

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 06/14/2011

Department of Commerce
National Oceanic and Atmospheric Administration
FOR CERTIFYING OFFICIAL: Simon Szykman
FOR CLEARANCE OFFICER: Diana Hynek

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 12/13/2010

ACTION REQUESTED: Extension without change of a currently approved collection
TYPE OF REVIEW REQUESTED: Regular
ICR REFERENCE NUMBER: 201011-0648-007
AGENCY ICR TRACKING NUMBER:
TITLE: An Observer Program for At-Sea Processing Vessels in the Pacific Coast Groundfish Fishery
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change
OMB CONTROL NUMBER: 0648-0500
The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 06/30/2014 DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	230	50	920
New	845	135	0
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	615	85	-426
Change due to Agency Adjustment	0	0	-494
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official: Kevin F. Neyland
Deputy Administrator,
Office Of Information And Regulatory Affairs

List of ICs

IC Title	Form No.	Form Name	CFR Citation
Observer provider contact information/change in ownership	NA	West Coast Groundfish Observer Contact Information	50 CFR 660.116
Observer provider contracts with observers			50 CFR 660.116
Training/briefing/debriefing registration	NA	West Coast Observer Groundfish Training and Debriefing Registration Form	50 CFR 660.116
Projected Observer Assignments			50 CFR 660.116
Weekly deployment logistics report	NA	West Coast Groundfish Observer Program Weekly Status Report	50 CFR 660.16
Reports on observer harassment, safety or performance concerns			50 CFR 660.116

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

<p>1. Agency/Subagency originating request</p>	<p>2. OMB control number b. <input type="checkbox"/> None a. _____ - _____</p>
<p>3. Type of information collection (<i>check one</i>)</p> <p>a. <input type="checkbox"/> New Collection</p> <p>b. <input type="checkbox"/> Revision of a currently approved collection</p> <p>c. <input type="checkbox"/> Extension of a currently approved collection</p> <p>d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired</p> <p>e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired</p> <p>f. <input type="checkbox"/> Existing collection in use without an OMB control number</p> <p>For b-f, note Item A2 of Supporting Statement instructions</p>	<p>4. Type of review requested (<i>check one</i>)</p> <p>a. <input type="checkbox"/> Regular submission</p> <p>b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____</p> <p>c. <input type="checkbox"/> Delegated</p>
	<p>5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
	<p>6. Requested expiration date</p> <p>a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____</p>
<p>7. Title</p>	
<p>8. Agency form number(s) (<i>if applicable</i>)</p>	
<p>9. Keywords</p>	
<p>10. Abstract</p>	
<p>11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>)</p> <p>a. <input type="checkbox"/> Individuals or households d. <input type="checkbox"/> Farms</p> <p>b. <input type="checkbox"/> Business or other for-profit e. <input type="checkbox"/> Federal Government</p> <p>c. <input type="checkbox"/> Not-for-profit institutions f. <input type="checkbox"/> State, Local or Tribal Government</p>	<p>12. Obligation to respond (<i>check one</i>)</p> <p>a. <input type="checkbox"/> Voluntary</p> <p>b. <input type="checkbox"/> Required to obtain or retain benefits</p> <p>c. <input type="checkbox"/> Mandatory</p>
<p>13. Annual recordkeeping and reporting burden</p> <p>a. Number of respondents _____</p> <p>b. Total annual responses _____</p> <p> 1. Percentage of these responses collected electronically _____ %</p> <p>c. Total annual hours requested _____</p> <p>d. Current OMB inventory _____</p> <p>e. Difference _____</p> <p>f. Explanation of difference</p> <p> 1. Program change _____</p> <p> 2. Adjustment _____</p>	<p>14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>)</p> <p>a. Total annualized capital/startup costs _____</p> <p>b. Total annual costs (O&M) _____</p> <p>c. Total annualized cost requested _____</p> <p>d. Current OMB inventory _____</p> <p>e. Difference _____</p> <p>f. Explanation of difference</p> <p> 1. Program change _____</p> <p> 2. Adjustment _____</p>
<p>15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>)</p> <p>a. <input type="checkbox"/> Application for benefits e. <input type="checkbox"/> Program planning or management</p> <p>b. <input type="checkbox"/> Program evaluation f. <input type="checkbox"/> Research</p> <p>c. <input type="checkbox"/> General purpose statistics g. <input type="checkbox"/> Regulatory or compliance</p> <p>d. <input type="checkbox"/> Audit</p>	<p>16. Frequency of recordkeeping or reporting (<i>check all that apply</i>)</p> <p>a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure</p> <p>c. <input type="checkbox"/> Reporting</p> <p> 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly</p> <p> 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually</p> <p> 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____</p>
<p>17. Statistical methods</p> <p>Does this information collection employ statistical methods</p> <p style="text-align: center;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>18. Agency Contact (person who can best answer questions regarding the content of this submission)</p> <p>Name: _____</p> <p>Phone: _____</p>

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING STATEMENT
AN OBSERVER PROGRAM FOR VESSELS IN THE
PACIFIC COAST GROUND FISH FISHERY
OMB CONTROL NO. 0648-0500**

INTRODUCTION

This request is an extension of this information collection.

The United States (U.S.) groundfish fisheries off the Washington, Oregon, and California (WOC) coasts are managed pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) as amended in 2006, and the Pacific Coast Groundfish Fishery Management Plan (FMP).

The [Magnuson-Stevens Act](#) at 16 U.S.C. 1853(b)(8) provides that an FMP may require that one or more observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the FMP, for the purpose of collecting data necessary for the conservation and management of the fishery. The Pacific Coast Groundfish FMP provides that all operating in the groundfish fishery may be required to accommodate on-board observers for purposes of collecting scientific data. The Pacific Coast Groundfish fleet is composed of both shorebased (deliver catch to shoreside processors) and off-shore components (process at-sea).

The shore-based West Coast groundfish fishery is very diverse. Fishers use trawl and a variety of hook and line gear including longline, pots, stick/pipe/cable gear, troll, and rod and reel to target deep water and nearshore groundfish species. Some of the commonly targeted species include Dover sole, Shortspine and Longspine thornyheads, sablefish, Pacific hake, rockfish species, and other flatfish species. The vessels range in size from less than 18 feet to over 90 feet in length.

The range of vessel sizes results in differing fishing strategies. Trawlers often fish for three to five days per trip and fish in a variety of depths, from nearshore (50 fathoms or less) to deep water (200 fathoms or more). Trawlers catch between 1000lbs and 10,000lbs on a single haul, and average six hauls per trip. In comparison, the small hook and line vessels take single day trips on fair weather days only and fish primarily nearshore. These small hook and line vessels generally land less than 300lbs per day trip.

The West Coast at-sea Pacific hake fishery is a mid-water trawl fishery that is composed of large catcher-processor and mothership vessels. The catcher-processors harvest and process catch while the motherships rely on smaller catcher vessels to deliver unsorted catch for processing. These large processing vessels primarily operate in the Alaskan pollock (*Theragra chalcogramma*) fisheries, but move south to the WOC to fish for hake between pollock seasons. While they participate in the pollock fishery, they are subject to 50 CFR Part 679, which specifies requirements related to observer services for the North Pacific (Alaskan) Groundfish fisheries.

The regulations implementing observer programs for the groundfish and at-sea hake observer programs can be found at [50 CFR 660](#).

Observer Coverage

West Coast shore-based vessels have been required to carry one trained observer when selected for coverage since 2001 while the at-sea hake fleet has been voluntarily carrying at least one observer since 1991. The National Marine Fisheries Service (NMFS) trains the observers to provide data for estimating total landed catch and discards; monitoring the attainment of annual groundfish allocations; estimating catch rates of prohibited species; and assessing stock conditions. NMFS and other management and scientific bodies have come to depend on data from observers to provide information critical to conservation and management of the marine resources. In 2003, NMFS mandated observer for the at-sea hake fleet. The rule requires at-sea processing vessels greater than 125 ft. (38.1 m) in length to carry two NMFS-certified observers while participating in the groundfish fishery. Vessels less than 125 ft. (38.1 m) in length are required to carry one observer.

In 2011, NMFS mandated observer requirements for the groundfish trawl catch shares program in RIN 0648-AY68. For all fishery sectors, observers must be obtained through third-party observer provider companies operating under permits issued by the NMFS Alaska Region. The rule also specifies that certification and decertification requirements for observers be administered by the Northwest Region of NMFS in Seattle, Washington, which defines the responsibilities of observers and processing vessels.

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

Data collected by observers are used by NMFS to estimate total landed catch and discards, monitor the attainment of annual groundfish allocations, estimate catch rates of prohibited species, and as a component in stock assessments. These data are necessary to comply with the Magnuson-Stevens Act requirements to prevent overfishing. In addition, observer data is used to assess fishing-related mortality of protected and endangered species.

Information submitted by observer provider companies (transcripts, training, briefing and debriefing registration, notification of physical examination, projected observer assignments, observer weekly deployment/logistics reports, observer debriefing registration disclosure statement, and reports of observer harassment, observer safety concerns, or observer performance problems) is used to efficiently and effectively deploy well-qualified and trained fisheries observers.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

Information submitted by the observer providers will be used as follows:

Observer Provider Change In Ownership. The five observer providers will need to submit their company name, contact name, phone number, email address, physical address, and an emergency contact number that can be reached 24 hour/day to the observer program. This will facilitate communication between the providers and the program. In addition, if the providers

were to change ownership or any of the above information, they would need to resubmit that information.

Training/Briefing/Debriefing Registration. Prior to the beginning of a scheduled observer certification training session observer providers send the following information: date of requested training; a list of observer candidates that includes each candidate's full name (i.e., first, middle and last names), date of birth, gender, and length of contract (when appropriate); a copy of each candidate's academic transcripts and resume; and a statement signed by the observer candidate under penalty of perjury which discloses the candidate's criminal convictions. The requested information ensures that sufficient class space will be reserved for the candidates during the training session requested and that each potential, new observer meets the observer educational qualification standards. In addition, physical examinations are necessary because working aboard vessels or in processors is a dangerous occupation. An individual must be physically fit with no safety-endangering conditions. Notification of the physical examination allows NMFS to verify that all observers meet standards in the program.

Projected Observer Assignments. This information is used by the training or briefing instructor to adapt classroom instruction to meet the specific needs of the individual(s) in the training or briefing class. The instructor also uses it when giving "special project" assignments to students. This information must be submitted to the Observer Program Office prior to the completion of the training or briefing session and includes the following: the observer's name, vessel, port of embarkation or home port.

Observer Contracts. If requested, the observer provider must submit their contracts with observers or vessels to the observer program. We expect this to be an infrequent request and only necessary if a concern over observer treatment, bias, or other issues that affect observers or observer data arises.

Weekly Summary Report. An observer contractor must provide NMFS with a weekly deployment/logistics report during the period of time that an observer is deployed. Depending on the fishery the observer is collecting from, the deployment/logistics report may include: the observer's name, cruise number, current vessel (when applicable), home port and whether the observer is "in-service". This information is used for routine record keeping. Accurate and timely observer deployment information is important for fisheries management. Knowing where observers are at all times is also important should emergencies arise while an observer is deployed at sea.

Reports of Boarding Refusals, Observer Harassment, Observer Safety Concerns, or Observer Performance Problems. Review of these reports provides NMFS with an effective tool to monitor and enforce standards observer conduct and to identify problems on vessels that may compromise the observer's health and well-being. Reports on the following topics must be submitted to the Observer Program by the observer provider within 24 hours after the observer provider becomes aware of the problem: 1) observer harassment, 2) any prohibited action against observers concerns about vessel or processor safety, 3) any illness or injury that prevents the observer from completing his/her duties, 4) any information, allegations or reports regarding observer conflict of interest or breach of the observer standards of behavior.

The information collected, from observer providers (transcripts, training and debriefing registration, notification of physical examination, projected observer assignments, observer

weekly deployment/logistics reports, observer debriefing registration disclosure statement, and reports of observer harassment, observer safety concerns, or observer performance problems) and the information collected from observers (evidence and to argue in opposition to a suspension or decertification notice) will not be disseminated to the public or used to support publicly disseminated information.

As explained in the preceding paragraphs, the information gathered has utility. NMFS will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response to Question 10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Although the information collected is not expected to be disseminated directly to the public, results may be used in scientific, management, technical or general informational publications. Should NMFS decide to disseminate the information, it will be subject to the quality control measures and pre-dissemination review pursuant to [Section 515 of Public Law 106-554](#).

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

The periodic reports and information submitted by observer providers consist of extractions of the required data from their existing database systems into a report form that is then submitted by e-mail to NMFS.

4. Describe efforts to identify duplication.

Information collections provided voluntarily by observer providers are similar to collections required by regulation in the federal groundfish fishery off Alaska. The collection of information for observers in the Alaska fisheries has been approved under Office of Management and Budget (OMB) Control No. 0648-0318.

The at-sea hake observer program is administered by the Northwest fishery Science Center in cooperation with Alaska fishery Science Center's North Pacific Groundfish Observer Program. Because the observer providers that supply observers for the hake fishery are permitted to provide observers for the Alaska groundfish fishery, the information collections are provided in the same manner as is done for observers deployed in Alaska. If an individual observer has been deployed in the Alaska groundfish fishery prior to the hake fishery, information such as the notification of the observer's physical examination, and portions of the training/briefing registration materials are already available to NMFS and do not need to be resubmitted for the hake fishery.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

The application procedures and reporting requirements for observer providers do not have a significant impact on small entities.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

The information is required for the efficient operation of an observer program and must be submitted in the time frames requested. Collecting this information less frequently would jeopardize the goals and objectives of the observer program and the effective management of the west coast groundfish fishery. NMFS believes that data quality will be maintained by creating a regulatory structure for managing observer and observer provider performance.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

No special circumstances exist that would require information collection to be conducted in a manner inconsistent with OMB Guidelines except for the weekly reports which are needed more frequently for effective management of the program.

8. Provide information on the PRA Federal Register Notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

A Federal Register Notice published on August 23, 2010 (75 FR 51752). No comments were received.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

No payments or gifts to respondents are provided under this collection.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

Because the information collected is from commercial operations, under the Magnuson-Stevens Act (16 U.S.C. 1801 et seq.), all data submitted are treated in accordance with [NOAA Administrative Order 216-100, Protection of Confidential Fisheries Statistics](#). The information collected under this regulatory package is managed by NMFS on a computer network in accordance with relevant IT security policies and regulations such as the standards set out in [Appendix III, A Security of Automated Information Resources, to OMB Circular A-130](#); the [Computer Security Act](#); and the [Government Information Security Reform Act](#). These procedures have been implemented under the NMFS Operations Manual entitled, "Data Security Handbook for the Northwest-Alaska Region, National Marine Fisheries Service."

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

This collection of information does not include any sensitive information.

12. Provide an estimate in hours of the burden of the collection of information.

See Table 1 for details. Respondents total 5, responses total 845, and hours total 135. Total labor costs, estimated at \$30 per hour, are \$4,050.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in Question 12 above).

There are no reporting/recordkeeping costs.

Table 1. Burden and Labor Cost

Type Of Response	Respondents	Responses Per Respondent	Total Responses	Time Per Response	Total Hours Per Response	Total Labor Cost
Observer Provider Change in Ownership	5 observer providers	1	5	20 minutes	2	\$60
Training/Briefing/Debriefing Registration	5 observer providers	40	200	7 minutes	23	\$690
Projected Observer Assignments	5 observer providers	50	250	5 minutes	21	\$630
Observer Contracts	5 observer providers	10	50	5 minutes	4	\$120
Weekly deployment/logistics report	5 observer providers	52	260	15 minutes	65	\$1,950
Reports on boarding refusals, observer harassment, safety, or performance concerns	5 observer providers	16	80	15 minutes	20	\$600
TOTALS	5		845		135	\$4,050

14. Provide estimates of annualized cost to the Federal government.

The observer provider change in ownership information is estimated to take 10 minutes to process. The total annual burden estimate is expected to be one (1) hour.

The training, briefing and debriefing registration information, including the notice of physical examinations, is estimated to take about 20 minutes per response to process and enter into the NMFS database. With 200 responses per year this is estimated to be about 67 hours annually.

The projected observer assignments reports are expected to take 10 minutes per response to process, for a total annual burden of 42 hours.

The observer contracts information is expected to take 20 minutes per response for a total annual burden estimate of 17 hours.

The weekly deployment/logistics reports are expected to take about 15 minutes per response to process and enter into the NMFS database. The total annual burden is expected to be 65 hours.

The review of and response to reports of observer harassment, safety or performance concerns is estimated at 2 hour per report. With an estimate of 80 reports per year this is expected to be an annual burden of 160 hours.

The total annual burden on the government for review and processing information from observer providers is 285 hours. At \$24 per hour this would be an annual cost of \$6,840.

15. Explain the reasons for any program changes or adjustments.

Program Changes

On January 1, 2011, a portion of the west coast industry will transition to catch shares management. Under this new management structure, the model used to hire and pay for observers has changed. Historically, the Limited Entry trawl fishery was observed through a cooperative agreement with Pacific States Marine Fisheries Commission (PSMFC). Under this agreement, PSMFC wrote a Request for Proposal and observer providers bid on the proposal. Only one observer provider was selected to employ all observers for the program. Under trawl catch shares, up to five observer providers can employ observers. In addition, NMFS has handled logistics for the Limited Entry trawl observers but under trawl catch shares, the observer providers will be handling all observer logistics. Due to these changes, the observer program must obtain information from the multiple providers on who they're hiring (so we can register them for training), what the observers are doing (so we know which vessels are covered) and how to contact the providers. These additional reporting requirements from the observer providers to the NMFS will ensure effective program management.

In the 2007 supporting statement, the weekly deployment/logistics reports were required only for the At-Sea Hake fishery, which is seasonal and has a consistent number of vessels and observers. The burden estimate of 90 responses was computed by estimating the number of observers it would require for the entire year (30) and the estimated assignment length of each contract (three weeks). In 2011, these reports will also be required for the trawl catch shares fishery. We estimate that this adds 170 responses.

Adjustments:

The details of observer physicals and physical appointments do not need to be reported to NMFS. They had previously been included in error. Also, debriefing is now included in the registration and briefing IC. NOTE: removal of these three ICs registers as a program change, because there is not an option to label a removal as an adjustment.

Reporting/recordkeeping costs are removed, due to e-mailing of virtually all responses.

16. For collections whose results will be published, outline the plans for tabulation and publication.

No plans exist for publishing the information collected.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

Not Applicable.

18. Explain each exception to the certification statement.

Not Applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.

Directions for observer providers:

For employees acting in multiple roles or who go on inactive status, document each role separately.

First and Last Name: Write the observer or catch monitors first, middle initial, and last name.

Catch Shares #: Unique identification code given to each observer and catch monitor. The observer or catch monitor program will provide you with this number.

Start Date: MM/DD/YYYY in which the employee left on a trip, started working in a processor, or went inactive.

End Date: MM/DD/YYYY in which the employee returned from a trip, stopped working in a processor returned from inactive status.

Status: Document whether the person acted as an observer (by fishery), catch monitor, or was inactive.

Vessel/Processor Name: Document the name of the vessel or processor observed/monitored.

Vessel ID #: Document the USCG # or State Registration # of the vessel observed.

Example:

John T. Doe observed on the fishing vessel "Busy Bee", USCG # 629436, an IFQ trawl vessel, from 01/02/2011 to 01/05/2011 and then was a catch monitor on 01/06/2011 at the processing plant "We Buy Fish", then the form should be completed as follows:

First and Last Name	NW ID #	Start Date	End Date	Status	Vessel/Processor Name	Vessel ID #
John T. Doe	XXXXX	01/02/2011	01/05/2011	IFQ Trawl	Busy Bee	629436
John T. Doe	XXXXX	01/06/2011	01/06/2011	Catch Monitor	We Buy Fish	

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other suggestions for reducing this burden to Janell Majewski, NWFSC, 2725 Montlake Blvd East, Seattle, Washington 98112. Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subjected to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Directions for Observer Providers:

Observer Providers should complete the following fields:

1. **Observer Provider:** Select the name of your company.
2. **Training or Briefing:** Document whether the candidates will be attending a briefing or training. Please complete separate forms for trainings and briefings.
3. **Dates of Training/Briefing:** Select the training or briefing session.
4. **Candidates Full Name:** Document the first, middle initial, and last name of the candidate.
5. **Date of Birth:** Enter the candidates date of birth in MM/DD/YYYY.
6. **Gender:** Select the candidates gender.
7. **Length of Contract:** Select the appropriate length of contract. You can also enter your own value into this field. Be sure the value is in days.

If you have questions, contact Rebecca Hoch (206) 437-2415, Rebecca.Hoch@noaa.gov

Northwest Trawl Catch Shares

Observer and Catch Monitor Contact Information Form

Observer Provider Submission Date:

Full Name (F, MI, L)

NW ID # Home Port

Street Address

City

State: Zip Code

Cell Phone Number:

Home Phone Number:

Full Name (F, MI, L)

NW ID # Home Port

Street Address

City

State: Zip Code

Cell Phone Number:

Home Phone Number:

Full Name (F, MI, L)

NW ID # Home Port

Street Address

City

State: Zip Code

Cell Phone Number:

Home Phone Number:

Full Name (F, MI, L)

NW ID # Home Port

Street Address

City

State: Zip Code

Cell Phone Number:

Home Phone Number:

Full Name (F, MI, L)

NW ID # Home Port

Street Address

City

State: Zip Code

Cell Phone Number:

Home Phone Number:

Full Name (F, MI, L)

NW ID # Home Port

Street Address

City

State: Zip Code

Cell Phone Number:

Home Phone Number:

If you have questions, contact Rebecca Hoch (206) 437-2415, Rebecca.Hoch@noaa.gov

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other suggestions for reducing this burden to Janell majewski, NWFSC, 2725 Montlake Blvd, East, Seattle, Washington 98112. Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subjected to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****15 CFR Part 902****50 CFR Part 660**

[Docket No. 100212086-0354-04]

RIN 0648-AY68

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

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

ACTION: Final rule.

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

to make the total groundfish regulations more clear.

DATES: This rule is effective November 1, 2010.

ADDRESSES: Background information and documents, including the final environmental impacts statements for Amendment 20 and Amendment 21, are available at the Pacific Fishery Management Council's Web site at <http://www.pfcouncil.org/>. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is summarized in the Classification section of this final rule. Copies of the FRFA and the Small Entity Compliance Guide are available from William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070; or by phone at 206-526-6150.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070, and by e-mail to OIRA_Submission@omb.eop.gov, or fax to 202-395-7285.

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

SUPPLEMENTARY INFORMATION:**Background**

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

The trawl rationalization program is scheduled to be implemented on January 1, 2011. Due to the complexity of the program and the tight timeline for implementation, NMFS has issued, or is

in the process of issuing multiple rulemakings that would implement this program. The following actions are related to the trawl rationalization program:

- A final rule (75 FR 4684, January 29, 2010) which announced that potential participants in the program should review and, if necessary, correct their data that will be used for the issuance of QS, permits, and endorsements. It also established which data NMFS would use and requested ownership information from potential participants.

- A notice of availability for Amendments 20 and 21 (75 FR 26702, May 12, 2010).

- A proposed rule (75 FR 32994, June 10, 2010) that would implement Amendments 20 and 21, focused on provisions deemed necessary to issue permits and endorsements in time for use in the 2011 fishery and to have the 2011 harvest specifications reflect the new allocation scheme. In addition, the June 10th proposed rule also proposed to restructure the entire Pacific Coast groundfish regulations at 50 CFR part 660 from one subpart (Subpart G) to five subparts (Subparts C-G).

- A correction to the June 10th proposed rule (75 FR 37744, June 30, 2010) which corrected two dates referenced in the preamble to the proposed rule regarding the decision date for the FMP amendments and the end date for the public comment period.

- The Secretary's review of and decision to partially approve Amendments 20 and 21 on August 9, 2010.

- A proposed rule (75 FR 53380, August 31, 2010) which proposes for implementation on January 1, 2011, additional program details, including: measures applicable to gear switching for the IFQ program, observer programs, retention requirements, equipment requirements, catch monitors, catch weighing requirements, coop permits, coop agreement requirements, first receiver site licenses, QS accounts, vessel accounts, further tracking and monitoring components, and economic data collection requirements.

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

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

Partial Approval of Amendments 20 and 21

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

Description of Data Used for Initial Issuance Decisions

The allocation formulas in Amendment 20 and implemented by this final rule are based on vessel landings or processor receipt histories for the shoreside sector. As discussed in the preamble to the proposed rule, NMFS will use data from the Pacific Fisheries Information Network (PacFIN) of the Pacific States Marine Fisheries Commission (PSMFC) to derive these histories. Since 1974, PSMFC has worked actively with its member states and State and Federal fisheries agencies to improve the quality and timeliness of fisheries data collection, processing, and analysis, and to produce regionally

coherent data summaries required for regional conservation and management purposes. PacFIN is a regional fisheries data network that is a joint Federal and State data collection and information management project; for more information see <http://pacfin.psmfc.org/index.php>. Although it addresses other species of fish and related uses, PacFIN has a strong focus on the informational needs of the Council. PacFIN first came on line in 1981 by providing the Council's Groundfish Management Team, originally called the Plan Team, with two reports and an associated retrieval system. One report displayed monthly catch by species by area and another report displayed monthly catch by species by data source, including foreign countries and joint-ventures.

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

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

In addition to the PacFIN and NORPAC quality control and quality assurance process, in early 2010, NMFS provided notice to all participants (basically all current owners of limited

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

Use of 2011 Harvest Specifications and Management Measures

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

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

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

Comments and Responses

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

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

Some commenters have incorporated by reference previous comments submitted during the Council process.

Comments presented to the Council are part of the record and were considered by the Council during their deliberation. In reviewing the proposed rule and amendments, NMFS considered the record as a whole.

General Comments in Support and Opposed

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

Response. NMFS acknowledges these comments.

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

Response. NMFS acknowledges these comments.

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

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

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

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

Comment 5. NMFS received multiple comments objecting to the proposed rule and amendments due to general policy objections including to the use of

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

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

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

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

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

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

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

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

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

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

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

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

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

Response. As described in the EIS, NMFS and the Council have explored a wide range of alternatives and analyzed the potential impacts. As stated in the

responses to comments 19 and 34, the underlying analyses conclude that the negative impacts are justified by the anticipated benefits.

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

Response. NMFS acknowledges this comment.

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

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

Comments Pertaining to Timing

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

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

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

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

opportunity to modify the program through a review process, and a data collection process will be implemented to support that review."

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

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

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

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

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

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

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

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

Comments on Program Costs

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

Response. While the trawl rationalization program would move the fishery toward some of its most

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

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

Consideration was also given to allocating QSs to communities and crew members. With respect to the Council consideration of CDQs, up to the very end of the Council’s deliberations, communities expressed little or no interest in receiving an initial allocation of QSs. Therefore, the Council developed other mechanisms to address concerns about communities, including,

but not limited to, the AMP, a two-year moratorium on QS transfers, a five-year review that includes a community advisory committee, accumulation limits and a two-year review of some of the limits, the opportunity for communities to receive an initial QS allocation by acquiring a trawl permit, and a trailing action on CFAs. With respect to crew members, an initial allocation is difficult because there is limited historic information on the identity of crew members who have fished on trawl vessels. It is the Council’s hope that by providing highly divisible QSs and ensuring that other elements of the program design facilitate crew ownership of QS, that crew members who want to do so will be able to incrementally accumulate QSs.

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

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

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

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

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

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

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

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

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

Comments on the Observer Program

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

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

Conservation measures in order to facilitate the rebuilding of overfished species were specific components of the trawl rationalization program.

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

Response. Appendix H to the EIS for Amendment 20, the “Regulatory Impact Review and Initial Regulatory Flexibility Analysis, (RIR/IRFA)” addresses a number of these issues. As noted in the RIR/IRFA, the cost estimates are preliminary; the direct observer and monitoring costs depend heavily on operational decisions by industry (both fishing vessels and processors) to reduce costs. In addition, it is impossible to predict how much consolidation will occur, especially in the initial years of program implementation. For these reasons, the RIR/IRFA makes broad assumptions about industry behavior to frame the range of costs. At one extreme, annual observer costs could rise to \$18 million if a 100-vessel fleet needed observers 365 days a year at a cost of \$500 per day. However, as stated at numerous Council meetings, the industry could reduce costs by voluntary limits on the number of vessels that can be at sea at

any one time or agreements to share observer coverage between multiple vessels. Observer and other costs could decline as the number of participating vessels decline, when the fleet consolidates because of the program. As discussed in the RIR/IRFA, the Lian analysis (Lian *et al.*, 2008) indicates an expectation that there will be a fleet of 50 to 60 vessels of a size of 60 to 70 feet after rationalization. If this were to happen, one would expect the costs to be significantly lower and approximately half of the estimated costs for the current fleet.

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

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

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

Comments on Initial Allocation of Catch Shares

a. General Comments

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

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

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

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

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

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

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

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

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

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

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

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

b. Allocation Formula in General

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

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

- It rewards the inefficiencies, inadequate infrastructure and lack of investment that characterized the qualifying year window. Allocations of nonwhiting groundfish to inactive participants in the fishery harm active participants.

- The allocation period includes years with inaccurate species composition and discard data that will skew the picture of the true state of nature.

- More current data is available and critically important.

- There have been dramatic changes in the whiting fishery starting in 2001, and which have been especially significant after 2003.

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

catch taken in the mid-1990s was in line with what was allowed under the regulations and believed to be sustainable at the time.

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

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

The Council disagrees with the commenter's assertion that Amendment

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

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

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

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

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

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

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

Response. NMFS has reviewed the comments and the supporting exhibits. The commenter’s position is that the prior permit owner’s assignment in 2004 of all fishing history to the current vessel/permit owner included the

groundfish “B” Permit fishing history from the 1994, 1995 and 1996, and therefore the program improperly excludes valid “B” Permit groundfish fishing history in the initial allocation process. Further, the comment notes that nothing in Amendment 20 or 21 precludes inclusion of that “B” Permit history in the total catch history owned by the current permit owner. NMFS disagrees, for the following reasons.

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

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

distinct from the permits with “B” endorsements that are no longer in existence.

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

c. Allocation of Bycatch/Overfished Species IFQ

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

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

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

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

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

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

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

Response. The Council recommended its preferred alternative in response to the identified need for bycatch control and the need for conservation through

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

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

Finally, this is a forward-looking management program. It is expected to improve the economics of the overall trawl fishery. Economic analysis of the fishery indicates that the average nonwhiting shoreside fisherman is either breaking even or losing money (not fully covering its capital costs). Fishing businesses that don't receive an initial allocation may participate either

by acquiring QP each year from quota shareholders or acquiring long-term security through the purchase of QS. Those fishing businesses that do not choose to acquire QS will have to compete each year in the market for QP. Their ability to purchase QP will depend on their ability to be more efficient than other fishing businesses, and thereby more able to offer a higher price for the QP. Fishing businesses that choose to do so will be able to increase the security of their investments by acquiring QS.

Comments on Quota Ownership and Transfer

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

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

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

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

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

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

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

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

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

The Council considered requiring an owner on board, but rejected that alternative due to: The impracticality of such a provision in a multispecies fishery which would rely heavily on quota trading to match quota mix to catch mix; the substantial increase in

tracking and monitoring costs that such a provision would entail; and the fact that the owner-operator mode of organization is less dominant in the trawl fleet than in other, smaller boat, fisheries.

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

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

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

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

Response: The specific comments are summarized and addressed below.

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

The commenters provided an example where the Vice President of Human Resources of Company X would be considered to have control even though she has no control over fishing activities, and such Vice President is also a member of a family corporation that owns a boat that has quota shares.

The commenters ask who would be required to divest shares in excess of the accumulation limits, if the total of the "two completely separate and distinct quota share holding exceeds the accumulation limits, or whether the Vice President would be required to resign her position.

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

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

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

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

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

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

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

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

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

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

to change or revoke catch shares in the future.

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

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

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

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

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

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

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

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

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

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

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

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

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

The owner-on-board provision was addressed in the response to comments on the draft EIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery," and is repeated here. "An owner-operator or owner-on-board provision was considered but rejected.

In Section A-11 of Appendix A, three reasons are identified for rejection of the provisions: First, the impracticality of such a provision in a multispecies fishery which would rely heavily on quota trading to match quota mix to catch mix; second, the substantial increase in tracking and monitoring costs that such a provision would entail; and third, the owner-operator mode of organization is less dominant in the trawl fleet than in other, smaller boat, fisheries."

Comments on Community Impacts, Involvement, and CFAs

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

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

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

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

of a survey of community stakeholders and their concerns over the development of the trawl rationalization program.

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

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

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

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

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

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

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

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

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

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

Response. See response to comments 39, 40 and 65–67. Impacts on a broad

range of communities are assessed and acknowledged.

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

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

Comments on Adaptive Management

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

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

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

Comments on Participation by and Effect on Nontrawl Fisheries

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

conservation associated with gear switching provisions.

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

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

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

Comments on Other Effects

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

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

It is expected that the TIQ will lead to consolidation and this may affect small processors, particularly if they are in disadvantaged ports. Chapter 4 of the FEIS analyzed the effects on processors from various perspectives: The distribution of landings across west coast ports may change as a result of fleet consolidation, industry agglomeration, and the comparative advantage of ports (a function of bycatch rates in the waters constituting the operational area for the port, differences

in infrastructure, and other factors). In particular, the Council analysis indicated that processors associated with disadvantaged communities may see trawl groundfish volumes decline.

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

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

Comments on the RIR/IRFA

Comment 50. One commenter stated that the summary of the initial regulatory flexibility analysis (IRFA)

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

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

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

substitutable. Therefore, west coast groundfish producers (harvesters and buyers/processors) have little ability to influence price based on supply. In general, the ability to influence price is not expected to change under the proposed action. However, rationalization of the fishery could allow quality improvement and the development of new product forms/markets that could increase prices for certain species of fish currently caught. As noted above as an example, the whiting fishery operates as a derby fishery (especially in relation to bycatch species limits rather than the target species) causing the fishery to close due to imposed limits rather than availability of fish or market conditions. Whiting attain a larger size later in the year, commanding a higher unit price. Nonwhiting harvesters currently operate under 2-month cumulative landing limits, which allow greater flexibility in terms of harvest timing between 2-month periods but less flexibility within periods (because any difference between actual limits and the period limit cannot be carried over to the next period). In contrast, under the IFQ program harvesters will have control over harvest timing over the whole calendar year. However, in terms of any influence on price, this increased flexibility is unlikely to have a noticeable effect. The degree to which harvesters versus processors are able to capture profits due to increases in price depends on their relative bargaining power * * *.”

Bargaining power is a concept related to the abilities of parties in a given situation to exert influence over each other. Fishermen and processors negotiate the prices that are paid to the fishermen for delivering their fish to the processor. One way for fishermen to exert influence on the prices they receive for their fish is to delay the delivery of fish until the processor provides the desired price. Under the IFQ system, fishermen have the ability to choose when they can deliver their fish. Under the current system, the fishermen are given two month landing limits and these limits are designed to achieve a year-round fishery and to address the seasonality of the market. Given that the current system is already designed to address the seasonality of the market, the influence of fishermen to raise market prices based on the timing of deliveries relative to the current timing of deliveries is not expected to be great.

Chapter 4 of the FEIS (<http://www.pcouncil.org/groundfish/fishery-management-plan/fmp-amendment-20/#EIS>) provides the following analyses

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

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

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

Comments on Policies and Legal Standards

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

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

a. Public Trust and Privatization

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

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

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

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

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

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

the future, the Council may provide for a greater return to the American public.

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

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

b. Magnuson-Stevens Act

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

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

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

Response. National Standard 1 requires that: "Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery * * *" MSA section 301(a)(1). The MSA defines OY to mean: "The amount of fish which—will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems; is prescribed on the basis of the "maximum sustainable yield" (MSY) from the fishery, as reduced by any relevant social, economic, or ecological

factor; and in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery. MSA section 3(28); See also 50 CFR 600.310(e)(3). Thus, National Standard 1 does not require that FMPs provide for 100 percent harvest of all healthy stocks.

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

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

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

The Council considered and rejected the option of allocating overfished species for nonwhiting trips using the same method as for other nonwhiting IFQ species as not appropriate under the circumstances. In particular, the relative weighting approach, by which landings for a year are measured as a percent of all landings for the year and species, would have given a particularly high amount of credit for pounds caught during the rebuilding period.

Additionally, QS would have been allocated to those who targeted some of the overfished species in the mid-1990s (before they were declared overfished) rather than to those who need such QS to access current target species. Accordingly, the Council rejected the approach of using the same allocation formula for overfished species as for nonwhiting target species based on the desire to not reward bycatch during the rebuilding period and in order to provide QS to those who would need it to cover incidental catch taken with their target species QS allocation.

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

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

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

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

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

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

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

Response. National Standard 4 requires that conservation and management measures shall not discriminate between residents of

different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such a manner that no particular individual, cooperation, or other entity acquires an excessive share of such privileges.

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

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

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

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

program was structured to provide fair and equitable allocations of both target species and overfished species to participants.

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

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

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

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

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

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

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

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

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

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

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

Response. NMFS and the Council have analyzed the likely effects of consolidation on communities. The Executive Summary of the FEIS, on pages xix and xx, lists the following expectations: "Fishing communities would be differentially affected due to the fleet and processor consolidation. Some communities would likely benefit and others would be harmed. Fleet and processor consolidation could result in the concentration of vessels and commercial infrastructure in fewer ports, disadvantaging communities that lose vessels and infrastructure. Limits on the amount of Qs an entity can control would reduce ownership consolidation and would increase the number and types of businesses involved in the fishery, contributing to diversity and stability. Isolated communities, where there are few alternative employment opportunities, could be adversely affected by the loss of fishing-related jobs. Processors would likely consolidate and possibly move, affecting processor labor and municipal

revenue. Fishing, in all its diversity, is culturally important to coastal communities. As a consequence, communities experiencing a decline in fishing activity due to trawl rationalization would be adversely affected. Family fishing businesses would have to deal with the implications of the asset value associated with IFQs (or co-op shares). This can complicate fishery entry and exit, leading to intra-family strife. Tourism could be adversely affected in communities that lose a working waterfront to the degree it is important to the tourist identity of the community. Nontrawl communities could be affected by rationalization through increased competition, gear conflicts, impacts on the support sector, infrastructure impacts, and competition in the marketplace."

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

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

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

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

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

evaluate the impacts of these amendments.

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

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

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

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

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

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

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

Comment 68. Some commenters stated that the proposed rule and

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

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

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

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

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

Comment 70. Some commenters stated that the proposed rule and amendments will help reduce bycatch

and will address bycatch problems that the current system cannot solve.

Response. NMFS agrees.

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

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

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

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

1. Provide a mechanism for total catch accounting.
2. Provide for a viable, profitable, and efficient groundfish fishery.
3. Promote practices that reduce bycatch and discard mortality, and minimize ecological impacts.
4. Increase operational flexibility.
5. Minimize adverse effects from an IFQ program on fishing communities and other fisheries to the extent practical.

6. Promote measurable economic and employment benefits through the seafood catching, processing, distribution elements, and support sectors of the industry.

7. Provide quality product for the consumer.

8. Increase safety in the fishery.

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

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

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

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

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

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

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

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

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

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

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

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

policy recommendations that are not produced through the MSA Council system.

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

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

c. Other Applicable Law

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

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

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

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

Comments on Intersector Allocations

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

Response. NMFS does not agree that the regulations punish the non-trawl

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

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

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

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

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

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

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

Response. NMFS disagrees with the commenter's characterization of the trawl fleet. That said, the FEIS identifies and discloses the potential adverse impacts of trawl gear cited by this commenter. To the degree that these impacts may exist, they are not increased under trawl rationalization and may be reduced because it allows more opportunities for use of fixed gear to harvest the trawl allocation. The

Council actions under Amendment 20 provide an opportunity for the transition of harvest away from the trawl sector and its action under Amendment 21 limits the trawl fleet allocation to the lower end of its recent harvest share. Furthermore, the allocations provided to trawlers in Amendment 21 are not permanent and may be changed in the future as it is determined to be appropriate. Additionally, trawl rationalization is expected to decrease total trawling hours required to take a given amount of harvest. Amendment 20 allows some movement of harvest toward the nontrawl gear through gear switching and the transfer of IFQ to the nontrawl fleet. For the time being, that movement is constrained by the number of trawl permits available and the dictates of the market place, combined with any incentives or subsidies that may be created.

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

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

Comment 84. One commenter felt the halibut bycatch rates should be based on all landed flatfish using 1994–2003 as opposed to using petrale sole and arrowtooth flounder harvests in 2003–

2006 to determine bycatch rates, so targets match better with bycatch.

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

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

Page 36, "It may turn out that the socioeconomic impacts are too great under these stringent limits, and the Council may ultimately decide to increase the total catch limit.

Conversely, the trawl industry may adjust well to these lower limits, and the realized bycatch of Pacific halibut will be lower than the prescribed limits. In that case, the Council may want to adjust the future total catch limit downward from 100,000 pounds to provide more benefits to Area 2A directed halibut fisheries. In either case, the Council preferred the flexibility of deciding future total catch limits of Pacific halibut in the biennial specifications and management measures process.

Items NMFS Requested Comment on in the Proposed Rule

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

Changes From the Proposed Rule

A. All Trawl Programs

I. Definitions

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

II. Ownership Issues

Language was added to § 660.25(b)(4)(iv)(A) to cross-reference the language in the specific trawl rationalization programs that states the owner of a limited entry trawl permit may not change during the application

process for a QS permit, an MS/CV endorsement, or a C/P endorsement, as specified at §§ 660.140(d)(8)(viii), 660.150(g)(6)(vii), and 660.160(d)(7)(vi), respectively.

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

Some additional modifications have been made to the accumulation limits language. For the Shorebased IFQ Program, as described in the responses to comments, above, NMFS does not intend that control rules would apply to banks and other financial institutions that rely on QS or IBQ as collateral for loans, unless the financial documents specify control beyond normal business agreements. Accordingly, based on

further agency consideration and in response to public comment received, NMFS further clarified the application of the control rules for QS or IBQ at § 660.140(d)(4). In addition, in the MS Coop Program, NMFS further clarified the ownership language at §§ 660.150(f)(3)(ii) and 660.150(g)(3)(i)(A) for MS permits and MS/CV endorsements, respectively.

III. Allocations

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

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

IV. Application and Appeals Process

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

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

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

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

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

errors in NMFS' use or application of ownership interest information."

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

upon which the application is received by NMFS, whichever occurs first, until a final decision is made by the Regional Administrator on behalf of the Secretary of Commerce * * * Limited entry trawl permits may be transferred after the application process is complete, once the permit owner has received a final decision (*i.e.*, the QS, permit, or endorsement has been issued and the appeals process has been completed).

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

V. Application Deadline

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

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

VI. Changes To Reflect Recent NMFS Actions

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

VII. Whiting Closure and Reapportionment Authority

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

VIII. Minor Edits

NMFS has made some minor edits to the regulations to make terminology more consistent (e.g., references to shorebased IFQ fishery are edited to

read Shorebased IFQ Program) and to correct typographical errors and technical errors (e.g., "Other fish" are not an IFQ species and are thus removed from the QS accumulation limit table). In addition, Table 2d of Part 660, Subpart C (2012 At-sea Whiting Fishery Set-asides) is removed and Table 1d of Part 660, Subpart C is relabeled, "At-Sea Whiting Fishery Annual Set-Asides, 2011 and 2012" to cover annual set-asides for both 2011 and 2012.

B. Shorebased IFQ Program

I. General

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

II. Accumulation Limits

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

NMFS also specifically requested comment in the proposed rule (75 FR

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

III. Initial Issuance Allocation Formulas

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

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

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

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

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

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

C. At-Sea Coop Programs

I. MS Coop Program

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

Accordingly, the provision included in the proposed rule has been removed from this final rule.

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

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

II. C/P Coop Program

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

Classification

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

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

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

The preamble to the proposed rule (75 FR 32994, June 10, 2010) included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here. NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA) prepared a FRFA in support of this rule. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS's responses to those comments. A copy of the FRFA is available from NMFS (*see ADDRESSES*) and a summary of the FRFA follows:

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

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

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

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

between the trawl and non-trawl sectors. Allocating the available harvest of groundfish species and species complexes would occur in the Council process of deciding biennial harvest specifications and management measures and, as such, would be considered short term allocations.

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

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

current permits' landing history alone. In the mothership sector, the best 8 out of 10 years are used between 1994 and 2003 for calculating catch history.

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

As described in the RIR/IRFA, NMFS developed the following estimates of the number of small entities to which this rule would apply. NMFS makes the following conclusions based primarily on analyses associated with fish ticket data and limited entry permit data, available employment data provided by processors, information on the charterboat and tribal fleets, and available industry responses industry to on-going survey on ownership. Entities were analyzed as to whether they were only affected by the Amendment 21 allocation processes (non-trawl), or if they were affected by both Amendment 20 and 21 (trawl).

The non-trawl businesses are associated with the following fleets: limited entry fixed gear (approximately

150 companies), open access groundfish (1,100), charterboats (465), and the tribal fleet (four tribes with 66 vessels).

Available information on average revenue per vessel suggests that all the entities in this group can be considered small. For the trawl sector, there are 177 permit holders. Nine limited entry trawl permits are associated with the catcher-processing vessels which are considered "large" companies. Of the remaining 168 limited entry permits, 25 limited entry trawl permits are either owned or closely associated with a "large" shore-based processing company or with a non-profit organization who considers itself a "large" organization. Nine other permit owners indicated that they were large "companies." Almost all of these companies are associated with the shorebased and mothership whiting fisheries. The remaining 134 limited entry trawl permits are projected to be held by "small" companies. Three of the six mothership processors are "large" companies. Within the 14 shorebased whiting first receivers/processors, there are four "large" companies. Including the shorebased whiting first receivers, in 2008, there were 75 first receivers that purchased limited entry trawl groundfish. There were 36 small purchasers (less than \$150,000); 26 medium purchasers (purchases equal to or greater than \$150,000 but less than \$1,000,000); and 13 large purchasers (purchases equal to or greater than \$1.0 million). Because of the costs of obtaining a "processor site license", procuring and scheduling a catch monitor, and installing and using the electronic fish ticket software, these "small" purchasers will likely opt out of buying groundfish, or make arrangements to purchase fish from another company that has obtained a processing site license.

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

Although not specifically addressed to RIR/IRFA, comments were received that relate to the impacts on small businesses. In particular, concerns were raised about "negative impacts on

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

NMFS has responded to these comments above in detail and these responses will not be repeated here. However, as discussed in the response to Comments 19 (small harvesters) and 49 (small processors) the overall general nature of these responses is the following. In terms of impacts on small businesses, the trawl rationalization program is intended to increase net economic benefits, create economic stability, provide full utilization of the trawl sector allocation, consider environmental impacts, and promote conservation through individual accountability for catch and bycatch. The allocations of quota under the new program do not differ significantly from status quo allocations made biennially in terms of total allocations. However, instead of fleetwide quotas, there will now be individual allocations of quota shares and quota pounds to permit owners. Allocations of overfished species constrain all groundfish fishermen, for both large and small operations. In some cases, smaller operators may be constrained to a greater extent. This was recognized in development of the program, and operators are encouraged to work together cooperatively, through mechanisms like combining and sharing quota amounts. The program provides for leasing of additional quota as needed to facilitate operations. The proposed action includes provisions that would have a beneficial impact on small entities. It would create a management program under which most recent participants in the Pacific Coast groundfish limited entry trawl fishery (many of which are small entities) would be eligible to continue participating in the fishery and under which the fishery itself would experience an increase in economic

profitability. Small entities choosing to exit the fishery should receive financial compensation from selling their permit or share of the resource. To prevent a particular individual, corporation, or other entity from acquiring an excessive share of the total harvest privileges in the program, accumulation limits would restrict the amount of harvest privileges that can be held, acquired, or used by individuals and vessels. In addition, for the shoreside sector of the fishery, an AMP was created to mitigate any adverse impacts, including impacts on small entities and communities that might result from the proposed action.

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

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

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

In summary, as stated in the RIR/IRFA, the major impacts of this rule appear to be on three groups: Shoreside processors which are a mix of large and small processors; and shore-based trawlers which are also a mix of large and small companies. The non-whiting shore-based trawlers are currently operating at a loss or at best are "breaking even." The new rationalization program would lead to profitability, but only with a reduction of about 50 percent of the fleet. This program would lead to major changes in the fishery. To help mitigate against these changes, as discussed above, the agency has announced its intent, subject to available Federal funding, that participants would initially be responsible for 10 percent of the cost of hiring observers and catch monitors. The industry proportion of the costs of hiring observers and catch monitors would be increased every year so that by 2014, once the fishery has transitioned to the rationalization program, the industry would be responsible for 100 percent of the cost of hiring the observers and catch monitors. NMFS believes that an incrementally reduced subsidy to industry funding would enhance the observer and catch monitor program's stability, ensure 100 percent observer and catch monitor coverage, and facilitate the industries' successful transition to the new quota system. In addition, to help mitigate against the negative impacts of this program, the Council has adopted an Adaptive Management Program where starting in year 3 of the program, 10 percent of non-whiting QS would be set aside every year to address community impacts and industry transition needs.

After reviewing the initial effects of ITQ programs in other parts of the world, the council had placed a short term QS trading prohibition so that fishermen can learn from their experiences and not make premature sales of their QS. The Council is also envisioning future regulatory processes that would allow community fisheries associations to be established to help aid communities and fishermen.

Small Entity Compliance Guide

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

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by the Office of Management and Budget (OMB) under control number 0648-0611. Public reporting burden for the QS Initial Issuance/QS Permit Application is estimated to average 6 hours per response (180 responses). Public reporting burden for the MS Permit Application is estimated to average 1 hour per response (6 responses). Public reporting burden for the MS/CV Endorsement Application is estimated to average 2 hours per response (30 responses). Public reporting burden for the C/P Endorsement Application is estimated to average 30 minutes per response (10 responses). Public reporting burden for the Ownership Interest form is estimated to average 30 minutes per response (216 responses). Public reporting burden for the Appeals is estimated to average 6 hours per response (100 responses). These estimates include the time for reviewing

instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. No comments were received on the PRA during the proposed rule comment period. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (*see ADDRESSES*) and by e-mail to OIRA_Submission@omb.eop.gov, or fax to 202-395-7285.

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

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, pertaining to the effects of the Pacific Coast groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the FMP for the Pacific Coast groundfish fishery was not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

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

of salmon take in the bottom trawl fishery.

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

Since 1999, annual Chinook bycatch has averaged about 8,450 fish. The Chinook ESUs most likely affected by the whiting fishery has generally improved in status since the 1999 section 7 consultation. Although these species remain at risk, as indicated by their ESA listing, NMFS concluded that the higher observed bycatch in 2005 does not require a reconsideration of its prior "no jeopardy" conclusion with respect to the fishery. For the groundfish bottom trawl fishery, NMFS concluded that incidental take in the groundfish fisheries is within the overall limits articulated in the Incidental Take Statement of the 1999 Biological Opinion. The groundfish bottom trawl limit from that opinion was 9,000 fish annually. NMFS will continue to monitor and collect data to analyze take levels. NMFS also reaffirmed its prior determination that implementation of the Groundfish FMP is not likely to jeopardize the continued existence of any of the affected ESUs.

Lower Columbia River coho (70 FR 37160, June 28, 2005) were recently listed and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead. The Southern Distinct Population Segment (DPS) of green sturgeon (71 FR 17757, April 7, 2006) and the southern DPS of Pacific eulachon (75 FR 13012, March 18, 2010) were also recently listed as threatened under the ESA. As a consequence, NMFS has reinitiated its Section 7 consultation on the Groundfish FMP.

After reviewing the available information, NMFS concluded that, consistent with Sections 7(a)(2) and 7(d) of the ESA, the implementation of this final rule would not result in any irreversible or irretrievable commitment of resources that would have the effect

of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

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

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: September 13, 2010.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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

15 CFR Chapter IX

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

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

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

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

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

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

The additions read as follows:

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

*	*	*	*	*
(b) * * *				

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648—)
*	*
50 CFR	*

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

50 CFR Chapter VI

PART 660—FISHERIES OFF WEST COAST STATES

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

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

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

Subpart C—West Coast Groundfish Fisheries

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

Table 2b to Part 660, Subpart C—2010, and Beyond, Harvest Guidelines for Minor Rockfish by Depth Sub-groups (weights in metric tons)

Table 2c to Part 660, Subpart C—2010, and Beyond, Open Access and Limited Entry Allocations by Species or Species Group (weights in metric tons)

Subpart D—West Coast Groundfish—Limited Entry Trawl Fisheries

- 660.100 Purpose and scope.
 660.111 Trawl fishery—definitions.
 660.112 Trawl fishery—prohibitions.
 660.113 Trawl fishery—recordkeeping and reporting
 660.116 Trawl fishery—observer requirements.
 660.120 Trawl fishery—crossover provisions.
 660.130 Trawl fishery—management measures.
 660.131 Pacific whiting fishery management measures.
 660.140 Shorebased IFQ Program.
 660.150 Mothership (MS) Coop Program.
 660.160 Catcher/processor (C/P) Coop Program.

Table 1 (North) to Part 660, Subpart D—2010 Trip Limits for Limited Entry Trawl Gear North of 40°10' N. Lat.

Table 1 (South) to Part 660, Subpart D—2010 Trip Limits for Limited Entry Trawl Gear South of 40°10' N. Lat.

Figure 1 to Part 660, Subpart D—Diagram of Selective Flatfish Trawl

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

- 660.210 Purpose and scope.
 660.211 Fixed gear fishery—definitions.
 660.212 Fixed gear fishery—prohibitions.
 660.213 Fixed gear fishery—recordkeeping and reporting.
 660.216 Fixed gear fishery—observer requirements.
 660.219 Fixed gear identification and marking.
 660.220 Fixed gear fishery—crossover provisions.
 660.230 Fixed gear fishery—management measures.
 660.231 Limited entry fixed gear primary fishery for sablefish.
 660.232 Limited entry daily trip limit (DTL) fishery for sablefish

Table 2 (North) to Part 660, Subpart E—2010 Trip Limits for Limited Entry Fixed Gear North of 40°10' N. Lat.

Table 2 (South) to Part 660, Subpart E—2010 Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Lat.

Subpart F—West Coast Groundfish—Open Access Fisheries

- 660.310 Purpose and scope.
 660.311 Open access fishery—definitions.
 660.312 Open access fishery—prohibitions.
 660.313 Open access fishery—recordkeeping and reporting.
 660.316 Open access fishery—observer requirements.
 660.319 Open access fishery gear identification and marking.
 660.320 Open access fishery—crossover provisions.

660.330 Open access fishery—management measures.

660.332 Open access daily trip limit (DTL) fishery for sablefish.

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

Table 3 (North) to Part 660, Subpart F—2010 Trip Limits for Open Access Gears North of 40°10' N. Lat.

Table 3 (South) to Part 660, Subpart F—2010 Trip Limits for Open Access Gears South of 40°10' N. Lat.

Subpart C—West Coast Groundfish Fisheries

§ 660.10 Purpose and scope.

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

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

§ 660.11 General definitions.

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

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

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

Allocation. (See § 600.10 of this chapter)

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

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

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

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

Calendar year. (see “fishing year”)
Catch, take, harvest. (See § 600.10 of this chapter)

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

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

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

Commercial fishing means:

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

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

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

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

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

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

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

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

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

Council means the Pacific Fishery Management Council, including its Groundfish Management Team (GMT), Scientific and Statistical Committee

(SSC), Groundfish Advisory Subpanel (GAP), and any other advisory body established by the Council.

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

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

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

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

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

Entity. (See "Person")

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

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

Fish. (See § 600.10 of this chapter)

Fishery (See § 600.10 of this chapter)

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

Fishery management area means the EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nm offshore, and bounded on the north by the Provisional International Boundary between the U.S. and Canada, and bounded on the south by the International Boundary between the U.S. and Mexico. The inner boundary of the fishery management area is a line coterminous with the seaward boundaries of the States of Washington, Oregon, and California (the "3-mile

limit"). The outer boundary of the fishery management area is a line drawn in such a manner that each point on it is 200 nm from the baseline from which the territorial sea is measured, or is a provisional or permanent international boundary between the U.S. and Canada or Mexico. All groundfish possessed between 0–200 nm offshore or landed in Washington, Oregon, or California are presumed to have been taken and retained from the EEZ, unless otherwise demonstrated by the person in possession of those fish.

Fishing. (See § 600.10 of this chapter)

Fishing gear includes the following types of gear and equipment:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) *Large footrope trawl gear* means a bottom trawl gear with a footrope diameter larger than 8 inches (20 cm,) and no larger than 19 inches (48 cm) including any rollers, bobbins, or other

material encircling or tied along the length of the footrope.

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

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

(iii) *Trawl gear components* include:

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

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

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

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

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

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

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

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

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

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

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

codend to strengthen the net during fishing.

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

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

Fishing vessel. (See § 600.10 of this chapter)

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

Groundfish means species managed by the PCGFMP, specifically:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) South of 40°10' N. lat.: Bronzespotted rockfish, *S. gilli*; chameleon rockfish, *S. phillipsi*; dusky rockfish, *S. ciliatus*; dwarf-red rockfish, *S. rufianus*; flag rockfish, *S. rubrivinctus*; freckled, *S. lentiginosus*; greenblotched rockfish, *S. rosenblatti*;

green-spotted rockfish, *S. chlorostictus*; greenstriped rockfish, *S. elongatus*; halfbanded rockfish, *S. semicinctus*; harlequin rockfish, *S. variegatus*; honeycomb rockfish, *S. umbrosus*; Mexican rockfish, *S. macdonaldi*; pink rockfish, *S. eos*; pinkrose rockfish, *S. simulator*; pygmy rockfish, *S. wilsoni*; redstripe rockfish, *S. proriger*; rosethorn rockfish, *S. helvomaculatus*; rosy rockfish, *S. rosaceus*; silvergray rockfish, *S. brevispinis*; speckled rockfish, *S. ovalis*; squarespot rockfish, *S. hopkinsi*; starry rockfish, *S. constellatus*; stripetail rockfish, *S. saxicola*; swordspine rockfish, *S. ensifer*; tiger rockfish, *S. nigrocinctus*; vermilion rockfish, *S. miniatus*; yellowtail rockfish, *S. flavidus*.

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

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

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

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

(9) "Other fish": Where regulations of subparts C through G of this part refer to landings limits for "other fish," those

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

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

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

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

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

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

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

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

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

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

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

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

Limited entry permit means:

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

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

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

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

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

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

Nontrawl fishery means

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

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

North-South management area means the management areas defined in paragraph (1) of this definition, or defined and bounded by one or more or

the commonly used geographic coordinates set out in paragraph (2) of this definition for the purposes of implementing different management measures in separate geographic areas of the U.S. West Coast.

(1) *Management areas.*

(i) *Vancouver.*

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

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

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

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

(ii) *Columbia.*

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

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

(iii) *Eureka.*

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

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

(iv) *Monterey.*

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

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

(v) *Conception.*

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

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

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

(2) *Commonly used geographic coordinates.*

(i) Cape Alava, WA—48°10.00’ N. lat.

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

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

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

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

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

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

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

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

(x) Cape Arago, OR—43°20.83’ N. lat.

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

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

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

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

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

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

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

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

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

(xx) Ano Nuevo, CA—37°07.00’ N. lat.

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

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

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

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

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

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

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

Open access gear means all types of fishing gear except:

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

(2) *Groundfish trawl*.

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

Operator. (See § 600.10)

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

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

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

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

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

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

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

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

Pacific Coast Groundfish Fishery Management Plan or PCGFMP means the Fishery Management Plan for the Washington, Oregon, and California Groundfish Fishery developed by the

Pacific Fishery Management Council and approved by the Secretary on January 4, 1982, and as it may be subsequently amended.

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

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

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

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

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

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

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

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

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

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

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

Regional Administrator means the Administrator, Northwest Region, NMFS.

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

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

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

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

Secretary. (See § 600.10 of this chapter)

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

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

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

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

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

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

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

Trawl fishery means

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

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

Trip. (See § 600.10 of this chapter)

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

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

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

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

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

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

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

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

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

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

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

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

§ 660.12 General groundfish prohibitions.

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

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

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

(3) Fish for groundfish in violation of any terms or conditions attached to an

EFP under § 600.745 of this chapter or § 660.30, subpart C of this part.

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

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

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

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

(8) Fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, scientific sorting designation, quota, harvest guideline, or OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, scientific sorting designation, quota, harvest guideline, or OY applied; except as specified at § 660.131, subpart C for vessels participating in the Pacific whiting at-sea sectors.

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

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

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

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

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

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

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

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

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

(2) [Reserved]

(d) *Limited entry permits.*

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

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

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

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

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

(4) Harass an observer by conduct that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 660.13 Recordkeeping and reporting.

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) Limited entry fixed gear,
- (2) [Reserved]
- (3) Limited entry mid water trawl, non-whiting,
- (4) Limited entry mid water trawl, Pacific whiting shore based sector,
- (5) Limited entry mid water trawl, Pacific whiting catcher/processor sector,
- (6) Limited entry mid water trawl, Pacific whiting mother ship sector,
- (7) Limited entry bottom trawl, not including emerald trawl,
- (8) Limited entry emerald trawl,
- (9) Non-groundfish trawl gear for pink shrimp,
- (10) Non-groundfish trawl gear for ridgeback prawn,
- (11) Non-groundfish trawl gear for California halibut,
- (12) Non-groundfish trawl gear for sea cucumber,
- (13) Open access longline gear for groundfish,

(14) Open access Pacific halibut longline gear,

(15) Open access groundfish trap or pot gear,

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

(17) Open access prawn trap or pot gear,

(18) Open access sheephead trap or pot gear,

(19) Open access line gear for groundfish,

(20) Open access HMS line gear,

(21) Open access salmon troll gear,

(22) Open access California Halibut line gear,

(23) Open access net gear,

(24) Other gear, or

(25) Tribal trawl.

(B) [Reserved]

§ 660.14 Vessel Monitoring System (VMS) requirements.

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

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

(1) Any vessel registered for use with a limited entry permit that fishes in state or Federal waters seaward of the baseline from which the territorial sea is measured off the States of Washington, Oregon or California (0–200 nm offshore).

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

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

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

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

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

(3) NMFS OLE may publish a list of NMFS OLE type-approved mobile transceiver units and communication

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

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

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

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

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

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

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

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

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

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

the time the vessel is removed from the water until the time that the vessel is placed back in the water.

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

(iii) *Permit transfer exemption.* If the limited entry permit has been transferred from a vessel (for the purposes of this section, this includes permits placed into "unidentified" status) the vessel may be exempted from VMS requirements providing the vessel is not used to fish in state or Federal waters seaward of the baseline from which the territorial sea is measured off the States of Washington, Oregon or California (0–200 nm offshore) for the remainder of the fishing year. If the vessel is used to fish in this area for any species of fish at any time during the remaining portion of the fishing year without being registered to a limited entry permit, the vessel is required to have and use VMS.

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

(v) *Emergency exemption.* Vessels required to have VMS under paragraph (b) of this section may be exempted from VMS provisions in emergency situations that are beyond the vessel owner's control, including but not limited to: Fire, flooding, or extensive physical damage to critical areas of the vessel. A vessel owner may apply for an emergency exemption from the VMS

requirements specified in paragraph (b) of this section for his/her vessel by sending a written request to NMFS OLE specifying the following information: The reasons for seeking an exemption, including any supporting documents (e.g., repair invoices, photographs showing damage to the vessel, insurance claim forms, etc.); the time period for which the exemption is requested; and the location of the vessel while the exemption is in effect. NMFS OLE will issue a written determination granting or denying the emergency exemption request. A vessel will not be covered by the emergency exemption until NMFS OLE issues a determination granting the exemption. If an exemption is granted, the duration of the exemption will be specified in the NMFS OLE determination.

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

(vii) *Valid exemption reports.* For an exemption report to be valid, it must be received by NMFS at least 2 hours and not more than 24 hours before the exempted activities defined at

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

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

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

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

(8) Ensure that the mobile transceiver unit is not tampered with, disabled,

destroyed, operated, or maintained improperly.

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

§ 660.15 Equipment requirements.

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

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

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

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

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

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

(iii) Microsoft Access 2003 or newer.

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

Seattle, WA 98115, or via e-mail to frank.lockhart@noaa.gov.

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

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

§ 660.16 Groundfish observer program.

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

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

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

(1) Any vessel registered for use with a Pacific Coast groundfish limited entry permit that fishes in state or Federal waters seaward of the baseline from which the territorial sea is measured off the States of Washington, Oregon or California (0-200 nm offshore).

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

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

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

to the regulatory sections with the observer coverage requirements.

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

(e) *NMFS-certified Observer Certification and Observer Responsibilities*—(1) *Observer Certification*—(i) *Applicability*.

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

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

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

(B) Have provided, through their observer provider:

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

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

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

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

(1) Successful completion of training by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Observer Program.

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

of an IAD denying certification, as specified under paragraph (e)(2)(i) of this section.

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

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

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

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

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

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

(ii) *Annual general endorsements*.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) *Observer suspension and decertification.*

(1) *Suspension and decertification review official.* The Regional Administrator (or a designee) will designate a suspension and decertification review official(s), who will have the authority to review

certifications and issue initial administrative determinations of certification suspension and/or decertification.

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

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

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

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

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

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

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

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

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

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

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

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

writing and shall state the reasons therefore.

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

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

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

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

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

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

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

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

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

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

processor while employed by an observer or catch monitor provider.

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

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

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

§ 660.20 Vessel and gear identification.

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

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

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

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

§ 660.24 Limited entry and open access fisheries.

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

(b) [Reserved]

§ 660.25 Permits.

(a) *General.* Each of the permits or licenses in this section has different conditions or privileges as part of the permit or license. The permits or licenses in this section confer a conditional privilege of participating in

the Pacific coast groundfish fishery, in accordance with Federal regulations in 50 CFR part 660, subparts C through G.

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

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

(B) [Reserved]

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

(iii) *Registration.* Limited entry permits will normally be registered for use with a particular vessel at the time the permit is issued, renewed, transferred, or replaced. If the permit will be used with a vessel other than the one registered on the permit, the permit

owner must register that permit for use with the new vessel through the SFD. The reissued permit must be placed on board the new vessel in order for the vessel to be used to fish in the limited entry fishery.

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

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

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

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

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

(3) *Endorsements*—(i) “A” *endorsement.* A limited entry permit with an “A” endorsement entitles the vessel registered to the permit to fish in the limited entry fishery for all groundfish species with the type(s) of limited entry gear specified in the

endorsement, except for sablefish harvested north of 36° N. lat. during times and with gears for which a sablefish endorsement is required. See paragraph (b)(3)(iv) of this section for provisions on sablefish endorsement requirements. An "A" endorsement is transferable with the limited entry permit to another person, or to a different vessel under the same ownership under paragraph (b)(4) of this section. An "A" endorsement expires on failure to renew the limited entry permit to which it is affixed. An MS permit is not considered a limited entry "A"-endorsed permit.

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

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

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

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

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

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

tiers, based on the qualifying catch history of the permit.

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

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

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

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

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

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

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

(4) Any partnership or corporation with any ownership interest in or that holds a limited entry permit with a sablefish endorsement shall document the extent of that ownership interest or the individuals that hold the permit with the SFD via the Identification of Ownership Interest Form sent to the permit owner through the annual permit renewal process and whenever a change in permit owner, permit holder, and/or vessel registration occurs as described at paragraph (b)(4)(iv) and (v) of this section. SFD will not renew a sablefish-endorsed limited entry permit through the annual renewal process described at paragraph (b)(4)(i) of this section, or approve a change in permit owner, permit holder, and/or vessel registration unless the Identification of Ownership Interest Form has been completed. Further, if SFD discovers through review of the Identification of Ownership Interest Form that an individual person, partnership, or corporation owns or holds more than 3 permits and is not authorized to do so under paragraph (b)(3)(iv)(C)(2) of this section, the individual person, partnership or corporation will be notified and the permits owned or held by that individual person, partnership, or corporation will be void and reissued with the vessel status as “unidentified” until the permit owner owns and/or holds a quantity of permits appropriate to the restrictions and requirements described in paragraph (b)(3)(iv)(C)(2) of this section. If SFD discovers through review of the Identification of Ownership Interest Form that a partnership or corporation has had a change in membership since November 1, 2000, as described in paragraph (b)(3)(iv)(C)(3) of this section, the partnership or corporation will be notified, SFD will void any existing permits, and reissue any permits owned and/or held by that partnership or corporation in “unidentified” status with respect to vessel registration until the partnership or corporation is able to transfer those permits to persons authorized under this section to own sablefish-endorsed limited entry permits.

(5) A person, partnership, or corporation that is exempt from the owner-on-board requirement may sell all of their permits, buy another sablefish-endorsed permit within up to a year from the date the last permit was approved for transfer, and retain their exemption from the owner-on-board

requirements. An individual person, partnership or corporation could only obtain a permit if it has not added or changed individuals since November 1, 2000, excluding individuals that have left the partnership or corporation or that have died.

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

(v) *MS/CV endorsement.* An MS/CV endorsement on a trawl limited entry permit conveys a conditional privilege that allows a vessel registered to it to fish in either the coop or non-coop fishery in the MS Coop Program described at § 660.150, subpart D. The provisions for the MS/CV-endorsed limited entry permit, including eligibility, renewal, change of permit ownership, vessel registration, combinations, accumulation limits, fees, and appeals are described at § 660.150, subpart D.

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

(vii) *Endorsement and exemption restrictions.* “A” endorsements, gear endorsements, sablefish endorsements and sablefish tier assignments, MS/CV endorsements, and C/P endorsements may not be transferred separately from the limited entry permit. Sablefish at-sea processing exemptions are associated with the vessel and not with the limited entry permit and may not be transferred at all.

(4) *Limited entry permit actions—renewal, combination, stacking, change of permit ownership or permit holdership, and transfer—*(i) *Renewal of limited entry permits and gear endorsements.* (A) Limited entry permits expire at the end of each

calendar year, and must be renewed between October 1 and November 30 of each year in order to remain in force the following year.

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

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

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

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

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

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

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

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

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

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

(iv) *Changes in permit ownership and permit holder.* (A) *General.* The permit owner may convey the limited entry permit to a different person. The new permit owner will not be authorized to use the permit until the change in permit ownership has been registered with and approved by the SFD. The SFD will not approve a change in permit ownership for a limited entry permit with a sablefish endorsement that does not meet the ownership requirements for such permit described at paragraph (b)(3)(iv)(C) of this section. The SFD will not approve a change in permit ownership for a limited entry permit with an MS/CV endorsement that does not meet the ownership requirements for such permit described at § 660.150(g)(3), subpart D. Change in permit owner and/or permit holder applications must be submitted to SFD with the appropriate documentation described at paragraph (b)(4)(vii) of this section.

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

(2) [Reserved]

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

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

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

(B) *Application.* A complete application must be submitted to SFD in

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

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

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

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

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

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

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

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

are met. The following evidentiary standards apply:

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

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

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

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

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

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

(G) For a request to change a permit's ownership that is necessitated by divorce, the individual requesting the

change in permit ownership must submit an executed divorce decree that awards the permit to a designated individual(s).

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

(viii) *Application forms available.* Application forms for the change in vessel registration (transfer) and change of permit ownership or permit holder of limited entry permits are available from the SFD (see part 600 for address of the Regional Administrator). Contents of the application, and required supporting documentation, are specified in the application form.

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

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

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

(c) *Quota share (QS) permit.* A QS permit conveys a conditional privilege to a person to own QS or IBQ for designated species and species groups and to fish in the Shorebased IFQ Program described § 660.140, subpart D. A QS permit is not a limited entry permit. The provisions for the QS permit, including eligibility, renewal, change of permit ownership, accumulation limits, fees, and appeals are described at § 660.140, subpart D.

(d) *First receiver site license.* The first receiver site license conveys a conditional privilege to a first receiver to receive, purchase, or take custody, control or possession of landings from the Shorebased IFQ Program. The first receiver site license is issued for a person and a unique physical site consistent with the terms and

conditions required to account for and weigh the landed species. A first receiver site license is not a limited entry permit. The provisions for the First Receiver Site License, including eligibility, registration, change of ownership, fees, and appeals are described at § 660.140(f), subpart D.

(e) *Coop permit.* [Reserved]

(1) *MS coop permit.* [Reserved]

(2) *C/P coop permit.* [Reserved]

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

(g) *Permit appeals process*—(1) *General.* For permit actions, including issuance, renewal, change in vessel registration, change in permit owner or permit holder, and endorsement upgrade, the Assistant Regional Administrator for Sustainable Fisheries will make an initial administrative determination (IAD) on the action. In cases where the applicant disagrees with the IAD, the applicant may appeal that decision. Final decisions on appeals of IADs regarding issuance, renewal, change in vessel registration, change in permit owner or permit holder, and endorsement upgrade, will be made in writing by the Regional Administrator acting on behalf of the Secretary of Commerce and will state the reasons therefore. This section describes the procedures for appealing the IAD on permit actions made in this title under subparts C through G of part 660. Additional information regarding appeals of an IAD related to the trawl rationalization program is contained in the specific program sections under subpart D of part 660.

(2) *Who May Appeal?* Only a person who received an IAD that disapproved any part of their application may file a written appeal. For purposes of this section, such person will be referred to as the “applicant.”

(3) *Submission of appeals.* (i) The appeal must be in writing, must allege credible facts or circumstances to show why the criteria in this subpart have been met, and must include any relevant information or documentation to support the appeal.

(ii) Appeals must be mailed or faxed to: National Marine Fisheries Service, Northwest Region, Sustainable Fisheries Division, ATTN: Appeals, 7600 Sand Point Way NE., Seattle, WA, 98115; Fax: 206-526-6426; or delivered to National Marine Fisheries Service at the same address.

(4) *Timing of appeals.* (i) If an applicant appeals an IAD, the appeal must be postmarked, faxed, or hand delivered to NMFS no later than 30 calendar days after the date on the IAD. If the applicant does not appeal the IAD within 30 calendar days, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(ii) The time period to submit an appeal begins with the date on the IAD. If the last day of the time period is a Saturday, Sunday, or Federal holiday, the time period will extend to the close of business on the next business day.

(5) *Address of record.* For purposes of the appeals process, NMFS will establish as the address of record, the address used by the applicant in initial correspondence to NMFS. Notifications of all actions affecting the applicant after establishing an address of record will be mailed to that address, unless the applicant provides NMFS, in writing, with any changes to that address. NMFS bears no responsibility if a notification is sent to the address of record and is not received because the applicant’s actual address has changed without notification to NMFS.

(6) *Decisions on appeals.* (i) For the appeal of an IAD related to the application and initial issuance process for the trawl rationalization program listed in subpart D of part 660, the Regional Administrator shall appoint an appeals officer. After determining there is sufficient information and that all procedural requirements have been met, the appeals officer will review the record and issue a recommendation on the appeal to the Regional Administrator, which shall be advisory only. The recommendation must be based solely on the record. Upon receiving the findings and recommendation, the Regional Administrator shall issue a final decision on the appeal acting on behalf of the Secretary of Commerce in accordance with paragraph (g)(6)(ii) of this section.

(ii) *Final decision on appeal.* The Regional Administrator will issue a written decision on the appeal which is the final decision of the Secretary of Commerce.

(7) *Status of permits pending appeal.* (i) For all permit actions, except those actions related to the application and initial issuance process for the trawl rationalization program listed in subpart D of part 660, the permit registration remains as it was prior to the request until the final decision has been made.

(ii) For permit actions related to the application and initial issuance process for the trawl rationalization program

listed in subpart D of part 660, the status of permits pending appeal is as follows:

(A) For permit and endorsement qualifications and eligibility appeals (i.e., QS permit, MS permit, MS/CV endorsement, C/P endorsement), any permit or endorsement under appeal after December 31, 2010 may not be used to fish in the Pacific Coast groundfish fishery until a final decision on the appeal has been made. If the permit or endorsement will be issued, the permit or endorsement will be effective upon approval, except for QS permits, which will be effective at the start of the next fishing year.

(B) For a QS or IBQ amount for specific IFQ management unit species under appeal, the QS or IBQ amount for the IFQ species under appeal will remain as the amount assigned to the associated QS permit in the IAD). The QS permit may be used to fish in the Pacific Coast groundfish fishery with the QS or IBQ amounts assigned to the QS permit in the IAD. Once a final decision on the appeal has been made and if a revised QS or IBQ amount for a specific IFQ species will be assigned to the QS permit, the additional QS or IBQ amount associated with the QS permit will be effective at the start of the next calendar year following the final decision.

(C) For a Pacific whiting catch history assignment associated with an MS/CV endorsement under appeal, the catch history assignment will remain as that previously assigned to the associated MS/CV-endorsed limited entry permit in the IAD). The MS/CV-endorsed limited entry permit may be used to fish in the Pacific Coast groundfish fishery with the catch history assigned to the MS/CV-endorsed permit in the IAD. Once a final decision on the appeal has been made, and if a revised catch history assignment will be issued, the additional Pacific whiting catch history assignment associated with the MS/CV endorsement will be effective at the start of the next calendar year following the final decision.

(h) *Permit sanctions.* (1) All permits and licenses issued or applied for under Subparts C through G are subject to sanctions pursuant to the Magnuson-Stevens Act at 16 U.S.C. 1858(g) and 15 CFR part 904, subpart D.

(2) All Shorebased IFQ Program permits (QS permit, first receiver site license), QS accounts, vessel accounts, and MS Coop Program permits (MS permit, MS/CV-endorsed permit, and MS coop permit), and C/P Coop Program permits (C/P-endorsed permit, C/P coop permit) issued under subpart D:

SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS 16 U.S.C. 1853

95-354, 99-659, 101-627, 104-297

(a) **REQUIRED PROVISIONS.**—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are—

(A) necessary and appropriate for the conservation and management of the fishery to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery;

(B) described in this subsection or subsection (b), or both; and

(C) consistent with the national standards, the other provisions of this Act, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interest in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;

(4) assess and specify—

(A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3),

(B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing, and

(C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;

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(5) specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, charter fishing, and fish processing in the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, economic information necessary to meet the requirements of this Act, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors;

(6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;

(7) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat;

(8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan;

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(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and analyze the likely effects, if any, including the cumulative conservation, economic, and social impacts, of the conservation and management measures on, and possible mitigation measures for—

(A) participants in the fisheries and fishing communities affected by the plan or amendment;

(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants; and

(C) the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants in the fishery;

(10) specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery;

(11) establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority—

(A) minimize bycatch; and

(B) minimize the mortality of bycatch which cannot be avoided;

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MSA § 303

(12) assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;

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(13) include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery, including its economic impact, and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors;

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(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate, taking into consideration the economic impact of the harvest restrictions or recovery benefits on the fishery participants in each sector, any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery and;

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(15) establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.

97-453, 99-659, 101-627, 102-251, 104-297

(b) DISCRETIONARY PROVISIONS.—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may—

(1) require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to—

(A) any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone [or special areas,]* or for anadromous species or Continental Shelf fishery resources beyond such zone [or areas]*;

(B) the operator of any such vessel; or

(C) any United States fish processor who first receives fish that are subject to the plan;

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(2)(A) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(B) designate such zones in areas where deep sea corals are identified under section 408, to protect deep sea corals from physical damage from fishing gear or to prevent loss or damage to such fishing gear from interactions with deep sea corals, after considering long-term sustainable uses of fishery resources in such areas; and

(C) with respect to any closure of an area under this Act that prohibits all fishing, ensure that such closure—

- (i) is based on the best scientific information available;
- (ii) includes criteria to assess the conservation benefit of the closed area;
- (iii) establishes a timetable for review of the closed area's performance that is consistent with the purposes of the closed area; and
- (iv) is based on an assessment of the benefits and impacts of the closure, including its size, in relation to other management measures (either alone or in combination with such measures), including the benefits and impacts of limiting access to: users of the area, overall fishing activity, fishery science, and fishery and marine conservation;

(3) establish specified limitations which are necessary and appropriate for the conservation and management of the fishery on the—

- (A) catch of fish (based on area, species, size, number, weight, sex, bycatch, total biomass, or other factors);
- (B) sale of fish caught during commercial, recreational, or charter fishing, consistent with any applicable Federal and State safety and quality requirements; and
- (C) transshipment or transportation of fish or fish products under permits issued pursuant to section 204;

(4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this Act;

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(5) incorporate (consistent with the national standards, the other provisions of this Act, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery and take into account the different circumstances affecting fisheries from different States and ports, including distances to fishing grounds and proximity to time and area closures;

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(6) establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account—

- (A) present participation in the fishery;
- (B) historical fishing practices in, and dependence on, the fishery;
- (C) the economics of the fishery;
- (D) the capability of fishing vessels used in the fishery to engage in other fisheries;
- (E) the cultural and social framework relevant to the fishery and any affected fishing communities;
- (F) the fair and equitable distribution of access privileges in the fishery; and
- (G) any other relevant considerations;

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MSA § 303

(7) require fish processors who first receive fish that are subject to the plan to submit data which are necessary for the conservation and management of the fishery;

(8) require that one or more observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if the facilities of the vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized;

(9) assess and specify the effect which the conservation and management measures of the plan will have on the stocks of naturally spawning anadromous fish in the region;

(10) include, consistent with the other provisions of this Act, conservation and management measures that provide harvest incentives for participants within each gear group to employ fishing practices that result in lower levels of bycatch or in lower levels of the mortality of bycatch;

(11) reserve a portion of the allowable biological catch of the fishery for use in scientific research;

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(12) include management measures in the plan to conserve target and non-target species and habitats, considering the variety of ecological factors affecting fishery populations; and

(14)[sic]¹⁵ prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

97-453, 104-297

(c) PROPOSED REGULATIONS.—Proposed regulations which the Council deems necessary or appropriate for the purposes of—

(1) implementing a fishery management plan or plan amendment shall be submitted to the Secretary simultaneously with the plan or amendment under section 304; and

(2) making modifications to regulations implementing a fishery management plan or plan amendment may be submitted to the Secretary at any time after the plan or amendment is approved under section 304.

¹⁵ So in original.

P.L. 109-479, sec. 104(b), MSA § 303 note

16 U.S.C. 1853 note

EFFECTIVE DATES; APPLICATION TO CERTAIN SPECIES.—The amendment made by subsection (a)(10)¹⁶—

(1) shall, unless otherwise provided for under an international agreement in which the United States participates, take effect—

(A) in fishing year 2010 for fisheries determined by the Secretary to be subject to overfishing; and

(B) in fishing year 2011 for all other fisheries; and

(2) shall not apply to a fishery for species that have a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing of that species; and

(3) shall not limit or otherwise affect the requirements of section 301(a)(1) or 304(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851(a)(1) or 1854(e), respectively).

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SEC. 303A. LIMITED ACCESS PRIVILEGE PROGRAMS.

16 U.S.C. 1853a

(a) **IN GENERAL.**—After the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, a Council may submit, and the Secretary may approve, for a fishery that is managed under a limited access system, a limited access privilege program to harvest fish if the program meets the requirements of this section.

(b) **NO CREATION OF RIGHT, TITLE, OR INTEREST.**—Limited access privilege, quota share, or other limited access system authorization established, implemented, or managed under this Act—

(1) shall be considered a permit for the purposes of sections 307, 308, and 309;

(2) may be revoked, limited, or modified at any time in accordance with this Act, including revocation if the system is found to have jeopardized the sustainability of the stock or the safety of fishermen;

(3) shall not confer any right of compensation to the holder of such limited access privilege, quota share, or other such limited access system authorization if it is revoked, limited, or modified;

(4) shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested by the holder; and

(5) shall be considered a grant of permission to the holder of the limited access privilege or quota share to engage in activities permitted by such limited access privilege or quota share.

¹⁶ Section 104(a)(10) of P.L. 109-479 added section 303(a)(15).

(c) REQUIREMENTS FOR LIMITED ACCESS PRIVILEGES.—

(1) IN GENERAL.—Any limited access privilege program to harvest fish submitted by a Council or approved by the Secretary under this section shall—

(A) if established in a fishery that is overfished or subject to a rebuilding plan, assist in its rebuilding;

(B) if established in a fishery that is determined by the Secretary or the Council to have over-capacity, contribute to reducing capacity;

(C) promote—

(i) fishing safety;

(ii) fishery conservation and management; and

(iii) social and economic benefits;

(D) prohibit any person other than a United States citizen, a corporation, partnership, or other entity established under the laws of the United States or any State, or a permanent resident alien, that meets the eligibility and participation requirements established in the program from acquiring a privilege to harvest fish, including any person that acquires a limited access privilege solely for the purpose of perfecting or realizing on a security interest in such privilege;

(E) require that all fish harvested under a limited access privilege program be processed on vessels of the United States or on United States soil (including any territory of the United States);

(F) specify the goals of the program;

(G) include provisions for the regular monitoring and review by the Council and the Secretary of the operations of the program, including determining progress in meeting the goals of the program and this Act, and any necessary modification of the program to meet those goals, with a formal and detailed review 5 years after the implementation of the program and thereafter to coincide with scheduled Council review of the relevant fishery management plan (but no less frequently than once every 7 years);

(H) include an effective system for enforcement, monitoring, and management of the program, including the use of observers or electronic monitoring systems;

(I) include an appeals process for administrative review of the Secretary's decisions regarding initial allocation of limited access privileges;

(J) provide for the establishment by the Secretary, in consultation with appropriate Federal agencies, for an information collection and review process to provide any additional information needed to determine whether any illegal acts of anti-competition, anti-trust, price collusion, or price fixing have occurred among regional fishery associations or persons receiving limited access privileges under the program; and

(K) provide for the revocation by the Secretary of limited access privileges held by any person found to have violated the antitrust laws of the United States.

(2) WAIVER.—The Secretary may waive the requirement of paragraph (1)(E) if the Secretary determines that—

- (A) the fishery has historically processed the fish outside of the United States; and
- (B) the United States has a seafood safety equivalency agreement with the country where processing will occur.

(3) FISHING COMMUNITIES.—

(A) IN GENERAL.—

(i) ELIGIBILITY.—To be eligible to participate in a limited access privilege program to harvest fish, a fishing community shall—

- (I) be located within the management area of the relevant Council;
- (II) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;
- (III) consist of residents who conduct commercial or recreational fishing, processing, or fishery-dependent support businesses within the Council's management area; and
- (IV) develop and submit a community sustainability plan to the Council and the Secretary that demonstrates how the plan will address the social and economic development needs of coastal communities, including those that have not historically had the resources to participate in the fishery, for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(ii) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section for any person who fails to comply with the requirements of the community sustainability plan. Any limited access privileges denied or revoked under this section may be reallocated to other eligible members of the fishing community.

- (B) PARTICIPATION CRITERIA.—In developing participation criteria for eligible communities under this paragraph, a Council shall consider—
- (i) traditional fishing or processing practices in, and dependence on, the fishery;
 - (ii) the cultural and social framework relevant to the fishery;
 - (iii) economic barriers to access to fishery;
 - (iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;
 - (v) the expected effectiveness, operational transparency, and equitability of the community sustainability plan; and
 - (vi) the potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting or processing activities in the fishery.

(4) REGIONAL FISHERY ASSOCIATIONS.—

(A) IN GENERAL.—To be eligible to participate in a limited access privilege program to harvest fish, a regional fishery association shall—

- (i) be located within the management area of the relevant Council;
- (ii) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;
- (iii) be a voluntary association with established by-laws and operating procedures;
- (iv) consist of participants in the fishery who hold quota share that are designated for use in the specific region or subregion covered by the regional fishery association, including commercial or recreational fishing, processing, fishery-dependent support businesses, or fishing communities;
- (v) not be eligible to receive an initial allocation of a limited access privilege but may acquire such privileges after the initial allocation, and may hold the annual fishing privileges of any limited access privileges it holds or the annual fishing privileges that is [sic]¹⁷ members contribute; and
- (vi) develop and submit a regional fishery association plan to the Council and the Secretary for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(B) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section to any person participating in a regional fishery association who fails to comply with the requirements of the regional fishery association plan.

¹⁷ So in original.

(C) PARTICIPATION CRITERIA.—In developing participation criteria for eligible regional fishery associations under this paragraph, a Council shall consider—

- (i) traditional fishing or processing practices in, and dependence on, the fishery;
- (ii) the cultural and social framework relevant to the fishery;
- (iii) economic barriers to access to fishery;
- (iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;
- (v) the administrative and fiduciary soundness of the association; and
- (vi) the expected effectiveness, operational transparency, and equitability of the fishery association plan.

(5) ALLOCATION.—In developing a limited access privilege program to harvest fish a Council or the Secretary shall—

(A) establish procedures to ensure fair and equitable initial allocations, including consideration of—

- (i) current and historical harvests;
- (ii) employment in the harvesting and processing sectors;
- (iii) investments in, and dependence upon, the fishery; and
- (iv) the current and historical participation of fishing communities;

(B) consider the basic cultural and social framework of the fishery, especially through—

- (i) the development of policies to promote the sustained participation of small owner-operated fishing vessels and fishing communities that depend on the fisheries, including regional or port-specific landing or delivery requirements; and
- (ii) procedures to address concerns over excessive geographic or other consolidation in the harvesting or processing sectors of the fishery;

(C) include measures to assist, when necessary and appropriate, entry-level and small vessel owner-operators, captains, crew, and fishing communities through set-asides of harvesting allocations, including providing privileges, which may include set-asides or allocations of harvesting privileges, or economic assistance in the purchase of limited access privileges;

(D) ensure that limited access privilege holders do not acquire an excessive share of the total limited access privileges in the program by—

- (i) establishing a maximum share, expressed as a percentage of the total limited access privileges, that a limited access privilege holder is permitted to hold, acquire, or use; and
- (ii) establishing any other limitations or measures necessary to prevent an inequitable concentration of limited access privileges; and

(E) authorize limited access privileges to harvest fish to be held, acquired, used by, or issued under the system to persons who substantially participate in the fishery, including in a specific sector of such fishery, as specified by the Council.

(6) PROGRAM INITIATION.—

(A) LIMITATION.—Except as provided in subparagraph (D), a Council may initiate a fishery management plan or amendment to establish a limited access privilege program to harvest fish on its own initiative or if the Secretary has certified an appropriate petition.

(B) PETITION.—A group of fishermen constituting more than 50 percent of the permit holders, or holding more than 50 percent of the allocation, in the fishery for which a limited access privilege program to harvest fish is sought, may submit a petition to the Secretary requesting that the relevant Council or Councils with authority over the fishery be authorized to initiate the development of the program. Any such petition shall clearly state the fishery to which the limited access privilege program would apply. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the limited access program shall be eligible to sign a petition for such a program and shall serve as the basis for determining the percentage described in the first sentence of this subparagraph.

(C) CERTIFICATION BY SECRETARY.—Upon the receipt of any such petition, the Secretary shall review all of the signatures on the petition and, if the Secretary determines that the signatures on the petition represent more than 50 percent of the permit holders, or holders of more than 50 percent of the allocation in the fishery, as described by subparagraph (B), the Secretary shall certify the petition to the appropriate Council or Councils.

(D) NEW ENGLAND AND GULF REFERENDUM.—

(i) Except as provided in clause (iii) for the Gulf of Mexico commercial red snapper fishery, the New England and Gulf Councils may not submit, and the Secretary may not approve or implement, a fishery management plan or amendment that creates an individual fishing quota program, including a Secretarial plan, unless such a system, as ultimately developed, has been approved by more than 2/3 of those voting in a referendum among eligible permit holders, or other persons described in clause (v), with respect to the New England Council, and by a majority of those voting in the referendum among eligible permit holders with respect to the Gulf Council. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the individual fishing quota program shall be eligible to vote in such a referendum. If an individual fishing quota program fails to be approved by the requisite number of those voting, it may be revised and submitted for approval in a subsequent referendum.

(ii) The Secretary shall conduct a referendum under this subparagraph, including notifying all persons eligible to participate in the referendum and making available to them information concerning the schedule, procedures, and eligibility requirements for the referendum process and the proposed individual fishing quota program. Within 1 year after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary shall publish guidelines and procedures to determine procedures and voting eligibility requirements for referenda and to conduct such referenda in a fair and equitable manner.

(iii) The provisions of section 407(c) of this Act shall apply in lieu of this subparagraph for an individual fishing quota program for the Gulf of Mexico commercial red snapper fishery.

(iv) Chapter 35 of title 44, United States Code, (commonly known as the Paperwork Reduction Act) does not apply to the referenda conducted under this subparagraph.

(v) The Secretary shall promulgate criteria for determining whether additional fishery participants are eligible to vote in the New England referendum described in clause (i) in order to ensure that crew members who derive a significant percentage of their total income from the fishery under the proposed program are eligible to vote in the referendum.

(vi) In this subparagraph, the term ‘individual fishing quota’ does not include a sector allocation.

(7) TRANSFERABILITY.—In establishing a limited access privilege program, a Council shall—

(A) establish a policy and criteria for the transferability of limited access privileges (through sale or lease), that is consistent with the policies adopted by the Council for the fishery under paragraph (5); and

(B) establish, in coordination with the Secretary, a process for monitoring of transfers (including sales and leases) of limited access privileges.

(8) PREPARATION AND IMPLEMENTATION OF SECRETARIAL PLANS.—This subsection also applies to a plan prepared and implemented by the Secretary under section 304(c) or 304(g).

(9) ANTITRUST SAVINGS CLAUSE.—Nothing in this Act shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of the preceding sentence, the term ‘antitrust laws’ has the meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

16 U.S.C. 1853a
MSA § 303A

(d) AUCTION AND OTHER PROGRAMS.—In establishing a limited access privilege program, a Council shall consider, and may provide, if appropriate, an auction system or other program to collect royalties for the initial, or any subsequent, distribution of allocations in a limited access privilege program if—

(1) the system or program is administered in such a way that the resulting distribution of limited access privilege shares meets the program requirements of this section; and

(2) revenues generated through such a royalty program are deposited in the Limited Access System Administration Fund established by section 305(h)(5)(B) and available subject to annual appropriations.

(e) COST RECOVERY.—In establishing a limited access privilege program, a Council shall—

(1) develop a methodology and the means to identify and assess the management, data collection and analysis, and enforcement programs that are directly related to and in support of the program; and

(2) provide, under section 304(d)(2), for a program of fees paid by limited access privilege holders that will cover the costs of management, data collection and analysis, and enforcement activities.

(f) CHARACTERISTICS.—A limited access privilege established after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 is a permit issued for a period of not more than 10 years that—

(1) will be renewed before the end of that period, unless it has been revoked, limited, or modified as provided in this subsection;

(2) will be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have failed to comply with any term of the plan identified in the plan as cause for revocation, limitation, or modification of a permit, which may include conservation requirements established under the plan;

(3) may be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have committed an act prohibited by section 307 of this Act; and

(4) may be acquired, or reacquired, by participants in the program under a mechanism established by the Council if it has been revoked, limited, or modified under paragraph (2) or (3).

(g) LIMITED ACCESS PRIVILEGE ASSISTED PURCHASE PROGRAM.—

(1) IN GENERAL.—A Council may submit, and the Secretary may approve and implement, a program which reserves up to 25 percent of any fees collected from a fishery under section 304(d)(2) to be used, pursuant to section 53706(a)(7) of title 46, United States Code, to issue obligations that aid in financing—

(A) the purchase of limited access privileges in that fishery by fishermen who fish from small vessels; and

(B) the first-time purchase of limited access privileges in that fishery by entry level fishermen.

(2) ELIGIBILITY CRITERIA.—A Council making a submission under paragraph (1) shall recommend criteria, consistent with the provisions of this Act, that a fisherman must meet to qualify for guarantees under subparagraphs (A) and (B) of paragraph (1) and the portion of funds to be allocated for guarantees under each subparagraph.

(h) EFFECT ON CERTAIN EXISTING SHARES AND PROGRAMS.—Nothing in this Act, or the amendments made by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, shall be construed to require a reallocation or a reevaluation of individual quota shares, processor quota shares, cooperative programs, or other quota programs, including sector allocation in effect before the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006.

(i) TRANSITION RULES.—

(1) IN GENERAL.—The requirements of this section shall not apply to any quota program, including any individual quota program, cooperative program, or sector allocation for which a Council has taken final action or which has been submitted by a Council to the Secretary, or approved by the Secretary, within 6 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, except that—

(A) the requirements of section 303(d) of this Act in effect on the day before the date of enactment of that Act shall apply to any such program;

(B) the program shall be subject to review under subsection (c)(1)(G) of this section not later than 5 years after the program implementation; and

(C) nothing in this subsection precludes a Council from incorporating criteria contained in this section into any such plans.

(2) PACIFIC GROUND FISH PROPOSALS.—The requirements of this section, other than subparagraphs (A) and (B) of subsection (c)(1) and subparagraphs (A), (B), and (C) of paragraph (1) of this subsection, shall not apply to any proposal authorized under section 302(f) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 that is submitted within the timeframe prescribed by that section.

16 U.S.C. 1853a note, 1854
MSA §§ 303A note, 304

P.L. 109-479, sec. 106(e), MSA § 303A note

16 U.S.C. 1853a note

APPLICATION WITH AMERICAN FISHERIES ACT.—Nothing in section 303A of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), as added by subsection (a) [P.L. 109-479], shall be construed to modify or supersede any provision of the American Fisheries Act (46 U.S.C. 12102 note; 16 U.S.C. 1851 note; et alia).

P.L. 104-297, sec. 108(i), MSA § 303 note

EXISTING QUOTA PLANS.—Nothing in this Act [P.L.104-297] or the amendments made by this Act shall be construed to require a reallocation of individual fishing quotas under any individual fishing quota program approved by the Secretary before January 4, 1995.

SEC. 304. ACTION BY THE SECRETARY

16 U.S.C. 1854

104-297

(a) REVIEW OF PLANS.—

(1) Upon transmittal by the Council to the Secretary of a fishery management plan or plan amendment, the Secretary shall—

(A) immediately commence a review of the plan or amendment to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law; and

(B) immediately publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

(2) In undertaking the review required under paragraph (1), the Secretary shall—

(A) take into account the information, views, and comments received from interested persons;

(B) consult with the Secretary of State with respect to foreign fishing; and

(C) consult with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea and to fishery access adjustments referred to in section 303(a)(6).

(3) The Secretary shall approve, disapprove, or partially approve a plan or amendment within 30 days of the end of the comment period under paragraph (1) by written notice to the Council. A notice of disapproval or partial approval shall specify—

(A) the applicable law with which the plan or amendment is inconsistent;

(B) the nature of such inconsistencies; and

(C) recommendations concerning the actions that could be taken by the Council to conform such plan or amendment to the requirements of applicable law.

If the Secretary does not notify a Council within 30 days of the end of the comment period of the approval, disapproval, or partial approval of a plan or amendment, then such plan or amendment shall take effect as if approved.

before the exemption is required to obtain information needed to make exemption reports. NMFS OLE must be contacted during business hours (Monday through Friday between 0800 and 1700 Pacific Standard Time).

(iv) Exemption reports must be received by NMFS at least 2 hours and not more than 24 hours before the exempted activities defined at paragraph (d)(4)(i) and (ii) of this section occur. An exemption report is valid until NMFS receives a report canceling the exemption. An exemption cancellation must be received at least 2 hours before the vessel re-enters the EEZ following an outside areas exemption or at least 2 hours before the vessel is placed back in the water following a haul out exemption.

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

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

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

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

(9) Pay all charges levied by the communication service provider as nec-

essary to ensure continuous operation of the VMS transceiver units.

[68 FR 62384, Nov. 4, 2003. Redesignated and amended at 69 FR 42350, July 15, 2004]

§ 660.314 Groundfish observer program.

(a) *General.* Vessel owners, operators, and managers are jointly and severally responsible for their vessel's compliance with this section.

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

(c) *Observer coverage requirements—(1) At-sea processors.* A catcher-processor or mothership 125 ft (38.1 m) LOA or longer must carry two NMFS-certified observers, and a catcher-processor or mothership shorter than 125 ft (38.1 m) LOA must carry one NMFS-certified observer, each day that the vessel is used to take, retain, receive, land, process, or transport groundfish.

(2) *Catcher vessels.* For the purposes of this section, catcher vessels include all vessels, using open access or limited entry gear (including exempted gear types) that take and retain, possess or land groundfish at a processor(s) as defined at § 660.302. When NMFS notifies the vessel owner, operator, permit holder, or the vessel manager of any requirement to carry an observer, the vessel may not take and retain, possess, or land any groundfish without carrying an observer.

(i) *Notice of departure—Basic rule.* At least 24 hours (but not more than 36 hours) before departing on a fishing trip, a vessel that has been notified by NMFS that it is required to carry an observer, or that is operating in an active sampling unit, must notify NMFS (or its designated agent) of the vessel's intended time of departure. Notice will be given in a form to be specified by NMFS.

(A) *Optional notice—Weather delays.* A vessel that anticipates a delayed departure due to weather or sea conditions may advise NMFS of the anticipated

delay when providing the basic notice described in paragraph (c)(2)(i) of this section. If departure is delayed beyond 36 hours from the time the original notice is given, the vessel must provide an additional notice of departure not less than 4 hours prior to departure, in order to enable NMFS to place an observer.

(B) *Optional notice—Back-to-back fishing trips.* A vessel that intends to make back-to-back fishing trips (i.e., trips with less than 24 hours between off-loading from one trip and beginning another), may provide the basic notice described in paragraph (c)(2)(i) of this section for both trips, prior to making the first trip. A vessel that has given such notice is not required to give additional notice of the second trip.

(ii) *Cease fishing report.* Not more than 24 hours after ceasing the taking and retaining of groundfish with limited entry or open access gear in order to leave the fishery management area or to fish for species not managed under the PCGFMP, the owner, operator, or vessel manager of each vessel that is required to carry an observer or that is operating in a segment of the fleet that NMFS has identified as an active sampling unit must provide NMFS or its designated agent with notification as specified by NMFS.

(3) *Vessels engaged in recreational fishing.* [Reserved]

(4) *Waiver.* The Northwest Regional Administrator may provide written notification to the vessel owner stating that a determination has been made to temporarily waive coverage requirements because of circumstances that are deemed to be beyond the vessel's control.

(d) *Vessel responsibilities.* An operator of a vessel required to carry one or more observer(s) must provide:

(1) *Accommodations and food.* Provide accommodations and food that are:

(i) *At-sea processors.* Equivalent to those provided for officers, engineers, foremen, deck-bosses or other management level personnel of the vessel.

(ii) *Catcher vessels.* Equivalent to those provided to the crew.

(2) *Safe conditions.* Maintain safe conditions on the vessel for the protection of observer(s) including adherence to all USCG and other applicable rules,

regulations, or statutes pertaining to safe operation of the vessel, and provisions at §§ 600.725 and 600.746 of this chapter.

(3) *Observer communications.* Facilitate observer communications by:

(i) *Observer use of equipment.* Allowing observer(s) to use the vessel's communication equipment and personnel, on request, for the entry, transmission, and receipt of work-related messages, at no cost to the observer(s) or the U.S. or designated agent.

(ii) *Functional equipment.* Ensuring that the vessel's communications equipment, used by observers to enter and transmit data, is fully functional and operational.

(iii) *Hardware and software.* At-sea processing vessels must provide hardware and software pursuant to regulations at 50 CFR 679.50(f)(1)(iii)(B)(1) and 50 CFR 679.50(f)(2), as follows:

(A) Providing for use by the observer a personal computer in working condition that contains a full Pentium 120 Mhz or greater capacity processing chip, at least 32 megabytes of RAM, at least 75 megabytes of free hard disk storage, a Windows 9x or NT compatible operating system, an operating mouse, and a 3.5-inch (8.9 cm) floppy disk drive. The associated computer monitor must have a viewable screen size of at least 14.1 inches (35.8 cm) and minimum display settings of 600×800 pixels. The computer equipment specified in this paragraph (A) must be connected to a communication device that provides a modem connection to the NMFS host computer and supports one or more of the following protocols: ITU V.22, ITU V.22bis, ITU V.32, ITU V.32bis, or ITU V.34. Processors that use a modem must have at least a 28.8kbs Hayes-compatible modem. The above-specified hardware and software requirements do not apply to processors that do not process groundfish.

(B) *NMFS-supplied software.* Ensuring that each at-sea processing ship that is required to have two observers aboard obtains the data entry software provided by the Regional Administrator for use by the observer.

(4) *Vessel position.* Allow observer(s) access to, and the use of, the vessel's navigation equipment and personnel,

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on request, to determine the vessel's position.

(5) *Access.* Allow observer(s) free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(6) *Prior notification.* Notify observer(s) at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer, unless the observer specifically requests not to be notified.

(7) *Records.* Allow observer(s) to inspect and copy any state or Federal logbook maintained voluntarily or as required by regulation.

(8) *Assistance.* Provide all other reasonable assistance to enable observer(s) to carry out their duties, including, but not limited to:

(i) Measuring decks, codends, and holding bins.

(ii) Providing the observer(s) with a safe work area.

(iii) Collecting bycatch when requested by the observer(s).

(iv) Collecting and carrying baskets of fish when requested by the observer(s).

(v) Allowing the observer(s) to collect biological data and samples.

(vi) Providing adequate space for storage of biological samples.

(9) *At-sea transfers to or from processing vessels.* Processing vessels must:

(i) Ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours, under safe conditions, and with the agreement of observers involved.

(ii) Notify observers at least 3 hours before observers are transferred, such that the observers can collect personal belongings, equipment, and scientific samples.

(iii) Provide a safe pilot ladder and conduct the transfer to ensure the safety of observers during transfers.

(iv) Provide an experienced crew member to assist observers in the small boat or raft in which any transfer is made.

(e) *Procurement of observer services by at-sea processing vessels.* Owners of vessels required to carry observers under paragraph (c)(1) of this section must arrange for observer services from an observer provider permitted by the North Pacific Groundfish Observer Program under 50 CFR 679.50(i), except that:

(1) Vessels are required to procure observer services directly from NMFS when NMFS has determined and given notification that the vessel must carry NMFS staff or an individual authorized by NMFS in lieu of an observer provided by a permitted observer provider.

(2) Vessels are required to procure observer services directly from NMFS and a permitted observer provider when NMFS has determined and given notification that the vessel must carry NMFS staff or individuals authorized by NMFS, in addition to an observer provided by a permitted observer provider.

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

(ii) *Observer certification official.* The Regional Administrator will designate a NMFS observer certification official who will make decisions for the Observer Program Office on whether to issue or deny observer certification.

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

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

(B) Have provided, through their observer provider:

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

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

(C) Meet all education and health standards as specified in 50 CFR

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679.50(i)(2)(i)(A) and (1)(2)(x)(C), respectively; and

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

(I) Successful completion of training by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Observer Program.

(2) If a candidate fails training, he or she will be notified in writing on or before the last day of training. The notification will indicate: the reasons the candidate failed the training; whether the candidate can retake the training, and under what conditions, or whether, the candidate will not be allowed to retake the training. If a determination is made that the candidate may not pursue further training, notification will be in the form of an IAD denying certification, as specified under paragraph (f)(1)(iv)(A) of this section.

(E) Have not been decertified under paragraph (f)(3) of this section, or pursuant to 50 CFR 679.50.

(iv) Agency determinations on observer certification (A) *Denial of a certification*. The NMFS observer certification official will issue a written IAD denying observer certification when the observer certification official determines that a candidate has unresolvable deficiencies in meeting the requirements for certification as specified in paragraph (f)(1)(iii) of this section. The IAD will identify the reasons certification was denied and what requirements were deficient.

(B) *Appeals*. A candidate who receives an IAD that denies his or her certification may appeal pursuant to paragraph (f)(4) of this section. A candidate who appeals the IAD will not be issued an interim observer certification, and will not receive a certification unless the final resolution of that appeal is in the candidate's favor.

(C) *Issuance of an observer certification*. An observer certification will be issued upon determination by the observer certification official that the candidate has successfully met all re-

quirements for certification as specified in paragraph (f)(1)(iii) of this section.

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

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

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

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

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

Fishery Conservation and Management

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

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

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

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

(2) *Standards of observer conduct*—(i) Limitations on conflict of interest.

(A) Observers:

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

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

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

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

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

(3) May not serve as observers on any vessel or at any shoreside or floating stationary processing facility owned or operated by a person who previously employed the observers.

(4) May not solicit or accept employment as a crew member or an employee of a vessel, shoreside processor, or stationary floating processor while employed by an observer provider.

(B) Provisions for remuneration of observers under this section do not constitute a conflict of interest.

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

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

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

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

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

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

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

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

(3) *Suspension and decertification*—(i) *Suspension and decertification review official*. The Regional Administrator (or a designee) will designate an observer suspension and decertification review official(s), who will have the authority to review observer certifications and

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issue initial administrative determinations of observer certification suspension and/or decertification.

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

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

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

(2) Failed to abide by the standards of conduct for observers as prescribed under paragraph (f)(2) of this section;

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

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

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

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

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

(iv) *Appeals.* A certified observer who receives an IAD that suspends or revokes his or her observer certification

may appeal pursuant to paragraph (f)(4) of this section.

(4) *Appeals.* (i) Decisions on appeals of initial administrative decisions denying certification to, or suspending, or decertifying, an observer, will be made by the Regional Administrator (or designated official).

(ii) Appeals decisions shall be in writing and shall state the reasons therefor.

(iii) An appeal must be filed with the Regional Administrator within 30 days of the initial administrative decision denying, suspending, or revoking the observer's certification.

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

(v) Absent good cause for further delay, the Regional Administrator (or designated official) will issue a written decision on the appeal within 45 days of receipt of the appeal. The Regional Administrator's decision is the final administrative decision of the Department as of the date of the decision.

(g) *Sample station and operational requirements—(1) Observer sampling station.* This paragraph contains the requirements for observer sampling stations. The vessel owner must provide an observer sampling station that complies with this section so that the observer can carry out required duties.

(i) *Accessibility.* The observer sampling station must be available to the observer at all times.

(ii) *Location.* The observer sampling station must be located within 4 m of the location from which the observer samples unsorted catch. Unobstructed passage must be provided between the observer sampling station and the location where the observer collects sample catch.

(iii) *Minimum work space aboard at-sea processing vessels.* The observer must have a working area of 4.5 square meters, including the observer's sampling table, for sampling and storage of fish to be sampled. The observer must be able to stand upright and have a work area at least 0.9 m deep in the area in front of the table and scale.

(iv) *Table aboard at-sea processing vessels.* The observer sampling station must include a table at least 0.6 m deep, 1.2 m wide and 0.9 m high and no more than 1.1 m high. The entire surface area of the table must be available for use by the observer. Any area for the observer sampling scale is in addition to the minimum space requirements for the table. The observer's sampling table must be secured to the floor or wall.

(v) *Diverter board aboard at-sea processing vessels.* The conveyor belt conveying unsorted catch must have a removable board (diverter board) to allow all fish to be diverted from the belt directly into the observer's sampling baskets. The diverter board must be located downstream of the scale used to weigh total catch. At least 1 m of accessible belt space, located downstream of the scale used to weight total catch, must be available for the observer's use when sampling.

(vi) *Other requirement for at-sea processing vessels.* The sampling station must be in a well-drained area that includes floor grating (or other material that prevents slipping), lighting adequate for day or night sampling, and a hose that supplies fresh or sea water to the observer.

(vii) *Observer sampling scale.* The observer sample station must include a NMFS-approved platform scale (pursuant to requirements at 50 CFR 679.28(d)(5)) with a capacity of at least 50 kg located within 1 m of the observer's sampling table. The scale must be mounted so that the weighing surface is no more than 0.7 m above the floor.

(2) *Requirements for bins used to make volumetric estimates on at-sea processing vessels.* [Reserved]

(3) *Operational requirements for at-sea processing vessels.* [Reserved]

[66 FR 20613, Apr. 24, 2001, as amended at 69 FR 31755, June 7, 2004. Redesignated and amended at 69 FR 42350, July 15, 2004; 69 FR 57881, Sept. 28, 2004]

§ 660.320 Allocations.

(a) *General.* The commercial portion of the Pacific Coast groundfish fishery, excluding the treaty Indian fishery, is divided into limited entry and open access fisheries. Separate allocations for the limited entry and open access fish-

eries will be established biennially or annually for certain species and/or areas using the procedures described in this subpart or the PCGFMP.

(1) *Limited entry allocation.* The allocation for the limited entry fishery is the allowable catch (harvest guideline or quota excluding set asides for recreational or tribal Indian fisheries) minus the allocation to the open access fishery.

(2) *Open access allocation.* The allocation for the open access fishery is derived by applying the open access allocation percentage to the annual harvest guideline or quota after subtracting any set asides for recreational or tribal Indian fisheries. For management areas where quotas or harvest guidelines for a stock are not fully utilized, no separate allocation will be established for the open access fishery until it is projected that the allowable catch for a species will be reached.

(b) *Open access allocation percentage.* For each species with a harvest guideline or quota, the initial open access allocation percentage is calculated by:

(1) Computing the total catch for that species during the window period by any vessel that does not initially receive a limited entry permit.

(2) Dividing that amount by the total catch during the window period by all gear.

(3) The guidelines in this paragraph (b)(3) apply to recalculation of the open access allocation percentage. Any recalculated allocation percentage will be used in calculating the following biennial fishing period's open access allocation.

(c) *Catch accounting between the limited entry and open access fisheries.* Any groundfish caught by a vessel with a limited entry permit will be counted against the limited entry allocation while the limited entry fishery for that vessel's limited entry gear is open. When the fishery for a vessel's limited entry gear has closed, groundfish caught by that vessel with open access gear will be counted against the open access allocation. All groundfish caught by vessels without limited entry permits will be counted against the open access allocation.

(d) *Additional guidelines.* Additional guidelines governing determination of

COMPUTER SECURITY ACT OF 1987

Public Law 100-235 (H.R. 145)

January 8, 1988

SECTION 1. SHORT TITLE

The Act may be cited as the "Computer Security Act of 1987".

SEC. 2 PURPOSE

(a) IN GENERAL.-The Congress declares that improving the security and privacy of sensitive information in Federal computer systems is in the public interest, and hereby creates a means for establishing minimum acceptable security practices for such systems, without limiting the scope of security measures already planned or in use.

(b) SPECIFIC PURPOSES.-The purposes of this Act are--

(1) by amending the Act of March 3, 1901, to assign to the National Bureau of Standards responsibility for developing standards and guidelines for Federal computer systems, including responsibility for developing standards and guidelines needed to assure the cost-effective security and privacy of sensitive information in Federal computer systems, drawing on the technical advice and assistance (including work products) of the National Security Agency, where appropriate;

(2) to provide for promulgation of such standards and guidelines by amending section 111(d) of the Federal Property and Administrative

Services Act of 1949;

(3) to require establishment of security plans by all operators of Federal computer systems that contain sensitive information; and

(4) to require mandatory periodic training for all persons involved in management, use, or operation of Federal computer systems that contain sensitive information.

SEC. 3. ESTABLISHMENT OF COMPUTER STANDARDS PROGRAM.

The Act of March 3, 1901, (15 U.S.C. 271-278h), is amended--

(1) in section 2(f), by striking out "and" at the end of paragraph (18), by striking out the period at the end of paragraph (19) and inserting in lieu thereof: "; and", and by inserting after such paragraph the following:

"(20) the study of computer systems (as that term is defined in section 20(d) of this Act) and their use to control machinery and processes.";

(2) by redesignating section 20 as section 22, and by inserting after section 19 the following new sections: "SEC. 20. (a) The National Bureau of Standards shall--

"(1) have the mission of developing standards, guidelines, and

associated methods and techniques for computer systems;

"(2) except as described in paragraph (3) of this subsection (relating to security standards), develop uniform standards and guidelines for Federal computer systems, except those systems excluded by section 2315 of title 10, United States Code, or section 3502(2) of title 44, United States Code.

"(3) have responsibility within the Federal Government for developing technical, management, physical, and administrative standards and guidelines for the cost-effective security and privacy of sensitive information in Federal computer systems except--

"(A) those systems excluded by section 2315 of title 10, United States Code, or section 3502(2) of title 44, United States Code; and

"(B) those systems which are protected at all times by procedures established for information which has been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense or foreign policy,

The primary purpose of which standards and guidelines shall be to control loss and unauthorized modification or disclosure of sensitive information in such systems and to prevent computer-related fraud and misuse;

"(4) submit standards and guidelines developed pursuant to

paragraphs (2) and (3) of this subsection, along with recommendations as to the extent to which these should be made compulsory and binding, to the Secretary of Commerce for promulgation under section 111(d) of the Federal Property and Administrative Services Act of 1949;

"(5) develop guidelines for use by operators of Federal computer systems that contain sensitive information in training their employees in security awareness and accepted security practice, as required by section 5 of the Computer Security Act of 1987; and

"(6) develop validation procedures for, and evaluate the effectiveness of, standards and guidelines developed pursuant to paragraphs (1), (2), and (3) of this subsection through research and liaison with other government and private agencies.

"(b) In fulfilling subsection (a) of this section, the National Bureau of Standards is authorized--

"(1) to assist the private sector, upon request, in using and applying the results of the programs and activities under this section;

"(2) to make recommendations, as appropriate, to the Administrator of General Services on policies and regulations proposed pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949;

"(3) as requested, to provide to operators of Federal computer systems technical assistance in implementing the standards and guidelines promulgated pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949;

"(4) to assist, as appropriate, the Office of Personnel Management in developing regulations pertaining to training, as required by section 5 of the Computer Security Act of 1987;

"(5) to perform research and to conduct studies, as needed, to determine the nature and extent of the vulnerabilities of, and to devise techniques for the cost effective security and privacy of sensitive information in Federal computer systems; and

"(6) to coordinate closely with other agencies and offices (including, but not limited to, the Departments of Defense and Energy, the National Security Agency, the General Accounting Office, the Office of Technology Assessment, and the Office of Management and Budget)--

"(A) to assure maximum use of all existing and planned programs, materials, studies, and reports relating to computer systems security and privacy, in order to avoid unnecessary and costly duplication of effort; and

"(B) to assure, to the maximum extent feasible, that standards developed pursuant to subsection (a) (3) and (5) are consistent and compatible with standards and procedures developed for the protection of information in Federal computer systems which is

authorized under criteria established by Executive order or an Act of Congress to be kept secret in the interest of national defense or foreign policy.

"(c) For the purposes of--

"(1) developing standards and guidelines for the protection of sensitive information in Federal computer systems under subsections (a) (1) and (a) (3), and

"(2) performing research and conducting studies under subsection (b) (5), the National Bureau of Standards shall draw upon computer system technical security guidelines developed by the National Security Agency to the extent that the National Bureau of Standards determines that such guidelines are consistent with the requirements for protecting sensitive information in Federal computer systems.

"(d) As used in this section--

"(1) the term computer system'--

"A) means any equipment or interconnected system or subsystems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception, of data or information; and

"(B) includes--

"(i) computers;

"(ii) ancillary equipment;

"(iii) software, firmware, and similar procedures;

"(iv) services, including support services; and

"(v) related resources as defined by regulations issued by the Administrator for General Services pursuant to section 111 of the Federal Property and Administrative Services Act of 1949;

"(2) the term 'Federal computer system'--

"(A) means a computer system operated by a Federal agency or by a contractor of a Federal agency or other organization that processes information (using a computer system) on behalf of the Federal Government to accomplish a Federal function; and

"(B) includes automatic data processing equipment as that term is defined in section 111(a)(2) of the Federal Property and Administrative Services Act of 1949;

"(3) the term 'operator of a Federal computer system' means a Federal agency, contractor of a Federal agency, or other organization that processes information using a computer system on behalf of the Federal Government to accomplish a Federal function;

"(4) the term 'sensitive information' means any information, the loss, misuse, or unauthorized access to or modification of which could adversely affect the national interest or the conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept secret in the interest of national defense or foreign policy; and

"(5) the term 'Federal agency' has the meaning given such term by section 3(b) of the Federal Property and Administrative Services Act of 1949.

"SEC. 21. (a) There is hereby established a Computer System Security and Privacy Advisory Board within the Department of Commerce. The Secretary of Commerce shall appoint the chairman of the Board. The Board shall be composed of twelve additional members appointed by the Secretary of Commerce as follows:

"(1) four members from outside the Federal Government who are eminent in the computer or telecommunications industry, at least one of whom is representative of small or medium sized companies in such industries;

"(2) four members from outside the Federal Government who are eminent in the fields of computer or telecommunications technology, or related disciplines, but who are not employed by or

representative of a producer of computer or telecommunications equipment; and

"(3) four members from the Federal Government who have computer systems management experience, including experience in computer systems security and privacy, at least one of whom shall be from the National Security Agency.

"(b) The duties of the Board shall be--

"(1) to identify emerging managerial, technical, administrative, and physical safeguard issues relative to computer systems security and privacy;

"(2) to advise the Bureau of Standards and the Secretary of Commerce on security and privacy issues pertaining to Federal computer systems; and

"(3) to report its findings to the Secretary of Commerce, the Director of the Office of Management and Budget, the Director of the National Security Agency, and the appropriate Committees of the Congress.

"(c) The term of office of each member of the Board shall be four years, except that--

"(1) of the initial members, three shall be appointed for terms of one year, three shall be appointed for terms of two years, three shall be appointed for terms of three years, and three shall be

appointed for terms of four years; and

"(2) any member appointed to fill a vacancy in the Board shall serve for the remainder of the term for which his predecessor was appointed.

"(d) The Board shall not act in the absence of a quorum, which shall consist of seven members.

"(e) Members of the Board, other than full-time employees of the Federal Government while attending meetings of such committees or while otherwise performing duties at the request of the Board Chairman while away from their homes or a regular place of business, may be allowed travel expenses in accordance with subchapter I of chapter 57 of title 5, United States Code.

"(f) To provide the staff services necessary to assist the Board in carrying out its functions, the Board may utilize personnel from the National Bureau of Standards or any other agency of the Federal Government with the consent of the head of the agency.

"(g) As used in this section, the terms 'computer system' and 'Federal computer system' have the meanings given in section 20(d) of this Act."; and

"(3) by adding at the end thereof the following new section:

"SEC. 23. This Act may be cited as the National Bureau of

Standards Act."

SEC. 4 AMENDMENT TO BROOKS ACT.

Section 111(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(d)) is amended to read as follows:

"(d) (1) The Secretary of Commerce shall, on the basis of standards and guidelines developed by the National Bureau of Standards pursuant to section 20(a) (2) and (3) of the National Bureau of Standards Act, promulgate standards and guidelines pertaining to Federal computer systems, making such standards compulsory and binding to the extent to which the Secretary determines necessary to improve the efficiency of operation or security and privacy of Federal computer systems. The President may disapprove or modify such standards and guidelines if he determines such action to be in the public interest. The President's authority to disapprove or modify such standards and guidelines may not be delegated. Notice of such disapproval or modification shall be submitted promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the Federal Register. Upon receiving notice of such disapproval or modification, the Secretary of Commerce shall immediately rescind or modify such standards or guidelines as directed by the President.

"(2) The head of a Federal agency may employ standards for the cost effective security and privacy of sensitive information in a Federal

computer system within or under the supervision of that agency that are more stringent than the standards promulgated by the Secretary of Commerce, if such standards contain, at a minimum, the provisions of those applicable standards made compulsory and binding by the Secretary of Commerce.

"(3) The standards determined to be compulsory and binding may be waived by the Secretary of Commerce in writing upon a determination that compliance would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or cause a major adverse financial impact on the operator which is not offset by government-wide savings. The Secretary may delegate to the head of one or more Federal agencies authority to waive such standards to the extent to which the Secretary determines such action to be necessary and desirable to allow for timely and effect implementation of Federal computer systems standards. The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of title 44, United States Code. Notice of each such waiver and delegation shall be transmitted promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the Federal Register.

"(4) The Administrator shall revise the Federal information resources management regulations (41 CFR ch. 201) to be consistent with the standards and guidelines promulgated by the Secretary of Commerce under this subsection.

"(5) As used in this subsection, the terms 'Federal computer system' and 'operator of a Federal computer system' have the meanings given in section 20(d) of the National Bureau of Standards Act."

SEC. 5. FEDERAL COMPUTER SYSTEM SECURITY TRAINING.

(a) In General.--Each Federal agency shall provide for the mandatory periodic training in computer security awareness and accepted computer security practice of all employees who are involved with the management, use, or operation of each Federal computer system within or under the supervision of that agency. Such training shall be--

(1) provided in accordance with the guidelines developed pursuant to section 20(a)(5) of the National Bureau of Standards Act (as added by section 3 of this Act), and in accordance with the regulations issued under subsection (c) of this section for Federal civilian employees; or

(2) provided by an alternative training program approved by the head of that agency on the basis of a determination that the alternative training program is at least as effective in accomplishing the objectives of such guidelines and regulations.

(b) TRAINING OBJECTIVES.--Training under this section shall be started within 60 days after the issuance of the regulations described in subsection (c). Such training shall be designed--

(1) to enhance employees' awareness of the threats to and vulnerability of computer systems; and

(2) to encourage the use of improved computer security practices.

(c) REGULATIONS.--Within six months after the date of the enactment of this Act, the Director of the Office of Personnel Management shall issue regulations prescribing the procedures and scope of the training to be provided Federal civilian employees under subsection (a) and the manner in which such training is to be carried out.

SEC. 6. ADDITIONAL RESPONSIBILITIES FOR COMPUTER SYSTEMS SECURITY AND PRIVACY.

(a) IDENTIFICATION OF SYSTEMS THAT CONTAIN SENSITIVE INFORMATION--Within 6 months after the date of enactment of this Act, each Federal agency shall identify each Federal computer system, and system under development, which is within or under the supervision of that agency and which contains sensitive information.

(b) SECURITY PLAN.--Within one year after the date of enactment of this Act, each such agency shall, consistent with the standards, guidelines, policies, and regulations prescribed pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949, establish a plan for the security and privacy of each Federal computer system identified by that agency pursuant to subsection (a)

that is commensurate with the risk and magnitude or the harm resulting from the loss, misuse, or unauthorized access to or modification of the information contained in such system. Copies of each such plan shall be transmitted to the National Bureau of Standards and the National Security Agency for advice and comment. A summary of such plan shall be included in the agency's five-year plan required by section 3505 of title 44, United States Code. Such plan shall be subject to disapproval by the Director of the Office of Management and Budget. Such plan shall be revised annually as necessary.

SEC. 7. DEFINITIONS.

As used in this Act, the terms "computer system", "Federal computer system", "operator of a Federal computer system", "sensitive information", and "Federal agency" have the meanings given in section 20(d) of the National Bureau of Standards Act (as added by section 3 of this Act).

SEC. 8. RULES OF CONSTRUCTION OF ACT.

Nothing in this Act, or in any amendment made by this Act, shall be construed--

(1) to constitute authority to withhold information sought pursuant to section 552 of title 5, United States Code; or

(2) to authorize any Federal agency to limit, restrict, regulate, or control the collection, maintenance, disclosure, use, transfer, or sale of any information (regardless of the medium in which the information may be maintained) that is--

(A) privately-owned information;

(B) disclosable under section 552 of title 5, United States Code, or other law requiring or authorizing the public disclosure of information; or

(C) public domain information.

Government Information Security Reform Act (GISRA)



Information Technology Solutions for a Global Market

Ed Busch – Director of Information Security – DSA, Inc.

- **Forty years in the communications & computer industries, working almost exclusively on classified or secure DoD systems.**
- **Certified Information Systems Security Professional (CISSP), certified by the International Information Systems Security Certification Consortium (ISC)² .**
- **Technical Advisor (Former PM) for Security on DISA's DISN (Defense Information System Network) Switched/Bandwidth Manager - CONUS (DS/BMS-C) project.**
- **Lead for DoD Information Technology Security Certification and Accreditation (DITSCAP) effort for the DS/BMS-C Program**
 - **System Security Authorization Agreement**
 - **Security Test & Evaluation**
- **Currently providing on-going security support for DoD and non-DoD Government Agencies**

Background

GISRA Signed Into Law October 2000 (Became effective 29 Nov 2000)

Primarily addresses Program Management and Evaluation aspects of Information Security

Applies to Unclassified and National Security Systems

Codifies OMB Circular A-130, Appendix III “Security of Federal Automated Information Resources”



Background

Basic Purpose Is To Ensure

- Confidentiality
- Integrity
- Availability

Of Information – Government & Personal

Background

Requires Federal Agencies to:

- **Implement sound security management practices**
- **Conduct and internal as well as an independent (IG) review of their security**
- **Report on these actions to the Office of Management and Budget as part of the budget process (OMB will report to Congress)**

Background

Information Security Requirements Planning

- **Implement and Maintain A Program To Adequately Secure Information And System Assets**
- **Security Programs Must:**
 - **Assure that systems and applications operate securely, providing appropriate *Confidentiality, Integrity* and *Availability (AND Privacy)***
 - **Protect information commensurate with the level of risk associated with the loss, misuse, unauthorized access or modification of that information**

Background

- **GISRA is currently set to expire in November 2002**
(After 2003 Budgets submitted)
- **Indications are that many agencies went through the motions in 2001 – but did not get it done**
- **September 11th changed all that**
- **Rep. Tom Davis (R-VA) is attempting to make the law permanent and include standards for information security**

Report Card Is Not Good

Government gets a collective F for its IT security - HotSpice

http://www.gcn.com/03_03/news/030301.html

Free AOL & Int. Instant: Outlook, New!Cool, America's Job D, RealPlayer

GCN Explore the Government IT Marketplace
March 14, 2003, 9:38 a.m. to 9:38 p.m. at the City Athletic Club, 30 West 54th St., New York City.
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Government gets a collective F for its IT security

By William Jackson
GCN Staff

The government's overall grade for IT security fell from a D- to an F this year, according to a congressional report card released earlier this month.

Individual grades also fell for most of the 24 executive branch agencies evaluated by the House Government Reform Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations.

Sixteen of the agencies, including the Defense Department, got failing grades. Five agencies received D- and two, C's. The National Science Foundation got the highest grade, a B+.

Chairman Steve Horn (R-Calif.) called on the president to take heed of what he called a sobering assessment.

"All of us in Congress are well aware that the nation is in a state of war," Horn said.

The evaluation gave the first glimpse of security reports required under last year's Government Information Security Reform Act, now being reviewed by the Office of Management and Budget.

Agencies must submit annual self-evaluations with their budget requests, documenting how security planning and funding are integrated into priority cycles.

OMB provided raw data from the reports to Horn's subcommittee, which also used information from the General Accounting Office and agency inspector general audits.

OMB found "continuing pervasive weaknesses" in IT security, said Robert F. Dracy, director of information security issues.

Mark Forman, OMB's associate director of IT and e-government, said the office would release its own report on OISRA data along with the president's fiscal 2003 budget proposal.

Despite the low grades, Forman said some agencies appeared to be graded too leniently in the report card. But he disputed the negative assessment of DOD (below).

Resources

Security does not measure up

Agency	2001 Grade	2002 Grade
Agriculture	F	F
Air	D-	F
Commerce	C	F
DOD	D-	F
Education	B	F
Energy	NC	F
Env	B	D-
Health	NC	F
IAA	B	D-
Int	F	F
NSA	C	F
State	F	F
Treasury	F	F
USAID	C	F
USIA	F	F
USDOJ	F	F
USA	F	F
USIA	B	B+
USIA	NC	F
USIA	F	F
USIA	F	F
USIA	B	D-
USIA	C	B-
Transportation	NC	F
Treasury	B	F
US	F	F
Total average	D	F

Source: House Government Reform Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations

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Report Card Is Not Good

Of The 24 Identified Federal Agencies, IT Security Grades Were Abysmal:

- **16 Failed (“F”)**
- **5 below “passing” (“D”)**
- **2 were “Passing” (“C”)**
- **1 was considered acceptable (National Science Foundation) (“B”)**

Between 2000 and 2001, 3 agencies improved (slightly) and 9 got *worse*

GISRA Elements

- **All federal agencies must assess the security of their non-classified information systems**
- **Agencies are to perform Security Assessments and report on the security needs of the systems (Gap Analysis)**
- **Security Reports will be included in the agency's budget for upcoming fiscal year (OMB)**
- **Funds can be cut for non-compliance**

GISRA Elements

- **The Act implies that funding will be provided to cover the mitigation of security gaps**
- **Agencies have opportunity to get the additional funds as long as they can provide a comprehensive Security Assessment that includes viable, Best Practice mitigating solutions**
- **Events of 9/11 have added \$\$ to security initiatives, in general**

GISRA Guidelines

M-01-08: Guidance On Implementing the Government Information Security Reform Act

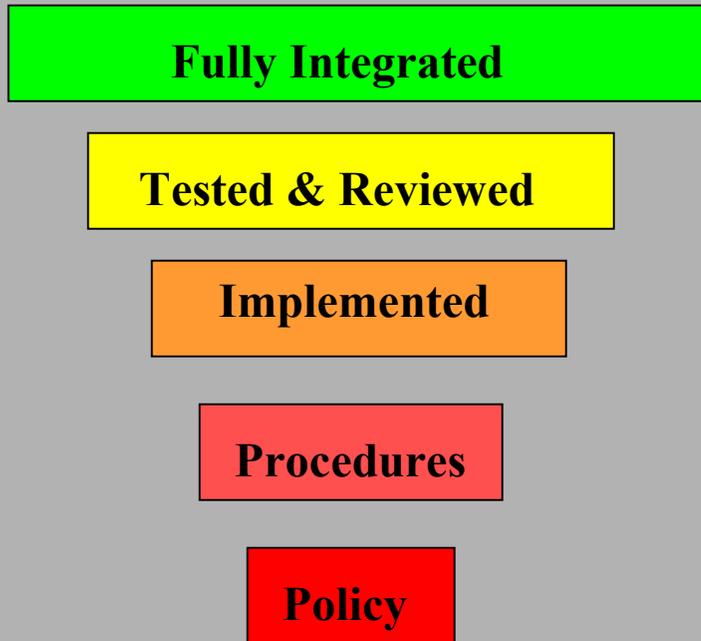
- **Dated January 16, 2001**
- **Guidance focuses on unclassified systems**
- **Reiterates that GISRA “pertains to all systems supporting all operations and assets of an agency, including those systems currently in place or planned”**
- **Act includes contractor systems “used by the agency directly or is used by a contractor under contract to the agency..”**

Federal Information Technology Security Assessment Framework

Provides guidance for agencies to:

- **Determine current status of security program(s) relative to existing policy**
- **Assess status of current security controls**
- **Comprises five levels to aid in establishing priorities**
- **Establishes a target for improvement**
- **Linked to NIST's Self-Assessment Questionnaire**

Framework



**A Bottom-Up Approach Built
On A Sound Foundation of
Approved Security Policies**

Level 1 - Policy

Policy

- **Documented security program covering all major agency components**
- **Includes approved system security plans for operations, general support systems and major applications**

Level 2 - Procedures

Procedures

- **Formal, well-documented, procedures that support implementation of policies established in Level 1**
- **Requirements and Guidance provided in “Source of Control Criteria”**

Level 3 - Implemented

Implemented

- **Implemented security program across defined assets with detailed procedures available to implementers**
- **Users periodically acknowledge awareness and acceptance of security responsibilities**

Level 4 – Tested & Reviewed

Tested & Reviewed

- Measure of adequacy and effectiveness of security policies, procedures and controls
- Input for Cost/Benefit Analysis
- Refinement of Policies & Procedures
- Essential ingredient to an effective *Risk Management* program

Level 5 – Fully Integrated

Fully Integrated

- A pervasive, continuously improving security program that has produced a “security culture” throughout the organization
- System engineering decisions now based on in-place security metrics

Self-Assessment Tools

Security Self-Assessment Guide for Information Technology Systems

- **NIST Special Publication 800-26**
- **August 2001**
- **17 Control Areas**
- **Based on requirements found in Statute, Policy and Guidelines on security**

Self-Assessment Tools

- 800-26 Is a **GUIDE** – It Must Be Tailored To Your System(s)
- Identifies Documents That Provide Further, Detailed Guidance
- Each Agency Must Decide If Additional Security Controls Should Be Added To The Questionnaire

Control Areas

Management Controls

- **Risk Management**
- **Review of Security Controls**
- **Life Cycle**
- **Authorize Processing (C&A)**
- **System Security Plan**

Control Areas

Operational Controls

- Personnel Security
- Physical Security
- Production, Input/Output Controls
- Contingency Planning
- Hardware/Systems Software Maintenance
- Data Integrity
- Documentation
- Security Awareness, Training & Education
- Incident Response Capability

Control Areas

Technical Controls

- **Identification**
- **Logical Access Controls**
- **Audit Trails**

NIST 800-26

Good News! – It’s In Word Format (.doc)

Specific Control Objectives and Techniques	L.1 Policy	L.2 Procedures	L.3 Implemented	L.4 Tested	L.5 Integrated	Risk Based Decision Made	Comments	Initials
Risk Management <i>OMB Circular A-130, III</i>								
1.1 Critical Element: Is risk periodically assessed?								
1.1.1 Is the current system configuration documented, including links to other systems? <i>NIST SP 800-18</i>								
1.1.2 Are risk assessments performed and documented on a regular basis or whenever the system, facilities, or other conditions change? <i>FISCAM SP-1</i>								
1.1.3 Has data sensitivity and integrity of the data been considered? <i>FISCAM SP-1</i>								



NIST 800-26

Specific Control Objectives	L.1 Policy	L.2 Procedures	L.3 Implemented	L.4 Tested	L.5 Integrated	Risk Based Decision Made	Comments	Initials
<p align="center">Personnel Security <i>OMB Circular A-130, III</i></p>								
<p>6.1. Critical Element: Are duties separated to ensure least privilege and individual accountability?</p>								
<p>6.1.1 Are all positions reviewed for sensitivity level? <i>FISCAM SD-1.2</i> <i>NIST SP 800-18</i></p>								
<p>6.1.2 Are there documented job descriptions that accurately reflect assigned duties and responsibilities and that segregate duties? <i>FISCAM SD-1.2</i></p>								
<p>6.1.3 Are sensitive functions divided among different individuals? <i>OMB Circular A-130, III</i> <i>FISCAM SD-1</i> <i>NIST SP 800-18</i></p>								



A Possible Alternative

Computer Security Institute's Information Protection Assessment Kit (IPAK)

- **Excel Workbook Format (Can't Modify)**
- **Eleven sections each consisting of twenty controls**
- **More Granular Than NIST's Security Assessment Framework (10 vs. 5 Levels)**
- **Scoring System and Action Plan Guidance**
- **Might work on a small system**

Cost: \$197 (\$157 for CSI Members)

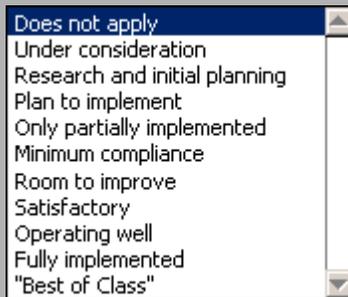
<http://www.gocsi.com/>



G. Network Security Controls

1 . A network security policy governing internal and external (i.e., Internet and WWW) connections has been implemented

0



Resources

- **SP 800-26: Security Self-Assessment Guide for Information Technology Systems, November 2001**
- **SP 800-30: Risk Management Guide for Information Technology Systems, January 2002**
- **SP 800-27: Engineering Principles for Information Technology Security (A Baseline for Achieving Security), June 2001**
- **SP 800-14 Generally Accepted Principles and Practices for Securing Information Technology Systems, September 1996**

<http://csrc.nist.gov/publications/nistpubs/index.html>



Resources

- **National Institute of Standards and Technology. "Guide for Developing Security Plans for Information Technology Systems." NIST Special Publication 800-18. December 1998.**
URL: <http://ois.nist.gov/pub/nistpubs/nistpubs.html>
- **Office of Management and Budget. "Security of Federal Automated Information Resources." Appendix III, OMB Circular No. A-130, Transmittal IV. 28 November 2000.**
URL: <http://www.whitehouse.gov/omb/circulars/a130/a130trans4.html>
- **Information Technology Policy Documents (Many)**
URL: <http://www.itpolicy.gsa.gov/itpolicy.htm>

Resources

- **Information Security Risk Assessment: Practices of Leading Organizations. GAO/AIMD-00-33 November, 1999**
- **Management Planning Guide for Information Systems Security Auditing**

<http://www.gao.gov/>



Acronyms

C&A	Certification & Accreditation
DISA	Defense Information Systems Agency
DISN	Defense Information System Network
DITSCAP	DoD Information Technology Security Certification and Accreditation Process
DS/BMS-C	DISN Switched/Bandwidth Manager Services - CONUS
GAO	Government Accounting Office
GISRA	Government Information Security Reform Act
NIST	National Institute of Standards & Technology
IG	Inspector General
IT	Information Technology
OMB	Office of Management and Budget

Appendix III to OMB Circular No. A-130 - Security of Federal Automated Information Resources

A. Requirements.

1. Purpose

This Appendix establishes a minimum set of controls to be included in Federal automated information security programs; assigns Federal agency responsibilities for the security of automated information; and links agency automated information security programs and agency management control systems established in accordance with OMB Circular No. A-123. The Appendix revises procedures formerly contained in Appendix III to OMB Circular No. A-130 (50 FR 52730; December 24, 1985), and incorporates requirements of the Computer Security Act of 1987 (P.L. 100-235) and responsibilities assigned in applicable national security directives.

2. Definitions

The term:

- a. "adequate security" means security commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of information. This includes assuring that systems and applications used by the agency operate effectively and provide appropriate confidentiality, integrity, and availability, through the use of cost-effective management, personnel, operational, and technical controls.
- b. "application" means the use of information resources (information and information technology) to satisfy a specific set of user requirements.
- c. "general support system" or "system" means an interconnected set of information resources under the same direct management control which shares common functionality. A system normally includes hardware, software, information, data, applications, communications, and people. A system can be, for example, a local area network (LAN) including smart terminals that supports a branch office, an agency-wide backbone, a communications network, a departmental data processing center including its operating system and utilities, a tactical radio network, or a shared information processing service organization (IPSO).
- d. "major application" means an application that requires special attention to security due to the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of the information in the application. Note: All Federal applications require some level of protection. Certain applications, because of the information in them, however, require special management oversight and should be treated as major. Adequate security for other applications should be provided by security of the systems in which they operate.

3. Automated Information Security Programs. Agencies shall implement and maintain a program to assure that adequate security is provided for all agency information collected, processed, transmitted, stored, or disseminated in general support systems and major applications.

Each agency's program shall implement policies, standards and procedures which are consistent with government-wide policies, standards, and procedures issued by the Office of Management and Budget, the Department of Commerce, the General Services Administration and the Office of Personnel Management (OPM). Different or more stringent requirements for securing national security information should be incorporated into agency programs as required by appropriate national security directives. At a minimum, agency programs shall include the following controls in their general support systems and major applications:

a. Controls for general support systems.

1) Assign Responsibility for Security. Assign responsibility for security in each system to an individual knowledgeable in the information technology used in the system and in providing security for such technology.

2) System Security Plan. Plan for adequate security of each general support system as part of the organization's information resources management (IRM) planning process. The security plan shall be consistent with guidance issued by the National Institute of Standards and Technology (NIST). Independent advice and comment on the security plan shall be solicited prior to the plan's implementation. A summary of the security plans shall be incorporated into the strategic IRM plan required by the Paperwork Reduction Act (44 U.S.C. Chapter 35) and Section 8(b) of this circular. Security plans shall include:

a) Rules of the System. Establish a set of rules of behavior concerning use of, security in, and the acceptable level of risk for, the system. The rules shall be based on the needs of the various users of the system. The security required by the rules shall be only as stringent as necessary to provide adequate security for information in the system. Such rules shall clearly delineate responsibilities and expected behavior of all individuals with access to the system. They shall also include appropriate limits on interconnections to other systems and shall define service provision and restoration priorities. Finally, they shall be clear about the consequences of behavior not consistent with the rules.

b) Training. Ensure that all individuals are appropriately trained in how to fulfill their security responsibilities before allowing them access to the system. Such training shall assure that employees are versed in the rules of the system, be consistent with guidance issued by NIST and OPM, and apprise them about available assistance and technical security products and techniques. Behavior consistent with the rules of the system

and periodic refresher training shall be required for continued access to the system.

c) Personnel Controls. Screen individuals who are authorized to bypass significant technical and operational security controls of the system commensurate with the risk and magnitude of harm they could cause. Such screening shall occur prior to an individual being authorized to bypass controls and periodically thereafter.

d) Incident Response Capability. Ensure that there is a capability to provide help to users when a security incident occurs in the system and to share information concerning common vulnerabilities and threats. This capability shall share information with other organizations, consistent with NIST coordination, and should assist the agency in pursuing appropriate legal action, consistent with Department of Justice guidance.

e) Continuity of Support. Establish and periodically test the capability to continue providing service within a system based upon the needs and priorities of the participants of the system.

f) Technical Security. Ensure that cost-effective security products and techniques are appropriately used within the system.

g) System Interconnection. Obtain written management authorization, based upon the acceptance of risk to the system, prior to connecting with other systems. Where connection is authorized, controls shall be established which are consistent with the rules of the system and in accordance with guidance from NIST.

3) Review of Security Controls. Review the security controls in each system when significant modifications are made to the system, but at least every three years. The scope and frequency of the review should be commensurate with the acceptable level of risk for the system. Depending on the potential risk and magnitude of harm that could occur, consider identifying a deficiency pursuant to OMB Circular No. A-123, "Management Accountability and Control" and the Federal Managers' Financial Integrity Act (FMFIA), if there is no assignment of security responsibility, no security plan, or no authorization to process for a system.

4) Authorize Processing. Ensure that a management official authorizes in writing the use of each general support system based on implementation of its security plan before beginning or significantly changing processing in the system. Use of the system shall be re-authorized at least every three years.

b. Controls for Major Applications.

1) Assign Responsibility for Security. Assign responsibility for security of

each major application to a management official knowledgeable in the nature of the information and process supported by the application and in the management, personnel, operational, and technical controls used to protect it. This official shall assure that effective security products and techniques are appropriately used in the application and shall be contacted when a security incident occurs concerning the application.

2) Application Security Plan. Plan for the adequate security of each major application, taking into account the security of all systems in which the application will operate. The plan shall be consistent with guidance issued by NIST. Advice and comment on the plan shall be solicited from the official responsible for security in the primary system in which the application will operate prior to the plan's implementation. A summary of the security plans shall be incorporated into the strategic IRM plan required by the Paperwork Reduction Act. Application security plans shall include:

a) Application Rules. Establish a set of rules concerning use of and behavior within the application. The rules shall be as stringent as necessary to provide adequate security for the application and the information in it. Such rules shall clearly delineate responsibilities and expected behavior of all individuals with access to the application. In addition, the rules shall be clear about the consequences of behavior not consistent with the rules.

b) Specialized Training. Before allowing individuals access to the application, ensure that all individuals receive specialized training focused on their responsibilities and the application rules. This may be in addition to the training required for access to a system. Such training may vary from a notification at the time of access (e.g., for members of the public using an information retrieval application) to formal training (e.g., for an employee that works with a high-risk application).

c) Personnel Security. Incorporate controls such as separation of duties, least privilege and individual accountability into the application and application rules as appropriate. In cases where such controls cannot adequately protect the application or information in it, screen individuals commensurate with the risk and magnitude of the harm they could cause. Such screening shall be done prior to the individuals' being authorized to access the application and periodically thereafter.

d) Contingency Planning. Establish and periodically test the capability to perform the agency function supported by the application in the event of failure of its automated support.

e) Technical Controls. Ensure that appropriate security controls are specified, designed into, tested, and accepted in the application in

accordance with appropriate guidance issued by NIST.

f) Information Sharing. Ensure that information shared from the application is protected appropriately, comparable to the protection provided when information is within the application.

g) Public Access Controls. Where an agency's application promotes or permits public access, additional security controls shall be added to protect the integrity of the application and the confidence the public has in the application. Such controls shall include segregating information made directly accessible to the public from official agency records.

3) Review of Application Controls. Perform an independent review or audit of the security controls in each application at least every three years. Consider identifying a deficiency pursuant to OMB Circular No. A-123, "Management Accountability and Control" and the Federal Managers' Financial Integrity Act if there is no assignment of responsibility for security, no security plan, or no authorization to process for the application.

4) Authorize Processing. Ensure that a management official authorizes in writing use of the application by confirming that its security plan as implemented adequately secures the application. Results of the most recent review or audit of controls shall be a factor in management authorizations. The application must be authorized prior to operating and re-authorized at least every three years thereafter. Management authorization implies accepting the risk of each system used by the application.

4. Assignment of Responsibilities

a. Department of Commerce. The Secretary of Commerce shall:

1) Develop and issue appropriate standards and guidance for the security of sensitive information in Federal computer systems.

2) Review and update guidelines for training in computer security awareness and accepted computer security practice, with assistance from OPM.

3) Provide agencies guidance for security planning to assist in their development of application and system security plans.

4) Provide guidance and assistance, as appropriate, to agencies concerning cost-effective controls when interconnecting with other systems.

5) Coordinate agency incident response activities to promote sharing of incident response information and related vulnerabilities.

6) Evaluate new information technologies to assess their security vulnerabilities, with technical assistance from the Department of Defense, and apprise Federal agencies of such vulnerabilities as soon as they are known.

b. Department of Defense. The Secretary of Defense shall:

1) Provide appropriate technical advice and assistance (including work products) to the Department of Commerce.

2) Assist the Department of Commerce in evaluating the vulnerabilities of emerging information technologies.

c. Department of Justice. The Attorney General shall:

1) Provide appropriate guidance to agencies on legal remedies regarding security incidents and ways to report and work with law enforcement concerning such incidents.

2) Pursue appropriate legal actions when security incidents occur.

d. General Services Administration. The Administrator of General Services shall:

1) Provide guidance to agencies on addressing security considerations when acquiring automated data processing equipment (as defined in section 111(a)(2) of the Federal Property and Administrative Services Act of 1949, as amended).

2) Facilitate the development of contract vehicles for agencies to use in the acquisition of cost-effective security products and services (e.g., back-up services).

3) Provide appropriate security services to meet the needs of Federal agencies to the extent that such services are cost-effective.

e. Office of Personnel Management. The Director of the Office of Personnel Management shall:

1) Assure that its regulations concerning computer security training for Federal civilian employees are effective.

2) Assist the Department of Commerce in updating and maintaining guidelines for training in computer security awareness and accepted computer security practice.

f. Security Policy Board. The Security Policy Board shall coordinate the activities of the Federal government regarding the security of information technology that processes classified information in accordance with applicable national security directives;

5. Correction of Deficiencies and Reports

a. Correction of Deficiencies. Agencies shall correct deficiencies which are identified through the reviews of security for systems and major applications described above.

b. Reports on Deficiencies. In accordance with OMB Circular No. A-123, "Management Accountability and Control", if a deficiency in controls is judged by the agency head to be material when weighed against other agency deficiencies, it shall be included in the annual FMFIA report. Less significant deficiencies shall be reported and progress on corrective actions tracked at the appropriate agency level.

c. Summaries of Security Plans. Agencies shall include a summary of their system security plans and major application plans in the strategic plan required by the Paperwork Reduction Act (44 U.S.C. 3506).

B. Descriptive Information.

The following descriptive language is explanatory. It is included to assist in understanding the requirements of the Appendix.

The Appendix re-orientes the Federal computer security program to better respond to a rapidly changing technological environment. It establishes government-wide responsibilities for Federal computer security and requires Federal agencies to adopt a minimum set of management controls. These management controls are directed at individual information technology users in order to reflect the distributed nature of today's technology.

For security to be most effective, the controls must be part of day-to-day operations. This is best accomplished by planning for security not as a separate activity, but as an integral part of overall planning.

"Adequate security" is defined as "security commensurate with the risk and magnitude of harm resulting from the loss, misuse, or unauthorized access to or modification of information." This definition explicitly emphasizes the risk-based policy for cost-effective security established by the Computer Security Act.

The Appendix no longer requires the preparation of formal risk analyses. In the past, substantial resources have been expended doing complex analyses of specific risks to systems, with limited tangible benefit in terms of improved security for the systems. Rather than continue to try to precisely measure risk, security efforts are better served by generally assessing risks and taking actions to manage them. While formal risk analyses need not be performed, the need to determine adequate security will require that a risk-based approach be used. This risk assessment approach should include a consideration of the major factors in risk management: the value of the system or application, threats, vulnerabilities, and the effectiveness of current or proposed safeguards. Additional guidance on effective risk assessment is available in "An Introduction to Computer Security: The NIST Handbook" (March 16, 1995).

Discussion of the Appendix's Major Provisions. The following discussion is provided to aid reviewers in understanding the changes in emphasis in the Appendix.

Automated Information Security Programs. Agencies are required to establish controls to assure adequate security for all information processed, transmitted, or stored in Federal automated information systems. This Appendix emphasizes management controls affecting individual users of information technology. Technical and operational controls support management controls. To be effective, all must interrelate. For example, authentication of individual users is an important management control, for which password protection is a technical control. However, password protection will only be effective if both a strong technology is employed, and it is managed to assure that it is used correctly.

Four controls are set forth: assigning responsibility for security, security planning, periodic review of security controls, and management authorization. The Appendix requires that these management controls be applied in two areas of management responsibility: one for general support systems and one for major applications.

The terms "general support system" and "major application" were used in OMB Bulletins Nos. 88-16 and 90-08. A general support system is "an interconnected set of information resources under the same direct management control which shares common functionality." Such a system can be, for example, a local area network (LAN) including smart terminals that supports a branch office, an agency-wide backbone, a communications network, a departmental data processing center including its operating system and utilities, a tactical radio network, or a shared information processing service organization. Normally, the purpose of a general support system is to provide processing or communications support.

A major application is a use of information and information technology to satisfy a specific set of user requirements that requires special management attention to security due to the risk and magnitude of harm resulting from the loss, misuse or unauthorized access to or modification of the information in the application. All applications require some level of security, and adequate security for most of them should be provided by security of the general support systems in which they operate. However, certain applications, because of the nature of the information in them, require special management oversight and should be treated as major. Agencies are expected to exercise management judgement in determining which of their applications are major.

The focus of OMB Bulletins Nos. 88-16 and 90-08 was on identifying and securing both general support systems and applications which contained sensitive information. The Appendix requires the establishment of security controls in all general support systems, under the presumption that all contain some sensitive information, and focuses extra security controls on a limited number of particularly high-risk or major applications.

a. General Support Systems. The following controls are required in all general support systems:

1) Assign Responsibility for Security. For each system, an individual should be a focal point for assuring there is adequate security within the system, including ways

to prevent, detect, and recover from security problems. That responsibility should be assigned in writing to an individual trained in the technology used in the system and in providing security for such technology, including the management of security controls such as user identification and authentication.

2) Security Plan. The Computer Security Act requires that security plans be developed for all Federal computer systems that contain sensitive information. Given the expansion of distributed processing since passage of the Act, the presumption in the Appendix is that all general support systems contain some sensitive information which requires protection to assure its integrity, availability, or confidentiality, and therefore all systems require security plans.

Previous guidance on security planning was contained in OMB Bulletin No. 90-08. This Appendix supersedes OMB Bulletin 90-08 and expands the coverage of security plans from Bulletin 90-08 to include rules of individual behavior as well as technical security. Consistent with OMB Bulletin 90-08, the Appendix directs NIST to update and expand security planning guidance and issue it as a Federal Information Processing Standard (FIPS). In the interim, agencies should continue to use the Appendix of OMB Bulletin No. 90-08 as guidance for the technical portion of their security plans.

The Appendix continues the requirement that independent advice and comment on the security plan for each system be sought. The intent of this requirement is to improve the plans, foster communication between managers of different systems, and promote the sharing of security expertise.

This Appendix also continues the requirement from the Computer Security Act that summaries of security plans be included in agency strategic information resources management plans. OMB will provide additional guidance about the contents of those strategic plans, pursuant to the Paperwork Reduction Act of 1995.

The following specific security controls should be included in the security plan for a general support system:

a) Rules. An important new requirement for security plans is the establishment of a set of rules of behavior for individual users of each general support system. These rules should clearly delineate responsibilities of and expectations for all individuals with access to the system. They should be consistent with system-specific policy as described in "An Introduction to Computer Security: The NIST Handbook" (March 16, 1995). In addition, they should state the consequences of non-compliance. The rules should be in writing and will form the basis for security awareness and training.

The development of rules for a system must take into consideration the needs of all parties who use the system. Rules should be as stringent as necessary to provide adequate security. Therefore, the acceptable level of risk for the system must be established and should form the basis for determining

the rules.

Rules should cover such matters as work at home, dial-in access, connection to the Internet, use of copyrighted works, unofficial use of government equipment, the assignment and limitation of system privileges, and individual accountability. Often rules should reflect technical security controls in the system. For example, rules regarding password use should be consistent with technical password features in the system. Rules may be enforced through administrative sanctions specifically related to the system (e.g. loss of system privileges) or through more general sanctions as are imposed for violating other rules of conduct. In addition, the rules should specifically address restoration of service as a concern of all users of the system.

b) Training. The Computer Security Act requires Federal agencies to provide for the mandatory periodic training in computer security awareness and accepted computer security practice of all employees who are involved with the management, use or operation of a Federal computer system within or under the supervision of the Federal agency. This includes contractors as well as employees of the agency. Access provided to members of the public should be constrained by controls in the applications through which access is allowed, and training should be within the context of those controls. The Appendix enforces such mandatory training by requiring its completion prior to granting access to the system. Each new user of a general support system in some sense introduces a risk to all other users. Therefore, each user should be versed in acceptable behavior -- the rules of the system -- before being allowed to use the system. Training should also inform the individual how to get help in the event of difficulty with using or security of the system.

Training should be tailored to what a user needs to know to use the system securely, given the nature of that use. Training may be presented in stages, for example as more access is granted. In some cases, the training should be in the form of classroom instruction. In other cases, interactive computer sessions or well-written and understandable brochures may be sufficient, depending on the risk and magnitude of harm.

Over time, attention to security tends to dissipate. In addition, changes to a system may necessitate a change in the rules or user procedures. Therefore, individuals should periodically have refresher training to assure that they continue to understand and abide by the applicable rules.

To assist agencies, the Appendix requires NIST, with assistance from the Office of Personnel Management (OPM), to update its existing guidance. It also proposes that OPM assure that its rules for computer security training for Federal civilian employees are effective.

c) Personnel Controls. It has long been recognized that the greatest harm has come from authorized individuals engaged in improper activities, whether intentional or accidental. In every general support system, a number of technical, operational, and management controls are used to prevent and detect harm. Such controls include individual accountability, "least privilege," and separation of duties.

Individual accountability consists of holding someone responsible for his or her actions. In a general support system, accountability is normally accomplished by identifying and authenticating users of the system and subsequently tracing actions on the system to the user who initiated them. This may be done, for example, by looking for patterns of behavior by users.

Least privilege is the practice of restricting a user's access (to data files, to processing capability, or to peripherals) or type of access (read, write, execute, delete) to the minimum necessary to perform his or her job.

Separation of duties is the practice of dividing the steps in a critical function among different individuals. For example, one system programmer can create a critical piece of operating system code, while another authorizes its implementation. Such a control keeps a single individual from subverting a critical process.

Nevertheless, in some instances, individuals may be given the ability to bypass some significant technical and operational controls in order to perform system administration and maintenance functions (e.g., LAN administrators or systems programmers). Screening such individuals in positions of trust will supplement technical, operational, and management controls, particularly where the risk and magnitude of harm is high.

d) Incident Response Capability. Security incidents, whether caused by viruses, hackers, or software bugs, are becoming more common. When faced with a security incident, an agency should be able to respond in a manner that both protects its own information and helps to protect the information of others who might be affected by the incident. To address this concern, agencies should establish formal incident response mechanisms. Awareness and training for individuals with access to the system should include how to use the system's incident response capability.

To be fully effective, incident handling must also include sharing information concerning common vulnerabilities and threats with those in other systems and other agencies. The Appendix directs agencies to effectuate such sharing, and tasks NIST to coordinate those agency activities government-wide.

The Appendix also directs the Department of Justice to provide appropriate guidance on pursuing legal remedies in the case of serious incidents.

e) Continuity of Support. Inevitably, there will be service interruptions. Agency plans should assure that there is an ability to recover and provide service sufficient to meet the minimal needs of users of the system. Manual procedures are generally NOT a viable back-up option. When automated support is not available, many functions of the organization will effectively cease. Therefore, it is important to take cost-effective steps to manage any disruption of service.

Decisions on the level of service needed at any particular time and on priorities in service restoration should be made in consultation with the users of the system and incorporated in the system rules. Experience has shown that recovery plans that are periodically tested are substantially more viable than those that are not. Moreover, untested plans may actually create a false sense of security.

f) Technical Security. Agencies should assure that each system appropriately uses effective security products and techniques, consistent with standards and guidance from NIST. Often such techniques will correspond with system rules of behavior, such as in the proper use of password protection.

The Appendix directs NIST to continue to issue computer security guidance to assist agencies in planning for and using technical security products and techniques. Until such guidance is issued, however, the planning guidance included in OMB Bulletin 90-08 can assist in determining techniques for effective security in a system and in addressing technical controls in the security plan.

g) System Interconnection. In order for a community to effectively manage risk, it must control access to and from other systems. The degree of such control should be established in the rules of the system and all participants should be made aware of any limitations on outside access. Technical controls to accomplish this should be put in place in accordance with guidance issued by NIST.

There are varying degrees of how connected a system is. For example, some systems will choose to isolate themselves, others will restrict access such as allowing only e-mail connections or remote access only with sophisticated authentication, and others will be fully open. The management decision to interconnect should be based on the availability and use of technical and non-technical safeguards and consistent with the acceptable level of risk defined in the system rules.

3) Review of Security Controls. The security of a system will degrade over time, as the technology evolves and as people and procedures change. Reviews should assure that management, operational, personnel, and technical controls are functioning effectively. Security controls may be reviewed by an independent audit or a self review. The type and rigor of review or audit should be commensurate with the acceptable level of risk that is established in the rules for the system and the likelihood of learning useful information to improve security. Technical tools such as virus scanners, vulnerability assessment products (which look for known security problems, configuration errors, and the installation of the latest patches), and penetration testing can assist in the on-going review of different facets of systems. However, these tools are no substitute for a formal management review at least every three years. Indeed, for some high-risk systems with rapidly changing technology, three years will be too long.

Depending upon the risk and magnitude of harm that could result, weaknesses identified during the review of security controls should be reported as deficiencies in accordance with OMB Circular No. A-123, "Management Accountability and Control" and the Federal Managers' Financial Integrity Act. In particular, if a basic management control such as assignment of responsibility, a workable security plan, or management authorization are missing, then consideration should be given to identifying a deficiency.

4) Authorize Processing. The authorization of a system to process information, granted by a management official, provides an important quality control (some agencies refer to this authorization as accreditation). By authorizing processing in a system, a manager accepts the risk associated with it. Authorization is not a decision that should be made by the security staff.

Both the security official and the authorizing management official have security responsibilities. In general, the security official is closer to the day-to-day operation of the system and will direct or perform security tasks. The authorizing official will normally have general responsibility for the organization supported by the system.

Management authorization should be based on an assessment of management, operational, and technical controls. Since the security plan establishes the security controls, it should form the basis for the authorization, supplemented by more specific studies as needed. In addition, the periodic review of controls should also contribute to future authorizations. Some agencies perform "certification reviews" of their systems periodically. These formal technical evaluations lead to a management accreditation, or "authorization to process." Such certifications (such as those using the methodology in FIPS Pub 102 "Guideline for Computer Security Certification and Accreditation") can provide useful information to assist management in authorizing a system, particularly when combined with a review of the broad behavioral controls envisioned in the security plan required by the Appendix.

Re-authorization should occur prior to a significant change in processing, but at

least every three years. It should be done more often where there is a high risk and potential magnitude of harm.

b. Controls in Major Applications. Certain applications require special management attention due to the risk and magnitude of harm that could occur. For such applications, the controls of the support system(s) in which they operate are likely to be insufficient. Therefore, additional controls specific to the application are required. Since the function of applications is the direct manipulation and use of information, controls for securing applications should emphasize protection of information and the way it is manipulated.

1) Assign Responsibility for Security. By definition, major applications are high risk and require special management attention. Major applications usually support a single agency function and often are supported by more than one general support system. It is important, therefore, that an individual be assigned responsibility in writing to assure that the particular application has adequate security. To be effective, this individual should be knowledgeable in the information and process supported by the application and in the management, personnel, operational, and technical controls used to protect the application.

2) Application Security Plans. Security for each major application should be addressed by a security plan specific to the application. The plan should include controls specific to protecting information and should be developed from the application manager's perspective. To assist in assuring its viability, the plan should be provided to the manager of the primary support system which the application uses for advice and comment. This recognizes the critical dependence of the security of major applications on the underlying support systems they use. Summaries of application security plans should be included in strategic information resource management plans in accordance with this Circular.

a) Application Rules. Rules of behavior should be established which delineate the responsibilities and expected behavior of all individuals with access to the application. The rules should state the consequences of inconsistent behavior. Often the rules will be associated with technical controls implemented in the application. Such rules should include, for example, limitations on changing data, searching databases, or divulging information.

b) Specialized Training. Training is required for all individuals given access to the application, including members of the public. It should vary depending on the type of access allowed and the risk that access represents to the security of the application and information in it. This training will be in addition to that required for access to a support system.

c) Personnel Security. For most major applications, management controls such as individual accountability requirements, separation of duties enforced by access controls, or limitations on the processing privileges of individuals,

are generally more cost-effective personnel security controls than background screening. Such controls should be implemented as both technical controls and as application rules. For example, technical controls to ensure individual accountability, such as looking for patterns of user behavior, are most effective if users are aware that there is such a technical control. If adequate audit or access controls (through both technical and non-technical methods) cannot be established, then it may be cost-effective to screen personnel, commensurate with the risk and magnitude of harm they could cause. The change in emphasis on screening in the Appendix should not affect background screening deemed necessary because of other duties that an individual may perform.

d) Contingency Planning. Normally the Federal mission supported by a major application is critically dependent on the application. Manual processing is generally NOT a viable back-up option. Managers should plan for how they will perform their mission and/or recover from the loss of existing application support, whether the loss is due to the inability of the application to function or a general support system failure. Experience has demonstrated that testing a contingency plan significantly improves its viability. Indeed, untested plans or plans not tested for a long period of time may create a false sense of ability to recover in a timely manner.

e) Technical Controls. Technical security controls, for example tests to filter invalid entries, should be built into each application. Often these controls will correspond with the rules of behavior for the application. Under the previous Appendix, application security was focused on the process by which sensitive, custom applications were developed. While that process is not addressed in detail in this Appendix, it remains an effective method for assuring that security controls are built into applications. Additionally, the technical security controls defined in OMB Bulletin No. 90-08 will continue, until that guidance is replaced by NIST's security planning guidance.

f) Information Sharing. Assure that information which is shared with Federal organizations, State and local governments, and the private sector is appropriately protected comparable to the protection provided when the information is within the application. Controls on the information may stay the same or vary when the information is shared with another entity. For example, the primary user of the information may require a high level of availability while the secondary user does not, and can therefore relax some of the controls designed to maintain the availability of the information. At the same time, however, the information shared may require a level of confidentiality that should be extended to the secondary user. This normally requires notification and agreement to protect the information prior to its being shared.

g) Public Access Controls. Permitting public access to a Federal

application is an important method of improving information exchange with the public. At the same time, it introduces risks to the Federal application. To mitigate these risks, additional controls should be in place as appropriate. These controls are in addition to controls such as "firewalls" that are put in place for security of the general support system.

In general, it is more difficult to apply conventional controls to public access systems, because many of the users of the system may not be subject to individual accountability policies. In addition, public access systems may be a target for mischief because of their higher visibility and published access methods.

Official records need to be protected against loss or alteration. Official records in electronic form are particularly susceptible since they can be relatively easy to change or destroy. Therefore, official records should be segregated from information made directly accessible to the public. There are different ways to segregate records. Some agencies and organizations are creating dedicated information dissemination systems (such as bulletin boards or World Wide Web servers) to support this function. These systems can be on the outside of secure gateways which protect internal agency records from outside access.

In order to secure applications that allow direct public access, conventional techniques such as least privilege (limiting the processing capability as well as access to data) and integrity assurances (such as checking for viruses, clearly labeling the age of data, or periodically spot checking data) should also be used. Additional guidance on securing public access systems is available from NIST Computer Systems Laboratory Bulletin "Security Issues in Public Access Systems" (May, 1993).

3) Review of Application Controls. At least every three years, an independent review or audit of the security controls for each major application should be performed. Because of the higher risk involved in major applications, the review or audit should be independent of the manager responsible for the application. Such reviews should verify that responsibility for the security of the application has been assigned, that a viable security plan for the application is in place, and that a manager has authorized the processing of the application. A deficiency in any of these controls should be considered a deficiency pursuant to the Federal Manager's Financial Integrity Act and OMB Circular No. A-123, "Management Accountability and Control."

The review envisioned here is different from the system test and certification process required in the current Appendix. That process, however, remains useful for assuring that technical security features are built into custom-developed software applications. While the controls in that process are not specifically called for in this Appendix, they remain in Bulletin No. 90-08, and are recommended in appropriate

circumstances as technical controls.

4) Authorize Processing. A major application should be authorized by the management official responsible for the function supported by the application at least every three years, but more often where the risk and magnitude of harm is high. The intent of this requirement is to assure that the senior official whose mission will be adversely affected by security weaknesses in the application periodically assesses and accepts the risk of operating the application. The authorization should be based on the application security plan and any review(s) performed on the application. It should also take into account the risks from the general support systems used by the application.

4. Assignment of Responsibilities. The Appendix assigns government-wide responsibilities to agencies that are consistent with their missions and the Computer Security Act.

a. Department of Commerce. The Department of Commerce, through NIST, is assigned the following responsibilities consistent with the Computer Security Act.

1) Develop and issue security standards and guidance.

2) Review and update, with assistance from OPM, the guidelines for security training issued in 1988 pursuant to the Computer Security Act to assure they are effective.

3) Replace and update the technical planning guidance in the appendix to OMB Bulletin 90-08 This should include guidance on effective risk-based security absent a formal risk analysis.

4) Provide agencies with guidance and assistance concerning effective controls for systems when interconnecting with other systems, including the Internet. Such guidance on, for example, so-called "firewalls" is becoming widely available and is critical to agencies as they consider how to interconnect their communications capabilities.

5) Coordinate agency incident response activities. Coordination of agency incident response activities should address both threats and vulnerabilities as well as improve the ability of the Federal government for rapid and effective cooperation in response to serious security breaches.

6) Assess security vulnerabilities in new information technologies and apprise Federal agencies of such vulnerabilities. The intent of this new requirement is to help agencies understand the security implications of technology before they purchase and field it. In the past, there have been too many instances where agencies have acquired and implemented technology, then found out about vulnerabilities in the technology and had to retrofit security measures. This activity is intended to help avoid such difficulties in the future.

b. Department of Defense. The Department, through the National Security Agency, should provide technical advice and assistance to NIST, including work products such as technical security guidelines, which NIST can draw upon for developing standards and guidelines for protecting sensitive information in Federal computers.

Also, the Department, through the National Security Agency, should assist NIST in evaluating vulnerabilities in emerging technologies. Such vulnerabilities may present a risk to national security information as well as to unclassified information.

c. Department of Justice. The Department of Justice should provide appropriate guidance to Federal agencies on legal remedies available to them when serious security incidents occur. Such guidance should include ways to report incidents and cooperate with law enforcement.

In addition, the Department should pursue appropriate legal actions on behalf of the Federal government when serious security incidents occur.

d. General Services Administration. The General Services Administration should provide agencies guidance for addressing security considerations when acquiring information technology products or services. This continues the current requirement.

In addition, where cost-effective to do so, GSA should establish government-wide contract vehicles for agencies to use to acquire certain security services. Such vehicles already exist for providing system back-up support and conducting security analyses.

GSA should also provide appropriate security services to assist Federal agencies to the extent that provision of such services is cost-effective. This includes providing, in conjunction with the Department of Defense and the Department of Commerce, appropriate services which support Federal use of the National Information Infrastructure (e.g., use of digital signature technology).

e. Office of Personnel Management. In accordance with the Computer Security Act, OPM should review its regulations concerning computer security training and assure that they are effective.

In addition, OPM should assist the Department of Commerce in the review and update of its computer security awareness and training guidelines. OPM worked closely with NIST in developing the current guidelines and should work with NIST in revising those guidelines.

f. Security Policy Board. The Security Policy Board is assigned responsibility for national security policy coordination in accordance with the appropriate Presidential directive. This includes policy for the security of information technology used to process classified information.

Circular A-130 and this Appendix do not apply to information technology that supports certain critical national security missions, as defined in 44 U.S.C. 3502(9) and 10 U.S.C.

2315. Policy and procedural requirements for the security of national security systems (telecommunications and information systems that contain classified information or that support those critical national security missions (44 U.S.C. 3502(9) and 10 U.S.C. 2315)) is assigned to the Department of Defense pursuant to Presidential directive. The Circular clarifies that information classified for national security purposes should also be handled in accordance with appropriate national security directives. Where classified information is required to be protected by more stringent security requirements, those requirements should be followed rather than the requirements of this Appendix.

5. Reports. The Appendix requires agencies to provide two reports to OMB:

The first is a requirement that agencies report security deficiencies and material weaknesses within their FMFIA reporting mechanisms as defined by OMB Circular No. A-123, "Management Accountability and Control," and take corrective actions in accordance with that directive.

The second, defined by the Computer Security Act, requires that a summary of agency security plans be included in the information resources management plan required by the Paperwork Reduction Act.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; An Observer Program for Vessels in the Pacific Coast Groundfish Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 22, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Janell Majewski, 206-860-3293, or Janell.Majewski@noaa.gov.

SUPPLEMENTARY INFORMATION:**I. Abstract**

This is a request for a renewal of a currently approved information collection.

The National Marine Fisheries Service At-Sea Hake and West Coast Groundfish Observer Programs define observer duties, train and debrief observers, and manage observer data and its release. The observers, deployed aboard vessels participating in the US West Coast groundfish fishery, are hired by observer providers who contract with the vessels to provide the required observer coverage (50 CFR 660). This data collection relates to the response time for observer providers and observers to register for training, debriefing or responses to suspension or decertification.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include electronic (Web-based or e-mail) and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648-0500.

Form Number: None.

Type of Review: Regular submission (renewal of a currently approved collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 12.

Estimated Time Per Response: Training/briefing/debriefing registration, 7 minutes; contract submission, 5 minutes; change in ownership of observer provider company, 15 minutes; boarding refusals, 10 minutes; weekly status reports, 15 minutes; reports of observer illness, injury, harassment, intimidation, or violations of standards of conduct or conflict of interest, 15 minutes.

Estimated Total Annual Burden Hours: 111.

Estimated Total Annual Cost to Public: \$2,856 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 17, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010-20770 Filed 8-20-10; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 50-2010]

Foreign-Trade Zone 72—Indianapolis, IN; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Indianapolis Airport Authority, grantee of FTZ 72, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 1/12/09; correction 74 FR 3987, 1/22/09). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new "usage-driven" FTZ sites for operators/users located within a grantee's "service area" in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 17, 2010.

FTZ 72 was approved by the Board on September 28, 1981 (Board Order 179, 46 FR 50091, 10/9/1981) and expanded on September 2, 1992 (Board Order 598, 57 FR 41915, 9/14/1992) and on November 18, 2004 (Board Order 1359, 69 FR 70121, 12/2/2004).

The current zone project includes the following sites: *Site 1:* (4,832 acres) within the Indianapolis International Airport complex; *Site 2:* (318 acres) Flagship Industrial Park, West 73rd Street, Anderson, Madison County; *Site 3:* (674 acres) within the Park 100 Business Park, located at 71st Street and Interstate 465, Indianapolis, Marion County (includes 3 acres located at 4950 W. 79th Street); *Site 4:* (154 acres) within the Park Fletcher Business Park, located at Interstate 465 and Airport Expressway, Indianapolis, Marion County; *Site 5:* (182 acres) within the Plainfield Business Park, Plainfield, Hendricks County; *Site 9:* (27 acres) located at 2300 Southeastern Avenue, Indianapolis, Marion County; *Site 10:* (52 acres) located at 3003 Reeves Road, Plainfield, Hendricks County; *Site 11:* (5 acres) located at 4605 Decatur Boulevard, Indianapolis; *Site 12:* (258 acres) Scatterfield Business Park, Scatterfield Road, Anderson, Marion County; and, *Site 13:* (44 acres)—Eagle Park, located south of Interstate 69, west of State Road 109 and north of 67th Street, Anderson, Marion County.