.* [Reserved]

§ 660.150 Mothership (MS) Coop Program.

(a) *General.* The MS Coop Program requirements in this section will be effective beginning January 1, 2011, except for paragraphs (f)(3), (f)(5), (f)(6), (g)(3), (g)(5), and (g)(6) which are effective immediately. The MS Coop Program is a 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. In addition to the requirements of this section, the MS Coop Program is subject to the following groundfish regulations of subparts C and D:

(1) Pacific whiting seasons § 660.131(b), subpart D.

(2) Area restrictions specified for midwater trawl gear used to harvest Pacific whiting fishery specified at § 660.131(c), Subpart D for GCAs, RCAs, Salmon Conservation Zones, BRAs, and EFHCAs.

(3) Regulations set out in the following sections of subpart C: § 660.11 Definitions, § 660.12 Prohibitions, § 660.13 Recordkeeping and reporting, § 660.14 VMS requirements, § 660.15 Equipment requirements, § 660.16 Groundfish Observer Program, § 660.20

Vessel and gear identification, § 660.25 Permits, § 660.26 Pacific whiting vessel licenses, § 660.55 Allocations, § 660.60 Specifications and management measures, § 660.65 Groundfish harvest specifications, and §§ 660.70 through 660.79 Closed areas.

(4) Regulations set out in the following sections of subpart D: § 660.111 Trawl fishery definitions, § 660.112 Trawl fishery prohibitions, § 660.113 Trawl fishery recordkeeping and reporting, § 660.116 Trawl fishery observer requirements, § 660.120 Trawl fishery crossover provisions, § 660.130 Trawl fishery management measures, and § 660.131 Pacific whiting fishery management measures.

(5) The MS Coop Program may be restricted or closed as a result of projected overages within the MS Coop Program, the C/P Coop Program, or the Shorebased IFQ Program. As determined necessary by the Regional Administrator, area restrictions, season closures, or other measures will be used to prevent the trawl sectors in aggregate or the individual trawl sector (Shorebased IFQ, MS Coop, or C/P Coop) from exceeding an OY, or formal allocation specified in the PCGFMP or regulation at § 660.55, subpart C, or §§ 660.140, 660.150, or 660.160, subpart D.

(b) *Participation requirements.* [Reserved]

(1) *Mothership vessels.* [Reserved]

(2) *Mothership catcher vessels.* [Reserved]

(3) *MS Coop formation and failure.* [Reserved]

(c) *Inter-coop agreement.* [Reserved]

(d) *MS Coop Program species and allocations*—(1) *MS Coop Program species.* MS Coop Program Species are as follows:

(i) Species with formal allocations to the MS Coop Program are Pacific whiting, canary rockfish, darkblotched rockfish, Pacific Ocean perch, and widow rockfish;

(ii) Species with set-asides for the MS and C/P Coop Programs combined, as described in Tables 1d and 2d, subpart C.

(2) *Annual mothership sector sub-allocations.* [Reserved]

(i) *Mothership catcher vessel catch history assignments.* [Reserved]

(ii) *Annual coop allocations.* [Reserved]

(iii) *Annual non-coop allocation.* [Reserved]

(3) *Reaching an allocation or sub-allocation.* [Reserved]

(4) *Non-whiting groundfish species reapportionment.* [Reserved]

(5) *Announcements.* [Reserved]

(6) *Redistribution of annual allocation.* [Reserved]

(7) *Processor obligation.* [Reserved]

(8) *Allocation accumulation limits.* [Reserved]

(e) *MS coop permit and agreement.* [Reserved]

(f) *Mothership (MS) permit.*

(1) *General.* Any vessel that processes or receives deliveries as a mothership processor in the Pacific whiting fishery mothership sector must be registered to an MS permit. A vessel registered to an MS permit may receive fish from a vessel that fishes in an MS coop and/or may receive fish from a vessel that fishes in the non-coop fishery at the same time or during the same year.

(i) *Vessel size endorsement.* An MS permit does not have a vessel size endorsement. The endorsement provisions at § 660.25(b)(3)(iii), subpart C, do not apply to an MS permit.

(ii) *Restriction on C/P vessels operating as motherships.* Restrictions on a vessel registered to a limited entry permit with a C/P endorsement operating as a mothership are specified at § 660.160, subpart D.

(2) *Renewal, change of permit ownership, or vessel registration.* [Reserved]

(3) *Accumulation limits.*

(i) *MS permit usage limit.* [Reserved]

(ii) *Ownership—individual and collective rule.* The ownership that counts towards a person's accumulation limit will include:

(A) Any MS permit owned by that person, and

(B) That portion of any MS permit owned by an entity in which that person has an economic or financial interest, where the person's share of interest in that entity will determine the portion of that entity's ownership that counts toward the person's limit.

(iii) *[Reserved]*

(iv) *Trawl identification of ownership interest form.* Any person that is applying for an MS permit shall document those persons that have an ownership interest in the MS permit greater than or equal to 2 percent. This ownership interest must be documented with SFD via the Trawl Identification of Ownership Interest Form. SFD will not issue an MS Permit unless the Trawl Identification of Ownership Interest Form has been completed. NMFS may request additional information of the applicant as necessary to verify compliance with accumulation limits.

(4) *Appeals.* [Reserved]

(5) *Fees.* The Regional Administrator is authorized to charge fees for administrative costs associated with the issuance of an MS permit consistent with the provisions given at § 660.25(f), Subpart C.

(6) *Application requirements and initial issuance for MS permit*—(i) *Eligibility criteria for MS permit.* Only the current owner of a vessel that processed Pacific whiting in the mothership sector in the qualifying years is eligible to receive initial issuance of an MS permit, except that in the case of bareboat charterers, the charterer of the bareboat may receive an MS permit instead of the vessel owner. As used in this section, "bareboat charterer" means a vessel charterer operating under a bareboat charter, defined as a complete transfer of possession, command, and navigation of a vessel from the vessel owner to the charterer for the limited time of the charter agreement.

(ii) *Qualifying criteria for MS permit.* To qualify for initial issuance of an MS permit, a person must own, or operate under a bareboat charter, a vessel on which at least 1,000 mt of Pacific whiting was processed in the mothership sector in each year for at least two years between 1997 and 2003 inclusive.

(iii) *MS permit application.* Persons may apply for initial issuance of an MS permit in one of two ways: complete and submit a prequalified application received from NMFS, or complete and submit an application package. The completed application must be either postmarked or hand-delivered within normal business hours no later than November 1, 2010. If an applicant fails to submit a completed application by the deadline date, they forgo the opportunity to receive consideration for initial issuance of an MS permit.

(A) *Prequalified application.* A "prequalified application" is a partially pre-filled application where NMFS has preliminarily determined the processing history that may qualify the applicant for an initial issuance of an MS permit. NMFS will mail prequalified application packages to the owners or bareboat charterer of vessels which NMFS determines may qualify for an MS permit. NMFS will mail the application by certified mail to the current address of record in the NMFS permit database. The application will contain the basis of NMFS' calculation. The application package will include, but is not limited to: A prequalified application (with processing history), a Trawl Identification of Ownership Interest form, and any other documents NMFS believes are necessary to aid the owners of the vessel or charterer of the bareboat to complete the MS permit application.

(B) *Request for an application.* Any current owner or bareboat charterer of a vessel that the owner or bareboat charterer believes qualifies for initial issuance of an MS permit that does not

receive a prequalified application must complete an application package and submit the completed application to NMFS by the application deadline. Application packages are available on NMFS' Web site (*http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Permits/index.cfm*) or by contacting SFD. An application must include valid NORPAC data or other credible information that substantiates the applicant's qualification for initial issuance of an MS permit.

(iv) *Corrections to the application.* If the applicant does not accept NMFS' calculation in the prequalified application either in part or whole, in order for NMFS to reconsider NMFS' calculation, the applicant must identify in writing to NMFS which parts of the prequalified application that the applicant contends to be inaccurate, and must provide specific credible information to substantiate any requested corrections. The completed application and specific credible information must be provided to NMFS in writing by the application deadline. Written communication must be either post-marked or hand-delivered within normal business hours no later than November 1, 2010. Requests for corrections may only be granted for errors in NMFS' use or application of data, including:

(A) Errors in NMFS' use or application of data from NORPAC;

(B) Errors in NMFS' calculations; and

(C) Errors in the vessel registration as listed in the NMFS permit database, or in the identification of the mothership owner or bareboat charterer.

(v) *Submission of the application and application deadline*—(A) *Submission of the Application.* Submission of the complete, certified application includes, but is not limited to, the following:

(*1*) The applicant is required to sign and date the application and have the document notarized by a licensed Notary Public.

(*2*) The applicant must certify that they qualify to own an MS permit.

(*3*) The applicant must indicate they accept NMFS' calculation in the prequalified application, or provide credible information that demonstrates their qualification for an MS permit.

(*4*) The applicant is required to provide a complete Trawl Identification of Ownership Interest Form as specified at paragraph (f)(3)(iv) of this section.

(*5*) Business entities may be required to submit a corporate resolution or other credible documentation as proof that the representative of the entity is authorized to act on behalf of the entity;

(*6*) A bareboat charterer must provide credible evidence that demonstrates it was chartering the mothership vessel under a private contract during the qualifying years; and

(*7*) NMFS may request additional information of the applicant as necessary to make an IAD on initial issuance of an MS permit.

(B) *Application deadline.* A complete, certified application must be either postmarked or hand-delivered within normal business hours to NMFS, Northwest Region, Permits Office, Bldg. 1, 7600 Sand Point Way, NE., Seattle, WA 98115, no later than November 1, 2010. NMFS will not accept or review any applications received or postmarked after the application deadline. There are no hardship provisions for this deadline.

(vi) *Initial administrative determination (IAD).* NMFS will issue an IAD for all complete, certified applications received by the application deadline date. If NMFS approves an application for initial issuance of an MS permit, the applicant will receive an MS permit. If NMFS disapproves an application, the IAD will provide the reasons. If the applicant does not appeal the IAD within 30 calendar days of the date on the IAD, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(vii) *Appeals.* For MS permits issued under this section, the appeals process and timelines are specified at § 660.25(g), subpart C. For the initial issuance of an MS permit, the bases for appeal are described in paragraph (f)(6)(iv) of this section. Items not subject to appeal include, but are not limited to, the accuracy of data in the relevant NORPAC dataset on August 1, 2010.

(g) *Mothership catcher vessel (MS/CV)-endorsed permit*—(1) *General.* Any vessel that delivers whiting to a mothership processor in the Pacific whiting fishery mothership sector must be registered to an MS/CV-endorsed permit, except that a vessel registered to limited entry trawl permit without an MS/CV or C/P endorsement may fish for a coop with permission from the coop. Within the MS Coop Program, an MS/CV-endorsed permit may participate in a coop or in the non-coop fishery.

(i) *Catch history assignment.* NMFS will assign a catch history assignment to each MS/CV-endorsed permit. The catch history assignment is based on the catch history in the Pacific whiting mothership sector during the qualifying years of 1994 through 2003. The catch history assignment is expressed as a percentage of Pacific whiting of the total mothership sector allocation as described at paragraph (d)(2)(i) of this section. Catch history assignments will be issued to the nearest whole pound using standard rounding rules (i.e. decimal amounts from zero up to 0.5 round down and 0.5 up to 1.0 round up).

(ii) *Pacific whiting mothership sector allocation.* The catch history assignment allocation accrues to the coop to which the MS/CV-endorsed permit is tied through private agreement, or will be assigned to the non-coop fishery if the MS/CV-endorsed permit does not participate in the coop fishery.

(iii) *Non-severable.* The MS/CV endorsement and its catch history assignment are not severable from the limited entry trawl permit. An MS/CV endorsement and its catch history assignment are permanently affixed to the original qualifying limited entry permit, and cannot be transferred separately from the original qualifying limited entry permit.

(iv) *Renewal.* [Reserved]

(v) *Restrictions on processing by vessels registered to MS/CV-endorsed permits.* A vessel registered to an MS/CV-endorsed permit in a given year shall not engage in processing of Pacific whiting during that year.

(2) *Change of permit owner, vessel registration, vessel owner, or combination.* [Reserved]

(3) *Accumulation limits*—(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 permit transfer request. 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.

(A) *Ownership—Individual and collective rule.* The Pacific whiting catch history assignment that applies to a person's accumulation limit will include:

(*1*) The catch history assignment on any MS/CV-endorsed permit owned by that person, and

(*2*) That portion of the catch history assignment on any MS/CV-endorsed

permit owned by an entity in which that person has an economic or financial interest, where the person's share of interest in that entity will determine the portion of that entity's catch history assignment that counts toward the person's limit.

(B) [Reserved]

(C) *Trawl identification of ownership interest form.* Any person that owns a limited entry trawl permit and is applying for an MS/CV endorsement shall document those persons that have an ownership interest in the permit greater than or equal to 2 percent. This ownership interest must be documented with the SFD via the Trawl Identification of Ownership Interest Form. SFD will not issue an MS/CV endorsement unless the Trawl Identification of Ownership Interest Form has been completed. NMFS may request additional information of the applicant as necessary to verify compliance with accumulation limits. Further, if SFD discovers through review of the Trawl Identification of Ownership Interest Form that a person owns more than the accumulation limits, the person will be subject to divestiture provisions specified in paragraph (g)(3)(i)(D) of this section.

(D) *Divestiture.* For MS/CV-endorsed permit owners that are found to exceed the accumulation limits during the initial issuance of MS/CV-endorsed permits, an adjustment period will be provided after which they will have to completely divest of ownership in permits that exceed the accumulation limits. Any person that NMFS determines, as a result of the initial issuance of MS/CV-endorsed permits, to own in excess of 20 percent of the total catch history assignment in the MS Coop Program applying the individual and collective rule described at § 660.150(g)(3)(i)(A) will be allowed to receive such permit(s), but must divest themselves of the excess ownership during years one and two of the MS Coop Program. Owners of such permit(s) may receive and use the MS/CV-endorsed permit(s), up to the time their divestiture is completed. At the end of year two of the MS Coop Program, any MS/CV-endorsed permits owned by a person (including any person who has ownership interest in the owner named on the permit) in excess of the accumulation limits will not be issued (renewed) until the permit owner complies with the accumulation limits.

(ii) [Reserved]

(4) *Appeals.* [Reserved]

(5) *Fees.* The Regional Administrator is authorized to charge a fee for administrative costs associated with the issuance of an MS/CV-endorsed permit, as provided at § 660.25(f), subpart C.

(6) *Application requirements and initial issuance for MS/CV endorsement*—(i) *Eligibility criteria for MS/CV endorsement.* Only a current trawl limited entry permit with a qualifying history of Pacific whiting deliveries in the MS Pacific whiting sector is eligible to receive an MS/CV endorsement. Any past catch history associated with the current limited entry trawl permit accrues to the permit. If a trawl limited entry permit is eligible to receive both a C/P endorsement and an MS/CV endorsement, the permit owner must choose which endorsement to apply for (*i.e.,* the owner of such a permit may not receive both a C/P and an MS/CV endorsement). NMFS will not recognize any other person as permit owner other than the person listed as permit owner in NMFS permit database.

(ii) *Qualifying criteria for MS/CV endorsement.* In order to qualify for an MS/CV endorsement, a qualifying trawl-endorsed limited entry permit must have been registered to a vessel or vessels that caught and delivered a cumulative amount of at least 500 mt of Pacific whiting to motherships between 1994 through 2003. The calculation will be based on the following:

(A) To determine a permit's qualifying catch history, NMFS will use documented deliveries to a mothership in Pacific whiting observer data as recorded in the relevant NORPAC dataset on August 1, 2010.

(B) The qualifying catch history will include any deliveries of Pacific whiting to motherships by vessels registered to limited entry trawl-endorsed permits that were subsequently combined to generate the current permit.

(C) If two or more limited entry trawl permits have been simultaneously registered to the same vessel, NMFS will divide the qualifying catch history evenly between all such limited entry trawl-endorsed permits during the time they were simultaneously registered to the vessel.

(D) History of illegal deliveries will not be included in the qualifying catch history.

(E) Deliveries made from Federal limited entry groundfish permits that were retired through the Federal buyback program will not be included in the qualifying catch history.

(F) Deliveries made under provisional "A" permits that did not become "A" permits and "B" permits will not be included in the qualifying catch history.

(iii) *Qualifying criteria for catch history assignment.* A catch history assignment will be specified as a percent on the MS/CV-endorsed permit. The calculation will be based on the following:

(A) For determination of a permit's catch history, NMFS will use documented deliveries to a mothership in Pacific whiting observer data as recorded in the relevant NORPAC dataset on August 1, 2010.

(B) NMFS will use relative history, which means the catch history of a permit for a year divided by the total fleet history for that year, expressed as a percent. NMFS will calculate relative history for each year in the qualifying period from 1994 through 2003 by dividing the total deliveries of Pacific whiting to motherships for the vessel(s) registered to the permit for each year by the sum of the total catch of Pacific whiting delivered to mothership vessel(s) for that year.

(C) NMFS will select the eight years with the highest relative history of Pacific whiting, unless the applicant requests a different set of eight years during the initial issuance and appeals process, and will add the relative histories for these years to generate the permit's total relative history. NMFS will then divide the permit's total relative history by the sum of all qualifying permits' total relative histories to determine the permit's catch history assignment, expressed as a percent.

(D) The total relative history will include any deliveries of Pacific whiting to motherships by vessels registered to limited entry trawl-endorsed permits that were subsequently combined to generate the current permit.

(E) If two or more limited entry trawl permits have been simultaneously registered to the same vessel, NMFS will split the catch history evenly between all such limited entry trawl-endorsed permits during the time they were simultaneously registered to the vessel.

(F) History of illegal deliveries will not be included in the calculation of a permit's catch history assignment or in the calculation of relative history for individual years.

(G) Deliveries made from Federal limited entry groundfish permits that were retired through the Federal buyback program will not be included in the calculation of a permit's catch history assignment other than for the purpose of calculating relative history for individual years.

(H) Deliveries made under provisional "A" permits that did not become "A" permits and "B" permits will not be included in the calculation of a permit's catch history assignment other than for the purpose of calculating relative history for individual years.

(iv) *MS/CV endorsement and catch history assignment application.* Persons may apply for an initial issuance of an MS/CV endorsement on a limited entry trawl permit and its associated catch history assignment in one of two ways: complete and submit a prequalified application received from NMFS, or complete and submit an application package. The completed application must be either postmarked or hand-delivered within normal business hours no later than November 1, 2010. If an applicant fails to submit a completed application by the deadline date, they forgo the opportunity to receive consideration for an initial issuance of an MS/CV endorsement and associated catch history assignment.

(A) *Prequalified application.* A "prequalified application" is a partially pre-filled application where NMFS has preliminarily determined the catch history that may qualify the applicant for an initial issuance of an MS/CV endorsement and associated catch history assignment. NMFS will mail prequalified application packages to the owners of current limited entry trawl permits, as listed in the NMFS permit database at the time applications are mailed, which NMFS determines may qualify for an MS/CV endorsement and associated catch history assignment. NMFS will mail the application by certified mail to the current address of record in the NMFS permit database. The application will contain the basis of NMFS' calculation. The application package will include, but is not limited to: a prequalified application (with landings history), a Trawl Identification of Ownership Interest form, and any other documents NMFS believes are necessary to aid the limited entry permit owner in completing the application.

(B) *Request for an application.* Any owner of a current limited entry trawl permit that does not receive a prequalified application that believes the permit qualifies for an initial issuance of an MS/CV endorsement and associated catch history assignment must complete an application package and submit the completed application to NMFS by the application deadline. Application packages are available on the NMFS Web site (*http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Permits/index.cfm*) or by contacting SFD. An application must include valid NORPAC data, copies of NMFS observer data forms, or other credible information that substantiates the applicant's qualification for an initial issuance of an MS/CV endorsement and associated catch history assignment.

(v) *Corrections to the application.* If the applicant does not accept NMFS' calculation in the prequalified application either in part or whole, in order for NMFS to reconsider NMFS' calculation, the applicant must identify in writing to NMFS which parts of the application that the applicant contends to be inaccurate, and must provide specific credible information to substantiate any requested corrections. The completed application and specific credible information must be provided to NMFS in writing by the application deadline. Written communication must be either post-marked or hand-delivered within normal business hours no later than November 1, 2010. Requests for corrections may only be granted for changes to the selection of the eight years with the highest relative history of whiting and errors in NMFS' use or application of data, including:

(A) Errors in NMFS' use or application of data from NORPAC;

(B) Errors in NMFS' calculations;

(C) Errors in the identification of the permit owner, permit combinations, or vessel registration as listed in the NMFS permit database; and

(D) Errors in NMFS' use or application of ownership interest information.

(vi) *Submission of the application and application deadline*—(A) *Submission of the application.* Submission of the complete, certified application includes, but is not limited to, the following:

(*1*) The applicant is required to sign and date the application and have the document notarized by a licensed Notary Public.

(*2*) The applicant must certify that they qualify to own an MS/CV-endorsed permit and associated catch history assignment.

(*3*) The applicant must indicate they accept NMFS' calculation of initial issuance of an MS/CV-endorsed permit and associated catch history assignment provided in the prequalified application, or provide credible information that demonstrates their qualification for an MS/CV-endorsed permit and associated catch history assignment.

(*4*) The applicant is required to provide a complete Trawl Identification of Ownership Interest Form as specified at paragraph (g)(3)(i)(C) of this section.

(*5*) Business entities may be required to submit a corporate resolution or other credible documentation as proof that the representative of the entity is authorized to act on behalf of the entity; and

(*6*) NMFS may request additional information of the applicant as necessary to make an IAD on initial issuance of an MS/CV-endorsed permit and associated catch history assignment.

(B) *Application deadline.* A complete, certified application must be either postmarked or hand-delivered within normal business hours to NMFS, Northwest Region, Permits Office, Bldg. 1, 7600 Sand Point Way NE., Seattle, WA 98115, no later than November 1, 2010. NMFS will not accept or review any applications received or postmarked after the application deadline. There are no hardship provisions for this deadline.

(vii) *Permit transfer during application period.* NMFS will not review or approve any request for a change in limited entry trawl permit owner at any time after either November 1, 2010 or the date upon which the application is received by NMFS, whichever occurs first, until a final decision is made by the Regional Administrator on behalf of the Secretary of Commerce on that permit.

(viii) *Initial Administrative Determination (IAD).* NMFS will issue an IAD for all complete, certified applications received by the application deadline date. If NMFS approves an application for initial issuance of an MS/CV-endorsed permit and associated catch history assignment, the applicant will receive an MS/CV endorsement on a limited entry trawl permit specifying the amounts of catch history assignment for which the applicant has qualified. If NMFS disapproves an application, the IAD will provide the reasons. If known at the time of the IAD, NMFS will indicate if the owner of the MS/CV-endorsed permit has ownership interest in catch history assignments that exceed the accumulation limits and are subject to divestiture provisions given at paragraph (g)(3)(i)(D) of this section. If the applicant does not appeal the IAD within 30 calendar days of the date on the IAD, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(ix) *Appeals.* For an MS/CV-endorsed permit and associated catch history assignment issued under this section, the appeals process and timelines are specified at § 660.25(g), subpart C. For the initial issuance of an MS/CV-endorsed permit and associated catch history assignment, the bases for appeal are described in paragraph (g)(6)(v) of this section. Items not subject to appeal include, but are not limited to, the accuracy of data in the relevant NORPAC dataset on August 1, 2010.

(h) *Non-coop fishery.* [Reserved]

(i) *Retention requirements.* [Reserved]

(j) *Observer requirements.* [Reserved]

(k) *Catch weighing requirements.* [Reserved]

(l) [Reserved]

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

(a) *General.* The C/P Coop Program requirements in § 660.160 will be effective beginning January 1, 2011, except for paragraphs (d)(5) and (d)(7) of this section, which are effective immediately. 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:

(1) Pacific whiting seasons § 660.131(b), subpart D.

(2) Area restrictions specified for midwater trawl gear used to harvest Pacific whiting fishery specified at § 660.131(c), subpart D for GCAs, RCAs, Salmon Conservation Zones, BRAs, and EFHCAs.

(3) Regulations set out in the following sections of subpart C: § 660.11 Definitions, § 660.12 Prohibitions, § 660.13 Recordkeeping and reporting, § 660.14 VMS requirements, § 660.15 Equipment requirements, § 660.16 Groundfish Observer Program, § 660.20 Vessel and gear identification, § 660.25 Permits, § 660.26 Pacific whiting vessel licenses, § 660.55 Allocations, § 660.60 Specifications and management measures, § 660.65 Groundfish harvest specifications, and §§ 660.70 through 660.79 Closed areas.

(4) Regulations set out in the following sections of subpart D: § 660.111 Trawl fishery definitions, § 660.112 Trawl fishery prohibitions, § 660.113 Trawl fishery recordkeeping and reporting, § 660.116 Trawl fishery observer requirements, § 660.120 Trawl fishery crossover provisions, § 660.130 Trawl fishery management measures, and § 660.131 Pacific whiting fishery management measures.

(5) The C/P Coop Program may be restricted or closed as a result of projected overages within the MS Coop Program, the C/P Coop Program, or the Shorebased IFQ Program. As determined necessary by the Regional Administrator, area restrictions, season closures, or other measures will be used to prevent the trawl sectors in aggregate or the individual trawl sector (Shorebased IFQ, MS Coop, or C/P Coop) from exceeding an OY, or formal allocation specified in the PCGFMP or regulation at § 660.55, subpart C, or §§ 660.140, 660.150, or 660.160, subpart D.

(b) *C/P Coop Program species and allocations*—(1) *C/P Coop Program species.* C/P Coop Program species are as follows:

(i) Species with formal allocations to the C/P Coop Program are Pacific whiting, canary rockfish, darkblotched rockfish, Pacific Ocean perch, widow rockfish;

(ii) Species with set-asides for the MS and C/P Programs combined, as described in Table 1d and 2d, subpart C.

(2) [Reserved]

(c) *C/P coop permit and agreement.* [Reserved]

(d) *C/P-endorsed permit*—(1) *General.* Any vessel participating in the C/P sector of the non-tribal primary Pacific whiting fishery during the season described at § 660.131(b) of this subpart must be registered to a valid limited entry permit with a C/P endorsement.

(i) *Non-severable.* A C/P endorsement is not severable from the limited entry trawl permit, and therefore, the endorsement may not be transferred separately from the limited entry trawl permit.

(ii) *Restriction on C/P vessel operating as a catcher vessel in the mothership sector.* A vessel registered to a C/P-endorsed permit cannot operate as a catcher vessel delivering unprocessed Pacific whiting to a mothership processor during the same calendar year it participates in the C/P sector.

(iii) *Restriction on C/P vessel operating as mothership.* A vessel registered to a C/P-endorsed permit cannot operate as a mothership during the same calendar year it participates in the C/P sector.

(2) *Eligibility and renewal for C/P-endorsed permit.* [Reserved.]

(3) *Change in permit ownership, vessel registration, vessel owner, transfer or combination.* [Reserved]

(4) *Appeals.* [Reserved]

(5) *Fees.* The Regional Administrator is authorized to charge fees for the administrative costs associated with review and issuance of a C/P endorsement consistent with the provisions at § 660.25(f), subpart C.

(6) [Reserved]

(7) *Application requirements and initial issuance for C/P endorsement*—(i) *Eligibility criteria for C/P endorsement.* Only current owners of a current limited entry trawl permit that has been registered to a vessel that participated in the C/P fishery during the qualifying period are eligible to receive a C/P endorsement. Any past catch history associated with the current limited entry trawl permit accrues to the current permit owner. NMFS will not recognize any other person as the limited entry permit owner other than the person listed as the limited entry permit owner in the NMFS permit database.

(ii) *Qualifying criteria for C/P endorsement.* In order to qualify for a C/P endorsement, a vessel registered to a valid trawl-endorsed limited entry permit must have caught and processed any amount of Pacific whiting during a primary catcher/processor season between 1997 through 2003. The calculation will be based on the following:

(A) Pacific Whiting Observer data recorded in the relevant NORPAC dataset on August 1, 2010, and NMFS permit data on limited entry trawl-endorsed permits will be used to determine whether a permit meets the qualifying criteria for a C/P endorsement.

(B) Only Pacific whiting regulated by this subpart that was taken with midwater (or pelagic) trawl gear will be considered for the C/P endorsement.

(C) Permit catch and processing history includes only the catch/processing history of Pacific whiting for a vessel when it was registered to that particular permit during the qualifying years.

(D) History of illegal landings will not count.

(E) Landings history from Federal limited entry groundfish permits that were retired through the Federal buyback program will not count.

(F) Landings under provisional "A" permits that did not become "A" permits and "B" permits will not count.

(iii) *C/P endorsement application.* Persons may apply for an initial issuance of a C/P endorsement in one of two ways: complete and submit a prequalified application received from NMFS, or complete and submit an application package. The completed application must be either postmarked or hand-delivered within normal business hours no later than November 1, 2010. If an applicant fails to submit a completed application by the deadline date, they forgo the opportunity to receive consideration for initial issuance of a C/P endorsement.

(A) *Prequalified application.* A "prequalified application" is a partially pre-filled application where NMFS has preliminarily determined the catch history that may qualify the applicant for an initial issuance of a C/P endorsement. NMFS will mail a prequalified application to all owners of current trawl limited entry permits, as listed in NMFS permit database at the time applications are mailed, which

NMFS determines may qualify for a C/P endorsement. NMFS will mail the application by certified mail to the current address of record in the NMFS permit database. The application will contain the basis of NMFS' calculation. The application package will include, but is not limited to: a prequalified application (with catch history) and any other documents NMFS believes are necessary to aid the limited entry permit owner in completing the application.

(B) *Request for an application.* Any owner of a current limited entry trawl permit that does not receive a prequalified application that believes the permit qualifies for an initial issuance of a C/P endorsement must complete an application package and submit the completed application to NMFS by the application deadline. Application packages are available on the NMFS Web site (*http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Permits/index.cfm*) or by contacting SFD. An application must include valid NORPAC data, copies of NMFS observer data forms, or other credible information that substantiates the applicant's qualification for initial issuance of a C/P endorsement.

(iv) *Corrections to the application.* If the applicant does not accept NMFS' calculation in the prequalified application either in part or whole, in order for NMFS to reconsider NMFS' calculation, the applicant must identify in writing to NMFS which parts of the application the applicant contends to be inaccurate, and must provide specific credible information to substantiate any requested corrections. The completed application and specific credible information must be provided to NMFS in writing by the application deadline. Written communication must be either post-marked or hand-delivered within normal business hours no later than November 1, 2010. Requests for corrections may only be granted for errors in NMFS' use or application of data, including:

(A) Errors in NMFS' use or application of data from NORPAC;

(B) Errors in NMFS' calculations; and

(C) Errors in the identification of the permit owner, permit combinations, or vessel registration as listed in the NMFS permit database.

(v) *Submission of the application and application deadline*—(A) *Submission of the Application.* Submission of the complete, certified application includes, but is not limited to, the following:

(*1*) The applicant is required to sign and date the application and have the document notarized by a licensed Notary Public.

(*2*) The applicant must certify that they qualify to own a C/P-endorsed permit.

(*3*) The applicant must indicate they accept NMFS' calculation of initial issuance of C/P endorsement provided in the prequalified application, or provide credible information that demonstrates their qualification for a C/P endorsement.

(*4*) Business entities may be required to submit a corporate resolution or other credible documentation as proof that the representative of the entity is authorized to act on behalf of the entity; and

(*5*) NMFS may request additional information of the applicant as necessary to make an IAD on initial issuance of a C/P endorsement.

(B) *Application deadline.* A complete, certified application must be either postmarked or hand-delivered within normal business hours to NMFS, Northwest Region, Permits Office, Bldg. 1, 7600 Sand Point Way NE., Seattle, WA 98115, no later than November 1, 2010. NMFS will not accept or review any applications received or postmarked after the application deadline. There are no hardship provisions for this deadline.

(vi) *Permit transfer during application period.* NMFS will not review or approve any request for a change in limited entry trawl permit owner at any time after either November 1, 2010 or the date upon which the application is received by NMFS, whichever occurs first, until a final decision is made by the Regional Administrator on behalf of the Secretary of Commerce.

(vii) *Initial Administrative Determination (IAD).* NMFS will issue an IAD for all complete, certified applications received by the application deadline date. If NMFS approves an application, the applicant will receive a C/P endorsement on a limited entry trawl permit. If NMFS disapproves an application, the IAD will provide the reasons. If the applicant does not appeal the IAD within 30 calendar days of the date on the IAD, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(viii) *Appeal.* For a C/P-endorsed permit issued under this section, the appeals process and timelines are specified at § 660.25(g), subpart C. For the initial issuance of a C/P-endorsed permit, the bases for appeal are described in paragraph (d)(7)(iv) of this section. Items not subject to appeal include, but are not limited to, the accuracy of data in the relevant NORPAC dataset on August 1, 2010.

(e) *Retention requirements.* [Reserved]

(f) *Observer requirements.* [Reserved]

(g) [Reserved]

(h) *Catch weighting requirements.* [Reserved]

Table 1 (North) to Part 660, Subpart D -- 2010 Trip Limits for Limited Entry Trawl Gear North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.160 before using this table

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TABLE 1 (North)

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	North of 48°10' N. lat.	shore - modified[7/] 200 fm line[6/]	shore - 200 fm line[6/]	shore - 150 fm line[6/]		shore - 200 fm line[6/]	shore - modified[7/] 200 fm line[6/]
2	48°10' N. lat. - 45°46' N. lat.	75 fm line[6/] - modified[7/] 200 fm line[6/]	75 fm line[6/] - 200 fm line[6/]	75 fm line[6/] - 150 fm line[6/]	100 fm line[6/] - 150 fm line[6/]	75 fm line[6/] - 200 fm line[6/]	75 fm line[6/] - modified[7/] 200 fm line[6/]
3	45°46' N. lat. - 40°10' N. lat.			75 fm line[6/] - 200 fm line[6/]	100 fm line[6/] - 200 fm line[6/]		
	Selective flatfish trawl gear is required shoreward of the RCA; all trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope and small footrope trawl gears (except for selective flatfish trawl gear) are prohibited shoreward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season.						
	See § 660.60 and § 660.130 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
4	**Minor slope rockfish[2/] & Darkblotched rockfish**	6,000 lb/ 2 months		2,000 lb/ 2 months			
5	**Pacific ocean perch**	1,500 lb/ 2 months					
6	**DTS complex**						
7	Sablefish						
8	large & small footrope gear	20,000 lb/ 2 months		24,000 lb/ 2 months	21,000 lb/ 2 months		
9	selective flatfish trawl gear	9,000 lb/ 2 months					
10	multiple bottom trawl gear [8/]	9,000 lb/ 2 months					
11	Longspine thornyhead						
12	large & small footrope gear	24,000 lb/ 2 months					
13	selective flatfish trawl gear	5,000 lb/ 2 months					
14	multiple bottom trawl gear [8/]	5,000 lb/ 2 months					
15	Shortspine thornyhead						
16	large & small footrope gear	18,000 lb/2 months					
17	selective flatfish trawl gear	5,000 lb/ 2 months					
18	multiple bottom trawl gear [8/]	5,000 lb/ 2 months					
19	Dover sole						
20	large & small footrope gear	110,000 lb/ 2 months			100,000 lb/ 2 months		
21	selective flatfish trawl gear	65,000 lb/ 2 months					
22	multiple bottom trawl gear [8/]	65,000 lb/ 2 months					

Table 1 (North). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
23	**Whiting**						
24	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.131 for season and trip limit details. -- After the primary whiting season: CLOSED.					
25	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.					
26	**Flatfish** (except Dover sole)						
27	Arrowtooth flounder						
28	large & small footrope gear	150,000 lb/ 2 months					
29	selective flatfish trawl gear	90,000 lb/ 2 months					
30	multiple bottom trawl gear [8/]	90,000 lb/ 2 months					
31	Other flatfish [3/], English sole, starry flounder, & Petrale sole						
32	large & small footrope gear for Other flatfish[3/], English sole, & starry flounder	110,000 lb/ 2 months	110,000 lb/ 2 months, no more than 9,500 lb/ 2 months of which may be petrale sole.		100,000 lb/ 2 months, no more than 6,300 lb/ 2 months of which may be petrale sole.		100,000 lb/ 2 months
33	large & small footrope gear for Petrale sole	9,500 lb/ 2 months					6,300 lb/ 2 months
34	selective flatfish trawl gear for Other flatfish[3/], English sole, & starry flounder	90,000 lb/ 2 months, no more than 9,500 lb/ 2 months of which may be petrale sole.	60,000 lb/ 2 months, no more than 9,500 lb/ 2 months of which may be petrale sole.		60,000 lb/ 2 months, no more than 6,300 lb/ 2 months of which may be petrale sole.		
35	selective flatfish trawl gear for Petrale sole						
36	multiple bottom trawl gear [8/]	90,000 lb/ 2 months, no more than 9,500 lb/ 2 months of which may be petrale sole.	60,000 lb/ 2 months, no more than 9,500 lb/ 2 months of which may be petrale sole.		60,000 lb/ 2 months, no more than 6,300 lb/ 2 months of which may be petrale sole.		
37	**Minor shelf rockfish[1/], Shortbelly, Widow & Yelloweye rockfish**						
38	midwater trawl for Widow rockfish	Before the primary whiting season: CLOSED. -- During primary whiting season: In trips of at least 10,000 lb of whiting, combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month. Mid-water trawl permitted in the RCA. See §660.131 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED.					
39	large & small footrope gear	300 lb/ 2 months					
40	selective flatfish trawl gear	300 lb/ month		1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish			300 lb/ month
41	multiple bottom trawl gear [8/]	300 lb/ month		300 lb/ 2 months, no more than 200 lb/ month of which may be yelloweye rockfish			300 lb/ month

TABLE 1 (North) con't

Table 1 (North). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
42	**Canary rockfish**						
43	large & small footrope gear	CLOSED					
44	selective flatfish trawl gear	100 lb/ month		300 lb/ month		100 lb/ month	
45	multiple bottom trawl gear 8/	CLOSED					
46	**Yellowtail**						
47	midwater trawl	Before the primary whiting season: CLOSED. -- During primary whiting season: In trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month. Mid-water trawl permitted in the RCA. See §660.131 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED.					
48	large & small footrope gear	300 lb/ 2 months					
49	selective flatfish trawl gear	2,000 lb/ 2 months					
50	multiple bottom trawl gear 8/	300 lb/ 2 months					
51	**Minor nearshore rockfish & Black rockfish**						
52	large & small footrope gear	CLOSED					
53	selective flatfish trawl gear	300 lb/ month					
54	multiple bottom trawl gear 8/	CLOSED					
55	**Lingcod** 4/						
56	large & small footrope gear	1,200 lb/ 2 months		4,000 lb/ 2 months			
57	selective flatfish trawl gear			1,200 lb/2 months			
58	multiple bottom trawl gear 8/						
59	**Pacific cod**	30,000 lb/ 2 months		70,000 lb/ 2 months			30,000 lb/ 2 months
60	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
61	**Other Fish** 5/	Not limited					

TABLE 1 (North) con't

1/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish.
2/ Splitnose rockfish is included in the trip limits for minor slope rockfish.
3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.
5/ "Other fish" are defined at § 660.11 and include sharks, skates (including longnose skate), ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
7/ The "modified" fathom lines are modified to exclude certain petrale sole areas from the RCA.
8/ If a vessel has both selective flatfish gear and large or small footrope gear on board during a cumulative limit period (either simultaneously or successively), the most restrictive cumulative limit for any gear on board during the cumulative limit period applies for the entire cumulative limit period.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 1 (South) to Part 660, Subpart D -- 2010 Trip Limits for Limited Entry Trawl Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.160 before using this table

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		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	South of 40°10' N. lat.	100 fm line[6/] - 150 fm line [6/ 7/]					
All trawl gear (large footrope, selective flatfish trawl, midwater trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope trawl gear and midwater trawl gear are prohibited shoreward of the RCA.							
See § 660.60 and § 660.130 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.							
2	**Minor slope rockfish[2/] & Darkblotched rockfish**						
3	40°10' - 38° N. lat.	15,000 lb/ 2 months					
4	South of 38° N. lat.	55,000 lb/ 2 months					
5	**Splitnose**						
6	40°10' - 38° N. lat.	15,000 lb/ 2 months					
7	South of 38° N. lat.	55,000 lb/ 2 months					
8	**DTS complex**						
9	Sablefish	22,000 lb/ 2 months			21,000 lb/ 2 months		
10	Longspine thornyhead	24,000 lb/ 2 months					
11	Shortspine thornyhead	18,000 lb/ 2 months					
12	Dover sole	110,000 lb/ 2 months			100,000 lb/ 2 months		
13	**Flatfish** (except Dover sole)						
14	Other flatfish[3/], English sole, & starry flounder	110,000 lb/ 2 months	110,000 lb/ 2 months, no more than 9,500 lb/ 2 months of which may be petrale sole.		100,000 lb/ 2 months, no more than 6,300 lb/ 2 months of which may be petrale sole.		100,000 lb/ 2 months
15	Petrale sole	9,500 lb/ 2 months					6,300 lb/ 2 months
16	Arrowtooth flounder	10,000 lb/ 2 months					
17	**Whiting**						
18	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.131 for season and trip limit details. -- After the primary whiting season: CLOSED.					
19	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.					

TABLE 1 (South)

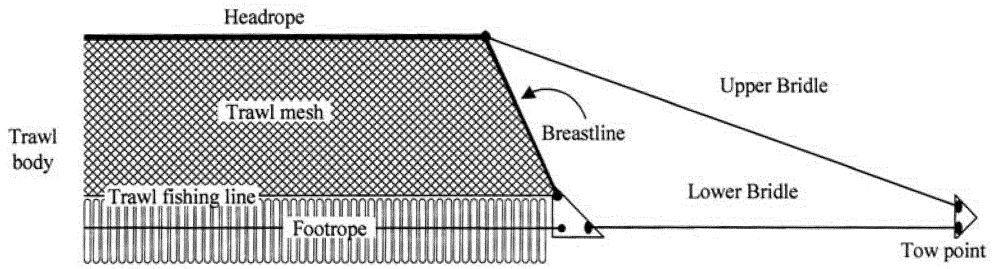
Table 1 (South). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
20	**Minor shelf rockfish[1/], Chilipepper, Shortbelly, Widow, & Yelloweye rockfish**						
21	large footrope or midwater trawl for Minor shelf rockfish & Shortbelly	300 lb/ month					
22	large footrope or midwater trawl for Chilipepper	12,000 lb/ 2 months			17,000 lb/ 2 months		
23	large footrope or midwater trawl for Widow & Yelloweye	CLOSED					
24	small footrope trawl for Minor Shelf, Shortbelly, Widow & Yelloweye	300 lb/ month					
25	small footrope trawl for Chilipepper	12,000 lb/ 2 months			17,000 lb/ 2 months		
26	**Bocaccio**						
27	large footrope or midwater trawl	300 lb/ 2 months					
28	small footrope trawl	CLOSED					
29	**Canary rockfish**						
30	large footrope or midwater trawl	CLOSED					
31	small footrope trawl	100 lb/ month		300 lb/ month		100 lb/ month	
32	**Cowcod**	CLOSED					
33	**Bronzespotted rockfish**	CLOSED					
34	**Minor nearshore rockfish & Black rockfish**						
35	large footrope or midwater trawl	CLOSED					
36	small footrope trawl	300 lb/ month					
37	**Lingcod[4/]**						
38	large footrope or midwater trawl	1,200 lb/ 2 months		4,000 lb/ 2 months			
39	small footrope trawl			1,200 lb/ 2 months			
40	**Pacific cod**	30,000 lb/ 2 months		70,000 lb/ 2 months			30,000 lb/ 2 months
41	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
42	**Other Fish[5/] & Cabezon**	Not limited					

TABLE 1 (South) con't

1/ Yellowtail is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.
2/ POP is included in the trip limits for minor slope rockfish
3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
4/ The minimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.
5/ Other fish are defined at § 660.11 and include sharks, skates (including longnose skate), ratfish, morids, grenadiers, and kelp greenling.
6/ The Rockfish Conservation Area is an area closed to fishing by particulary gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
7/ South of 34°27' N. lat., the RCA is 100 fm line - 150 fm line along the mainland coast; shoreline - 150 fm line around islands.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

FIGURE 1 TO PART 660, SUBPART D – DIAGRAM OF SELECTIVE FLATFISH TRAWL



Side view of trawl mouth

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Subpart E—West Coast Groundfish—Limited Entry Fixed Gear Fisheries

§ 660.210 Purpose and scope.

This subpart covers the Pacific Coast Groundfish limited entry fixed gear fishery.

§ 660.211 Fixed gear fishery—definitions.

These definitions are specific to the limited entry fixed gear fisheries covered in this subpart. General groundfish definitions are found at § 660.11, subpart C.

Daily Trip Limit (DTL) Fishery means a sablefish fishery that occurs both north and south of 36° N. lat. that is subject to trip limit restrictions including daily and/or weekly and/or bimonthly trip limits.

Limited entry fixed gear fishery means the fishery composed of vessels registered to limited entry permits with longline and pot/trap endorsements.

Sablefish primary fishery or sablefish tier limit fishery means, for the limited entry fixed gear sablefish fishery north of 36° N. lat, the fishery where vessels registered to at least one limited entry permit with both a gear endorsement for longline or trap (or pot) gear and a sablefish endorsement fish up to a specified tier limit and when they are not eligible to fish in the DTL fishery.

Sablefish primary season means, for the limited entry fixed gear sablefish fishery north of 36° N. lat, the period when vessels registered to at least one limited entry permit with both a gear endorsement for longline or trap (or pot) gear and a sablefish endorsement, are allowed to fish in the sablefish tier limit fishery described at § 660.231 of this subpart.

Tier limit means a specified amount of sablefish that may be harvested by a vessel registered to a limited entry fixed gear permit(s) with a Tier 1, Tier 2, and/or Tier 3 designation; a gear endorsement for longline or trap (or pot) gear; and a sablefish endorsement.

§ 660.212 Fixed gear fishery—prohibitions.

These prohibitions are specific to the limited entry fixed gear fisheries. General groundfish prohibitions are found at § 660.12, subpart C. In addition to the general groundfish prohibitions specified in § 660.12, subpart C, it is unlawful for any person to:

(a) *General.* (1) Possess, deploy, haul, or carry onboard a fishing vessel subject to subparts C and E a set net, trap or pot, longline, or commercial vertical hook-and-line as defined at § 660.11, subpart C, that is not in compliance with the gear restrictions in § 660.230, subpart E, unless such gear is the gear of another vessel that has been retrieved at sea and made inoperable or stowed in a manner not capable of being fished. The disposal at sea of such gear is prohibited by Annex V of the International Convention for the Prevention of Pollution From Ships, 1973 (Annex V of MARPOL 73/78).

(2) Take, retain, possess, or land more than a single cumulative limit of a particular species, per vessel, per applicable cumulative limit period, except for sablefish taken in the limited entry, fixed gear sablefish primary season from a vessel authorized to fish in that season, as described at § 660.231, subpart E.

(b) *Recordkeeping and reporting.* Fail to retain on board a vessel from which sablefish caught in the sablefish primary season is landed, and provide to an authorized officer upon request, copies of any and all reports of sablefish landings against the sablefish-endorsed permit's tier limit, or receipts containing all data, and made in the exact manner required by the applicable state law throughout the sablefish primary season during which such landings occurred and for 15 days thereafter.

(c) *Fishing in conservation areas.* (1) Operate a vessel registered to a limited entry permit with a longline or trap (pot) endorsement and longline and/or trap gear onboard in an applicable GCA (as defined at § 660.230(d)), except for purposes of continuous transiting, with all groundfish longline and/or trap gear stowed in accordance with § 660.212(a) or except as authorized in the groundfish management measures at § 660.230.

(2) Fish with bottom contact gear (as defined in § 660.11, subpart C) within the EEZ in the following areas (defined in §§ 660.78 and 660.79, subpart C): Thompson Seamount, President Jackson Seamount, Cordell Bank (50-fm (91-m) isobath), Harris Point, Richardson Rock, Scorpion, Painted Cave, Anacapa Island, Carrington Point, Judith Rock, Skunk Point, Footprint, Gull Island, South Point, and Santa Barbara.

(3) Fish with bottom contact gear (as defined in § 660.11, subpart C), or any other gear that is deployed deeper than 500-fm (914-m), within the Davidson Seamount area (defined in § 660.75, subpart C).

(d) *Sablefish fisheries.* (1) Take, retain, possess or land sablefish under the tier limits provided for the limited entry, fixed gear sablefish primary season, described in § 660.231(b), subpart E, from a vessel that is not registered to a limited entry permit with a sablefish endorsement.

(2) Take, retain, possess or land sablefish in the sablefish primary season, described at § 660.231(b), subpart E, unless the owner of the limited entry permit registered for use with that vessel and authorizing the vessel to fish in the sablefish primary season is on board that vessel. Exceptions to this prohibition are provided at § 660.231(b)(4)(i) and (ii).

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

§ 660.213 Fixed gear fishery—recordkeeping and reporting.

(a) *General.* General reporting requirements specified at § 660.13 (a) through (c), subpart C, apply to limited entry fixed gear fishery vessels.

(b) *Declaration reports for limited entry fixed gear fishery vessels.* Declaration reporting requirements for limited entry fixed gear fishery vessels are specified at § 660.13 (d), subpart C.

(c) *VMS requirements for limited entry fixed gear fishery vessels.* VMS requirements for limited entry fixed gear fishery vessels are specified at § 660.14, subpart C.

(d) *Retention of records.* (1) Any person landing groundfish must retain on board the vessel from which groundfish are landed, and provide to an authorized officer upon request, copies of any and all reports of groundfish landings containing all data, and in the exact manner, required by the applicable state law throughout the cumulative limit period during which a landing occurred and for 15 days thereafter.

(2) For participants in the sablefish primary season, the cumulative limit period to which this requirement applies is April 1 through October 31 or, for an individual permit holder, when that permit holder's tier limit is attained, whichever is earlier.

§ 660.216 Fixed gear fishery—observer requirements.

(a) *Observer coverage requirements.* When NMFS notifies the owner, operator, permit holder, or the manager of a catcher vessel, specified at § 660.16(c), subpart C, of any requirement to carry an observer, the catcher vessel may not be used to fish for groundfish without carrying an observer.

(b) *Notice of departure basic rule.* At least 24 hours (but not more than 36 hours) before departing on a fishing trip, a vessel that has been notified by NMFS that it is required to carry an observer, or that is operating in an active sampling unit, must notify NMFS (or its designated agent) of the vessel's intended time of departure. Notice will be given in a form to be specified by NMFS.

(1) *Optional notice—weather delays.* A vessel that anticipates a delayed departure due to weather or sea conditions may advise NMFS of the anticipated delay when providing the basic notice described in paragraph (b) of this section. If departure is delayed beyond 36 hours from the time the original notice is given, the vessel must provide an additional notice of departure not less than 4 hours prior to departure, in order to enable NMFS to place an observer.

(2) *Optional notice—back-to-back fishing trips.* A vessel that intends to make back-to-back fishing trips (*i.e.,* trips with less than 24 hours between offloading from one trip and beginning another), may provide the basic notice described in paragraph (b) of this section for both trips, prior to making the first trip. A vessel that has given such notice is not required to give additional notice of the second trip.

(c) *Cease fishing report.* Within 24 hours of ceasing the taking and retaining of groundfish, vessel owners, operators, or managers must notify NMFS or its designated agent that fishing has ceased. This requirement applies to any vessel that is required to carry an observer, or that is operating in a segment of the fleet that NMFS has identified as an active sampling unit.

(d) *Waiver.* The Northwest Regional Administrator may provide written notification to the vessel owner stating that a determination has been made to temporarily waive coverage requirements because of circumstances that are deemed to be beyond the vessel's control.

(e) *Vessel responsibilities*—(1) *Accommodations and food.* An operator of a vessel required to carry one or more observer(s) must provide accommodations and food that are Equivalent to those provided to the crew.

(2) *Safe conditions.* Maintain safe conditions on the vessel for the protection of observer(s) including adherence to all USCG and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel, and provisions at §§ 600.725 and 600.746 of this chapter.

(3) *Observer communications.* Facilitate observer communications by:

(i) *Observer use of equipment.* Allowing observer(s) to use the vessel's communication equipment and personnel, on request, for the entry, transmission, and receipt of work-related messages, at no cost to the observer(s) or the U.S. or designated agent.

(ii) *Functional equipment.* Ensuring that the vessel's communications equipment, used by observers to enter and transmit data, is fully functional and operational.

(4) *Vessel position.* Allow observer(s) access to, and the use of, the vessel's navigation equipment and personnel, on request, to determine the vessel's position.

(5) *Access.* Allow observer(s) free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(6) *Prior notification.* Notify observer(s) at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer, unless the observer specifically requests not to be notified.

(7) *Records.* Allow observer(s) to inspect and copy any state or Federal logbook maintained voluntarily or as required by regulation.

(8) *Assistance.* Provide all other reasonable assistance to enable observer(s) to carry out their duties, including, but not limited to:

(i) Measuring decks, codends, and holding bins.

(ii) Providing the observer(s) with a safe work area.

(iii) Collecting bycatch when requested by the observer(s).

(iv) Collecting and carrying baskets of fish when requested by the observer(s).

(v) Allowing the observer(s) to collect biological data and samples.

(vi) Providing adequate space for storage of biological samples.

(f) *Sample station*—(1) *Observer sampling station.* This paragraph contains the requirements for observer sampling stations. The vessel owner must provide an observer sampling station that complies with this section so that the observer can carry out required duties.

(i) *Accessibility.* The observer sampling station must be available to the observer at all times.

(ii) *Location.* The observer sampling station must be located within 4 m of the location from which the observer samples unsorted catch. Unobstructed passage must be provided between the observer sampling station and the location where the observer collects sample catch.

(2) [Reserved]

§ 660.219 Fixed gear identification and marking.

(a) *Gear identification.* (1) Limited entry fixed gear (longline, trap or pot) must be marked at the surface and at each terminal end, with a pole, flag, light, radar reflector, and a buoy.

(2) A buoy used to mark fixed gear must be marked with a number clearly identifying the owner or operator of the vessel. The number may be either:

(i) If required by applicable state law, the vessel's number, the commercial fishing license number, or buoy brand number; or

(ii) The vessel documentation number issued by the USCG, or, for an undocumented vessel, the vessel registration number issued by the state.

(b) [Reserved]

§ 660.220 Fixed gear fishery—crossover provisions.

(a) *Operating in both limited entry and open access fisheries.* See provisions at § 660.60(h)(7), subpart C.

(b) *Operating in north-south management areas with different trip limits.* NMFS uses different types of management areas for West Coast groundfish management. One type of management area is the north-south management area, a large ocean area with northern and southern boundary lines wherein trip limits, seasons, and conservation areas follow a single theme. Within each north-south management area, there may be one or more conservation areas, detailed in §§ 660.60(h)(7) and 660.70 through 660.74, subpart C. The provisions within this paragraph apply to vessels operating in different north-south management areas. Trip limits for a species or a species group may differ in different north-south management areas along the coast. The following "crossover" provisions apply to vessels operating in different geographical areas that have different cumulative or "per trip" trip limits for the same species or species group. Such crossover provisions do not apply to species that are subject only to daily trip limits, or to the trip limits for black rockfish off Washington (*see* § 660.230(d)).

(1) 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.

(2) 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.

(3) Operating 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.

(4) 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.

(i) 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.

(ii) 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.

§ 660.230 Fixed gear fishery-management measures.

(a) *General.* Most species taken in limited entry fixed gear (longline and pot/trap) fisheries will be managed with cumulative trip limits (see trip limits in Tables 2 (North) and 2 (South) of this subpart), size limits (see § 660.60(h)(5)), seasons (see trip limits in Tables 2 (North) and 2 (South) of this subpart and sablefish primary season details in § 660.231), gear restrictions (see paragraph (b) of this section), and closed areas (see paragraph (d) of this section and §§ 660.70 through 660.79, subpart C). Cowcod retention is prohibited in all fisheries, and groundfish vessels operating south of Point Conception must adhere to CCA restrictions (see paragraph (d)(10) of this section and § 660.70, subpart C). Yelloweye rockfish and canary rockfish retention is prohibited in the limited entry fixed gear fisheries. Regulations governing and tier limits for the limited entry, fixed gear sablefish primary season north of 36° N. lat. are found in § 660.231, subpart E. Vessels not participating in the sablefish primary season are subject to daily or weekly sablefish limits in addition to cumulative limits for each cumulative limit period. Only one sablefish landing per week may be made in excess of the daily trip limit and, if the vessel chooses to make a landing in excess of that daily trip limit, then that is the only sablefish landing permitted for that week. The trip limit for black rockfish caught with hook-and-line gear also applies, see § 660.230(d). The trip limits in Table 2 (North) and Table 2 (South) of this subpart apply to vessels participating in the limited entry groundfish fixed gear fishery and may not be exceeded. Federal commercial groundfish regulations are not intended to supersede any more restrictive state commercial groundfish regulations relating to federally-managed groundfish.

(b) *Gear restrictions*—(1) Longline and pot or trap gear are authorized in the limited entry fixed gear fishery, providing the gear is in compliance with the restrictions set forth in this section, and gear marking requirements described in § 660.219 of this subpart.

(2) Vessels participating in the limited entry fixed gear fishery may also fish with open access gear subject to the gear restrictions at § 660.330(b), subpart F, but will be subject to the most restrictive trip limits for the gear used as specified at § 660.60(h)(7), subpart C.

(3) Limited entry fixed gear (longline, trap or pot gear) must be attended at least once every 7 days.

(4) Traps or pots must have biodegradable escape panels constructed with 21 or smaller untreated cotton twine in such a manner that an opening at least 8 inches (20.3 cm) in diameter results when the twine deteriorates.

(c) *Sorting Requirements.* (1) Under § 660.12(a)(8), subpart C, 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, 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, or OY applied." The States of Washington, Oregon, and California may also require that vessels record their landings as sorted on their state landing receipts.

(2) For limited entry fixed gear, the following species must be sorted:

(i) Coastwide—widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, shortbelly rockfish, black rockfish, blue rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, shortspine and longspine thornyhead, Dover sole, arrowtooth flounder, petrale sole, starry flounder, English sole, other flatfish, lingcod, sablefish, Pacific cod, spiny dogfish, other fish, longnose skate, and Pacific whiting;

(ii) North of 40°10′ N. lat.—POP, yellowtail rockfish;

(iii) South of 40°10′ N. lat.—minor shallow nearshore rockfish, minor deeper nearshore rockfish, California scorpionfish, chilipepper rockfish, bocaccio rockfish, splitnose rockfish, Pacific sanddabs, cowcod, bronzespotted rockfish and cabezon.

(d) *Groundfish conservation areas applicable to limited entry fixed gear vessels.* A GCA, a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude. The latitude and longitude coordinates of the GCA boundaries are specified at §§ 660.70 through 660.74, subpart C. A vessel that is authorized by this paragraph to fish within a GCA (*e.g.* fishing for "other flatfish" using no more than 12 hooks, "Number 2" or smaller), may not simultaneously have other gear on board the vessel that is unlawful to use for fishing within the GCA. The following GCAs apply to vessels participating in the limited entry fixed gear fishery.

(1) *North coast recreational yelloweye rockfish conservation area.* The latitude and longitude coordinates of the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA) boundaries are specified at § 660.70, subpart C. The North Coast Recreational YRCA is designated as an area to be avoided (a voluntary closure) by commercial fixed gear fishers.

(2) *North coast commercial yelloweye rockfish conservation area.* The latitude and longitude coordinates of the North Coast Commercial Yelloweye Rockfish Conservation Area (YRCA) boundaries are specified at § 660.70, subpart C. Fishing with limited entry fixed gear is prohibited within the North Coast Commercial YRCA. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the North Coast Commercial YRCA. Limited entry fixed gear vessels may transit through the North Coast Commercial YRCA with or without groundfish on board.

(3) *South coast recreational yelloweye rockfish conservation area.* The latitude and longitude coordinates of the South Coast Recreational Yelloweye Rockfish Conservation Area (YRCA) boundaries are specified at § 660.70, subpart C. The South Coast Recreational YRCA is designated as an area to be avoided (a voluntary closure) by commercial fixed gear fishers.

(4) *Westport offshore recreational YRCA.* The latitude and longitude coordinates that define the Westport Offshore Recreational YRCA boundaries are specified at § 660.70, subpart C. The Westport Offshore Recreational YRCA is designated as an area to be avoided (a voluntary closure) by commercial fixed gear fishers.

(5) *Point St. George YRCA.* The latitude and longitude coordinates of the Point St. George YRCA boundaries are specified at § 660.70, Subpart C. Fishing with limited entry fixed gear is prohibited within the Point St. George YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the Point St. George YRCA, on dates when the closure is in effect. The closure is not in effect at this time, and commercial fishing for groundfish is open within the Point St. George YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment. Limited entry fixed gear vessels may transit through the Point St. George YRCA, at any time, with or without groundfish on board.

(6) *South Reef YRCA.* The latitude and longitude coordinates of the South Reef YRCA boundaries are specified at § 660.70, subpart C. Fishing with limited entry fixed gear is prohibited within the South Reef YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the South Reef YRCA, on dates when the closure is in effect. The closure is not in effect at this time, and commercial fishing for groundfish is open within the South Reef YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment. Limited entry fixed gear vessels may transit through the South Reef YRCA, at any time, with or without groundfish on board.

(7) *Reading Rock YRCA.* The latitude and longitude coordinates of the Reading Rock YRCA boundaries are specified at § 660.70, subpart C. Fishing with limited entry fixed gear is prohibited within the Reading Rock YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the Reading Rock YRCA, on dates when the closure is in effect. The closure is not in effect at this time, and commercial fishing for groundfish is open within the Reading Rock YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment. Limited entry fixed gear vessels may transit through the Reading Rock YRCA, at any time, with or without groundfish on board.

(8) *Point Delgada (North) YRCA.* The latitude and longitude coordinates of the Point Delgada (North) YRCA boundaries are specified at § 660.70, subpart C. Fishing with limited entry fixed gear is prohibited within the Point Delgada (North) YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the Point Delgada (North) YRCA, on dates when the closure is in effect. The closure is not in effect at this time, and commercial fishing for groundfish is open within the Point Delgada (North) YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment. Limited entry fixed gear vessels may transit through the Point Delgada (North) YRCA, at any time, with or without groundfish on board.

(9) *Point Delgada (South) YRCA.* The latitude and longitude coordinates of the Point Delgada (South) YRCA boundaries are specified at § 660.70, subpart C. Fishing with limited entry fixed gear is prohibited within the Point Delgada (South) YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the Point Delgada (South) YRCA, on dates when the closure is in effect. The closure is not in effect at this time, and commercial fishing for groundfish is open within the Point Delgada (South) YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment. Limited entry fixed gear vessels may transit through the Point Delgada (South) YRCA, at any time, with or without groundfish on board.

(10) *Cowcod Conservation Areas.* The latitude and longitude coordinates of the Cowcod Conservation Areas (CCAs) boundaries are specified at § 660.70, subpart C. It is unlawful to take and

retain, possess, or land groundfish within the CCAs, except for species authorized in this paragraph caught according to gear requirements in this paragraph, when those waters are open to fishing. Commercial fishing vessels may transit through the Western CCA with their gear stowed and groundfish on board only in a corridor through the Western CCA bounded on the north by the latitude line at 33°00.50′ N. lat., and bounded on the south by the latitude line at 32°59.50′ N. lat. Fishing with limited entry fixed gear is prohibited within the CCAs, except as follows:

(i) Fishing for "other flatfish" is permitted within the CCAs under the following conditions: When using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1-lb (0.45 kg) weights per line; and provided a valid declaration report as required at § 660.13(d), subpart C, has been filed with NMFS OLE.

(ii) Fishing for rockfish and lingcod is permitted shoreward of the 20 fm (37 m) depth contour within the CCAs when trip limits authorize such fishing, and provided a valid declaration report as required at § 660.13(d), subpart C, has been filed with NMFS OLE.

(11) *Nontrawl Rockfish Conservation Areas (RCA).* The nontrawl RCAs are closed areas, defined by specific latitude and longitude coordinates (specified at §§ 660.70 through 660.74, subpart C) designed to approximate specific depth contours, where fishing for groundfish with nontrawl gear is prohibited. Boundaries for the nontrawl RCA throughout the year are provided in the header to Table 2 (North) and Table 2 (South) of this subpart and may be modified by NMFS inseason pursuant to § 660.60(c), subpart C.

(i) It is unlawful to operate a vessel with limited entry nontrawl gear in the nontrawl RCA, except for the purpose of continuous transit, or when the use of limited entry nontrawl gear is authorized in this section. It is unlawful to take and retain, possess, or land groundfish taken with limited entry nontrawl gear within the nontrawl RCA, unless otherwise authorized in this section.

(ii) Limited entry nontrawl vessels may transit through the nontrawl RCA, with or without groundfish on board, provided all groundfish nontrawl gear is stowed either: Below deck; or if the gear cannot readily be moved, in a secured and covered manner, detached from all lines, so that it is rendered unusable for fishing.

(iii) The nontrawl RCA restrictions in this section apply to vessels registered to limited entry fixed gear permits fishing for species other than groundfish with nontrawl gear on trips where groundfish species are retained. Unless otherwise authorized in this section, a vessel may not retain any groundfish taken on a fishing trip for species other than groundfish that occurs within the nontrawl RCA. If a vessel fishes in a non-groundfish fishery in the nontrawl RCA, it may not participate in any fishing for groundfish on that trip that is prohibited within the nontrawl RCA. [For example, if a vessel fishes in the salmon troll fishery within the RCA, the vessel cannot on the same trip fish in the sablefish fishery outside of the RCA.]

(iv) It is lawful to fish within the nontrawl RCA with limited entry fixed gear only under the following conditions: when fishing for "other flatfish" off California (between 42° N. lat. south to the U.S./Mexico border) using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1-lb (0.91 kg) weights per line when trip limits authorize such fishing, provided a valid declaration report as required at § 660.13(d), subpart C, has been filed with NMFS OLE.

(12) *Farallon Islands.* Under California law, commercial fishing for all groundfish is prohibited between the shoreline and the 10 fm (18 m) depth contour around the Farallon Islands. An exception to this prohibition is that commercial fishing for "other flatfish" is permitted around the Farallon Islands using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1-lb (0.45-kg) weights per line. (*See* Table 2 (South) of this subpart.) For a definition of the Farallon Islands, *see* § 660.70, subpart C.

(13) *Cordell Banks.* Commercial fishing for groundfish is prohibited in waters of depths less than 100 fm (183 m) around Cordell Banks, as defined by specific latitude and longitude coordinates at § 660.70, subpart C. An exception to this prohibition is that commercial fishing for "other flatfish" is permitted around Cordell Banks using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1-lb (0.45-kg) weights per line.

(14) *Essential Fish Habitat Conservation Areas (EFHCA).* An EFHCA, a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude at §§ 660.75 through 660.79, Subpart C, where specified types of fishing are prohibited in accordance with § 660.12, Subpart C. EFHCAs apply to vessels using "bottom contact gear," which is defined at § 660.11, Subpart C to include limited entry fixed gear (longline and pot/trap,) among other gear types. Fishing with all bottom contact gear, including longline and pot/trap gear, is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at §§ 660.75 through 660.79, subpart C: Thompson Seamount, President Jackson Seamount, Cordell Bank (50 fm (91 m) isobath), Harris Point, Richardson Rock, Scorpion, Painted Cave, Anacapa Island, Carrington Point, Judith Rock, Skunk Point, Footprint, Gull Island, South Point, and Santa Barbara. Fishing with bottom contact gear is also prohibited within the Davidson Seamount EFH Area, which is defined by specific latitude and longitude coordinates at § 660.75, subpart C.

(e) *Black rockfish fishery management.* The trip limit for black rockfish (*Sebastes melanops*) for commercial fishing vessels using hook-and-line gear between the U.S.-Canada border and Cape Alava (48°09.50′ N. lat.), and between Destruction Island (47°40′ N. lat.) and Leadbetter Point (46°38.17′ N. lat.), is 100 lbs (45 kg) or 30 percent, by weight of all fish on board, whichever is greater, per vessel per fishing trip. These per trip limits apply to limited entry and open access fisheries, in conjunction with the cumulative trip limits and other management measures in § 660.230, subpart E, and § 660.330, subpart F. The crossover provisions in § 660.60(h)(7), subpart C, do not apply to the black rockfish per-trip limits.

§ 660.231 Limited entry fixed gear sablefish primary fishery.

This section applies to the sablefish primary season for the limited entry fixed gear fishery north of 36° N. lat. Limited entry and open access fixed gear sablefish fishing outside of the sablefish primary season north of 36° N. lat. is governed by routine management measures imposed under §§ 660.230 and 660.232, subpart E.

(a) *Sablefish endorsement.* A vessel may not fish in the sablefish primary season for the limited entry fixed gear fishery, unless at least one limited entry permit with both a gear endorsement for longline or trap (or pot) gear and a sablefish endorsement is registered for use with that vessel. Permits with sablefish endorsements are assigned to one of three tiers, as described at § 660.25(b)(3)(iv), subpart C.

(b) *Sablefish primary season for the limited entry fixed gear fishery*—(1) *Season dates.* North of 36° N. lat., the

sablefish primary season for the limited entry, fixed gear, sablefish-endorsed vessels begins at 12 noon local time on April 1 and ends at 12 noon local time on October 31, or for an individual permit holder when that permit holder's tier limit has been reached, whichever is earlier, unless otherwise announced by the Regional Administrator through the routine management measures process described at § 660.60, subpart C.

(2) *Gear type.* During the season primary and when fishing against primary season cumulative limits, each vessel authorized to fish in that season under paragraph (a) of this section may fish for sablefish with any of the gear types, except trawl gear, endorsed on at least one of the permits registered for use with that vessel.

(3) *Cumulative limits.* (i) A vessel participating in the primary season will be constrained by the sablefish cumulative limit associated with each of the permits registered for use with that vessel. During the primary season, each vessel authorized to fish in that season under paragraph (a) of this section may take, retain, possess, and land sablefish, up to the cumulative limits for each of the permits registered for use with that vessel (*i.e.,* stacked permits). If multiple limited entry permits with sablefish endorsements are registered for use with a single vessel, that vessel may land up to the total of all cumulative limits announced in this paragraph for the tiers for those permits, except as limited by paragraph (b)(3)(ii) of this section. Up to 3 permits may be registered for use with a single vessel during the primary season; thus, a single vessel may not take and retain, possess or land more than 3 primary season sablefish cumulative limits in any one year. A vessel registered for use with multiple limited entry permits is subject to per vessel limits for species other than sablefish, and to per vessel limits when participating in the daily trip limit fishery for sablefish under § 660.232, subpart E. In 2009, the following annual limits are in effect: Tier 1 at 61,296-lb (27,803 kg), Tier 2 at 27,862-lb (12,638 kg), and Tier 3 at 15,921-lb (7,221 kg). For 2010 and beyond, the following annual limits are in effect: Tier 1 at 56,081-lb (25,437 kg), Tier 2 at 25,492-lb (11,562 kg), and Tier 3 at 14,567-lb (6,648 kg).

(ii) If a permit is registered to more than one vessel during the primary season in a single year, the second vessel may only take the portion of the cumulative limit for that permit that has not been harvested by the first vessel to which the permit was registered. The combined primary season sablefish landings for all vessels registered to that permit may not exceed the cumulative limit for the tier associated with that permit.

(iii) A cumulative trip limit is the maximum amount of sablefish that may be taken and retained, possessed, or landed per vessel in a specified period of time, with no limit on the number of landings or trips.

(iv) Incidental halibut retention north of Pt. Chehalis, WA (46° 53.30′ N. lat.). No halibut retention is allowed during the primary sablefish fishery in 2010.

(4) *Owner-on-board requirement.* Any person who owns or has ownership interest in a limited entry permit with a sablefish endorsement, as described at § 660.25(b)(3), subpart C, must be on board the vessel registered for use with that permit at any time that the vessel has sablefish on board the vessel that count toward that permit's cumulative sablefish landing limit. This person must carry government issued photo identification while aboard the vessel. A permit owner is not obligated to be on board the vessel registered for use with the sablefish-endorsed limited entry permit during the sablefish primary season if:

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

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

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

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

permit owner and is required to be on the vessel during fishing operations.

§ 660.232 Limited entry daily trip limit (DTL) fishery for sablefish.

(a) *Limited entry DTL fisheries both north and south of 36° N. lat.*—(1) Before the start of the primary season for the sablefish tier limit fishery, all sablefish landings made by a vessel authorized by § 660.231(a) to fish in the primary season will be subject to the restrictions and limits of the limited entry daily and/or weekly trip limit (DTL) fishery for sablefish specified in this section and which is governed by routine management measures imposed under § 660.60(c), subpart C.

(2) Following the start of the primary season, all landings made by a vessel authorized by § 660.231(a) of this subpart to fish in the primary season will count against the primary season cumulative limit(s) associated with the permit(s) registered for use with that vessel. A vessel that is eligible to fish in the sablefish primary season may fish in the DTL fishery for sablefish once that vessels' primary season sablefish limit(s) have been taken, or after the end of the primary season, whichever occurs earlier. Any subsequent sablefish landings by that vessel will be subject to the restrictions and limits of the limited entry DTL fishery for sablefish for the remainder of the fishing year.

(3) No vessel may land sablefish against both its primary season cumulative sablefish limits and against the DTL fishery limits within the same 24 hour period of 0001 hours local time to 2400 hours local time. If a vessel has taken all of its tier limit except for an amount that is smaller than the DTL amount, that vessel's subsequent sablefish landings are automatically subject to DTL limits.

(4) Vessels registered for use with a limited entry, fixed gear permit that does not have a sablefish endorsement may fish in the limited entry, DTL fishery for as long as that fishery is open during the fishing year, subject to routine management measures imposed under § 660.60(c), Subpart C. DTL limits for the limited entry fishery north and south of 36° N. lat. are provided in Tables 2 (North) and 2 (South) of this subpart.

(b) [Reserved]

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Table 2 (North) to Part 660, Subpart E -- 2010 Trip Limits for Limited Entry Fixed Gear North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read §§ 660.10 - 660.65 and §§ 660.210 - 660.232 before using this tabl 08252010

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	North of 46°16' N. lat.	shoreline - 100 fm line[6/]					
2	46°16' N. lat. - 45°03.83' N. lat.	30 fm line[6/] - 100 fm line[6/]					
3	45°03.83' N. lat. - 43°00' N. lat.	30 fm line[6/] - 125 fm line [6/ 7/]					
4	43°00' N. lat. - 42°00' N. lat.	20 fm line[6/] - 100 fm line[6/]					
5	42°00' N. lat. - 40°10' N. lat.	20 fm depth contour - 100 fm line[6/]					
	See § 660.60 and § 660.230 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
6	**Minor slope rockfish [2/] & Darkblotched rockfish**	4,000 lb/ 2 months					
7	**Pacific ocean perch**	1,800 lb/ 2 months					
8	**Sablefish**	1,750 lb per week, not to exceed 7,000 lb/ 2 months			1,750 lb per week, not to exceed 8,500 lb/ 2 months		1,750 lb per week, not to exceed 8,000 lb/ 2 months
9	**Longspine thornyhead**	10,000 lb/ 2 months					
10	**Shortspine thornyhead**	2,000 lb/ 2 months					
11	**Dover sole**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
12	**Arrowtooth flounder**						
13	**Petrale sole**						
14	**English sole**						
15	**Starry flounder**						
16	**Other flatfish[1/]**						
17	**Whiting**	10,000 lb/ trip					
18	**Minor shelf rockfish[2/], Shortbelly, Widow, & Yellowtail rockfish**	200 lb/ month					
19	**Canary rockfish**	CLOSED					
20	**Yelloweye rockfish**	CLOSED					
21	**Minor nearshore rockfish & Black rockfish**						
22	North of 42° N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]					
23	42° - 40°10' N. lat.	6,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]	7,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish [3/]				
24	**Lingcod[4/]**	CLOSED		800 lb/ 2 months		400 lb/ month	CLOSED
25	**Pacific cod**	1,000 lb/ 2 months					
26	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
27	**Other fish[5/]**	Not limited					

TABLE 2 (North)

1/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
2/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.
3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.
5/ "Other fish" are defined at § 660.11 and include sharks, skates (including longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
7/ The 125 fm line restriction is in place all year, except on days when the directed halibut fishery is open. On those days the 100 fm line restriction is in effect.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 2 (South) to Part 660, Subpart E -- 2010 Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read §§ 660.10 - 660.65 and §§ 660.210 - 660.232 before using this tabl 08252010

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[5/]:						
1	40°10' - 34°27' N. lat.	30 fm line[5/] - 150 fm line[5/]					
2	South of 34°27' N. lat.	60 fm line[5/] - 150 fm line[5/] (also applies around islands)					
	See § 660.60 and § 660.230 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
3	**Minor slope rockfish[2/] & Darkblotched rockfish**	40,000 lb/ 2 months					
4	**Splitnose**	40,000 lb/ 2 months					
5	**Sablefish**						
6	40°10' - 36° N. lat.	1,750 lb per week, not to exceed 7,000 lb/ 2 months			1,750 lb per week, not to exceed 8,500 lb/ 2 months		1,750 lb per week, not to exceed 8,000 lb/ 2 months
7	South of 36° N. lat.	400 lb/ day, or 1 landing per week of up to 1,500 lb				3,000 lb per week	
8	**Longspine thornyhead**	10,000 lb / 2 months					
9	**Shortspine thornyhead**						
10	40°10' - 34°27' N. lat.	2,000 lb/ 2 months					
11	South of 34°27' N. lat.	3,000 lb/ 2 months					
12	**Dover sole**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
13	**Arrowtooth flounder**						
14	**Petrale sole**						
15	**English sole**						
16	**Starry flounder**						
17	**Other flatfish[1/]**						
18	**Whiting**	10,000 lb/ trip					
19	**Minor shelf rockfish[2/], Shortbelly, Widow rockfish, and Bocaccio (including Chilipepper between 40°10' - 34°27' N. lat.)**						
20	40°10' - 34°27' N. lat.	Minor shelf rockfish, shortbelly, widow rockfish, bocaccio & chilipepper: 2,500 lb/ 2 months, of which no more than 500 lb/ 2 months may be any species other than chilipepper.					
21	South of 34°27' N. lat.	3,000 lb/ 2 months	CLOSED	3,000 lb/ 2 months			
22	**Chilipepper rockfish**						
23	40°10' - 34°27' N. lat.	Chilipepper included under minor shelf rockfish, shortbelly, widow and bocaccio limits - - See above					
24	South of 34°27' N. lat.	2,000 lb/ 2 months, this opportunity only available seaward of the nontrawl RCA					
25	**Canary rockfish**	CLOSED					
26	**Yelloweye rockfish**	CLOSED					
27	**Cowcod**	CLOSED					
28	**Bronzespotted rockfish**	CLOSED					
29	**Bocaccio**						
30	40°10' - 34°27' N. lat.	Bocaccio included under Minor shelf rockfish, shortbelly, widow & chilipepper limits -- See above					
31	South of 34°27' N. lat.	300 lb/ 2 months	CLOSED	300 lb/ 2 months			

TABLE 2 (South)

Table 2 (South). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC	
32	**Minor nearshore rockfish & Black rockfish**							
33	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	600 lb/ 2 months	
34	Deeper nearshore							
35	40°10' - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months		800 lb/ 2 months		
36	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months				
37	California scorpionfish	600 lb/ 2 months	CLOSED	600 lb/ 2 months	1,200 lb/ 2 months			
38	**Lingcod**[3/]	CLOSED		800 lb/ 2 months			400 lb/ month	CLOSED
39	**Pacific cod**	1,000 lb/ 2 months						
40	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months			
41	**Other fish**[4/] **& Cabezon**	Not limited						

TABLE 2 (South)

1/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
2/ POP is included in the trip limits for minor slope rockfish. Yellowtail is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.
3/ The minimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.
4/ "Other fish" are defined at § 660.11 and include sharks, skates (including longnose skates), ratfish, morids, grenadiers, and kelp greenling.
5/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

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Subpart F—West Coast Groundfish—Open Access Fisheries

§ 660.310 Purpose and scope.

This subpart covers the Pacific Coast Groundfish open access fishery. The open access fishery, as defined at § 660.11, Subpart C, is the fishery composed of commercial vessels using open access gear fished pursuant to the harvest guidelines, quotas, and other management measures specified for the harvest of open access allocations or governing the fishing activities of open access vessels.

§ 660.311 Open access fishery—definitions.

General definitions for the Pacific Coast groundfish fisheries are defined at § 660.11, subpart C. The definitions in this subpart are specific to the open access fishery covered in this subpart and are in addition to those specified at § 660.11, subpart C.

Closely tended for the purposes of this subpart means that a vessel is within visual sighting distance or within 0.25 nm (463 m) of the gear as determined by electronic navigational equipment.

§ 660.312 Open access fishery—prohibitions.

General groundfish prohibitions for the Pacific Coast groundfish fisheries are defined at § 660.12, subpart C. In addition to the general groundfish prohibitions, it is unlawful for any person to:

(a) *General.* (1) Take and retain, possess, or land groundfish in excess of the landing limit for the open access fishery without having a valid limited entry permit for the vessel affixed with a gear endorsement for the gear used to catch the fish.

(2) *Black rockfish fisheries.* Have onboard a commercial hook-and-line fishing vessel (other than a vessel operated by persons under § 660.60 (c)(1)(ii), subpart C), more than the amount of the trip limit set for black rockfish by § 660.330(e) while that vessel is fishing between the U.S.-Canada border and Cape Alava (48°09′30″ N. lat.), or between Destruction Island (47°40′00″ N. lat.) and Leadbetter Point (46°38′10″ N. lat.).

(b) *Gear.* (1) Possess, deploy, haul, or carry onboard a fishing vessel subject to this subpart a set net, trap or pot, longline, or commercial vertical hook-and-line that is not in compliance with the gear restrictions in § 660.330(b), subpart F, unless such gear is the gear of another vessel that has been retrieved at sea and made inoperable or stowed in a manner not capable of being fished. The disposal at sea of such gear is prohibited by Annex V of the International Convention for the Prevention of Pollution From Ships, 1973 (Annex V of MARPOL 73/78).

(2) Fish with dredge gear (defined in § 660.11) anywhere within EFH within the EEZ, as defined by latitude/longitude coordinates at § 660.75.

(3) Fish with beam trawl gear (defined in § 660.11) anywhere within EFH within the EEZ, as defined by latitude/longitude coordinates at § 660.75.

(4) Fish with bottom trawl gear with a footrope diameter greater than 19 inches (48 cm) (including rollers, bobbins, or other material encircling or tied along the length of the footrope) anywhere in EFH within the EEZ, as defined by latitude/longitude coordinates at § 660.75.

(c) *Fishing in conservation areas with open access gears.* (1) Operate a vessel with non-groundfish trawl gear onboard in any applicable GCA (as defined at § 660.330(d)) except for purposes of continuous transiting, with all trawl gear stowed in accordance with § 660.330(b), or except as authorized in the groundfish management measures published at § 660.330.

(2) Operate a vessel in an applicable GCA (as defined at § 660.330(d) that has

nontrawl gear onboard and is not registered to a limited entry permit on a trip in which the vessel is used to take and retain or possess groundfish in the EEZ, possess or land groundfish taken in the EEZ, except for purposes of continuous transiting, with all groundfish nontrawl gear stowed in accordance with § 660.330(b), or except as authorized in the groundfish management measures published at § 660.330.

(3) Fish with bottom contact gear (as defined in § 660.11, subpart C) within the EEZ in the following areas (defined in §§ 660.78 and 660.79): Thompson Seamount, President Jackson Seamount, Cordell Bank (50-fm (91-m) isobath), Harris Point, Richardson Rock, Scorpion, Painted Cave, Anacapa Island, Carrington Point, Judith Rock, Skunk Point, Footprint, Gull Island, South Point, and Santa Barbara.

(4) Fish with bottom contact gear (as defined in § 660.11, subpart C), or any other gear that is deployed deeper than 500-fm (914-m), within the Davidson Seamount area (defined in § 660.75).

§ 660.313 Open access fishery—recordkeeping and reporting.

(a) *General.* General reporting requirements specified at § 660.13(a) through (c) of subpart C apply to open access fisheries.

(b) *Declaration reports for vessels using nontrawl gear.* Declaration reporting requirements for open access vessels using nontrawl gear (all types of open access gear other than non-groundfish trawl gear) are specified at § 660.13(d).

(c) *Declaration reports for vessels using non-groundfish trawl gear.* Declaration reporting requirements for open access vessels using non-groundfish trawl gear are specified at § 660.13(d).

(d) *VMS requirements for open access fishery vessels.* VMS requirements for open access fishery vessels are specified at § 660.14, subpart C.

(e) *Retention of records.* Any person landing groundfish must retain on board the vessel from which groundfish is landed, and provide to an authorized officer upon request, copies of any and all reports of groundfish landings containing all data, and in the exact manner, required by the applicable state law throughout the cumulative limit period during which a landing occurred and for 15 days thereafter.

§ 660.316 Open access fishery—observer requirements.

(a) *Observer coverage requirements.* When NMFS notifies the owner, operator, permit holder, or the manager of a catcher vessel, specified at § 660.16(c), subpart C, of any requirement to carry an observer, the catcher vessel may not be used to fish for groundfish without carrying an observer.

(b) *Notice of departure—basic rule.* At least 24 hours (but not more than 36 hours) before departing on a fishing trip, a vessel that has been notified by NMFS that it is required to carry an observer, or that is operating in an active sampling unit, must notify NMFS (or its designated agent) of the vessel's intended time of departure. Notice will be given in a form to be specified by NMFS.

(1) *Optional notice—weather delays.* A vessel that anticipates a delayed departure due to weather or sea conditions may advise NMFS of the anticipated delay when providing the basic notice described in paragraph (b) of this section. If departure is delayed beyond 36 hours from the time the original notice is given, the vessel must provide an additional notice of departure not less than 4 hours prior to departure, in order to enable NMFS to place an observer.

(2) *Optional notice—back-to-back fishing trips.* A vessel that intends to make back-to-back fishing trips (*i.e.,* trips with less than 24 hours between offloading from one trip and beginning another), may provide the basic notice described in paragraph (b) of this section for both trips, prior to making the first trip. A vessel that has given such notice is not required to give additional notice of the second trip.

(c) *Cease fishing report.* Within 24 hours of ceasing the taking and retaining of groundfish, vessel owners, operators, or managers must notify NMFS or its designated agent that fishing has ceased. This requirement applies to any vessel that is required to carry an observer, or that is operating in a segment of the fleet that NMFS has identified as an active sampling unit.

(d) *Waiver.* The Northwest Regional Administrator may provide written notification to the vessel owner stating that a determination has been made to temporarily waive coverage requirements because of circumstances that are deemed to be beyond the vessel's control.

(e) *Vessel responsibilities*—(1) *Accommodations and food.* An operator of a vessel required to carry one or more observer(s) must provide accommodations and food that are Equivalent to those provided to the crew.

(2) *Safe conditions.* Maintain safe conditions on the vessel for the protection of observer(s) including adherence to all USCG and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel, and provisions at §§ 600.725 and 600.746 of this chapter.

(3) *Observer communications.* Facilitate observer communications by:

(i) *Observer use of equipment.* Allowing observer(s) to use the vessel's communication equipment and personnel, on request, for the entry, transmission, and receipt of work-related messages, at no cost to the observer(s) or the U.S. or designated agent.

(ii) *Functional equipment.* Ensuring that the vessel's communications equipment, used by observers to enter and transmit data, is fully functional and operational.

(4) *Vessel position.* Allow observer(s) access to, and the use of, the vessel's navigation equipment and personnel, on request, to determine the vessel's position.

(5) *Access.* Allow observer(s) free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(6) *Prior notification.* Notify observer(s) at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer, unless the observer specifically requests not to be notified.

(7) *Records.* Allow observer(s) to inspect and copy any state or Federal logbook maintained voluntarily or as required by regulation.

(8) *Assistance.* Provide all other reasonable assistance to enable observer(s) to carry out their duties, including, but not limited to:

(i) Measuring decks, codends, and holding bins.

(ii) Providing the observer(s) with a safe work area.

(iii) Collecting bycatch when requested by the observer(s).

(iv) Collecting and carrying baskets of fish when requested by the observer(s).

(v) Allowing the observer(s) to collect biological data and samples.

(vi) Providing adequate space for storage of biological samples.

(f) *Sample station*—(1) *Observer sampling station.* This paragraph contains the requirements for observer sampling stations. The vessel owner must provide an observer sampling station that complies with this section so that the observer can carry out required duties.

(i) *Accessibility.* The observer sampling station must be available to the observer at all times.

(ii) *Location.* The observer sampling station must be located within 4 m of the location from which the observer samples unsorted catch. Unobstructed passage must be provided between the observer sampling station and the location where the observer collects sample catch.

§ 660.319 Open access fishery gear identification and marking.

(a) *Gear identification.* (1) Open access fixed gear (longline, trap or pot, set net and stationary hook-and-line gear, including commercial vertical hook-and-line gear) must be marked at the surface and at each terminal end, with a pole, flag, light, radar reflector, and a buoy.

(2) Open access commercial vertical hook-and-line gear that is closely tended as defined at § 660.311 of this subpart, may be marked only with a single buoy of sufficient size to float the gear.

(3) A buoy used to mark fixed gear under paragraph (a)(1) or (a)(2) of this section must be marked with a number clearly identifying the owner or operator of the vessel. The number may be either:

(i) If required by applicable state law, the vessel's number, the commercial fishing license number, or buoy brand number; or

(ii) The vessel documentation number issued by the USCG, or, for an undocumented vessel, the vessel registration number issued by the state.

(b) [Reserved]

§ 660.320 Open access fishery—crossover provisions.

(a) *Operating in both limited entry and open access fisheries.* See provisions at § 660.60, subpart C.

(b) *Operating in north-south management areas with different trip limits.* NMFS uses different types of management areas for West Coast groundfish management. One type of management area is the north-south management area, a large ocean area with northern and southern boundary lines wherein trip limits, seasons, and conservation areas follow a single theme. Within each north-south management area, there may be one or more conservation areas, detailed in §§ 660.11 and 660.70 through 660.74, subpart C. The provisions within this paragraph apply to vessels operating in different north-south management areas. Trip limits for a species or a species group may differ in different north-south management areas along the coast. The following "crossover" provisions apply to vessels operating in different geographical areas that have different cumulative or "per trip" trip limits for the same species or species group. Such crossover provisions do not apply to species that are subject only to daily trip limits, or to the trip limits for black rockfish off Washington (see § 660.330(e)).

(1) *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.

(2) *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.

(3) Operating 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.

(4) *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.

(i) 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.

(ii) 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.

(5) "*DTS complex*". There are often differential trawl trip limits for the "DTS complex" north and south of latitudinal management lines. Vessels operating in the limited entry trawl fishery are subject to the crossover provisions in paragraph (b) of this section when making landings that include any one of the four species in the "DTS complex."

§ 660.330 Open access fishery—management measures.

(a) *General.* Groundfish species taken in open access fisheries will be managed with cumulative trip limits (*see* trip limits in Tables 3 (North) and 3 (South) of this subpart), size limits (see § 660.60(h)(5)), seasons (*see* seasons in Tables 3 (North) and 3 (South) of this subpart), gear restrictions (see paragraph (b) of this section), and closed areas (*see* paragraph (d) of this section and §§ 660.70 through 660.79, subpart C). Unless otherwise specified, a vessel operating in the open access fishery is subject to, and must not exceed any trip limit, frequency limit, and/or size limit for the open access fishery. Cowcod retention is prohibited in all fisheries and groundfish vessels operating south of Point Conception must adhere to CCA restrictions (*see* paragraph (d)(11) of this section and § 660.70, subpart C). Retention of yelloweye rockfish and canary rockfish is prohibited in all open access fisheries. For information on the open access daily/weekly trip limit fishery for sablefish, *see* § 660.332 and the trip limits in Tables 3 (North) and 3 (South) of this subpart. Open access vessels are subject to daily or weekly sablefish limits in addition to cumulative limits for each cumulative limit period. Only one sablefish landing per week may be made in excess of the daily trip limit and, if the vessel chooses to make a landing in excess of that daily trip limit, then that is the only sablefish landing permitted for that week. The trip limit for black rockfish caught with hook-and-line gear also applies, *see* paragraph (e) of this section. Open access vessels that fish with non-groundfish trawl gear or in the salmon troll fishery north of 40°10′ N. lat. are subject the cumulative limits and closed areas (except the pink shrimp fishery

which is not subject to RCA restrictions) listed in Tables 3 (North) and 3 (South) of this subpart. Federal commercial groundfish regulations are not intended to supersede any more restrictive state commercial groundfish regulations relating to federally managed groundfish.

(b) *Gear restrictions.* Open access gear includes longline, trap, pot, hook-and-line (fixed or mobile), setnet (anchored gillnet or trammel net, which are permissible south of 38° N. lat. only), spear and non-groundfish trawl gear (trawls used to target non-groundfish species: pink shrimp or ridgeback prawns, and, south of Pt. Arena, CA (38°57.50' N. lat.), California halibut or sea cucumbers). Restrictions for gears used in the open access fisheries are as follows:

(1) *Non-groundfish trawl gear.* Non-groundfish trawl gear is generally trawl gear used to target pink shrimp, ridgeback prawn, California halibut and sea cucumber and is exempt from the limited entry trawl gear restrictions at § 660.130(b). The following gear restrictions apply to non-groundfish trawl gear:

(i) Bottom trawl gear with a footrope diameter greater than 19 inches (48 cm) (including rollers, bobbins, or other material encircling or tied along the length of the footrope) is prohibited anywhere in EFH within the EEZ, as defined by latitude/longitude coordinates at § 660.75. unless such gear is the gear of another vessel that has been retrieved at sea and made inoperable or stowed in a manner not capable of being fished. The disposal at sea of such gear is prohibited by Annex V of the International Convention for the Prevention of Pollution From Ships, 1973 (Annex V of MARPOL 73/78).

(ii) [Reserved]

(2) *Fixed gear.* (i) Fixed gear (longline, trap or pot, set net and stationary hook-and-line gear, including commercial vertical hook-and-line gear) must be attended at least once every 7 days.

(ii) *Set nets.* Fishing for groundfish with set nets is prohibited in the fishery management area north of 38°00.00' N. lat.

(iii) *Traps or pots.* Traps must have biodegradable escape panels constructed with 21 or smaller untreated cotton twine in such a manner that an opening at least 8 inches (20.3 cm) in diameter results when the twine deteriorates.

(iv) *Spears.* Spears may be propelled by hand or by mechanical means.

(c) *Sorting.* Under § 660.12(a)(8), subpart C, 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, 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, or OY applied." The States of Washington, Oregon, and California may also require that vessels record their landings as sorted on their state landing receipts. For open access vessels, the following species must be sorted:

(1) Coastwide—widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, shortbelly rockfish, black rockfish, blue rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, shortspine and longspine thornyhead, Dover sole, arrowtooth flounder, petrale sole, starry flounder, English sole, other flatfish, lingcod, sablefish, Pacific cod, spiny dogfish, longnose skate, other fish, Pacific whiting, and Pacific sanddabs;

(2) North of 40°10' N. lat.—POP, yellowtail rockfish;

(3) South of 40°10' N. lat.—minor shallow nearshore rockfish, minor deeper nearshore rockfish, chilipepper rockfish, bocaccio rockfish, splitnose rockfish, cowcod, bronzespotted rockfish and cabezon.

(d) *Groundfish conservation areas affecting open access vessels.* A GCA, a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude. A vessel that is authorized by this paragraph to fish within a GCA (e.g. fishing for "other flatfish" using no more than 12 hooks, "Number 2" or smaller), may not simultaneously have other gear on board the vessel that is unlawful to use for fishing within the GCA. The following GCAs apply to vessels participating in the open access groundfish fishery.

(1) *North coast recreational yelloweye rockfish conservation area.* The latitude and longitude coordinates of the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA) boundaries are specified at § 660.70, subpart C. The North Coast Recreational YRCA is designated as an area to be avoided (a voluntary closure) by commercial fixed gear fishers.

(2) *North coast commercial yelloweye rockfish conservation area.* The latitude and longitude coordinates of the North Coast Commercial Yelloweye Rockfish Conservation Area (YRCA) boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the North Coast Commercial YRCA. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the North Coast Commercial YRCA. Open access vessels may transit through the North Coast Commercial YRCA with or without groundfish on board.

(3) *South coast recreational yelloweye rockfish conservation area.* The latitude and longitude coordinates of the South Coast Recreational Yelloweye Rockfish Conservation Area (YRCA) boundaries are specified at § 660.70, subpart C. The South Coast Recreational YRCA is designated as an area to be avoided (a voluntary closure) by commercial fixed gear fishers.

(4) *Westport offshore recreational YRCA.* The latitude and longitude coordinates that define the Westport Offshore Recreational YRCA boundaries are specified at § 660.70, subpart C. The Westport Offshore Recreational YRCA is designated as an area to be avoided (a voluntary closure) by commercial fixed gear fishers.

(5) *Point St. George YRCA.* The latitude and longitude coordinates of the Point St. George YRCA boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the Point St. George YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the Point St. George YRCA, on dates when the closure is in effect. The closure is not in effect at this time, and commercial fishing for groundfish is open within the Point St. George YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment. Open access vessels may transit through the Point St. George YRCA, at any time, with or without groundfish on board.

(6) *South Reef YRCA.* The latitude and longitude coordinates of the South Reef YRCA boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the South Reef YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the South Reef YRCA, on dates when the closure is in effect. The closure is not in effect at this time, and commercial fishing for groundfish is open within the South Reef YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment. Open access gear vessels may transit through the South Reef YRCA, at any time, with or without groundfish on board.

(7) *Reading Rock YRCA.* The latitude and longitude coordinates of the Reading Rock YRCA boundaries are

specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the Reading Rock YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the Reading Rock YRCA, on dates when the closure is in effect. The closure is not in effect at this time, and commercial fishing for groundfish is open within the Reading Rock YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment. Open access gear vessels may transit through the Reading Rock YRCA, at any time, with or without groundfish on board.

(8) *Point Delgada (North) YRCA.* The latitude and longitude coordinates of the Point Delgada (North) YRCA boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the Point Delgada (North) YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the Point Delgada (North) YRCA, on dates when the closure is in effect. The closure is not in effect at this time, and commercial fishing for groundfish is open within the Point Delgada (North) YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment. Open access gear vessels may transit through the Point Delgada (North) YRCA, at any time, with or without groundfish on board.

(9) *Point Delgada (South) YRCA.* The latitude and longitude coordinates of the Point Delgada (South) YRCA boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the Point Delgada (South) YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the Point Delgada (South) YRCA, on dates when the closure is in effect. The closure is not in effect at this time, and commercial fishing for groundfish is open within the Point Delgada (South) YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment. Open access gear vessels may transit through the Point Delgada (South) YRCA, at any time, with or without groundfish on board.

(10) *Salmon Troll Yelloweye Rockfish Conservation Area (YRCA).* The latitude and longitude coordinates of the Salmon Troll YRCA boundaries are specified in the groundfish regulations at § 660.70, subpart C, and in the salmon regulations at § 660.405. Fishing with salmon troll gear is prohibited within the Salmon Troll YRCA. It is unlawful for commercial salmon troll vessels to take and retain, possess, or land fish taken with salmon troll gear within the Salmon Troll YRCA. Open access vessels may transit through the Salmon Troll YRCA with or without fish on board.

(11) *Cowcod Conservation Areas (CCAs).* The latitude and longitude coordinates of the CCAs boundaries are specified at § 660.70, subpart C. It is unlawful to take and retain, possess, or land groundfish within the CCAs, except for species authorized in this paragraph caught according to gear requirements in this paragraph, when those waters are open to fishing. Commercial fishing vessels may transit through the Western CCA with their gear stowed and groundfish on board only in a corridor through the Western CCA bounded on the north by the latitude line at 33°00.50' N. lat., and bounded on the south by the latitude line at 32°59.50' N. lat. Fishing with open access gear is prohibited in the CCAs, except as follows:

(i) Fishing for "other flatfish" is permitted within the CCAs under the following conditions: when using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1-lb (0.45 kg) weights per line; and provided a valid declaration report as required at § 660.12(d), subpart C, has been filed with NMFS OLE.

(ii) Fishing for rockfish and lingcod is permitted shoreward of the 20 fm (37 m) depth contour within the CCAs when trip limits authorize such fishing, and provided a valid declaration report as required at § 660.12(d), subpart C, has been filed with NMFS OLE.

(12) *Nontrawl rockfish conservation areas for the open access fisheries.* The nontrawl RCAs are closed areas, defined by specific latitude and longitude coordinates (specified at §§ 660.70 through 660.74, subpart C) designed to approximate specific depth contours, where fishing for groundfish with nontrawl gear is prohibited. Boundaries for the nontrawl RCA throughout the year are provided in the open access trip limit tables, Table 3 (North) and Table 3 (South) of this subpart and may be modified by NMFS inseason pursuant to § 660.60(c).

(i) It is unlawful to operate a vessel in the nontrawl RCA that has nontrawl gear onboard and is not registered to a limited entry permit on a trip in which the vessel is used to take and retain or possess groundfish in the EEZ, or land groundfish taken in the EEZ, except for the purpose of continuous transiting, or when the use of nontrawl gear is authorized in part 660.

(ii) On any trip on which a groundfish species is taken with nontrawl open access gear and retained, the open access nontrawl vessel may transit through the nontrawl RCA only if all groundfish nontrawl gear is stowed either: Below deck; or if the gear cannot readily be moved, in a secured and covered manner, detached from all lines, so that it is rendered unusable for fishing.

(iii) The nontrawl RCA restrictions in this section apply to vessels taking and retaining or possessing groundfish in the EEZ, or landing groundfish taken in the EEZ. Unless otherwise authorized by part 660, a vessel may not retain any groundfish taken on a fishing trip for species other than groundfish that occurs within the nontrawl RCA. If a vessel fishes in a non-groundfish fishery in the nontrawl RCA, it may not participate in any fishing for groundfish on that trip that is prohibited within the nontrawl RCA. [For example, if a vessel fishes in the salmon troll fishery within the RCA, the vessel cannot on the same trip fish in the sablefish fishery outside of the RCA.]

(iv) Fishing for "other flatfish" off California (between 42° N. lat. south to the U.S./Mexico border) is permitted within the nontrawl RCA with fixed gear only under the following conditions: When using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1-lb (0.91 kg) weights per line when trip limits authorize such fishing; and provided a valid declaration report as required at § 660.12(d), subpart C, has been filed with NMFS OLE.

(13) *Non-groundfish trawl rockfish conservation areas for the open access non-groundfish trawl fisheries.* The non-groundfish trawl RCAs are closed areas, defined by specific latitude and longitude coordinates (specified at §§ 660.70 through 660.74, subpart C) designed to approximate specific depth contours, where fishing for groundfish with nontrawl gear is prohibited. Boundaries for the nontrawl RCA throughout the year are provided in the open access trip limit tables, Table 3 (North) and Table 3 (South) of this subpart and may be modified by NMFS in season pursuant to § 660.60(c).

(i) It is unlawful to operate a vessel in the non-groundfish trawl RCA with non-groundfish trawl gear onboard, except for the purpose of continuous transiting, or when the use of trawl gear is authorized in part 660. It is unlawful to take and retain, possess, or land groundfish taken with non-groundfish

trawl gear within the nontrawl RCA, unless otherwise authorized in part 660.

(ii) Non-groundfish trawl vessels may transit through the non-groundfish trawl RCA, with or without groundfish on board, provided all non-groundfish trawl gear is stowed either: Below deck; or if the gear cannot readily be moved, in a secured and covered manner, detached from all towing lines, so that it is rendered unusable for fishing; or remaining on deck uncovered if the trawl doors are hung from their stanchions and the net is disconnected from the doors.

(iii) The non-groundfish trawl RCA restrictions in this section apply to vessels taking and retaining or possessing groundfish in the EEZ, or landing groundfish taken in the EEZ. Unless otherwise authorized by Part 660, it is unlawful for a vessel to retain any groundfish taken on a fishing trip for species other than groundfish that occurs within the non-groundfish trawl RCA. If a vessel fishes in a non-groundfish fishery in the non-groundfish trawl RCA, it may not participate in any fishing on that trip that is prohibited within the non-groundfish trawl RCA. [For example, if a vessel fishes in the pink shrimp fishery within the RCA, the vessel cannot on the same trip fish in the DTS fishery seaward of the RCA.] Nothing in these Federal regulations supersedes any state regulations that may prohibit trawling shoreward of the fishery management area (3–200 nm).

(iv) It is lawful to fish with non-groundfish trawl gear within the non-groundfish trawl RCA only under the following conditions:

(A) Pink shrimp trawling is permitted in the non-groundfish trawl RCA when a valid declaration report as required at § 660.12(d), subpart C, has been filed with NMFS OLE. Groundfish caught with pink shrimp trawl gear may be retained anywhere in the EEZ and are subject to the limits in Table 3 (North) and Table 3 (South) of this subpart.

(B) When the shoreward line of the trawl RCA is shallower than 100 fm (183 m), vessels using ridgeback prawn trawl gear south of 34°27.00′ N. lat. may operate out to the 100 fm (183 m) boundary line specified at § 660.73 when a valid declaration report as required at § 660.12(d), subpart C, has been filed with NMFS OLE. Groundfish caught with ridgeback prawn trawl gear are subject to the limits in Table 3 (North) and Table 3 (South) of this subpart.

(14) *Farallon Islands.* Under California law, commercial fishing for all groundfish is prohibited between the shoreline and the 10 fm (18 m) depth contour around the Farallon Islands. An exception to this prohibition is that commercial fishing for "other flatfish" is permitted around the Farallon Islands using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1-lb (0.45 kg) weights per line. (See Table 2 (South) of this subpart.) For a definition of the Farallon Islands, see § 660.70, subpart C.

(15) *Cordell Banks.* Commercial fishing for groundfish is prohibited in waters of depths less than 100-fm (183-m) around Cordell Banks, as defined by specific latitude and longitude coordinates at § 660.70, subpart C. An exception to this prohibition is that commercial fishing for "other flatfish" is permitted around Cordell Banks using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1-lb (0.45 kg) weights per line.

(16) *Essential fish habitat conservation areas (EFHCA).* An EFHCA, a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude at §§ 660.76 through 660.79, where specified types of fishing are prohibited in accordance with § 660.12, subpart C. EFHCAs apply to vessels using bottom trawl gear and or vessels using "bottom contact gear," which is defined at § 660.11, subpart C, and includes, but is not limited to: Beam trawl, bottom trawl, dredge, fixed gear, set net, demersal seine, dinglebar gear, and other gear (including experimental gear) designed or modified to make contact with the bottom.

(i) The following EFHCAs apply to vessels operating within the EEZ off the coasts of Washington, Oregon, and California with bottom trawl gear:

(A) Seaward of a boundary line approximating the 700-fm (1280-m) depth contour. Fishing with bottom trawl gear is prohibited in waters of depths greater than 700 fm (1280 m) within the EFH, as defined by specific latitude and longitude coordinates at §§ 660.75 and 660.76.

(B) Shoreward of a boundary line approximating the 100-m (183-m) depth contour. Fishing with bottom trawl gear with a footrope diameter greater than 8 inches (20 cm) is prohibited in waters shoreward of a boundary line approximating the 100-fm (183-m) depth contour, as defined by specific latitude and longitude coordinates at § 660.73.

(C) EFHCAs for all bottom trawl gear. Fishing with all bottom trawl gear is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at §§ 660.77 through 660.78: Olympic 2, Biogenic 1, Biogenic 2, Grays Canyon, Biogenic 3, Astoria Canyon, Nehalem Bank/Shale Pile, Siletz Deepwater, Daisy Bank/Nelson Island, Newport Rockpile/Stonewall Bank, Heceta Bank, Deepwater off Coos Bay, Bandon High Spot, Rogue Canyon.

(D) EFHCAs for all bottom trawl gear, except demersal seine gear. Fishing with all bottom trawl gear except demersal seine gear (defined at § 660.11, subpart C) is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at § 660.79: Eel River Canyon, Blunts Reef, Mendocino Ridge, Delgada Canyon, Tolo Bank, Point Arena North, Point Arena South Biogenic Area, Cordell Bank/Biogenic Area, Farallon Islands/Fanny Shoal, Half Moon Bay, Monterey Bay/Canyon, Point Sur Deep, Big Sur Coast/Port San Luis, East San Lucia Bank, Point Conception, Hidden Reef/Kidney Bank (within Cowcod Conservation Area West), Catalina Island, Potato Bank (within Cowcod Conservation Area West), Cherry Bank (within Cowcod Conservation Area West), and Cowcod EFH Conservation Area East.

(E) EFHCAs for bottom contact gear, which includes bottom trawl gear. Fishing with bottom contact gear is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at §§ 660.398–.399: Thompson Seamount, President Jackson Seamount, Cordell Bank (50-fm (91-m) isobath), Harris Point, Richardson Rock, Scorpion, Painted Cave, Anacapa Island, Carrington Point, Judith Rock, Skunk Point, Footprint, Gull Island, South Point, and Santa Barbara. Fishing with bottom contact gear is also prohibited within the Davidson Seamount EFH Area, which is defined by specific latitude and longitude coordinates at § 660.75, subpart C.

(ii) [Reserved]

(e) *Black rockfish fishery management.* The trip limit for black rockfish (*Sebastes melanops*) for commercial fishing vessels using hook-and-line gear between the U.S.-Canada border and Cape Alava (48°09.50′ N. lat.), and between Destruction Island (47°40′ N. lat.) and Leadbetter Point (46°38.17′ N. lat.), is 100-lbs (45 kg) or 30 percent, by weight of all fish on board, whichever is greater, per vessel per fishing trip. These per trip limits apply to limited entry and open access fisheries, in conjunction with the cumulative trip limits and other management measures in §§ 660.230 and 660.330. The crossover provisions in § 660.60(h)(7), subpart C, do not

apply to the black rockfish per-trip limits.

§ 660.332 Open access daily trip limit (DTL) fishery for sablefish.

(a) *Open access DTL fisheries both north and south of 36° N. lat.* Open access vessels may fish in the open access, daily trip limit fishery for as long as that fishery is open during the year, subject to the routine management measures imposed under § 660.60, subpart C.

(b) *Trip limits.* (1) Daily and/or weekly trip limits for the open access fishery north and south of 36° N. lat. are provided in Tables 3 (North) and 3 (South) of this subpart.

(2) Trip and/or frequency limits may be imposed in the limited entry fishery on vessels that are not participating in the primary season under § 660.60, subpart C.

(3) Trip and/or size limits to protect juvenile sablefish in the limited entry or open access fisheries also may be imposed at any time under § 660.60, subpart C.

(4) Trip limits may be imposed in the open access fishery at any time under § 660.60, subpart C.

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

(a) *General.* Groundfish taken with non-groundfish trawl gear by vessels engaged in fishing for pink shrimp, ridgeback prawns, California halibut, or sea cucumbers. Trip limits for groundfish retained in the ridgeback prawn, California halibut, or sea cucumber fisheries are in the open access trip limit table, Table 3 (South) of this subpart. Trip limits for groundfish retained in the pink shrimp fishery are in Tables 3 (North) and 3 (South) of this subpart. The table also generally describes the RCAs for vessels participating in these fisheries.

(b) *Participation in the ridgeback prawn fishery.* A trawl vessel will be considered participating in the ridgeback prawn fishery if:

(1) It is not registered to a valid Federal limited entry groundfish permit issued under § 660.25(b) for trawl gear; 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.* (1) A trawl vessel will be considered participating in the California halibut fishery if:

(i) It is not registered to a valid Federal limited entry groundfish permit issued under § 660. 25(b) for trawl gear;

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

(iii) 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."

(2) [Reserved]

(d) *Participation in the sea cucumber fishery.* A trawl vessel will be considered to be participating in the sea cucumber fishery if:

(1) It is not registered to a valid Federal limited entry groundfish permit issued under § 660. 25(b) for trawl gear;

(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.

(e) *Groundfish taken with non-groundfish trawl gear by vessels engaged in fishing for pink shrimp.* Notwithstanding § 660.60(h)(7), a vessel that takes and retains pink shrimp and also takes and retains groundfish in either the limited entry or another open access fishery during the same applicable cumulative limit period that it takes and retains pink shrimp (which may be 1 month or 2 months, depending on the fishery and the time of year), may retain the larger of the two limits, but only if the limit(s) for each gear or fishery are not exceeded when operating in that fishery or with that gear. The limits are not additive; the vessel may not retain a separate trip limit for each fishery.

Table 3 (North) to Part 660, Subpart F -- 2010 Trip Limits for Open Access Gears North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read §§ 660.10 - 660.65 and §§ 660.310 - 660.333 before using this table 08252010

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	North of 46°16' N. lat.	shoreline - 100 fm line[6/]					
2	46°16' N. lat. - 45°03.83' N. lat.	30 fm line[6/] - 100 fm line[6/]					
3	45°03.83' N. lat. - 43°00' N. lat.	30 fm line[6/] - 125 fm line [6/ 7/]					
4	43°00' N. lat. - 42°00' N. lat.	20 fm line[6/] - 100 fm line[6/]					
5	42°00' N. lat. - 40°10' N. lat.	20 fm depth contour - 100 fm line[6/]					
	See § 660.60, § 660.330, and § 660.333 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
6	**Minor slope rockfish[1/] & Darkblotched rockfish**	Per trip, no more than 25% of weight of the sablefish landed					
7	**Pacific ocean perch**	100 lb/ month					
8	**Sablefish**	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months			300 lb/ day, or 1 landing per week of up to 950 lb, not to exceed 2,750 lb/ 2 months		
9	**Thornyheads**	CLOSED					
10	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
11	**Arrowtooth flounder**						
12	**Petrale sole**						
13	**English sole**						
14	**Starry flounder**						
15	**Other flatfish[2/]**						
16	**Whiting**	300 lb/ month					
17	**Minor shelf rockfish[1/], Shortbelly, Widow, & Yellowtail rockfish**	200 lb/ month					
18	**Canary rockfish**	CLOSED					
19	**Yelloweye rockfish**	CLOSED					
20	**Minor nearshore rockfish & Black rockfish**						
21	North of 42° N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]					
22	42° - 40°10' N. lat.	6,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]	7,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish [3/]				
23	**Lingcod[4/]**	CLOSED		400 lb/ month			CLOSED
24	**Pacific cod**	1,000 lb/ 2 months					
25	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
26	**Other Fish[5/]**	Not limited					

TABLE 3 (North)

Table 3 (North). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC	TABLE 3 (North) con't
27	**SALMON TROLL** *(subject to RCAs when retaining any species of groundfish except for yellowtail rockfish and lingcod, as described below)*							
28	North	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. Salmon trollers may retain and land up to 1 lingcod per 15 Chinook per trip, plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the RCA. This limit only applies during times when lingcod retention is allowed, and is not "CLOSED." This limit is within the per month limit for lingcod described in the table above, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.						
29	**PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)*							
30	North	**Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.						

1/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for minor shelf rockfish. Splitnose rockfish is included in the trip limits for minor slope rockfish.

2/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

5/ "Other fish" are defined at § 660.11 and include sharks, skates (including longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."

6/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

7/ The 125 fm line restriction is in place all year, except on days when the directed halibut fishery is open. On those days the 100 fm line restriction is in effect.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South) to Part 660, Subpart F -- 2010 Trip Limits for Open Access Gears South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read §§ 660.10 - 660.65 and §§ 660.310 - 660.333 before using this table 08252010

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[5/]:						
1	40°10' - 34°27' N. lat.	30 fm line[5/] - 150 fm line[5/]					
2	South of 34°27' N. lat.	60 fm line[5/] - 150 fm line[5/] (also applies around islands)					
	See § 660.60, § 660.330, and § 660.333 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
3	**Minor slope rockfish[1/] & Darkblotched rockfish**						
4	40°10' - 38° N. lat.	Per trip, no more than 25% of weight of the sablefish landed					
5	South of 38° N. lat.	10,000 lb/ 2 months					
6	**Splitnose**	200 lb/ month					
7	**Sablefish**						
8	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months			300 lb/ day, or 1 landing per week of up to 950 lb, not to exceed 2,750 lb/ 2 months		
9	South of 36° N. lat.	400 lb/ day, or 1 landing per week of up to 1,500 lb, not to exceed 8,000 lb/ 2 months				400 lb/ day, or 1 landing per week of up to 2,500 lb	
10	**Thornyheads**						
11	40°10' - 34°27' N. lat.	CLOSED					
12	South of 34°27' N. lat.	50 lb/ day, no more than 1,000 lb/ 2 months					
13	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
14	**Arrowtooth flounder**						
15	**Petrale sole**						
16	**English sole**						
17	**Starry flounder**						
18	**Other flatfish[2/]**						
19	**Whiting**	300 lb/ month					
20	**Minor shelf rockfish[1/], Shortbelly, Widow & Chilipepper rockfish**						
21	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED		200 lb/ 2 months	300 lb/ 2 months	
22	South of 34°27' N. lat.	750 lb/ 2 months			750 lb/ 2 months		
23	**Canary rockfish**	CLOSED					
24	**Yelloweye rockfish**	CLOSED					
25	**Cowcod**	CLOSED					
26	**Bronzespotted rockfish**	CLOSED					
27	**Bocaccio**						
28	40°10' - 34°27' N. lat.	200 lb/ 2 months	CLOSED		100 lb/ 2 months	200 lb/ 2 months	
29	South of 34°27' N. lat.	100 lb/ 2 months			100 lb/ 2 months		

TABLE 3 (South)

Table 3 (South). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
30	**Minor nearshore rockfish & Black rockfish**						
31	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	600 lb/ 2 months
32	Deeper nearshore						
33	40°10' - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months		800 lb/ 2 months	
34	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months			
35	California scorpionfish	600 lb/ 2 months	CLOSED	600 lb/ 2 months	1,200 lb/ 2 months		
36	**Lingcod[3/]**	CLOSED		400 lb/ month			CLOSED
37	**Pacific cod**	1,000 lb/ 2 months					
38	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
39	**Other Fish[4/] & Cabezon**	Not limited					
40	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**						
41	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:**						
42	40°10' - 38° N. lat.	100 fm - modified 200 fm 6/	100 fm - 150 fm				100 fm - modified 200 fm 6/
43	38° - 34°27' N. lat.	100 fm - 150 fm					
44	South of 34°27' N. lat.	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands					
45		Groundfish: 300 lb/trip. Trip limits in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 31).					
46	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*						
47	South	**Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

TABLE 3 (South) con't

1/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish. POP is included in the trip limits for minor slope rockfish. Bronzespotted rockfish have a species specific trip limit.
2/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
3/ The size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.
4/ "Other fish" are defined at § 660.11 and include sharks, skates (including longnose skates), ratfish, morids, grenadiers, and kelp greenling.
5/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
6/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

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■ 5. Redesignate §§ 660.390 through 660.399, subpart G as §§ 660.70 through 660.79, subpart C, as follows:

Old section	New section
§ 660.390	§ 660.70
§ 660.391	§ 660.71
§ 660.392	§ 660.72
§ 660.393	§ 660.73
§ 660.394	§ 660.74
§ 660.395	§ 660.75
§ 660.396	§ 660.76
§ 660.397	§ 660.77
§ 660.398	§ 660.78
§ 660.399	§ 660.79

■ 6. In part 660, subpart K, redesignate Table 2 to part 660 as Table 3 to part 660, in subpart C.

■ 7. Remove Tables 1a through 2c and Tables 3 (North) through 5 (South) to part 660, subpart G.

■ 8. Remove Figure 1 to subpart G of part 660.

■ 9. Revise subpart G to part 660 to read as follows:

Subpart G—West Coast Groundfish—Recreational Fisheries

Sec.
660.350 Purpose and scope.
660.351 Recreational fishery—definitions.
660.352 Recreational fishery—prohibitions.
660.353 Recreational fishery—recordkeeping and reporting.
660.360 Recreational fishery—management measures.

Subpart G—West Coast Groundfish—Recreational Fisheries

§ 660.350 Purpose and scope.

This subpart covers the Pacific Coast Groundfish recreational fishery.

§ 660.351 Recreational fishery—definitions.

These definitions are specific to the recreational fisheries covered in this subpart. General groundfish definitions are defined at § 660.11, subpart C.

Bag limit means the number of fish available to an angler.

Boat limit means the number of fish available to for a vessel or boat.

Hook limit means a limit on the number of hooks on any given fishing line.

§ 660.352 Recreational fishery—prohibitions.

These prohibitions are specific to the recreational fisheries. General groundfish prohibitions are found at § 660.12, subpart C. In addition to the general groundfish prohibitions specified in § 600.12, subpart C, of this chapter, it is unlawful for any person to:

(a) Sell, offer to sell, or purchase any groundfish taken in the course of recreational groundfish fishing.

(b) Use fishing gear other than hook-and-line or spear for recreational fishing.

§ 660.353 Recreational fishery—recordkeeping and reporting.

Recordkeeping and reporting requirements at § 660.13 (a) through (c), subpart C, apply to the recreational fishery.

§ 660.360 Recreational fishery-management measures.

(a) *General.* Federal recreational groundfish regulations are not intended to supersede any more restrictive state recreational groundfish regulations relating to federally-managed groundfish. The bag limits include fish taken in both state and Federal waters.

(b) *Gear restrictions.* The only types of fishing gear authorized for recreational fishing are hook-and-line and spear. Spears may be propelled by hand or by mechanical means. More fishery-specific gear restrictions may be required by state as noted in paragraph (c) of this section (*e.g.* California's recreational "other flatfish" fishery).

(c) *State-specific recreational fishery management measures.* Federal recreational groundfish regulations are not intended to supersede any more restrictive State recreational groundfish regulations relating to federally-managed groundfish. Off the coast of Washington, Oregon, and California, boat limits apply, whereby each fisher aboard a vessel may continue to use angling gear until the combined daily limits of groundfish for all licensed and juvenile anglers aboard has been attained (additional state restrictions on boat limits may apply).

(1) *Washington.* For each person engaged in recreational fishing off the coast of Washington, the groundfish bag limit is 15 groundfish per day, including rockfish and lingcod, and is open year-round (except for lingcod). In the Pacific halibut fisheries, retention of groundfish is governed in part by annual management measures for Pacific halibut fisheries, which are published in the **Federal Register.** South of Leadbetter Point, WA to the Washington/Oregon border, when Pacific halibut are onboard the vessel, no groundfish may be taken and retained, possessed or landed, except sablefish and Pacific cod. The following sublimits and closed areas apply:

(i) *Recreational groundfish conservation areas off Washington*—(A) *North coast recreational yelloweye rockfish conservation area.* Recreational fishing for groundfish and halibut is prohibited within the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA). It is unlawful for recreational fishing vessels to take and retain, possess, or land groundfish taken with recreational gear within the North Coast Recreational YRCA. A vessel fishing in the North Coast Recreational YRCA may not be in possession of any groundfish. Recreational vessels may transit through the North Coast Recreational YRCA with or without groundfish on board. The North Coast Recreational YRCA is defined by latitude and longitude coordinates specified at § 660.70, subpart C.

(B) *South coast recreational yelloweye rockfish conservation area.* Recreational fishing for groundfish and halibut is prohibited within the South Coast Recreational YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land groundfish taken with recreational gear within the South Coast Recreational YRCA. A vessel fishing in the South Coast Recreational YRCA may not be in possession of any groundfish. Recreational vessels may transit through the South Coast Recreational YRCA with or without groundfish on board. The South Coast Recreational YRCA is defined by latitude and longitude coordinates specified at § 660.70, subpart C.

(C) *Westport offshore recreational yelloweye rockfish conservation area.* Recreational fishing for groundfish and halibut is prohibited within the Westport Offshore Recreational YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land groundfish taken with recreational gear within the Westport Offshore Recreational YRCA. A vessel fishing in the Westport Offshore Recreational YRCA may not be in possession of any groundfish. Recreational vessels may transit through the Westport Offshore Recreational YRCA with or without groundfish on board. The Westport Offshore Recreational YRCA is defined by latitude and longitude coordinates specified at § 660.70, subpart C.

(D) *Recreational rockfish conservation area.* Fishing for groundfish with recreational gear is prohibited within the recreational RCA. It is unlawful to take and retain, possess, or land groundfish taken with recreational gear within the recreational RCA. A vessel fishing in the recreational RCA may not be in possession of any groundfish. [For example, if a vessel fishes in the recreational salmon fishery within the RCA, the vessel cannot be in possession of groundfish while in the RCA. The vessel may, however, on the same trip fish for and retain groundfish shoreward of the RCA on the return trip to port.]

(*1*) Between the U.S. border with Canada and the Queets River, recreational fishing for groundfish is prohibited seaward of a boundary line approximating the 20-fm (37-m) depth contour from May 21 through September 30, except on days when the Pacific halibut fishery is open in this area. Days open to Pacific halibut recreational fishing off Washington are announced on the NMFS hotline at (206) 526–6667 or (800) 662–9825. Coordinates for the boundary line approximating the 20-fm (37-m) depth contour are listed in § 660.71, subpart C.

(*2*) Between the Queets River and Leadbetter Point, recreational fishing for groundfish is prohibited seaward of a boundary line approximating the 30-fm (55-m) depth contour from March 15 through June 15, except that recreational fishing for sablefish and Pacific cod is permitted within the recreational RCA from May 1 through June 15, and on days that the primary halibut fishery is open lingcod may be taken, retained and possessed seaward of the boundary line approximating the 30-fm (55-m) depth contour. Days open to Pacific halibut recreational fishing off Washington are announced on the NMFS hotline at (206) 526–6667 or (800) 662–9825. Retention of lingcod seaward of the boundary line approximating the 30-fm (55-m) depth contour south of 46°58′ N. lat. is prohibited on Fridays and Saturdays from July 1 through August 31. For additional regulations regarding the Washington recreational lingcod fishery, see paragraph (c)(1)(iii) of this section. Coordinates for the boundary line approximating the 30-fm (55-m) depth contour are listed in § 660.71.

(ii) *Rockfish.* In areas of the EEZ seaward of Washington that are open to recreational groundfish fishing, there is a 10 rockfish per day bag limit. Taking and retaining canary rockfish and yelloweye rockfish is prohibited.

(iii) *Lingcod.* In areas of the EEZ seaward of Washington that are open to recreational groundfish fishing and when the recreational season for lingcod is open, there is a bag limit of 2 lingcod per day, which may be no smaller than 22 in (56 cm) total length. The recreational fishing season for lingcod is open as follows:

(A) Between the U.S./Canada border to 48°10′ N. lat. (Cape Alava) (Washington Marine Area 4), recreational fishing for lingcod is open, for 2009, from April 16 through October 15, and for 2010, from April 16 through October 15.

(B) Between 48°10′ N. lat. (Cape Alava) and 46°16′ N. lat. (Washington/Oregon border) (Washington Marine Areas 1–3), recreational fishing for lingcod is open for 2009, from March 14 through October 17, and for 2010, from March 13 through October 16.

(2) *Oregon*—(i) *Recreational groundfish conservation areas off Oregon*—(A) *Stonewall Bank yelloweye rockfish conservation area.* Recreational fishing for groundfish and halibut is prohibited within the Stonewall Bank YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land groundfish taken with recreational gear within the Stonewall Bank YRCA. A vessel fishing in the Stonewall Bank YRCA may not be in possession of any groundfish. Recreational vessels may transit through the Stonewall Bank YRCA with or without groundfish on board. The Stonewall Bank YRCA is defined by latitude and longitude coordinates specified at § 660.70, subpart C.

(B) *Recreational rockfish conservation area.* Fishing for groundfish with recreational gear is prohibited within the recreational RCA, a type of closed area or GCA. It is unlawful to take and retain, possess, or land groundfish taken with recreational gear within the recreational RCA. A vessel fishing in the recreational RCA may not be in possession of any groundfish. [For example, if a vessel fishes in the recreational salmon fishery within the RCA, the vessel cannot be in possession of groundfish while in the RCA. The vessel may, however, on the same trip fish for and retain groundfish shoreward of the RCA on the return trip to port.] Off Oregon, from April 1 through September 30, recreational fishing for groundfish is prohibited seaward of a recreational RCA boundary line approximating the 40 fm (73 m) depth contour. Coordinates for the boundary line approximating the 40 fm (73 m) depth contour are listed at § 660.71.

(C) *Essential fish habitat conservation areas.* The Essential Fish Habitat Conservation Areas (EFHCAs) are closed areas, defined by specific latitude and longitude coordinates at §§ 660.76 through 660.79, where specified types of fishing are prohibited. Prohibitions applying to specific EFHCAs are found at § 660.12.

(ii) *Seasons.* Recreational fishing for groundfish is open from January 1 through December 31, subject to the closed areas described in paragraph (c) of this section.

(iii) *Bag limits, size limits.* The bag limits for each person engaged in recreational fishing in the EEZ seaward of Oregon are three lingcod per day, which may be no smaller than 22 in (56 cm) total length; and 10 marine fish per day, which excludes Pacific halibut, salmonids, tuna, perch species, sturgeon, sanddabs, flatfish, lingcod, striped bass, hybrid bass, offshore pelagic species and baitfish (herring, smelt, anchovies and sardines), but which includes rockfish, greenling, cabezon and other groundfish species. The bag limit for all flatfish is 25 fish per day, which excludes Pacific halibut, but which includes all soles, flounders and Pacific sanddabs. In the Pacific halibut fisheries, retention of groundfish is governed in part by annual management measures for Pacific halibut fisheries, which are published in the **Federal Register.** Between the Oregon border with Washington and Cape Falcon, when Pacific halibut are onboard the vessel, groundfish may not be taken and retained, possessed or landed, except sablefish and Pacific cod. Between Cape Falcon and Humbug Mountain, during days open to the Oregon Central Coast "all-depth" sport halibut fishery, when Pacific halibut are onboard the vessel, no groundfish may be taken and retained, possessed or landed, except sablefish and Pacific cod. "All-depth" season days are established in the annual management measures for Pacific halibut fisheries, which are published in the **Federal Register** and are announced on the NMFS halibut hotline, 1–800–662–9825. The minimum size limit for cabezon retained in the recreational fishery is 16-in (41-cm), and for greenling is 10-in (26-cm). Taking and retaining canary rockfish and yelloweye rockfish is prohibited at all times and in all areas.

(3) *California.* Seaward of California, California law provides that, in times and areas when the recreational fishery is open, there is a 20 fish bag limit for all species of finfish, within which no more than 10 fish of any one species may be taken or possessed by any one person. [**Note:** There are some exceptions to this rule. The following groundfish species are not subject to a bag limit: Petrale sole, Pacific sanddab and starry flounder.] For groundfish species not specifically mentioned in this paragraph, fishers are subject to the overall 20–fish bag limit for all species of finfish and the depth restrictions at paragraph (c)(3)(i) of this section. Recreational spearfishing for all federally-managed groundfish, except lingcod during January, February, March, and December, is exempt from closed areas and seasons, consistent with Title 14 of the California Code of Regulations. This exemption applies only to recreational vessels and divers provided no other fishing gear, except spearfishing gear, is on board the vessel. California state law may provide regulations similar to Federal

regulations for the following state-managed species: Ocean whitefish, California sheephead, and all greenlings of the genus Hexagrammos. Kelp greenling is the only federally-managed greenling. Retention of cowcod, yelloweye rockfish, and canary rockfish is prohibited in the recreational fishery seaward of California all year in all areas. For each person engaged in recreational fishing in the EEZ seaward of California, the following closed areas, seasons, bag limits, and size limits apply:

(i) *Recreational groundfish conservation areas off California.* A Groundfish Conservation Area (GCA), a type of closed area, is a geographic area defined by coordinates expressed in degrees latitude and longitude. The following GCAs apply to participants in California's recreational fishery.

(A) *Recreational rockfish conservation areas.* The recreational RCAs are areas that are closed to recreational fishing for groundfish. Fishing for groundfish with recreational gear is prohibited within the recreational RCA, except that recreational fishing for "other flatfish" is permitted within the recreational RCA as specified in paragraph (c)(3)(iv) of this section. It is unlawful to take and retain, possess, or land groundfish taken with recreational gear within the recreational RCA, unless otherwise authorized in this section. A vessel fishing in the recreational RCA may not be in possession of any species prohibited by the restrictions that apply within the recreational RCA. [For example, if a vessel fishes in the recreational salmon fishery within the RCA, the vessel cannot be in possession of rockfish while in the RCA. The vessel may, however, on the same trip fish for and retain rockfish shoreward of the RCA on the return trip to port.]

(*1*) Between 42° N. lat. (California/Oregon border) and 40°10.00′ N. lat. (North Region), recreational fishing for all groundfish (except "other flatfish" as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of the 20-fm (37-m) depth contour along the mainland coast and along islands and offshore seamounts from May 15 through September 15; and is closed entirely from January 1 through May 14 and from September 16 through December 31 (*i.e.,* prohibited seaward of the shoreline).

(*2*) Between 40°10′ N. lat. and 38°57.50′ N. lat. (North-Central North of Point Arena Region), recreational fishing for all groundfish (except "other flatfish" as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of the 20-fm (37-m) depth contour along the mainland coast and along islands and offshore seamounts from May 15 through August 15; and is closed entirely from January 1 through May 14 and from August 16 through December 31 (*i.e.,* prohibited seaward of the shoreline).

(*3*) Between 38°57.50′ N. lat. and 37°11′ N. lat. (North-Central South of Point Arena Region), recreational fishing for all groundfish (except "other flatfish" as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of the boundary line approximating the 30-fm (55-m) depth contour along the mainland coast and along islands and offshore seamounts from June 13 through October 31; and is closed entirely from January 1 through June 12 and from November 1 through December 31 (*i.e.,* prohibited seaward of the shoreline). Closures around the Farallon Islands (*see* paragraph (c)(3)(i)(C) of this section) and Cordell Banks (*see* paragraph (c)(3)(i)(D) of this section) also apply in this area. Coordinates for the boundary line approximating the 30-fm (55-m) depth contour are listed in § 660.71.

(*4*) Between 37°11′ N. lat. and 36° N. lat. (Monterey South-Central Region), recreational fishing for all groundfish (except "other flatfish" as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of a boundary line approximating the 40-fm (73-m) depth contour along the mainland coast and along islands and offshore seamounts from May 1 through November 15; and is closed entirely from January 1 through April 30 and from November 16 through December 31 (*i.e.,* prohibited seaward of the shoreline). Coordinates for the boundary line approximating the 40-fm (73-m) depth contour are specified in § 660.71.

(*5*) Between 36° N. lat. and 34°27′ N. lat. (Morro Bay South-Central Region), recreational fishing for all groundfish (except "other flatfish" as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of a boundary line approximating the 40-fm (73-m) depth contour along the mainland coast and along islands and offshore seamounts from May 1 through November 15; and is closed entirely from January 1 through April 30 and from November 16 through December 31 (*i.e.,* prohibited seaward of the shoreline). Coordinates for the boundary line approximating the 40-fm (73-m) depth contour are specified in § 660.71.

(*6*) South of 34°27′ N. lat. (South Region), recreational fishing for all groundfish (except California scorpionfish as specified below in this paragraph and in paragraph (v) of this section and "other flatfish" as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of a boundary line approximating the 60-fm (110-m) depth contour from March 1 through December 31 along the mainland coast and along islands and offshore seamounts, except in the CCAs where fishing is prohibited seaward of the 20-fm (37-m) depth contour when the fishing season is open (see paragraph (c)(3)(i)(B) of this section). Recreational fishing for all groundfish (except California scorpionfish and "other flatfish") is closed entirely from January 1 through February 28 (i.e., prohibited seaward of the shoreline). Recreational fishing for California scorpionfish south of 34°27′ N. lat. is prohibited seaward of a boundary line approximating the 40-fm (73-m) depth contour from January 1 through February 28, and seaward of the 60-fm (110-m) depth contour from March 1 through December 31, except in the CCAs where fishing is prohibited seaward of the 20-fm (37-m) depth contour when the fishing season is open. Coordinates for the boundary line approximating the 40-fm (73-m) and 60-fm (110-m) depth contours are specified in §§ 660.71 and 660.72.

(B) *Cowcod conservation areas.* The latitude and longitude coordinates of the Cowcod Conservation Areas (CCAs) boundaries are specified at § 660.70, subpart C. In general, recreational fishing for all groundfish is prohibited within the CCAs, except that fishing for "other flatfish" is permitted within the CCAs as specified in paragraph (c)(3)(iv) of this section. However, recreational fishing for the following species is permitted shoreward of the 20 fm (37 m) depth contour when the season for those species is open south of 34°27′ N. lat.: Minor nearshore rockfish, cabezon, kelp greenling, lingcod, California scorpionfish, and "other flatfish" (subject to gear requirements at paragraph (c)(3)(iv) of this section during January–February). [**Note:** California state regulations also permit recreational fishing for California sheephead, ocean whitefish, and all greenlings of the genus Hexagrammos shoreward of the 20 fm (37 m) depth contour in the CCAs when the season for the RCG complex is open south of 34°27′ N. lat.] It is unlawful to take and retain, possess, or land groundfish within the CCAs, except for species authorized in this section.

(C) *Farallon islands.* Under California state law, recreational fishing for groundfish is prohibited between the shoreline and the 10-fm (18-m) depth contour around the Farallon Islands, except that recreational fishing for "other flatfish" is permitted around the Farallon Islands as specified in paragraph (c)(3)(iv) of this section.

(*Note:* California state regulations also prohibit the retention of other greenlings of the genus Hexagrammos, California sheephead and ocean whitefish.) For a definition of the Farallon Islands, *see* § 660.70, subpart C.

(D) *Cordell Banks.* Recreational fishing for groundfish is prohibited in waters less than 100 fm (183 m) around Cordell Banks as defined by specific latitude and longitude coordinates at § 660.70, subpart C, except that recreational fishing for "other flatfish" is permitted around Cordell Banks as specified in paragraph (c)(3)(iv) of this section. [**Note:** California state regulations also prohibit fishing for all greenlings of the genus Hexagrammos, California sheephead and ocean whitefish.]

(E) *Point St. George yelloweye rockfish conservation area (YRCA).* Recreational fishing for groundfish is prohibited within the Point St. George YRCA, as defined by latitude and longitude coordinates at § 660.70, subpart C, on dates when the closure is in effect. The closure is not in effect at this time, and recreational fishing for groundfish is open within the Point St. George YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment.

(F) *South reef YRCA.* Recreational fishing for groundfish is prohibited within the South Reef YRCA, as defined by latitude and longitude coordinates at § 660.70, subpart C, on dates when the closure is in effect. The closure is not in effect at this time, and recreational fishing for groundfish is open within the South Reef YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment.

(G) *Reading Rock YRCA.* Recreational fishing for groundfish is prohibited within the Reading Rock YRCA, as defined by latitude and longitude coordinates at § 660.70, subpart C, on dates when the closure is in effect. The closure is not in effect at this time, and recreational fishing for groundfish is open within the Reading Rock YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment.

(H) *Point Delgada (North) YRCA.* Recreational fishing for groundfish is prohibited within the Point Delgada (North) YRCA, as defined by latitude and longitude coordinates at § 660.70, subpart C, on dates when the closure is in effect. The closure is not in effect at this time, and recreational fishing for groundfish is open within the Point Delgada (North) YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment.

(I) *Point Delgada (South) YRCA.* Recreational fishing for groundfish is prohibited within the Point Delgada (South) YRCA, as defined by latitude and longitude coordinates at § 660.70, subpart C, on dates when the closure is in effect. The closure is not in effect at this time, and recreational fishing for groundfish is open within the Point Delgada (South) YRCA from January 1 through December 31. This closure may be imposed through inseason adjustment.

(J) *Essential fish habitat conservation areas.* The Essential Fish Habitat Conservation Areas (EFHCAs) are closed areas, defined by specific latitude and longitude coordinates at §§ 660.76 through 660.79, subpart C where specified types of fishing are prohibited. Prohibitions applying to specific EFHCAs are found at § 660.12, subpart C.

(ii) *RCG complex.* The California rockfish, cabezon, greenling complex (RCG Complex), as defined in state regulations (Section 1.91, Title 14, California Code of Regulations), includes all rockfish, kelp greenling, rock greenling, and cabezon. This category does not include California scorpionfish, also known as "sculpin".

(A) *Seasons.* When recreational fishing for the RCG complex is open, it is permitted only outside of the recreational RCAs described in paragraph (c)(3)(i) of this section.

(*1*) Between 42 °N. lat. (California/Oregon border) and 40°10′ N. lat. (North Region), recreational fishing for the RCG complex is open from May 15 through September 15 (*i.e.* it's closed from January 1 through May 14 and from September 16 through December 31).

(*2*) Between 40°10′ N. lat. and 38°57.50′ N. lat. (North Central North of Point Arena Region), recreational fishing for the RCG Complex is open from May 15 through August 15 (*i.e.* it's closed from January 1 through May 14 and May 16 through December 31).

(*3*) Between 38°57.50′ N. lat. and 37°11′ N. lat. (North Central South of Point Arena Region), recreational fishing for the RCG complex is open from June 13 through October 31 (*i.e.* it's closed from January 1 through June 12 and November 1 through December 31.

(*4*) Between 37°11′ N. lat. and 36° N. lat. (Monterey South-Central Region), recreational fishing for the RCG complex is open from May 1 through November 15 (*i.e.* it's closed from January 1 through April 30 and from November 16 through December 31).

(*5*) Between 36′ N. lat. and 34°27′ N. lat. (Morro Bay South-Central Region), recreational fishing for the RCG Complex is open from May 1 through November 15 (*i.e.* it's closed from January 1 through April 30 and from November 16 through December 31).

(*6*) South of 34°27′ N. lat. (South Region), recreational fishing for the RCG Complex is open from March 1 through December 31 (*i.e.* it's closed from January 1 through February 28.

(B) *Bag limits, hook limits.* In times and areas when the recreational season for the RCG Complex is open, there is a limit of 2 hooks and 1 line when fishing for rockfish. The bag limit is 10 RCG Complex fish per day coastwide. Retention of canary rockfish, yelloweye rockfish, bronzespotted and cowcod is prohibited. Within the 10 RCG Complex fish per day limit, no more than 2 may be bocaccio, no more than 2 may be greenling (kelp and/or other greenlings) and no more than 2 may be cabezon. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits.* The following size limits apply: Bocaccio may be no smaller than 10 in (25 cm) total length; cabezon may be no smaller than 15 in (38 cm) total length; and kelp and other greenling may be no smaller than 12 in (30 cm) total length.

(D) *Dressing/filleting.* Cabezon, kelp greenling, and rock greenling taken in the recreational fishery may not be filleted at sea. Rockfish skin may not be removed when filleting or otherwise dressing rockfish taken in the recreational fishery. The following rockfish filet size limits apply: Bocaccio filets may be no smaller than 5 in (12.8 cm) and brown-skinned rockfish fillets may be no smaller than 6.5 in (16.6 cm). "Brown-skinned" rockfish include the following species: Brown, calico, copper, gopher, kelp, olive, speckled, squarespot, and yellowtail.

(iii) *Lingcod*—(A) *Seasons.* When recreational fishing for lingcod is open, it is permitted only outside of the recreational RCAs described in paragraph (c)(3)(i) of this section.

(*1*) Between 42 °N. lat. (California/Oregon border) and 40°10.00′ N. lat. (North Region), recreational fishing for lingcod is open from May 15 through September 15 (*i.e.* it's closed from January 1 through May 14 and from September 16 through December 31).

(*2*) Between 40°10′ N. lat. and 38°57.50′ N. lat. (North Central North of Point Arena Region), recreational fishing for lingcod is open from May 15 through August 15 (*i.e.* it's closed from January 1 through May 14 and May 16 through December 31).

(*3*) Between 38°57.50′ N. lat. and 37°11′ N. lat. (North Central South of Point Arena Region), recreational fishing for lingcod is open from June 13 through October 31 (*i.e.* it's closed from January 1 through June 12 and November 1 through December 31.

(*4*) Between 37°11′ N. lat. and 36 °N. lat. (Monterey South–Central Region), recreational fishing for lingcod is open from May 1 through November 15 (*i.e.* it's closed from January 1 through April 30 and from November 16 through December 31).

(*5*) Between 36′ N. lat. and 34°27′ N. lat. (Morro Bay South-Central Region), recreational fishing for lingcod is open from May 1 through November 15 (*i.e.* it's closed from January 1 through April 30 and from November 16 through December 31).

(*6*) South of 34°27′ N. lat. (South Region), recreational fishing for lingcod is open from April 1 through November 30 (*i.e.* it's closed from January 1 through March 31 and from December 1 through 31).

(B) *Bag limits, hook limits.* In times and areas when the recreational season for lingcod is open, there is a limit of 2 hooks and 1 line when fishing for lingcod. The bag limit is 2 lingcod per day. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits.* Lingcod may be no smaller than 24 in (61 cm) total length.

(D) *Dressing/filleting.* Lingcod filets may be no smaller than 16 in (41 cm) in length.

(iv) "*Other flatfish*". Coastwide off California, recreational fishing for "other flatfish" is permitted both shoreward of and within the closed areas described in paragraph (c)(3)(i) of this section. "Other flatfish" are defined at § 660.11, subpart C, and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole. Recreational fishing for "other flatfish" is permitted within the closed areas. "Other flatfish," except Pacific sanddab, are subject to the overall 20-fish bag limit for all species of finfish, of which there may be no more than 10 fish of any one species. There is no season restriction or size limit for "other flatfish;" however, it is prohibited to filet "other flatfish" at sea.

(v) *California scorpionfish.* California scorpionfish predominately occur south of 40°10′ N. lat.

(A) *Seasons.* When recreational fishing for California scorpionfish is open, it is permitted only outside of the recreational RCAs described in paragraph (c)(3)(i) of this section.

(*1*) Between 40°10′ N. lat. and 37°11′ N. lat. (North Central Region), recreational fishing for California scorpionfish is open from June 1 through November 30 (*i.e.,* it's closed from January 1 through May 31 and from December 1 through December 31).

(*2*) Between 37°11′ N. lat. and 36° N. lat. (Monterey South Central Region), recreational fishing for California scorpionfish is open from May 1 through November 30 (*i.e.,* it's closed from January 1 through April 30 and from December 1 through December 31).

(*3*) Between 36° N. lat. and 34°27′ N. lat. (Morro Bay South Central Region), recreational fishing for California scorpionfish is open from May 1 through November 30 (*i.e.,* it's closed from January 1 through April 30 and from December 1 through December 31).

(*4*) South of 34°27′ N. lat. (South Region), recreational fishing for California scorpionfish is open from January 1 through December 31.

(B) *Bag limits, hook limits.* South of 40°10.00′ N. lat., in times and areas where the recreational season for California scorpionfish is open, the bag limit is 5 California scorpionfish per day. California scorpionfish do not count against the 10 RCG Complex fish per day limit. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits.* California scorpionfish may be no smaller than 10 in (25 cm) total length.

(D) *Dressing/Filleting.* California scorpionfish filets may be no smaller than 5 in (12.8 cm) and must bear an intact 1 in (2.6 cm) square patch of skin.

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