

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MB Docket No. 02–295, adopted September 23, 2005, and released September 26, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or <http://www.BCPIWEB.com>. This document is not subject to the Congressional Review Act. (The Commission is, therefore, not required to submit a copy of this *Report and Order* to GAO pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A), because the proposed rule is dismissed.)

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 050921244–5244–01; I.D. 091305A]

RIN 0648–AP38

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

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule to implement portions of Amendment 14 to the Pacific Coast Groundfish Fishery Management Plan (FMP) for 2007 and beyond. Amendment 14, approved by NOAA in August 2001, created a permit stacking program for limited entry permits with sablefish endorsements. This proposed rule would implement regulatory measures from Amendment 14 that the agency could not set in place in time for

the 2001 through 2006 primary sablefish seasons. Amendment 14 was intended to improve safety in the primary sablefish fishery and to provide greater season flexibility for sablefish fishery participants.

**DATES:** Comments must be submitted in writing by December 12, 2005.

**ADDRESSES:** You may submit comments on the proposed rule to implement further limited entry sablefish permit stacking program regulations, identified by 091305A, by any of the following methods:

- E-mail:

*Amendment14b.nwr@noaa.gov*. Include I.D. 091305A in the subject line of the message.

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Fax: 206–526–6736, Attn: Jamie Goen

- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070

Copies of Amendment 14 and its Environmental Assessment/Regulatory Impact Review (EA/RIR) are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council (Council), 7700 NE Ambassador Place, Portland, OR 97220. Copies of the Supplemental Initial Regulatory Flexibility Analysis (IRFA) are available from D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070.

Send comments on the reporting burden estimate or any other aspect of the collection-of-information requirements in this proposed rule to Jamie Goen or Kevin Ford, Northwest Region, NMFS, and to David Rostker, Office of Management and Budget (OMB), by e-mail at *David\_Rostker@omb.gov*, or fax to 202–395–7285.

**FOR FURTHER INFORMATION CONTACT:**

Jamie Goen or Kevin Ford (Northwest Region, NMFS), phone: 206–526–4646 or 206–526–6115; fax: 206–526–6736 and; e-mail: *jamie.goen@noaa.gov* or *kevin.ford@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

This **Federal Register** document is also accessible via the internet at the website of the Office of the **Federal Register**: <http://www.gpoaccess.gov/fr/index.html>.

NMFS is proposing this rule to implement those portions of Amendment 14 to the FMP that NMFS was unable to implement in time for the

2001 through 2006 primary sablefish seasons. Amendment 14 implemented a permit stacking program for limited entry permits with sablefish endorsements. This proposed rule is based on recommendations of the Council, under the authority of the Pacific Coast Groundfish FMP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The portions of Amendment 14 that were implemented for the 2001 primary sablefish season significantly increased safety in the fishery, allowed individual fishery participants to more fully use their existing vessel capacity, and reduced overall capacity in the primary fixed gear sablefish fishery. This proposed rule would not change any of those benefits, but would further complete the implementation of Amendment 14 by preventing excessive fleet consolidation, ensuring processor access to sablefish caught in the primary season, and maintaining the character of the fleet through owner-on-board requirements. The background and rationale for the Council's recommendations are summarized below. The discussion below also explains why NMFS will not be implementing the Council's recommendation for a hail-in requirement for vessels delivering primary season sablefish. Furthermore, it summarizes some modifications to the permit stacking program that the Council is considering for future implementation.

Further detail appears in the EA/RIR prepared by the Council for Amendment 14 and in the proposed and final rule to implement Amendment 14 for the 2001 primary sablefish season. The proposed rule for the 2001 season was published on June 8, 2001 (66 FR 30869), the final rule was published on August 7, 2001 (66 FR 41152), and a correction to the final rule was published on August 30, 2001 (66 FR 45786).

**Background**

For many years, sablefish harvested by the limited entry, fixed gear fleet north of 36° N. lat. has been separated into a small, year-round daily trip limit fishery and a primary season fishery (from April 1 through October 31). Annually, about 85 percent of the limited entry fixed gear sablefish allocation has been taken in the primary season fishery. Before 1997, the Council managed harvest in the primary season fishery without vessel cumulative limits by setting the season length short enough to ensure that the fishery would not exceed its quota. Capitalization in the fixed gear sablefish fleet increased

over time and the Council needed to set ever shorter primary seasons to control catch levels. By 1996, the fleet was able to take the bulk of the primary season sablefish catch in a 5 day fishery.

This evolution to a derby-style fishery induced the Council to make a series of management changes intended to rationalize fishing effort and improve safety for primary season fishery participants. Amendment 9 to the FMP introduced a sablefish endorsement program that limited the number of vessels allowed to participate in the primary season fishery. Limited entry permit holders with at least 16,000 lb (7,257 mt) of sablefish landed in any one year from 1984 through 1994 received sablefish endorsements. This program was intended to restrict primary season fishery participation to those permit holders with historical participation in and dependence upon the sablefish fishery.

Following Amendment 9, the Council further separated participation in the primary season sablefish fishery by introducing the three-tier program in 1998. This program divided sablefish-endorsed permits into 3 tiers based on historical landings associated with those permits. Under the three-tier program, a participant in the primary season may land an amount of sablefish up to the cumulative limit associated with his/her permit. Qualifications for each of the 3 tiers were based on the cumulative sablefish landings associated with a permit over the same 1984 through 1994 period: at least 898,000 lb (407.33 mt) to qualify for Tier 1, less than 898,000 lb (407.33 mt) but more than 380,000 lb (172.36 mt) to qualify for Tier 2, and less than 380,000 lb (172.36 mt) but at least the minimum 16,000 lb (7,257 mt) to qualify for Tier 3. The three-tier system also set a between-tier ratio to describe the relationship between the cumulative limits that would be available to each tier during the primary season fishery. That ratio is 1 (Tier 3): 1.75 (Tier 2):3.85 (Tier 1). For example, if Tier 3 had a cumulative limit of 10,000 lb (4,536 mt), Tier 2 would have a corresponding cumulative limit of 17,500 lb (7,938 mt), and Tier 1 would have a corresponding cumulative limit of 38,500 lb (17,463 mt).

While the three-tier program somewhat slowed the pace of the primary season fishery, the season was still less than 10 days long in each of the primary seasons from 1998 to 2000. Even under the three-tier program, the Council had to set the seasons short enough to ensure that not all participants would be able to catch the full cumulative limits of sablefish associated with their permits. A fishery

where all participants have the opportunity to catch a cumulative limit and all are able to catch that limit is an Individual Fishing Quota (IFQ) fishery as defined by the Magnuson-Stevens Act. At the time, the Magnuson-Stevens Act, as amended by Public Law 106–554, included a moratorium on the implementation of new IFQ programs through October 1, 2002. (The moratorium has since been lifted). However, via Public Law 106–554, Congress exempted from the moratorium a Pacific Council IFQ program for the fixed gear sablefish fishery that: (1) allows the use of more than one limited entry groundfish permit per vessel; and/or (2) sets cumulative trip limit periods, up to 12 months in any calendar year, that allow fishing vessels a reasonable opportunity to harvest the full amount of the associated trip limits. Amendment 14 to the FMP implements a permit stacking program that meets these moratorium exemption requirements.

#### Amendment 14

The Council approved Amendment 14 at its November 2000 meeting and clarified its intent on implementing Amendment 14 at its November 2001 and April 2002 meetings. Amendment 14 introduced a permit stacking program to the limited entry, fixed gear primary sablefish fishery. Under this permit stacking program, a vessel owner may register up to 3 sablefish-endorsed permits for use with their vessel to harvest each of the primary season sablefish cumulative limits associated with the stacked permits. By exempting the Pacific Coast fixed gear permit stacking program from the IFQ moratorium, Congress removed the need to set short seasons designed to prevent participants from catching their full cumulative limits. Amendment 14 allows a season up to 7 months long, from April 1 through October 31, which allows an ample period for vessels to pursue their primary season sablefish cumulative limits. Beginning in 2002, NMFS implemented the full April 1 through October 31 season via the Pacific Coast groundfish final specifications and management measures published on March 7, 2002 (67 FR 10490).

Provisions subject to the regulatory review process required under the Paperwork Reduction Act (PRA) and a longer NMFS application and permitting process were reserved for a second set of proposed regulations for 2002 and beyond. In its June 8, 2001, proposed rule, NMFS announced its intention to divide Amendment 14 implementation into two separate

regulatory processes. Implementation of this latter portion of Amendment 14 was further postponed in 2002 to allow time for NMFS to return to the Council for further clarification. On February 14, 2002, NMFS notified fixed gear permit holders by letter to let them know the agency would be requesting further clarification from the Council. NMFS received further clarification at the Council's April 2002 meeting.

The regulatory changes proposed with this **Federal Register** document would implement permit stacking regulations that include the following provisions: permit owners and permit holders would be required to document their ownership interests in their permits to ensure that no person holds or has ownership interest in more than 3 permits; an owner-on-board requirement for permit owners who did not own sablefish-endorsed permits as of November 1, 2000; an opportunity for permit owners to add a spouse as co-owner; vessels that do not meet minimum frozen sablefish historic landing requirements would not be allowed to process sablefish at sea; permit transferors would be required to certify sablefish landings during mid-season transfers; and, a definition of the term "base permit."

#### Documenting Permit Ownership Interest and Adding a Spouse as Co-owner

Amendment 14 includes several ownership-related provisions. (1) No partnership or corporation may own a sablefish-endorsed limited entry permit unless that partnership or corporation owned a sablefish-endorsed permit as of November 1, 2000 (also referred to as grandfathered or first generation permit owner). NMFS announced this November 1, 2000, control date in an Advance Notice of Proposed Rulemaking on April 3, 2001 (66 FR 17681). Partnerships or corporations that owned permits as of November 1, 2000, may continue to have ownership interest in those same permits and may purchase or hold additional permits up to the 3-permit limit; however, partnerships or corporations that owned a permit before November 1, 2000, and subsequently sell all of their sablefish-endorsed permits, will lose the privilege of continuing to own sablefish-endorsed permits if they do not buy another permit within one year. Any permits sold after November 1, 2000, may only be sold to an individual person or to partnerships or corporations that had ownership interest in a sablefish-endorsed permit before November 1, 2000.

(2) No person, partnership, or corporation in combination may have ownership interest in or hold more than 3 sablefish-endorsed permits 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 sablefish-endorsed permits as of November 1, 2000. An individual person, or partnerships or corporations that had ownership interest in 3 or more sablefish-endorsed permits as of November 1, 2000, may not acquire additional permits either by purchase or holding beyond those sablefish-endorsed permits owned on November 1, 2000, until they own fewer than 3 permits; at that time they may acquire additional permits but may not exceed the ownership cap of 3 permits.

(3) A partnership or corporation will lose the exemptions provided in paragraphs (1) and (2) of this section on the effective date of any change in the ownership of a corporation or partnership from that which existed on November 1, 2000. [Note: In cases where multiple corporations or partnership are listed on a permit, NMFS will treat them as one new entity for purposes of the permit count and grandfathered status. For example, if Smith, Inc. and Jones, Inc. are listed as owning a permit together since before November 1, 2000, they will be grandfathered as "Smith, Inc. and Jones, Inc." and this entity will be counted as owning that 1 permit. If Jones, Inc. did not also own a permit on its own before November 1, 2000, it would not be a grandfathered corporation and could not own a permit after November 1, 2000. Any change in Smith, Inc. and/or Jones, Inc. would affect "Smith, Inc. and Jones, Inc." as listed on the permit.] A "change" in the partnership or corporation means the addition of a partner or shareholder to the corporate or partnership membership. This definition of "change" will apply to any person added to the corporation or partnership 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. Changes in the partnership or corporation must be reported to NMFS' Sustainable Fisheries

Division (SFD) within 15 days of the addition of a new partner or shareholder.

(4) An individual person who did not own a sablefish-endorsed permit as of November 1, 2000, and who purchases a sablefish-endorsed permit after November 1, 2000, will be required to be on board the vessel registered for use with the permit when that vessel is fishing for sablefish against the primary sablefish tier limits associated with the permit(s) registered for use with that vessel. (Also known as the "owner-on-board" requirement.)

To implement these four major permit ownership provisions, NMFS will need to determine which individuals have an ownership interest in the partnerships and corporations that own and/or hold sablefish-endorsed permits. As of November 2000, about 40 partnerships or corporations were owners of sablefish-endorsed permits (this number only includes business entities denoted as corporation, general partnership, limited partnership, etc.). Similarly, about 40 partnerships or corporations were holders of sablefish-endorsed permits with seven of those being different from the partnerships or corporations that were given as permit owners. Once NMFS obtains the names of all of the individuals who had ownership interest in a sablefish-endorsed permit as of November 1, 2000, as well as all of the individuals that had ownership interest in or held a sablefish endorsed permit after November 1, 2000, the agency will be better able to implement the Amendment 14 provision that restricts the number of permits each person has ownership interest in or holds to three permits. If a person who has not owned all their permits since November 1, 2000, is found to have ownership interest in or hold more than 3 permits, NMFS will void all current permits, including any grandfathered permits owned or held by partnerships or corporations, and reissue all permits in an "unidentified" status meaning that the permits cannot be fished, until such time as that individual can prove they have ownership interest in or hold no more than 3 permits. [Note: A permit cannot be fished if it is in "unidentified" status. The permit must be registered for use with the vessel being used to land the groundfish as specified in 50 CFR 660.333(a).] For example, if a person is found to have ownership interest in five permits, three of which were owned as of November 1, 2000, NMFS will issue all five permits, including any permits shared with other individuals, partnerships or corporations, into "unidentified" status

until that person sells at least two of their permits so that they own or hold no more than three permits. If a person had ownership interest in five permits as of November 1, 2000, and still has ownership interest in those five permits and does not own or hold additional permits, none of the permits would be moved into the "unidentified" status.

While the Council recommended that permit owners would be required to document their ownership interests in their permits to ensure that no person holds or has ownership interest in more than 3 permits, NMFS has determined that permit holders that are corporations or partnerships would also be required to document their ownership interests for purposes of the permit count which was implemented with the first round of permit stacking regulations in August 2001. Therefore, NMFS has interpreted the Council's recommendation to not just require permit owners, but also permit holders to document their ownership interests in their permits to ensure that no person holds or has ownership interest in more than 3 permits. For purposes of establishing the permit count for each permit owner and permit holder, each individual who is listed as owner on the permit or is listed as having an ownership interest as part of a corporation or partnership will be counted as owning or holding one permit. In cases where a husband and wife are listed as co-owners of the same permit, both individuals will be counted as owning one permit each. However, if the husband is listed on the permit as the sole owner of that permit, only the husband will be counted as owning that permit for purposes of restrictions and exemptions on the number of permits a person may own or hold.

If a permit owner who owned the permit as of November 1, 2000, conveys a permit to their spouse upon their death, the conveyed permit will count toward the permit ownership limits for that spouse. "Spouse" means a person who is legally married to another person as recognized by state law (i.e., one's wife or husband). If the spouse already owns or holds 3 permits, he/she will not be permitted to retain this additional permit, unless he/she conveys ownership of or no longer holds one of his/her existing permits.

If a couple were married as of November 1, 2000, but only one spouse was listed on the permit as the permit owner at that time, the spouse of the listed permit owner would not be exempt from the owner-on-board requirement. However, NMFS realizes permit owners could not have foreseen the implications of not listing their spouse under the detailed provisions of

the permit stacking program adopted by the Council. Therefore, permit owners who were married as of the control date (November 1, 2000) and who wish to add their spouse as co-owner on their permit(s) may correct NMFS' permit ownership records as of that control date. Permit owners may add a not-listed spouse as a co-owner without losing their grandfathered status. As previously mentioned, in cases where a couple, married as of November 1, 2000, are listed as co-owners of the same permit, both individuals will be counted as owning one permit each and will have grandfathered status as a partnership as defined at § 660.302. An individual within the married couple will not, however, be able to retain their exemption from owner-on-board requirements if they choose to buy another permit as an individual and did not own a permit as an individual as of the control date in NMFS "corrected" records (i.e., NMFS records after allowing a not-listed spouse to be added as co-owner). Members of partnerships and corporations will not be allowed to add their spouses to the corporate ownership listing as of November 1, 2000, for purposes of exempting them from the owner-on-board requirements. (Note: NMFS defines a "partnership" as 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).)

Upon publication of these regulations in the **Federal Register**, NMFS will send a form to permit owners with one individual listed as of November 1, 2000, to allow married individuals who wish to declare their spouses as having permit ownership interest as of November 1, 2000. If the permit owner fails to return the form by July 1, 2006, the permit name on record with SFD as of November 1, 2000, will remain on the permit. If the permit owner has been married since the control date, chooses not to add their spouse as a co-owner and the permit owner listed on the permit thereafter dies, the spouse will not be exempt from the owner-on-board requirement should the spouse inherit the permit. SFD will not accept any declarations to add a spouse as co-owner for couples married as of the control date after the July 1, 2006, deadline.

For corporations and partnerships, NMFS will send a form to legally recognized corporations and partnerships (i.e., permit owners other

than individuals) that currently own or hold sablefish-endorsed permits that requests a listing of the names of all shareholders or partners as of November 1, 2000, and a second listing of that same information as of the current date in 2006. NMFS may require a copy of the United States Coast Guard Abstract of Title as proof of vessel ownership for permit holders and/or owners and may require articles of incorporation or other documentation deemed necessary for proof of corporate or partnership ownership. If a corporation or partnership fails to return the completed form by the deadline date of July 1, 2006, NMFS will send a second written notice to delinquent entities requesting the completed form be returned by a revised deadline date of August 1, 2006. If the permit owning entity fails to return the completed form by that second deadline date, August 1, 2006, NMFS will void their existing permit(s) and reissue the permit(s) with a vessel registration given as "unidentified" until such time that the completed form is provided to NMFS. For purposes of determining changes in partnerships/corporations in succeeding years, NMFS will send the form to corporations and partnerships as part of the annual permit renewal process.

Failure to report or false reporting of ownership interest in federal limited entry groundfish permits to NMFS may be subject to federal civil or criminal penalties.

#### **Owner-on-board Requirement**

As mentioned above, an individual person who owns sablefish-endorsed permits, but who did not have an ownership interest in a sablefish-endorsed permit as of November 1, 2000, would be required to be on board the vessel registered for use with that permit during any groundfish fishing operations within the primary season fishery while that permit's primary sablefish season limits are being taken. (Note: An individual person, or partnerships or corporations that hold(s) a sablefish-endorsed permit, but does not own a sablefish-endorsed permit, are not subject to the owner-on-board requirements.) The Council included this provision in Amendment 14 as a way of ensuring that the fixed gear sablefish fleet would maintain its character, by requiring that only fishermen control sablefish-endorsed permits and moving toward a fishery where permit owners are working onboard the vessel during fishing operations.

The sablefish permit stacking program is essentially an IFQ program. A concern about IFQ programs is that if

fishing privileges are for sale, individuals or business entities who do not fish could buy those privileges. Allowing individuals or business entities who do not fish to own fishing privileges and then rent those privileges out to fishers is often referred to as "share-cropping" the fishing privileges. Members of the West Coast sablefish fleet were concerned that without an owner-on-board provision, permit ownership could flow out of fishing communities and into the hands of speculative non-fishing buyers. To ensure that only fishers could buy into the sablefish fleet, the Council included an owner-on-board provision in Amendment 14.

Under this proposed rule, an individual who purchased a sablefish-endorsed permit after November 1, 2000, would be required to be on board the vessel registered for use with that permit when the vessel is participating in any groundfish fishery during the primary season and fishing on that permit's sablefish limits until that vessel has taken that permit's primary sablefish season limits. Once the primary sablefish season starts, any sablefish landings made by a vessel registered for use with a sablefish-endorsed permit count against that vessel's primary season limit(s). This aspect of the owner-on-board requirement prevents unnecessary sablefish discard by ensuring that if sablefish is taken incidentally in fisheries targeting other groundfish, that sablefish will not be discarded and will count against the primary season fishery limits. All permit owners who are subject to the owner-on-board requirements would be notified in a letter from NMFS in 2006 and prior to the start of the primary sablefish season on April 1, 2007.

Permit owners who are subject to the owner-on-board requirement may request an emergency exemption from the requirement in cases of death, illness, or injury of the permit owner that prevents the permit owner from participating in the fishery. This exemption would ensure that a permit owner's family could receive the sablefish income associated with a permit if the permit owner himself is unable to participate in the groundfish fishery through death, illness, or injury. In the case of death of a permit owner, the estate of the deceased permit owner is afforded a grace period from the owner-on-board requirement for up to 3 years after the death of the individual or until such time as there is settlement of the permit owner's estate and the permit is transferred to the beneficiary, whichever is earlier. 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 can send a letter to NMFS with a copy of the death certificate, requesting an exemption from the owner-on-board requirements until either the estate is settled or for up to 3 years after the time of death, whichever is earlier. An exemption from the owner-on-board requirements would be conveyed in a letter from NMFS to the estate of the permit owner and this letter would be required to be on the vessel during fishing operations. This grace period allows the estate a period of time in which to transfer the permit to an individual and also allows the estate to hire a skipper to fish the permit while the estate is being settled. Once the permit is transferred, the new owner would be subject to the owner-on-board requirements. If, after the estate is settled, the spouse inherits and therefore owns the permit and the deceased permit owner was grandfathered, but the spouse was not listed on the permit as grandfathered, the spouse would be a second generation owner and would be required to be on board the vessel while the permit is being fished.

An exemption due to injury or illness would be effective only through the end of the calendar year in which it was granted. In order to receive an exemption due to injury or illness, the permit owner must submit a letter to NMFS requesting an exemption from the owner-on-board requirement, explaining the need for the exemption, and providing documentation from a certified medical practitioner detailing why the permit owner is unable to continue to be onboard a fishing vessel. In order to extend an emergency medical exemption for a succeeding year, the permit owner must submit a new request to NMFS 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 would be conveyed in a letter from NMFS to the permit owner and this letter would be required to be on the vessel during fishing operations. All emergency exemptions will be evaluated by NMFS and a decision will be made by SFD in writing to the permit owner within 60 days of receipt of the original exemption request. Emergency medical exemptions will be granted by NMFS for no 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.

An individual person, or partnerships or corporations who continue to own at least one sablefish-endorsed permit that was owned as of November 1, 2000, would be exempt from the owner-on-board requirement. If a person, partnership, or corporation that is exempt from the owner-on-board requirement no longer owns at least one sablefish-endorsed permit for a period greater than one year, that permit owner would no longer be exempt from the owner-on-board requirement. However, a person, partnership, or corporation that is exempt from the owner-on-board requirement could sell all of its permits, buy another sablefish-endorsed permit within 1 year of the date the last permit was approved for transfer, and retain its exemption from the owner-on-board requirements. A person that is part of a grandfathered partnership or corporation could buy additional permits as an individual, up to the limit of three per individual, but the individual would not be exempt from the owner-on-board requirements with the new permit. However, if the individual was part of grandfathered partnership or corporation in which they were the only remaining individual (i.e., all other individuals with ownership interest had left the partnership or corporation), this individual would still be considered as a grandfathered partnership or corporation in NMFS records. Thus, permits owned by this individual under the partnership or corporation would be exempt from the owner-on-board requirements. This individual could also buy additional permits under the partnership or corporation, up to the limit of 3 per individual, and would remain exempt from the owner-on-board requirements with the additional permits.

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 within one year of the date that the final rule for these owner-on-board requirements is implemented. A 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. NMFS would send out a letter to all individuals, partnerships or corporations who owned a permit as of November 1, 2000, and who no longer

own a permit to notify them that they would qualify as a grandfathered permit owner if they choose to buy a permit within one year from the date the final rule for these owner-on-board requirements is effective.

If the individuals who have an ownership interest in the corporation or partnership change from those owning the partnership or corporation as of November 1, 2000, by adding another individual(s), that partnership or corporation will lose its exemption from both the owner-on-board requirements and from the provision that allows only an individual person to own a sablefish-endorsed permit. Thus, a husband and wife who own a permit could not add a sibling or child to the permit without losing their first generation status and losing their exemption from the provision that only allows an individual person to own permits. Similarly, a fisherman who wants to take on a new partner because an existing partner is retiring could not add that new partner without losing his first generation status and his exemption from the provision that only allows an individual to own permits. In the case of a grandfathered corporation such as "Smith, Inc. and Jones, Inc.," viewed as one corporation in NMFS records, Jones, Inc. could not add a new member without causing "Smith, Inc. and Jones, Inc." to lose its grandfathered status. However, an individual person, or partnerships and corporations may continue to hold sablefish-endorsed permits (e.g., through a lease arrangement) from any permit owner (exempt from owner-on-board or not) and remain exempt from the owner-on-board requirements, even if their membership has changed or they did not hold a sablefish-endorsed permit as of November 1, 2000.

As mentioned above, if a couple was married as of November 1, 2000, but only one spouse was listed as the permit owner at that time, the spouse of the listed permit owner would not be exempt from the owner-on-board requirement. NMFS will allow an opportunity for those grandfathered permit owners who wish to add their spouses as co-owners on their permits to correct NMFS' permit ownership records as of that control date (November 1, 2000). Permit owners may then add not-listed spouses as co-owners without losing their grandfathered statuses. Their new grandfathered status will be as a partnership, as defined at § 660.302, which includes married couples. Individual permit owners will lose their individual grandfathered status when they add their not-listed spouse unless they also owned at least one permit as

an individual and did not retroactively add a spouse as co-owner on that permit. The process that NMFS will follow for adding a spouse as co-owner is described in the ownership interest section of this proposed rule. As previously mentioned, in cases where married couples are listed as co-owners of the same permit, both individuals will be counted as owning one permit each and will have grandfathered status as a partnership, as defined at § 660.302. An individual within the married couple will not, however, be able to retain their exemption from owner-on-board requirements if they choose to buy another permit as an individual and did not own a permit as an individual as of the control date in NMFS "corrected" records (i.e., NMFS records after allowing a not-listed spouse to be added as co-owner). Members of partnerships and corporations will not be allowed to add their spouses as of November 1, 2000, for purposes of exempting those spouses from the owner-on-board requirements or the provision that only allows individuals to own or hold permits.

Because only the owners of non-exempt permits that are being fished during the trip are required to be on board, enforcement agents must be able to determine which permits are being fished and which owner should be on board. In order to enforce the owner-on-board provision, NMFS is requesting that the states require that the groundfish Federal limited entry permit number be written on state fish landing receipts (i.e., fish tickets). At the April 2002 Council meeting in Portland, OR, the Council and NMFS requested that the States of Washington, Oregon, and California modify their fish tickets to require a space for recording the permit number under which a landing is made. The states agreed to consider modifying their fish tickets, but requested time to consider the implications of such a modification and could not guarantee that action would be taken in time for implementation of the second set of the permit stacking regulations. Currently, only the State of California has added a line for permit information on their state fish tickets and enters that information into the fish ticket database, PacFIN. Until a new fish ticket design is available, states should require that permit numbers be written somewhere on the fish ticket, as appropriate. Ultimately, it would be beneficial to have these Federal limited entry permit numbers entered into the PacFIN database so that enforcement could query a given permit number and their associated fish ticket landings.

However, until such time, having the permit number on the paper fish ticket would allow hand searching of paper fish tickets for investigations. This request is also being made to aid in enforcement of mid-season transfers, discussed later in this proposed rule. Adding a permit number to the fish ticket is expected to aid enforcement by creating a record of which sablefish permit was being fished on a given fishing trip. Thus, if enforcement boarded a vessel at sea or as they were coming into port, enforcement could record which owners were on board. At a later time, they could then verify which permit the sablefish landings were credited to on the fish ticket and double check that the owner of that permit was on board if they were not exempt from the owner-on-board provisions.

At a minimum, the permit number associated with a landing should be recorded on the fish ticket and entered into the PacFIN database for tracking and enforcement reasons. If Washington and Oregon do not require that permit numbers be written on the fish tickets and entered into the PacFIN database, NMFS may require all permit owners who are subject to the owner-on-board requirement to be onboard the vessel when that vessel is fishing for groundfish until all sablefish tiers associated with that vessel during the primary season have been fished (e.g., even if landings are only being attributed to one permit at a time but all three permits are subject to the owner-on-board requirement, all three permit owners would be required to be onboard the vessel until that vessel has finished the primary season and completed their landings against all three permits). Conversely, if Washington and Oregon require the permit number on the fish ticket, only those permit owners who are subject to the owner-on-board requirement need to be onboard the vessel when that vessel is fishing for sablefish against a specific sablefish permit (e.g., if landings are only being attributed to one permit at a time and that permit is subject to the owner-on-board requirement, only that permit owner would be required to be onboard the vessel when that vessel is fishing against that permit).

#### **Exemptions for Vessels Processing Sablefish at Sea**

Sablefish caught off the West Coast are often processed and frozen for the Japanese market, but the manner of processing varies along the West Coast. Because of the varied ocean bottom topography, some sablefish fishing grounds are closer to shoreside

processing plants than others. Larger-sized sablefish tend to bring higher prices, but those large fish are usually found in deep water farther offshore. In areas where the sablefish grounds are within a single day's round trip from port, fishers might bring their sablefish to the processor whole. Processors remove the landed fish's head and guts, then glaze and freeze the sablefish body as quickly as possible to ensure that the processed product meets the high standards of the Japanese fish market. Fishers who operate farther than a day's trip from port might remove the head and guts from their sablefish before landing them at the processor to preserve the quality of the fish's flesh throughout fishing and processing operations. Depending on the care that a fisher takes in heading and gutting his/her sablefish, the processor may have to re-clean the fish before freezing and glazing it for sale.

Because of the primary sablefish fishery's history as a short season, fishers have traditionally pulled sablefish out of the ocean as quickly as possible and have left most or all of the processing to the processors. With a longer primary sablefish season, fishers could operate at a more leisurely pace and do more of their own processing. If a significant portion of the sablefish-endorsed fishers were to begin operating as their own processors, however, the shoreside processing plants would be deprived of their traditional sablefish-generated income. The value of sablefish taken with fixed gear and sold as processed product by West Coast processors was \$9–10 million in 1999 and \$10–11 million in 2000. Those amounts include sablefish taken in the daily trip limit fisheries and are based on round weight of sablefish landed in 1999 and 2000 with a product recovery rate range of 56–60 percent of round weight. With implementation of a prohibition on processing sablefish at sea, revenues in sold sablefish product for shoreside processors would be expected to remain similar to those amounts reported before the control date of November 1, 2000.

To ensure that shoreside processing plants would continue to have access to sablefish landed from the primary sablefish fishery, the Council included a provision in Amendment 14 that prohibits vessels from processing their sablefish at sea. "Processing" is defined at 50 CFR 660.302 as, "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.”

Although most West Coast sablefish vessels have not traditionally processed their sablefish catch, there are a few vessels that may have a history of processing sablefish. To acknowledge investments these vessel owners have made in on board freezing and processing equipment, Amendment 14 includes an exception to the at-sea processing prohibition for vessels that froze at least 2,000 lb (907.2 mt) round weight of sablefish landings in any one year of 1998, 1999, or 2000. Because the control date for this exemption is also November 1, 2000, frozen sablefish landings from 2000 would have to have occurred before that date. The best evidence of a vessel having made frozen sablefish landings would be state fish tickets for landed sablefish accompanied by receipts for frozen sablefish from fish buyers or exporters. The qualifying landings of frozen sablefish must have occurred during the primary sablefish fishery season, must have been taken in waters from 0–200 nautical miles offshore of the states of Washington, Oregon or California, and the vessel owner must have had a valid sablefish-endorsed limited entry permit at the time the qualifying fish were landed.

NMFS expects that fewer than five vessels owners will apply for an at-sea processing exemption. NMFS SFD will send a letter to sablefish-endorsed permit owners and/or fixed gear vessel owners announcing the qualification requirements for the at-sea processing exemption. Permit and/or vessel owners who believe that they qualify for an at-sea processing exemption would have at least 60 days to provide NMFS SFD with evidence of their frozen sablefish landings via an application to be provided by NMFS. The permit and/or vessel owner must submit an application and supporting evidence to SFD no later than July 1, 2006. The application will be available from NMFS in hard copy and online at <http://www.nwr.noaa.gov/1sustfsh/permits/prmits01.htm>. NMFS SFD would then have 30 days to review the submitted evidence and make determinations on whether an applicant vessel qualifies for the at-sea processing exemption. Persons whose vessels qualify for the at-sea processing exemption will be issued a letter from NMFS to carry aboard their vessels.

Permit and/or vessel owners who are initially denied the at-sea processing exemption but who believe that they have further evidence to demonstrate their qualifications for the exemption

will have 30 days from the NMFS SFD denial decision to appeal the decision to the Regional Administrator. No appeals will be accepted after September 1, 2006. An at-sea processing exemption would be issued if the permit and/or vessel owner demonstrates that his vessel has met the exemption qualification requirements. Unlike the initial limited entry permitting process, there are no hardship allowances for appealing denials and there will be no industry appeal board to review appeals of exemption denials. A complete list of the vessels exempted from the at-sea processing prohibition would be published in the **Federal Register** in the fall of 2006. This exemption would apply only to the vessel while it is registered for use with a sablefish-endorsed limited entry permit. The exemption would not be associated with any of the permits registered for use with the vessel and would not be transferable to any other vessel, including other vessels belonging to that same permit and/or vessel owner. Further, the exemption would expire if the vessel itself is sold or otherwise transferred to a new owner.

#### Mid-season Transfers

With the longer season, there are more opportunities for permit owners to transfer their permits mid-season. Permit transfers will still be constrained by limited entry program regulations at 50 CFR 660.335(e) and (f), which allow a permit to be transferred between vessels only once per calendar year and which make all permit transfers effective on the first day of a major cumulative limit period. Major cumulative limit periods begin on January 1, March 1, May 1, July 1, September 1 and November 1. While permits may only be transferred between vessels once per calendar year, changes in the permit owner or holder may occur at any time during the calendar year and as often as necessary. However, regardless of whether there is a change in the vessel registered to the permit and the permit owner/holder or just a change in the permit owner/holder, any of these actions would require a certification from the permit owner of the amount of sablefish landings to date. If a permit owner wishes to transfer a sablefish-endorsed permit mid-season, he/she will have to certify the cumulative amount of sablefish taken to date with that permit on a NMFS permit transfer form. In addition, the individual either leasing or buying the permit (the transferee) must acknowledge the cumulative amount of sablefish landed to date by signing the transfer form and maintaining the

permit onboard the vessel. Under already existing regulations at 660.303(c), the transferee would also be required to retain onboard any fish tickets associated with landings made against that transferred permit, including any landings made previously on the permit during the cumulative limit period (i.e., the primary sablefish season). This mid-season certification is required for enforcement purposes as it is a means to associate specific amounts of landings to date with an aggregate amount reported on fish tickets for a particular permit owner.

In addition to the certification of sablefish landings to date, a space will be provided on the landings certification portion of the permit transfer form that requests the sale or lease price of the permit. Providing this sale or lease price to NMFS is optional. This information is being requested so that NMFS may build a database on permit sale prices. This database would be useful in analyzing economic trends and the value of the sablefish fishery.

If during a post-season audit of landings associated with a permit, the landings exceed the amount available to be landed on the permit, enforcement measures may be taken against any party that had ownership interest in the permit during the calendar year. The vessel owner or operator may also be held liable. It is a violation of both state and Federal law to give false or incomplete information on fish tickets.

At the April 2002 Council meeting in Portland, OR, the Council and NMFS requested that the States of Washington, Oregon, and California modify their fish tickets to require a space for recording the permit number under which a landing is made. The states agreed to consider modifying their fish tickets, but requested time to consider the implications of such a modification and could not guarantee that action would be taken in time for implementation of the second set of the permit stacking regulations. Currently, only the State of California has added a line for permit information on their state fish tickets. Until a new fish ticket design is available, states should require that permit numbers be written somewhere on the fish ticket, as appropriate, and that the permit number be added into the PacFIN database. If Washington and Oregon do not require that permit numbers be written on the fish tickets and entered into the PacFIN database, NMFS may not allow mid-season transfers due to this provision being unenforceable.



### Defining the Term "Base Permit"

Under Amendment 14, each vessel participating in the primary sablefish fishery must be registered for use with at least one permit with a length endorsement appropriate to that vessel. Any additional permits need not match the vessel's length (50 CFR 660.334(c)). At Section 14.2.4, the FMP describes a base permit in a permit stacking program as the initial permit needed to participate in the limited entry fishery, and subject to all of the requirements for limited entry permit ownership qualifications, and permit gear and length endorsements. The FMP further allows that any requirements and additional privileges for permits stacked on to base permits may be authorized in a Federal rulemaking. Amendment 14 and its implementing regulations describe the requirements and privileges associated with stacking sablefish-endorsed limited entry permits.

This proposed rule would clarify that the permit registered for use with a vessel that is appropriate to that vessel's length is considered the "base" permit. 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 why. If the permit requested to be changed to the base permit matches the length of the vessel, NMFS SFD will reissue the permit with the new base permit.

At least one sablefish-endorsed permit must match the length of the vessel that will be fishing against the permit's landing limits, as required by current regulations at 50 CFR 660.334(c). Outside of the primary season, the vessel would operate under the per vessel cumulative limit restrictions appropriate to the gear of the base permit. Defining this term would not change the effect of limited entry permit regulations, but would provide further clarity in the regulations for both NMFS and for the public.

### Hail-in Requirement - Initial Council Recommendation not Proposed by NMFS

In adopting Amendment 14, the Council also recommended several regulatory measures to implement the permit stacking program. One of those recommendations was to require fishers to provide 6 hours advance notice to NMFS Enforcement when making a

sablefish landing in the primary sablefish season. Fishers were to provide landings times, hail weights, and landings locations as part of the hail-in procedure. This hail-in requirement was based on a similar requirement in place for the sablefish/halibut fisheries off Alaska. For the Alaska fisheries, the hail-in requirement was intended to prevent quota landings violations by giving enforcement officers an opportunity to meet the incoming vessel to inspect its catch.

NMFS has subsequently determined that this hail-in requirement would be unnecessarily burdensome for fishers and less useful in enforcing West Coast fisheries regulations than it may be in Alaska waters. Over 1,000 vessels participate in the sablefish/halibut IFQ fisheries off Alaska, each landing a vessel-specific amount of fish based on that vessel's particular quota share amount with many landings occurring in remote locations. In the West Coast primary sablefish fishery, there are only 164 sablefish-endorsed permits, which means that no more than 164 vessels could participate in the fishery. Additionally, each permit is assigned to one of 3 tiers, which means that there is a limited number of possible landings amounts available to the vessels participating in the primary fishery. This relatively simple cumulative limit system and the small number of vessels involved make a hail-in requirement unnecessary. NMFS does not now have hail-in requirements for any other West Coast groundfish species or fishery and does not believe that primary sablefish season cumulative limit management differs significantly enough from the rest of the groundfish fishery's cumulative limit management to warrant this additional enforcement and reporting burden.

NMFS consulted with the Council on this issue at the Council's October 29 through November 2, 2001, meeting in Millbrae, CA. The Council, its Enforcement Consultants and its Groundfish Advisory Subpanel concurred with the NMFS decision to not propose the hail-in requirement for implementation in the West Coast sablefish fishery.

### Owner-in-Board Requirement - Future Implementation

The Council is considering another qualifier to the owner-on-board exemptions for grandfathered individuals in partnerships or corporations based on the Groundfish Advisory Panel's recommendation. As previously mentioned, at the Council's April 2002 meeting, NMFS returned to the Council to seek clarification on the

Council's intent with the owner-on-board requirement, including duration of owner-on-board exemptions, time allotted to settle the estate of deceased owners, loss of exemption, and joint ownership of permits. While clarifying these issues, the Council stated that it also wished to consider allowing a person who had 30 percent or greater ownership interest in a partnership or corporation that was a first generation owner to be exempt from the owner-on-board provision if he/she wishes to own a permit under his/her own name, even if he/she did not own a permit under his/her own name as of November 1, 2000. The EA for the permit stacking program, dated October 2000, did not analyze the effects of allowing exemptions from the owner-on-board requirement for those individuals who had only 30 percent or greater ownership interest in a permit. Thus, further analysis and Council discussion is required before NMFS could consider this provision for implementation.

NMFS is also considering implementing a phone-in declaration system to aid in enforcement of the owner-on-board requirement, if having the permit numbers on the fish tickets is not sufficient. The declaration system would require all sablefish endorsed permit owners, including those exempt from the owner-on-board requirement, to call into a phone-in system and declare which permit(s) they will be fishing. Fishers would not need to call back into the system until they change the sablefish permit(s) they are currently fishing. For any permits reported on the phone-in declaration system, if not exempt from the owner-on-board requirement, the permit owner(s) would be expected to be onboard the vessel while fishing for sablefish. In addition to having permit numbers on state fish tickets, this would aid enforcement to determine, in a more timely manner, if the appropriate person was onboard.

### Cap on Number of Permits Held - Future Implementation

Under the Council's initial regulatory recommendations for implementing Amendment 14, no more than three sablefish-endorsed permits may be owned by an individual person, partnership or corporation, unless that individual person, partnership or corporation held more than 3 permits as of November 1, 2000. In June 2001, the Council clarified this recommendation, saying that it had intended to restrict each individual person, partnership or corporation to holding (owning or leasing) no more than 3 permits. The Council further clarified that the grandfathered exception to the three



permits restriction allowed only those individuals, partnerships or corporations that had owned more than 3 permits as of November 1, 2000, to continue to own those particular permits without acquiring (through owning or leasing) additional permits. This restriction was implemented through a final rule at 66 FR 41152, August 7, 2001.

In 2002, the Council and NMFS received a request from a limited entry permit owner to revisit the limit on the number of permits an entity may own or hold. This permit owner wished to hold (lease) additional permits beyond those he already owned. During the Council's April 2002 meeting, the Council's Groundfish Advisory Subpanel (GAP) discussed the issue and voted to retain the current regulations, which limits the number of permits that can be owned or held to no more than three permits, unless a person, partnership or corporation owned more than three permits as of November 1, 2000. An individual person, or partnerships or corporations that owned more than three permits as of November 1, 2000, are limited to the number of permits owned as of that date. Of the GAP members present, eight favored the current regulations (status quo), four favored recommending a regulatory change and four abstained. After the GAP meeting, this issue was brought before the Council. The Council requested that the GAP look into alternatives that would revise the accumulation cap on the total permits an individual person, partnership or corporation could hold through leasing and report back to the Council at a later meeting. Due to the busy agenda of the GAP and the Council, this issue has not yet been revisited and would require further analysis before it could be implemented.

#### **Permit Stacking Program Fee - Future Implementation**

NMFS is required under Section 304(d)(2) of the Magnuson-Stevens Act to collect fees from participants in an IFQ program to recover the actual costs directly related to the management and enforcement of the program. These fees shall not exceed 3 percent of the ex-vessel value of sablefish harvested under this IFQ program, to be collected as landings fees.

NMFS implemented a fee system for its sablefish/halibut IFQ fishery in Alaska on March 20, 2000 (65 FR 14919) after a lengthy consultation with the fishing industry and in a rulemaking specific just to fee implementation. NMFS would like an opportunity to assess the Alaska fee program and the

analyses associated with its implementation before proposing a fee system for West Coast sablefish-endorsement limited entry permit holders.

NMFS has not yet analyzed the cost of managing and enforcing the sablefish endorsement program and will be better able to predict this cost once all of the other provisions of Amendment 14 are implemented. NMFS will issue a separate proposed rule to implement a fee system after assessing the applicability of the Alaska fee system to West Coast fisheries, estimating the NMFS cost of managing and enforcing the sablefish endorsement program, and consulting on the fee system with the Council and West Coast industry.

#### **Classification**

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

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

As required by section 603 of the Regulatory Flexibility Act (RFA), NMFS prepared a supplement to the IRFA originally prepared by the Council as part of the EA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of this analysis is available from the NMFS (see **ADDRESSES**). A summary of the analysis follows.

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

NMFS and the SBA have already considered whether Amendment 14 would significantly affect the small entities involved in the limited entry, fixed gear sablefish fishery. The agencies concluded that while Amendment 14 would have significant effects on the limited entry, fixed gear sablefish fleet, those effects would be positive improvements in the safety of the fishing season, and in business planning flexibility. These conclusions were described in the final rule to

implement Amendment 14 for the 2001 fishing season (August 7, 2001, 66 FR 41152) and in the Final Regulatory Flexibility Analysis prepared for that rule.

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

The regulatory changes with this proposed rule will require permit owners and permit holders to document their ownership interests in sablefish-endorsement limited entry permits and is expected to have no effect on permit owners and permit holders beyond the time required to complete that documentation. The owner-on-board requirement will not affect the fishing behavior of persons who owned sablefish-endorsement permits before November 1, 2000, and will only affect those who consider purchasing permits after that time in that persons who do not wish to participate in fishing activities aboard a vessel may not wish to purchase sablefish-endorsement permits. Prohibiting vessels from processing sablefish at sea, if they do not meet minimum frozen sablefish historic landing requirements, is expected to simply maintain current sablefish landing and processing practices for both fishers and processors, therefore ensuring shore-based processors will continue to receive business from sablefish harvesters. Certification of current sablefish landings on a permit when conducting a mid-season permit transfer to another person is not expected to have any effect on permit owners or holders beyond the time required to complete the documentation. Defining the term "base permit" consistent with the FMP is not expected to have any effect on any participant in the groundfish fishery because it is only an administrative change. This rule is also not expected to have any effect on the 66 limited entry, fixed gear permit holders without sablefish endorsements because this program only applies to sablefish fishery participants with sablefish

endorsements (i.e., primary sablefish fishery participants). No Federal rules duplicate or conflict with these permit stacking regulations.

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

The actions considered in this document are not expected to have significant impacts on small entities. Public comment is invited on

adjustments that would reduce the impacts on small entities while achieving the regulatory objectives and on whether the analysis adequately takes into account impacts on small entities.

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

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

Council and implemented by NMFS was the permit stacking regime alternative with only certain options within each provisions being adopted as preferred.

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

This proposed rule contains a collection-of-information requirement subject to the PRA. This collection-of-information requirement has been submitted to OMB for approval. Proposed regulations further implementing provisions of Amendment 14 will require information collections to determine ownership interests of corporations/partnerships that own or hold sablefish permits, to determine unlisted spouses wishing to be listed as co-owner of sablefish permits as of a prior date, to certify mid-season transfers and to determine eligibility of sablefish freezer longliner vessels to obtain an exemption from the ban on at-sea processing. A summary of the information requirements and burden estimates follows.

To determine ownership interests, SFD would send an ownership interest form to the limited entry sablefish-endorsed permits that are owned or held by a corporation or partnership. The business entity would be requested to provide a list of all individuals who have an ownership interest in the corporation or partnership. The ownership interest form would document all individuals with an ownership interest in the partnership or corporation that owned a permit as of the control date, November 1, 2000, and would request a list of all individuals with an ownership interest in the partnership or corporation that owned or held a permit as of the current date. An authorized individual representing

the corporation/partnership would certify (by signing/dating the form) that no additional individual with ownership interest had been added since the control date. The applicant would be required to provide a corporate resolution or other authorizing document that authorizes the person signing the form to do so on behalf of the business entity. NMFS may require a copy of the United States Coast Guard Abstract of Title as proof of ownership for permit holders and/or owners and may require articles of incorporation or other documentation deemed necessary for proof of corporate or partnership ownership. SFD would compare the ownership interest reported on the form from the two dates to determine if an additional individual(s) with ownership interest had been added to the business entity. If so, the business entity would lose its exempted status and be required to divest the permit to an individual owner or other eligible entity. Also, SFD staff would establish a permit count for every individual who owns or holds a sablefish endorsed permit as an individual or as part of a business entity to ensure limits on the number of permits that can be owned or held are not exceeded.

After this initial mailing, future forms would be included in the annual permit renewal packages for those business entities that continue to own or hold a sablefish endorsed permit or would be required whenever a change in permit owner, permit holder, or vessel registration is requested. The estimated burden for this collection is 70 respondents at 0.5 hours each, or 35 hours total. The U.S. Census Bureau's Nonemployer Statistics, 2001, is the most recent data available for determining burden costs for fishermen. Using an estimate from the U.S. Census Bureau's Nonemployer Statistics, 2001, as a proxy for annual income from sablefish fishing of \$35,416 and breaking that into an hourly wage of \$17.02, the burden for this collection would cost approximately \$8.51 per respondent for the respondent's time, or \$595.70 total.

For the provision to add a not-listed spouse as permit co-owner, SFD would mail a cover letter and form to those permit owners who list one person as owner and where the owner has continued to own a sablefish endorsed permit since November 1, 2000. SFD would afford the opportunity to add a spouse as a co-owner on a voluntary, one-time only basis. Members of partnerships and corporations who have an interest in a permit owned since November 1, 2000, would not be

allowed to add their spouses as a co-owner of the permit. The current permit owner would be required to provide a copy of the marriage certificate. SFD would allow the addition of a spouse who was married according to state law to an exempted permit owner as of November 1, 2000. After review and approval of the application, SFD would reissue the permit in the names of both spouses. SFD would use this information to update the list of permit owners and the permit counts associated with these individuals. Additionally, SFD would revise the list of permit owners entitled to grandfather privileges (i.e.; exempt from owner on board requirements). Spouses listed as co-owner would be subject to the limits on the number of permits that can be owned or held. The estimated burden for this collection is 12 respondents at 0.33 hours each, or 4 hours total. Using an estimate from the U.S. Census Bureau's Nonemployer Statistics, 2001, as a proxy for annual income from sablefish fishing of \$35,416 and breaking that into an hourly wage of \$17.02, the burden for this collection would cost approximately \$5.62 per respondent for the respondent's time, or \$68.08 total.

For mid-season transfers of sablefish-endorsed permits, a new section would be added to the existing permit transfer form, also known as "Change of Vessel Registration, Permit Owner/Holder Application" (i.e.; transfer form). All permit owners are currently required to use this form to request these changes to their permit. The new section to the existing transfer form would require the permit owner to provide the cumulative amount of pounds of sablefish harvested on the permit during the current primary sablefish season. The permit owner would certify that the cumulative landing amount is correct by signing and dating the form. Similarly, the individual either buying the permit or seeking to hold the permit (if different from owner) will be required to sign an acknowledgment of the cumulative amount of sablefish landed as given in this section. Further, SFD would request on a voluntary basis the permit sale price or lease price and term of the lease. The estimated burden for this collection is 25 respondents at 0.5 hours each, or 12.5 hours total. Using an estimate from the U.S. Census Bureau's Nonemployer Statistics, 2001, as a proxy for annual income from sablefish fishing of \$35,416 and breaking that into an hourly wage of \$17.02, the burden for this collection would cost approximately \$8.51 per respondent for the respondent's time, or \$212.75 total.

For the sablefish at-sea processing exemption, SFD would prepare a one-time application for the purpose of determining which vessels are qualified for an exemption from the ban on at-sea processing. SFD would mail applications to all sablefish endorsed permit owners. Applicants would be required to provide evidence to support the number of pounds of sablefish processed at-sea as indicated on the form. Best evidence supporting the landings of processed sablefish would be state fish tickets for sablefish accompanied by sales receipts for frozen sablefish. A list of vessels that qualified for the exemption from the ban on processing and freezing sablefish at sea would be published in the **Federal Register**. The exemption would not be transferrable and would expire upon transfer of the vessel to a new owner. The estimated burden for this collection is 2 respondents at 30 minutes each, or 1 hour total. Using an estimate from the U.S. Census Bureau's Nonemployer Statistics, 2001, as a proxy for annual income from sablefish fishing of \$35,416 and breaking that into an hourly wage of \$17.02, the burden for this collection would cost approximately \$8.51 per respondent for the respondent's time, or \$17.02 total.

Operations and maintenance costs (copying, fax, mailing, notary) to the respondents are estimated to be less than \$250 for all respondents on an annual basis. No fees will be charged to the respondents for any of the above information collections. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to David Rostker, OMB, by e-mail at [David\\_Rostker@omb.gov](mailto:David_Rostker@omb.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.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including the practical utility of the information collection; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

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

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: October 4, 2005.

**William T. Hogarth,**

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

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

**PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC**

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

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

2. In § 660.302, new definitions for “Base permit,” “Change in partnership or corporation,” “Corporation,” “Partnership,” “Spouse,” and “Stacking” are added and the definition of “Permit holder” is revised in alphabetical order to read as follows:

**§ 660.302 Definitions.**

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

**§ 660.303 Reporting and Recordkeeping.**

\* \* \* \* \*

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

\* \* \* \* \*

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

**§ 660.306 Prohibitions.**

\* \* \* \* \*

(b) \* \* \*

(3) Fail to retain on board a vessel from which sablefish caught in the primary sablefish season is landed, and provide to an authorized officer upon request, copies of any and all reports of sablefish landings against the sablefish endorsed permit’s tier limit, or receipts containing all data, and made in the exact manner required by the applicable state law throughout the primary sablefish season during which such landings occurred and for 15 days thereafter.

\* \* \* \* \*

(e) *Fixed gear sablefish fisheries*. (1) Take, retain, possess or land sablefish under the cumulative limits provided for the primary limited entry, fixed gear sablefish season, described in § 660.372, 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 primary sablefish season described at § 660.372(b) unless the owner of the limited entry permit registered for use with that vessel and authorizing the vessel to participate in the primary sablefish season is on board that vessel. Exceptions to this prohibition are provided at § 660.372(b)(4)(i) and (ii).

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

\* \* \* \* \*

(g) \* \* \*

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

\* \* \* \* \*

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

**§ 660.334 Limited entry permits endorsements.**

\* \* \* \* \*

(c) \* \* \*

(3) *Size endorsement requirements for sablefish-endorsed permits*.

Notwithstanding paragraphs (c)(1) and (2) of this section, when multiple permits are “stacked” on a vessel, as described in § 660.335(c), at least one of the permits must meet the size requirements of those sections. The permit that meets the size requirements of those sections is considered the vessel’s “base” permit, as defined in § 660.302. If more than one permit registered for use with the vessel has an appropriate length endorsement for that vessel, NMFS SFD will designate a base permit by selecting the permit that has been registered to the vessel for the longest time. If the permit owner objects to NMFS’s selection of the base permit, the permit owner may send a letter to NMFS SFD requesting the change and the reasons for the request. If the permit requested to be changed to the base

permit is appropriate for the length of the vessel as provided for in paragraph (c)(2)(i) of this section, NMFS SFD will reissue the permit with the new base permit. Any additional permits that are stacked for use with a vessel participating in the limited entry primary fixed gear sablefish fishery may be registered for use with a vessel even if the vessel is more than 5 feet (1.5 meters) longer or shorter than the size endorsed on the permit.

\* \* \* \* \*

(d) \* \* \*

(4) \* \* \*

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

(iii) A partnership or corporation will lose the exemptions provided in paragraphs ((d)(4) (i) and (ii) of this section on the effective date of any change in the corporation or partnership from that which existed on November 1, 2000. A "change" in the partnership or corporation is defined at § 660.302. A change in the partnership or corporation must be reported to SFD within 15 days of the addition of a new shareholder or partner.

(iv) During 2006 when a permit's ownership interest is requested for the first time, NMFS anticipates sending a form to legally recognized corporations and partnerships (i.e., permit owners or holders that do not include only individual's names) that currently own or hold sablefish-endorsed permits that

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

permits owned and/or held by that partnership or corporation in "unidentified" status with respect to vessel registration until the partnership or corporation is able to transfer those permits to persons authorized under this section to own sablefish-endorsed limited entry permits.

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

November 1, 2000, postmarked after the July 1, 2006, deadline.

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

(e) *Sablefish at-sea processing prohibition and exemption—*

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

(2) *Qualifying criteria.* A sablefish at-sea processing exemption will be issued to any vessel registered for use with a sablefish-endorsed limited entry permit that meets the sablefish at-sea processing exemption qualifying criteria and for which the owner submits a timely application. The qualifying criteria for a sablefish at-sea processing exemption are: at least 2,000 lb (907.2 mt), round weight, of frozen sablefish landed by the applicant vessel during any one calendar year in either 1998 or 1999, or between January 1 and November 1, 2000. The best evidence of

a vessel having met these qualifying criteria will be receipts from frozen product buyers or exporters, accompanied by the fish tickets or landings receipts appropriate to the frozen product. Documentation showing investment in freezer equipment without also showing evidence of how poundage qualifications have been met is not sufficient evidence to qualify a vessel for a sablefish at-sea processing exemption. All landings of sablefish must have occurred during the regular and/or mop-up seasons and must have been harvested in waters managed under this part. Sablefish taken in tribal set aside fisheries or taken outside of the fishery management area, as defined at § 660.302, does not meet the qualifying criteria.

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

(i) The SFD will mail sablefish at-sea processing exemption applications to all limited entry permit owners with sablefish endorsements and/or fixed gear vessel owners and will make those applications available online at <http://www.nwr.noaa.gov/1sustfsh/permits/prmits01.htm>. Permit and/or vessel owners will have at least 60 days to submit applications. A permit and/or vessel owner who believes that their vessel may qualify for the sablefish at-sea processing exemption will have until July 1, 2006, to submit evidence showing how their vessel has met the qualifying criteria described in this section at paragraph (e)(2) of this section. Paragraph (e)(4) of this section sets out the relevant evidentiary standards and burden of proof. SFD will not accept applications for the sablefish at-sea processing exemption postmarked after July 1, 2006.

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

(iii) If a permit and/or vessel owner chooses to file an appeal of the determination under paragraph (e)(3)(ii) of this section, the appeal must be filed with the Regional Administrator within 30 days of the issuance of the letter of determination. The appeal must be in

writing and must allege facts or circumstances, and include credible evidence demonstrating why the vessel qualifies for a sablefish at-sea processing exemption. The appeal of a denial of an application for a sablefish at-sea processing exemption will not be referred to the Council for a recommendation, nor will any appeals be accepted by SFD after September 1, 2006.

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

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

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

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

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

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

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

\* \* \* \* \*

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

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

(a) \* \* \*

(4) Limited entry permits with sablefish endorsements, as described at

§ 660.334(d), will not be renewed until SFD has received complete documentation of permit ownership as required under § 660.334(d)(4)(iv).

\* \* \* \* \*

(c) *Stacking limited entry permits.* "Stacking" limited entry permits, as defined at § 660.302, refers to the practice of registering more than one permit for use with a single vessel. Only limited entry permits with sablefish endorsements may be stacked. Up to 3 limited entry permits with sablefish endorsements may be registered for use with a single vessel during the primary sablefish season described at § 660.372. Privileges, responsibilities, and restrictions associated with stacking permits to participate in the primary sablefish fishery are described at § 660.372 and at § 660.334(d).

(d) \* \* \*

(1) *General.* The permit owner may convey the limited entry permit to a different person. The new permit owner will not be authorized to use the permit until the change in permit ownership has been registered with and approved by the SFD. The SFD will not approve a change in permit ownership for limited entry permits with sablefish endorsements that does not meet the ownership requirements for those permits described at § 660.334 (d)(4). Change in permit owner and/or permit holder applications must be submitted to SFD with the appropriate documentation described at § 660.335(g).

\* \* \* \* \*

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

primary sablefish season during which a landing occurred and for 15 days thereafter.

\* \* \* \* \*

(e) \* \* \*

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

\* \* \* \* \*

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

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

a landing occurred and for 15 days thereafter.

\* \* \* \* \*

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

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

\* \* \* \* \*

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

**§ 660.372 Fixed gear sablefish fishery management.**

\* \* \* \* \*

(b) \* \* \*

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

\* \* \* \* \*

(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 § 660.334(d), must be aboard the vessel registered for use with that permit at any time that the vessel has sablefish on board the vessel that count toward that permit's cumulative sablefish landing limit. This person must carry government issued photo identification while aboard the vessel. A permit owner is not obligated to be on board the vessel registered for use with the sablefish-endorsed limited entry permit during the primary sablefish season if:

(i) The person, partnership or corporation had ownership interest in a limited entry permit with a sablefish endorsement prior to November 1, 2000. A person who has ownership interest in a partnership or corporation that owned a sablefish-endorsed permit as of November 1, 2000, but who did not individually own a sablefish-endorsed limited entry permit as of November 1, 2000, is not exempt from the owner-on-board requirement when he/she leaves the partnership or corporation and purchases another permit individually. A person, partnership, or corporation that is exempt from the owner-on-board requirement may sell all of their permits, buy another sablefish-endorsed



permit within up to a year from the date the last permit was approved for transfer, and retain their exemption from the owner-on-board requirements. Additionally, a person, partnership, or corporation that qualified for the owner-on-board exemption, but later divested their interest in a permit or permits, may retain rights to an owner-on-board exemption as long as that person, partnership, or corporation purchases another permit within one year of the date the final rule for these owner-on-board requirements is effective. A person, partnership or corporation could only purchase a permit if it has not added or changed individuals since November 1, 2000, excluding individuals that have left the partnership or corporation, or that have died.

(ii) A person who owns or who has ownership interest in a sablefish-endorsed limited entry permit, in cases of death, illness, or injury of the permit owner, that prevents the permit owner from being onboard a fishing vessel. The person requesting the exemption must send a letter to NMFS requesting an exemption from the owner-on-board requirements, with appropriate evidence as described at § 660.372(b)(4)(ii)(A) or (B). All

emergency exemptions for death, injury, or illness will be evaluated by NMFS and a decision will be made in writing to the permit owner within 60 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 conveyed the deceased permit owner's permit to a beneficiary or up to three years after the date of death as proven by a death certificate, whichever is earlier. An exemption from the owner-on-board requirements will be conveyed in a letter from NMFS to the estate of the permit owner and is required to be on the vessel during fishing operations.

(B) Evidence of illness or injury that prevents the permit owner from

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

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