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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 150902809-7999-02]

RIN 0648-BF12

Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Widow Rockfish Reallocation in the Individual Fishing Quota Fishery

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

ACTION: Final rule.

SUMMARY: Through this final rule, NMFS announces approval of a regulatory amendment to the Pacific Coast Groundfish Fishery Management Plan (FMP) to reallocate quota shares (QS) of widow rockfish in the Shorebased Individual Fishing Quota (IFQ) Program. In January 2011, NMFS implemented the trawl rationalization program, which includes an IFQ Program for limited entry (LE) trawl participants. At the time of implementation, the widow rockfish stock was overfished and QS were allocated to QS permit holders in the Shorebased IFQ Program (the Program) only to cover widow rockfish bycatch that may be associated with harvest of target species. Now that widow rockfish has been rebuilt, this action reallocates QS to initial recipients to reestablish a target widow rockfish fishery. The reallocation is based on a target species formula that more closely represents the fishing history of permit holders when widow rockfish was a

targeted species. This final rule also removes the daily vessel limit for widow rockfish, allows the trading of widow rockfish QS, and sets a deadline for divestiture of excess QS should the reallocation of widow rockfish cause any QS permit holder to exceed an accumulation limit.

DATES: This rule is effective [*Insert date 30 days after date of publication in the Federal Register*], except for the amendment to § 660.140(d)(1)(ii)(A)(4), which will be effective from [*insert date 30 days after date of publication in the Federal Register*] through December 31, 2018.

ADDRESSES: NMFS prepared an environmental assessment (EA), a Regulatory Impact Review (RIR), and a Final Regulatory Flexibility Analysis (FRFA), which is included in the Classification section of this final rule. NMFS also prepared an Initial Regulatory Flexibility Analysis (IRFA) for the proposed rule. Copies of the EA, RIR, IRFA, FRFA and the Small Entity Compliance Guide are available from Barry A. Thom, Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070; or by phone at 206-526-6150. Copies of the Small Entity Compliance Guide are available on the West Coast Region's Web site at <http://www.westcoast.fisheries.noaa.gov/>. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to the West Coast Region and by email to OIRA_Submission@omb.eop.gov, or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: Keeley Kent, 206-526-4655, keeley.kent@noaa.gov.

SUPPLEMENTARY INFORMATION:

This final rule modifies regulations to reallocate widow rockfish QS in the Pacific coast groundfish fishery trawl rationalization program and to allow the transfer of widow rockfish QS. The following sections describe: 1) the original allocation of widow rockfish under the trawl rationalization program, 2) rationale for why the Council selected the final preferred alternative (FPA), and 3) this final rule.

NMFS published a proposed rule for this action on June 29, 2016 (81 FR 42295). The comment period on the proposed rule ended on July 29, 2016. NMFS received two comment letters with 12 substantive comments. A summary of these comments and NMFS's responses are provided in the Comments and Responses section of this preamble. The preamble to the proposed rule provides more background and information on the history of initial quota share allocation, widow rockfish rebuilding, and the Council's decision to reallocate widow rockfish QS, as well as a description of the reallocation formula, eligibility, and the application process for reallocated widow rockfish QS. The preamble to the proposed rule also describes the timeline for trading widow rockfish QS, the deadline for divestiture should the reallocation of widow rockfish put any QS permit owner over an accumulation limit, and the removal of the daily vessel limit for widow rockfish.

Background on Allocations Under the Trawl Rationalization Program

The Pacific Coast Groundfish FMP specifies management measures for over 90 different species of rockfish, flatfish, roundfish, sharks, skates, and other species, in Federal waters off the West Coast states. Target species in the commercial fishery include Pacific hake (whiting), sablefish, dover sole, and rockfish, which are harvested by vessels using primarily midwater and bottom trawl gear, but also fish pots and hook and

line. The LE trawl fishery is managed under the trawl rationalization program, a catch share program, which was implemented through Amendment 20 to the FMP and corresponding implementing regulations at 50 CFR part 660 in January 2011.

Amendment 20 established the trawl rationalization program that consists of: an IFQ program for the shorebased trawl fleet (including Pacific whiting and nonwhiting sectors), and cooperative programs for the at-sea mothership and catcher/processor trawl fleets (Pacific whiting only). Concurrently, Amendment 21 set long-term allocations for the LE trawl sectors of certain groundfish species.

In Amendment 20, the Council used different formulas to allocate overfished, non-overfished, and bycatch species. Allocations of QS for each species were made based on each LE permit's Pacific whiting trips and nonwhiting trips. For the QS allocated for nonwhiting trips, the allocation formula for non-overfished species (target species) was different from that used for overfished species. For target species (which, at the time did not include widow rockfish) individuals received allocations based on their LE permits' harvest history of those species during the 1994 through 2003 allocation period.

For overfished species, QS was distributed to each recipient to meet expected bycatch based on the recipient's target species QS allocation (bycatch species). Overfished species QS was allocated in proportion to the amount of target species QS a person received, taking into account area of fishing and likely bycatch rates. Using this approach, many individuals received very low initial allocations of overfished species even though they had significantly depended on targeting the species and had fished within harvest levels permissible at the time. Amendment 20 to the Pacific Coast

Groundfish FMP states that when an overfished species is rebuilt, there may be a reallocation of QS in the Shorebased IFQ sector to facilitate the reestablishment of historic fishing opportunities.

Widow Rockfish Fishery

Widow rockfish was historically an important target species in the groundfish fishery, particularly for midwater trawl and bottom trawl vessels (see Section 1.4.1 of the EA). Vessels using midwater trawl gear take widow rockfish both as bycatch on Pacific whiting targeted trips and as a strategy targeting on pelagic rockfish, in which widow rockfish is caught jointly with yellowtail rockfish. Widow rockfish is also caught along with other species on trips using bottom trawl gear.

Catches of widow rockfish peaked in 1981 at 26,938 metric tons (mt) (59,388,124 pounds), then declined as the stock became overfished (see Section 1.4.1 of the EA). Widow rockfish was declared overfished in 2001 and NMFS implemented measures to reduce catch of this and other rockfish species in the 2000s, including Rockfish Conservation Areas (RCAs) and area-based gear restrictions and trip limits. Widow rockfish was still considered overfished in 2011 when the Council and NMFS implemented the trawl rationalization program and thus widow rockfish was allocated using an overfished species formula. Therefore, the QS allocations purposely did not reflect the historical fishing efforts of fishermen who may have targeted widow rockfish before it was declared overfished. However, shortly after implementing the trawl rationalization program in 2011, NMFS and the Council received the results of a new assessment that indicated that widow rockfish was rebuilt. The results of the assessment also indicated that widow rockfish may never have been overfished.

Council Rationale for its Final Preferred Alternative (FPA)

In April 2015, the Pacific Fishery Management Council (Council or PFMC) made a final recommendation to NMFS to reallocate the rebuilt widow rockfish stock to the Shorebased IFQ Program using a modified target species formula. The Council selected this alternative (Alternative 5) as its final preferred alternative (FPA) because this alternative best met the purpose and need of the action, which was to implement a policy that allows historical widow rockfish fishery participants to benefit from the renewed fishing opportunities through a direct reallocation rather than having to acquire widow rockfish QS on the open market.

NMFS has determined that the Council's recommendation to reallocate widow rockfish QS to the Shorebased IFQ Program using a modified target species formula is consistent with the Magnuson-Stevens Act (MSA), the Pacific Coast Groundfish FMP, and other applicable law. This determination is based on NMFS's review of the administrative record, including the Council's record, and NMFS's consideration of comments received during the comment period for the proposed rule. After considering the required statutory factors and the goals and objectives of the trawl rationalization program and the Pacific Coast Groundfish FMP, NMFS has determined that the Council's recommended reallocation formula provides for a fair and equitable allocation to the Shorebased IFQ Program, including between and among the Pacific whiting and nonwhiting participants.

The Council recommended to NMFS, and NMFS is approving through this final rule, Alternative 5, a target species formula based on the formula used at the time of initial implementation of the trawl rationalization program. The Alternative 5 reallocation

formula holds 10 percent of the total widow rockfish QS aside for the adaptive management program (AMP), divides a portion of the total widow rockfish QS (30 percent) equally among all participants (those owning LE permits in 2011), and allocates a portion of the total widow rockfish QS (60 percent) based on widow rockfish landings history, separately for Pacific whiting trip history (9 percent of the total widow rockfish QS) and nonwhiting trip history (51 percent of the total widow rockfish QS). Pacific whiting trips are defined as those trips where more than 50 percent of the catch is Pacific whiting.

The Council and NMFS balanced the use of the control date, investment and dependence in the fishery, potential disruption from reallocation, and the potential impacts on communities and determined that there are fundamental reasons to adopt the Council's recommendation, also known as the Council's final preferred alternative (FPA). The Council and NMFS selected Alternative 5 as the FPA due to its ability to quickly and efficiently reestablish the historic target fishery for widow rockfish by allocating to those participants who targeted widow rockfish during the historic target fishery period, represented by the years 1994-2002. The FPA is also most consistent with the directive established by Amendment 20 to the FMP to reestablish historic fishing opportunities when a stock is rebuilt.

Amendment 20 directs the Council to consider a direct reallocation for species that were under a rebuilding plan during initial allocation and subsequently have been rebuilt, as a means to more quickly reestablish targeting opportunities for those who had a history of participation in a target fishery. The Council and NMFS interpreted this Amendment 20 provision as a commitment to individuals and communities that

historically harvested and invested in the fishery (see Section 2.3 of the EA). As a species becomes rebuilt, reallocating to those individuals would take into account historic fishing investment and dependence on those species. With respect to widow rockfish, there is an additional consideration in that stock assessments now indicate that widow rockfish was potentially never overfished. Had the species been declared rebuilt one management cycle earlier (or never declared overfished), widow rockfish would have been allocated in 2011 based on the Amendment 20 allocation formula for target species.

Absent a reallocation of widow rockfish QS, QS permit owners would continue to hold an amount of widow rockfish QS that reflected their bycatch needs rather than their target needs. In order to obtain enough QS to target widow rockfish, those permit owners interested in targeting widow rockfish would then have to purchase widow rockfish QS on the open market. This form of redistribution to enable the reestablishment of a target fishery without reallocation could take a long time and involve high transaction costs.

Control Date

Alternative 5 maintains the integrity of the control date, November 6, 2003, by not rewarding speculative fishing history that occurred after the control date. As described in detail in NMFS's final rule on the reconsideration of the initial allocation of Pacific whiting quota (78 FR 18879; March 28, 2013), the Council adopted and announced a control date in 2003 to reduce overcapitalization and end the race for fish. The Council sought to discourage speculative capitalization and discourage effort by putting participants on notice that any fishing history earned beyond 2003 may not count towards a future allocation system. During the development of Amendment 20, many participants commented on how the control date would affect their business decisions.

NMFS acknowledges that the control date is not a guarantee that any specific period will count toward initial allocations. However, NMFS believes that recognizing the history and business decisions of those that interpreted the control date as signaling the end of the qualifying period is appropriate and consistent with the purposes of Amendment 20. While no mechanism exists to separate speculative from non-speculative effort following a control date, maintaining the control date does not reward speculation that may have occurred to the detriment of those that honored the control date. Furthermore, as the control date provided adequate notice to those participants that chose to make further capital investments after the fact that those investments may not affect their allocations, it is not inconsistent with the MSA, unfair, or inequitable, to not reward that speculation by not incorporating that history.

Fairness and Equity

The MSA specifies that initial allocations must be “fair and equitable,” and include consideration of current and historical harvests, employment in the harvesting and processing sectors, investments in and dependence upon the fishery, current and historical participation of fishing communities, the basic cultural and social framework of the fishery, including promoting the sustained participation of small fishing vessels and communities, and procedures to address concerns over excessive geographic concentration and prevent the inequitable concentration of privileges and excessive shares. NMFS finds that the Council’s recommended Alternative 5 reallocation formula is a fair and equitable allocation to the Shorebased IFQ Program. Alternative 5 struck the best balance between achieving the Council’s purpose and need for this action, as defined

by Amendment 20, and minimizing disruption to existing QS holders, processors, and communities.

The Council and NMFS acknowledged that under widow rockfish reallocation there would be current QS permit owners who would gain or lose widow rockfish QS to varying degrees, depending on the reallocation alternative chosen. The Council considered a range of alternatives, on a spectrum of reallocation including no action and four action alternatives. Under widow rockfish reallocation (the Council's FPA, Alternative 5), compared to status quo: 63 of 128 eligible QS permits will lose widow rockfish QS, 63 will gain widow rockfish QS, and 2 will hold the same amount of widow rockfish QS. Specifically, Table 4-7 of the EA shows that currently, the maximum allocation of the total widow rockfish QS pool to an individual LE permit holder is 2.11 percent, the minimum allocation is 0.02 percent. Under Alternative 5, the maximum allocation to an individual LE permit holder will be 1.98 percent of the total widow rockfish QS pool and the minimum allocation will be 0.18 percent. For those that will receive more widow rockfish QS, the average increase will be 0.34 percent of the total widow rockfish pool. For those that will receive less widow rockfish QS, the average decrease will be 0.34 percent of the total widow rockfish pool. As described above, all of the eligible permits will, at a minimum, be reallocated 0.177 percent of the total widow rockfish QS from the equal sharing portion of the reallocation formula, plus a portion from their landings history, if they had landings history. Despite the fact that 63 QS permits will lose widow rockfish QS under reallocation, this loss may be mitigated by the substantial increase in the widow rockfish annual catch limits (ACL) that has occurred for 2017 and 2018, which will result in significantly more QP for many permit holders

than they have been issued in all prior years since the start of the trawl rationalization program.

Now that widow rockfish is no longer managed as a bycatch species under a rebuilding plan, the Shorebased IFQ Program's widow rockfish allocation has increased from 342.62 mt (755,348 pounds) in 2011, to 11,392.7 mt (25,116,604 pounds) in 2017. In 2018, the widow rockfish allocation to the Shorebased IFQ Program will be 10,661.5 mt (23,504,584 pounds). Consequently, with the reallocation, each QS permit owner eligible for a reallocated widow rockfish QS amount will receive a minimum of 41,602 quota pounds (QPs) in 2018 from the equal share portion of the formula for each LE permit history (0.177 percent). Every QS permit will be allocated more widow rockfish QP in 2018 than in any of the first 6 years of the Shorebased IFQ Program due to the increasing ACL.

Current and Historical Harvests

The Council's FPA, Alternative 5, directly incorporates current and historical harvests and strikes a balance between these two sometimes competing factors. The Alternative 5 formula uses historic widow rockfish fishing history to reallocate a portion of the widow rockfish QS to QS holders, and provided the greatest weight to widow rockfish history compared to the other alternatives. This portion of the formula most advantaged those participants with widow rockfish fishing history when widow rockfish was a target fishery.

The Alternative 5 formula also acknowledges more recent participation and history by equally allocating a portion of the QS to all QS permit owners eligible for reallocation. This moderates the effects of the formula on recent participants from the use

of widow fishing history. Alternative 5, as with all the other alternatives, allocates QS to existing QS permit holders, and not to other classes of participants, such as limited entry permit (LEP) holders, recognizing the investment that these participants made in either having a long history in the fishery or having made an investment by purchasing the history from those that did. These are current participants in the fishery, because widow rockfish QS has not changed hands since the initial allocation in 2011. See Amendment 20 for a more detailed discussion on how the Council decided to allocate to QS permit holders (75 FR 60868; October 1, 2010).

Although ultimately not selected, the Council considered alternatives that would have given more weight to recent fishing history and revenues for other groundfish species. It was not possible to use fishing history for the most recent catch of widow rockfish, because widow rockfish catches have been heavily depressed by its overfished status and measures to reduce its catch until only recently, so the Council considered groundfish revenues for 2003-2010. This was an advantage to those that had high total revenues because of other groundfish species, but at the expense of those more dependent on widow rockfish that could not effectively target it during that period.

Communities

This final rule will have effects on communities, which are described in the preamble to the proposed rule and in the EA and RIR. Section 4.4.3 of the EA notes that the estimated amount of QS redistributed among port communities is 17 percent. However, the EA also notes that due to the low ACL for widow rockfish during the first few years of the trawl rationalization program, community dependence on widow rockfish has been low across Washington, Oregon, and California. Therefore, NMFS

does not expect that the geographic redistribution of QS will have a significant impact on communities. Additionally, the impacts of reallocation are not expected to be significant because widow rockfish comprises a small portion of the trawl groundfish fishery, and widow rockfish would be a small portion of the groundfish landings in any particular geographic area. Further, geographic distributions are likely to be driven more by the trading of QPs. While QS may be less fluid, the distribution among communities and implication of the FPA is harder to track because QS owners do not necessarily use their QS/QP in the communities in which they reside.

As discussed in Section 4.2 of the EA, over the long term, the reallocation of QS is not expected to substantially affect the distribution of landings relative to status quo. However, there may be some short term variations if those receiving the allocations run their own harvesting or processing operations (and hence are more likely to use the QS in the areas of their own operations). Overall, changes in the distribution of widow rockfish QS among ports as a result of reallocation are small relative to some of the inter-port variations in landings observed to date for the overall groundfish fishery.

Investment and Dependence

In making its final recommendation, the Council took into consideration the investments of fishery participants and the relative dependence of Pacific whiting and nonwhiting participants, processors, and communities. The Alternative 5 formula strikes a balance between Pacific whiting and nonwhiting participants, because it provides an advantage to neither. Alternative 2a would have provided more advantage to Pacific whiting vessels at the expense of nonwhiting vessels, and Alternative 2b would have had the opposite effect due to the weighting of whiting versus nonwhiting trips. Rather than

provide one group of participants an advantage over the other, the Council created and selected, as their FPA, Alternative 5 as the midpoint between the two. The Council also created an equal allocation portion of the QS that provided equal QS to those with and without widow history, and to Pacific whiting and nonwhiting vessels.

The Council also considered and incorporated the historic dependence of widow fishermen and the communities in which they reside, by making a portion of the allocation based on widow fishing history. Alternative 3 would have put greater emphasis on revenues when widow was not a target species and reflected the investment of those that were not targeting widow rockfish. This contradicted the Council's purpose and need and its overall policy, implemented through Amendment 20, of acknowledging the investment of those with fishing history for target species. Alternative 4 would have maintained existing allocations, emphasizing the dependence of those with more QP recently, but would have diluted the benefits of this action and the overall effectiveness of this action at achieving the Council's objectives.

Widow rockfish QS has not been transferable since the time of initial allocation in 2011 (except under U.S. court order), therefore, no investments in widow rockfish QS have occurred yet, other than initial investment in the trawl LE permit through which initial allocations and the reallocation of widow rockfish QS were assigned. The initial allocation of widow rockfish QS was based on the expectation that recipients would be dependent on widow rockfish QS as bycatch to access target species allocations, rather than depend on it for the revenue generated by catching widow rockfish itself. For this reason, there has not been much dependence on widow rockfish QS for targeting needs since 2011; rather the vessels that depend on widow rockfish purchase or trade widow

rockfish QP to meet their needs. With rebuilding, businesses have an opportunity to develop an economic reliance on widow rockfish QS for direct revenue (rather than as an input needed to access other species). When converted to ex-vessel revenue equivalents, widow rockfish QS is a relatively minor portion of the QS portfolios currently held by business entities. This rule may affect those vessels that regularly purchase widow rockfish QP for the purposes of directed fishing, by disrupting the existing trade relationships (as discussed in Section 3.3.1(b)(1) of the EA). However, NMFS assumes that these vessels would be able to seek out new trade relationships after the reallocation.

Overall employment is not expected to change through widow rockfish reallocation, but may be redistributed among firms, and geographically redistributed among communities. Geographic redistribution effects are expected to be greatest over the short term and diminish with time. The projected geographic reallocations did not vary substantially among reallocation alternatives.

Summary

The FPA, like all of the action alternatives considered, affects vessels, processors, vessel and processor employment, and communities to varying degrees indirectly through the allocations—except that vessel and processor owners may be directly affected to the degree that they acquired an initial allocation of QS due to their ownership of a trawl LE permit. Because the ACLs of widow rockfish have only recently increased enough to allow targeting, and the FPA would provide each QS permit owners more QP in 2018 than they received in any of the first 6 years of the program, the reallocation of widow rockfish QS is not expected to substantially disrupt recent activities nor is it expected to have significant adverse effects on recent investments. The Council and NMFS

considered the moratorium on widow rockfish QS trading as providing a strong signal of the impending reallocation, providing individuals an opportunity to anticipate widow rockfish QS reallocation as part of their recent investment planning.

The Council and NMFS considered expected impacts of the FPA on harvesters, processors, industry, investments, and communities, using the most recent data available, as reflected in the EA. The Council and NMFS determined that the FPA struck a balance between impacts to the Pacific whiting and nonwhiting fishery; and between re-establishing historic fisheries and the geographic distribution of impacts among the communities in Washington, Oregon, and California. Specifically, this final rule best reflects how widow rockfish would have been allocated at the start of the program if it had not been managed under a rebuilding plan at that time.

This action is part of an overall program designed to ensure that conservation objectives are met and to mitigate some of the distributional effects of those conservation measures. As compared to other action alternatives, the FPA fulfills the Council's purpose and need to reestablish the historic targeted widow rockfish fishery.

Description of This Final Rule

Below is a brief description of this final rule. For a more detailed description, please see the preamble of the proposed rule (81 FR 42295; June 29, 2016). This final rule will: 1) reallocate QS to initial recipients based on a target species formula that will more closely represent the fishing history of permit owners when widow rockfish was a targeted species, 2) allow the trading of widow rockfish quota shares, 3) set a deadline for divestiture in case the reallocation of widow rockfish puts any QS permit owner over an

accumulation limit, and 4) remove the daily vessel limit for widow rockfish since it is no longer an overfished species.

This final rule will reallocate widow rockfish QS. QS permit owners are only eligible for a reallocation of widow rockfish if they are one of the 128 original QS permit owners who initially received a QS permit in 2011 based on LE trawl permit ownership at that time. For those new QS permits to which NMFS administratively transferred widow rockfish QS based on a U.S. court order or due to the death of a QS holder, NMFS will reallocate widow rockfish QS directly to these new QS permits because the shares were transferred through a legal process to a beneficiary. The 10 shorebased Pacific whiting processors who received initial QS permits with only an initial allocation of Pacific whiting are not eligible to receive reallocated widow rockfish QS. Past landings history associated with each LE trawl permit will accrue to the current QS permit owner who received initial QS for that LE permit, even if the LE trawl permit ownership has changed since 2011.

For purposes of the widow rockfish reallocation calculation, NMFS will use landings data from the Pacific States Marine Fisheries Commission's Pacific Fishery Information Network (PacFIN) database. The proposed rule published on June 29, 2016, put the public on notice that NMFS would freeze the PacFIN dataset to be used in calculating the reallocation of widow rockfish on July 27, 2016. QS permit owners were instructed to contact their state fisheries data staff if they had concerns about the accuracy of their data. NMFS notes that there were no changes to the widow rockfish landings in the database for any QS permit holder's fishing history. NMFS then extracted a dataset of the PacFIN database on July 27, 2016, and will use that dataset for the reallocation of

widow rockfish. As there was a delay between the publication of the proposed rule and the final rule, NMFS reconfirmed with PacFIN that there were no changes to the data extract after the freeze.

After determining the new widow rockfish allocations, NMFS will mail prefilled applications and widow rockfish reallocation QS amounts to each eligible QS permit owner (calculated using the formula in this final rule). On the application, the applicant (the QS permit owner) must: 1) indicate whether or not they accept NMFS's calculation of the reallocated widow rockfish QS for each LE trawl permit, 2) provide a written description of what part of the reallocation formula requires correction and credible information to support the request for correction if they do not accept the calculation, and 3) sign, date and declare that the information in the application is true, correct and complete. Complete, certified applications must be submitted to the NMFS West Coast Region (see **ADDRESSES**). NMFS will not accept or review any applications postmarked or received in person after the application deadline, and any QS permit owner who does not submit an application would not be eligible to receive reallocated widow rockfish QS. NMFS will not accept applications by email. NMFS will redistribute the shares from any incomplete or non-submitted applications to all other QS permit owners who are eligible for a reallocation of widow rockfish QS in proportion to their reallocated widow QS amount.

Following review of an application, NMFS will issue an initial administrative determination (IAD). In the IAD, NMFS will inform the applicant whether or not their application for reallocated widow rockfish QS was approved. Applicants would have 60 calendar days from the date of the IAD to appeal the decision. If any appeals are

received, NMFS will reallocate widow QS amounts in 2018 consistent with all of the IADs and await any action resulting from an appeal until January 1, 2019. This is because the timeline of an appeal would be unknown, and new allocations are most easily implemented at the start of a calendar year.

If an application is approved, the QS permit owner will receive a 2018 QS permit showing the new widow rockfish QS amount, and the new QS percentage would show in the associated QS account when updated in 2018. Under this final rule, NMFS has the authority to issue widow rockfish QP for 2018 to QS accounts under one of two processes, depending upon the timing of publication of this final rule. The first process would be that NMFS would deposit QP into accounts on or about January 1, 2018, based on the IAD. Alternatively, widow rockfish QP may be allocated in two steps to QS accounts. Under the two-step process, on or about January 1, 2018, NMFS would deposit QP based on the lesser of the initial allocation under Amendment 20 or the reallocation under this rule to each individual account. Then, after NMFS finalizes the IAD, NMFS would deposit additional QP to the QS account as necessary.

An additional effect of implementing the Council's recommendations, through this final rule, is that after reallocation, some QS permit holders may be required to divest of widow rockfish QS in order to be in compliance with the control limits. Control limits in the Shorebased IFQ Program cap the amount of QS or individual bycatch quota (IBQ) that a person, individually or collectively, may own or control. Amendment 20 and implementing regulations set individual control limits for each of the 30 IFQ species, including widow rockfish, as well as an aggregate limit of 2.7 percent across nonwhiting

species (50 CFR 660.140(d)(4)(C)). The individual control limit for widow rockfish is 5.1 percent.

NMFS will allow the QS permit owner an adjustment period to hold the excess shares and divest. The divestiture deadline is November 30 in the year widow rockfish QS becomes transferrable. If NMFS does not receive any appeals on the reallocation, widow QS would become transferrable in early 2018, and any QS permit owner who exceeded the control limit as the result of the reallocation will have until November 30, 2018, to divest of their excess holdings. After the appeal deadline has passed, NMFS will issue a public notice to notify QS permit holders of when trading may begin. If NMFS does receive one or more appeals, widow QS will become transferrable on or about January 1, 2019, and any QS permit owner who exceeded the control limit as the result of the reallocation would have until November 30, 2019, to divest of their excess holdings. QS trading occurs between January 1 through November 30 each year. Trading is halted in the month of December so that NMFS can set QP allocations based on the static year-end amount of QS and mail QS permits that are effective January 1 of the following year. This adjustment period will allow the permit owner to benefit from holding excess QS, and from the sale or gifting of such an excess, but they will be required to divest of their excess QS in a timely manner, consistent with existing regulatory procedures.

Through this final rule, NMFS also removes the daily vessel limit for widow rockfish since daily vessel limits were developed with the intent to apply only to overfished species. NMFS will remove the daily vessel limit for widow rockfish only, and will not change widow's annual vessel limit or the daily or annual vessel limits of any other species. This change will better reflect the status of widow rockfish as rebuilt,

and allow fishermen to hold the full annual vessel limit at any time if they chose to do so, in line with every other non-overfished IFQ species.

Due to a delay in the development and publication of this final rule, many of the timelines associated with implementing this rulemaking have been updated since the proposed rule. Additionally, other deadlines are dependent on whether or not NMFS receives appeals on the reallocation of widow rockfish. NMFS will provide the affected public an updated list of deadlines in the Small Entity Compliance Guide (see **ADDRESSES**).

Response to Comments

The comment period on the proposed rule ended July 29, 2016. NMFS received two comment letters that included 12 substantive comments on the proposed rule, one from a law firm representing a harvester/processor company, and one from a fisherman. Comments from both letters are addressed below.

Comment 1: One commenter supports a timely and fair reallocation of widow rockfish, the elimination of the moratorium on widow rockfish QS trading, and the removal of the overfished species daily vessel limit.

Response: NMFS agrees with the commenter that the reallocation of widow rockfish should be fair and timely. NMFS also agrees that trading widow rockfish QS is an important aspect of the trawl rationalization program. In some cases the moratorium on widow rockfish QS trading has prevented QS permit owners' ability to supplement their QS portfolio or retire out of the fishery. NMFS notes that this final rule, consistent with the proposed rule, specifies that any appeals will delay the QS transfer start date for widow rockfish QS in order to prevent trading of an amount that may be adjusted later

through appeal. If no appeals are received, widow rockfish QS trading will begin in early 2018, following a public notice from NMFS. As discussed under the description of the final rule, if appeals are received, QS trading will begin January 1, 2019. Last, NMFS agrees that the overfished species daily vessel limit should be removed since widow rockfish is no longer considered an overfished species.

Comment 2: Both commenters assert that the reallocation does not adequately account for current harvests of, and present dependence on, widow rockfish.

Response: The Council and NMFS took into account current harvests of, and present dependence on, widow rockfish in coming to this final reallocation decision. The widow rockfish reallocation alternatives that the Council considered examined reallocating widow rockfish QS using catch history based on a wide range of years (1994-2010) that went as far back as possible to include historical widow rockfish harvests, given the best available scientific information on the groundfish trawl fleet prior to implementation of Amendment 20. Catch history from 2010 was the most recent considered in the reallocation alternatives the Council considered since it was the last year of catch history before the trawl rationalization program was implemented. The Council did not include years beyond 2010 in the allocation alternatives because the QS and resulting QP held by permit owners reflected bycatch needs instead of target fishery needs. Thus including post-2010 years was not consistent with the objective of the action, which is to facilitate the re-establishment of historic target fishing opportunities. However, the Council and NMFS did consider more recent participation and harvest by using more recent information to assess the impacts of each alternative (in some cases

information from 2014, 2015, or 2016, depending on the most recent year available for the relevant data set).

The Council considered but rejected from further analysis the alternative that would have based reallocation of QS solely on more recent participation (2003-2010) (Alternative 3) because it did not adequately meet the primary purpose and need for the action, which is to re-establish historic fishing opportunities (see Section 2.3 of the EA). In addition, Alternative 3 would have rewarded catch history after the control date and prior to the initial allocation of QS, potentially adversely impacting the effectiveness of future control dates.

While the Council ultimately did not select Alternative 3, components of the FPA do recognize recent participation. Under the FPA, 30 percent of the widow rockfish QS will be divided equally among all the QS accounts held by participants who owned a LE permit in 2011. This provides a benefit to more recent participants. Additionally, using LE permits as the basis for allocation places some weight on investment and dependence by entities that recently entered the fishery just before or after the end of the allocation history period and up until the time of initial allocation in 2011. This equal allocation element ensures that those with LE permits that had stronger participation after 2003 than before receive some widow QS allocation. The equal allocation alone will meet or exceed the bycatch needs of many.

Comment 3: One commenter stated that contrary to what is stated in the proposed rule, using the fishing history from 1994 to 2002 is not following the same methodology as was used in the initial allocation because the initial allocation methodology did not use data that was 15 to 23 years in the past.

Response: NMFS disagrees. By using the same fishing years (1994 to 2002), NMFS is following the original allocation methodology used in Amendment 20 to the FMP and providing consistency in the catch history used for this reallocation. While the fishing history years are now more dated, using the same range allows the Council and NMFS to preserve the snapshot of the trawl fisheries it created with Amendment 20.

Comment 4: One commenter asserted that the control date (November 6, 2003) used in this action is not applicable to the reallocation of widow rockfish because there was no directed fishery for widow rockfish between 2002 and 2010. Therefore, there is no danger of rewarding speculative effort by using more recent years. Additionally, it's not reasonable for PFMC to consider reallocating other overfished species using the control date in the future due to the staleness of the control date.

Response: NMFS disagrees. First, the control date was determined to be a valid control by the District Court in *Pac. Dawn, LLC v. Pritzker*, No. C13-1419 TEH, 2013 WL 6354421 (N.D. Cal. Dec. 5, 2013), which the 9th Circuit affirmed, *Pac. Dawn LLC v. Pritzker*, 831 F.3d 1166, 1179 (9th Cir. 2016). Second, the Council considered and rejected using data from 2003 to 2010 for the reallocation because it did not adequately meet the primary purpose and need for the action, which is to re-establish historic fishing opportunities (Section 1.3 of the EA). Additionally, the Council noted, and NMFS agrees, that using landings from 2003 to 2010 would reward catch history after the control date, during a time when the stock was overfished, and prior to the initial allocation of QS, potentially adversely impacting the effectiveness of future control dates. However, NMFS notes that reallocating QS among current QS holders rather than another class of participants does take into account current investment in the fishery (in

the form of the investments in LE permits as an asset and the subsequent holding of the QS which devolved from that investment).

Additionally, the EA notes in Section 2.3 that the Council stated this reallocation of widow QS was not necessarily a precedent for future reallocations of other currently overfished species. Widow QS trading had been frozen to facilitate reallocation in anticipation that the stock would soon be rebuilt and such an action has not been taken with regard to other overfished species. As noted in the EA in Section 2.3, it is likely that widow will be the only overfished species for which QS can be reallocated based on pre-catch share program historic harvest because the widow QS trading moratorium allows that QS to be tied back to those historic landings through the catch history of the vessel LE permits, which were used as the basis for establishing the initial allocations. This will not be possible for other overfished species since QS for those species has already been subject to trading, and tracking each of those trades across multiple transactions and QS owners for reallocation purposes likely would be unfeasible.

Comment 5: One comment asserts that NMFS's proposal to use two different catch history periods when reallocating widow rockfish is unlawful. This proposal would use the catch history from 1994 to 2003 for all buyback permits and for Pacific whiting landings history, but would drop the 2003 fishing year for nonwhiting landings history. The commenter alleges there is no legitimate explanation for differentiating between Pacific whiting and nonwhiting widow landings history in 2003 or for not including 2003 in the nonwhiting landings history.

Response: For the initial allocations of target (non-overfished) species under Amendment 20, the historical landing period was 1994-2003. NMFS and the Council

used 2003 because it was when the control date was announced by the Council and NMFS. The EA notes in Section 2.1.2(b) that for the purposes of the widow rockfish reallocation, 2003 was left off the historic fishing period for nonwhiting trips because regulations were implemented in 2002 designed to discourage widow rockfish harvest (67 FR 10489; March 7, 2002). 2002 was the last full year widow rockfish was managed as a “target species” instead of an overfished species. Therefore, excluding 2003 from the historic fishing period was consistent with the intent of allowing historical directed fishery participants to benefit from the renewed fishing opportunities through a direct reallocation. Since only a few vessels made landings in 2003 and because the allocation formula calculates history based on share of the fleet’s total catch, a relatively small amount of widow landed by a single LE permit could constitute a large portion of the fleet total for that year and have a disproportionate effect on the allocation for that LE permit. Therefore, 2003 is not included in the allocation formula for nonwhiting landings history.

Comment 6: Both commenters expressed concern that reallocating widow rockfish to current QS permit owners fails to recognize the widow rockfish fishing history associated with the LE permits because several LE permits have changed ownership since 2002.

Response: Based on the Council’s action, NMFS will reallocate widow rockfish based on the LE permit and QS permit relationship described above because the LE permit ownership was severed from the QS permit ownership at the time QS permits became effective in 2011. After that time, LE trawl permits could be sold without any effect on the QS holdings, and QS percentages could be transferred without any effect on

the LE permit. NMFS believes it is likely that QS permit owners would not have sold their LE trawl permits if they thought they would not receive the reallocated widow rockfish QS, and similarly, that it is likely that any persons who purchased a LE trawl permit did not believe that they would receive any future QS as part of the purchase.

Past landings history associated with each LE trawl permit will accrue to the current QS permit owner who received initial QS for that LE permit, even if the LE trawl permit ownership has changed since 2011. For example, if the fictitious company XYZ Fishing owned two LE trawl permits in 2010: Permit A and Permit B, they would have received a QS permit (QS Permit #1) in 2011 with an initial issuance of QS that was based on the history of LE trawl Permits A and B. For the purposes of widow rockfish reallocation, the linkage between LE trawl Permits A and B and QS Permit #1 will remain in place, so that QS Permit #1 will be reallocated widow rockfish QS based on the history from LE trawl Permits A and B, regardless of who owns those LE trawl permits now. If XYZ Fishing sold both LE trawl permits in 2013, and therefore no longer owns them at the time widow rockfish is reallocated, the company would still receive the reallocated widow rockfish QS from LE Permits A and B to QS Permit #1.

Comment 7: One commenter stated that the reallocation would reduce his widow rockfish QS holdings, and that he will be forced to lease quota pounds.

Response: NMFS acknowledges that 65 of 128 original QS permit owners will receive decreased allocations of widow rockfish QS under the reallocation formula, while 64 of 128 original QS permit owners will receive increased allocations of widow rockfish QS under the reallocation formula. Table 4-7 of the EA shows that currently, the maximum allocation of the total widow rockfish QS pool to an individual LE permit

holder is 2.11 percent, the minimum allocation is 0.02 percent. Under Alternative 5, the maximum allocation to an individual LE permit holder will be 1.98 percent of the total widow rockfish QS pool and the minimum allocation will be 0.18 percent. For those that will receive more widow rockfish QS, the average increase will be 0.34 percent of the total widow rockfish pool. For those that will receive less widow rockfish QS, the average decrease will be 0.34 percent of the total widow rockfish pool. Although these changes may affect some permit holders more than others, the ACL and annual Shorebased IFQ Program allocation have increased dramatically now that widow rockfish has been rebuilt, meaning that the quota pound equivalent of each share is now worth more. For example, a permit owner who holds one percent of widow rockfish QS would have been allocated 7,553 pounds in 2011 and 2,790,730 pounds in 2017. This means that even with a decrease in an individual QS permit owner's widow rockfish QS under reallocation, the permit owner will still likely be able to meet their bycatch needs since each share is worth more than 350 times in terms of QP than at the time of initial allocation in 2011.

NMFS also notes that this final rule will allow the transfer of widow rockfish QS, which has been restricted since the implementation of the trawl rationalization program. The commenter would then be able to purchase widow QS on the open market to meet his needs.

Comment 8: One commenter said that the time allotted for QS permit owners to review and revise their widow rockfish history prior to extracting a dataset from the PacFIN database was not sufficient.

Response: NMFS disagrees. NMFS provided sufficient notification to QS permit owners to review their widow rockfish history prior to the publication of this final rule. Initially, QS permit owners had the opportunity to review their catch history, including for widow rockfish, when the original allocations for the trawl rationalization program were made in 2011. Specific to this rule, NMFS notified the public that QS permit owners should review, and if necessary revise their widow rockfish history in April 2016 at the Council meeting and again in the proposed rule, published on June 29, 2016 (81 FR 42295). The proposed rule stated a deadline of July 27, 2016, for the data extraction. According to information provided by the States, all data requests were completed within the timeframe provided and NMFS is unaware of any outstanding data issues. There were no requested modifications to landing information.

Comment 9: One commenter stated that the proposed rule will force QS permit holders to divest of widow rockfish QS, after NMFS already forced permit holders to divest in 2015. They allege that a second round of divestiture brings duplicative costs and is contrary to National Standards 7 and 8 of the MSA.

Response: NMFS agrees that under this final rule, any QS permit holders that exceed an aggregate control rule after the reallocation of widow rockfish QS will be required to divest. However, NMFS notes that under this final rule, permit holders will have several months to divest and QS permit holders may sell their excess widow rockfish QS, which was allocated at no cost to the participant, thereby, allowing the participant to make a profit on the divestiture. Additionally, NMFS sent all eligible QS holders a preliminary notification of their widow rockfish QS reallocation amount when the proposed rule was published (81 FR 42295; June 29, 2016). This has provided QS

holders over a year to determine whether they will need to divest or not under this final rule.

National Standard 7 of the MSA states that, “Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.” While the divestiture transaction may require some time investment on the part of the QS holder, selling QS that was allocated freely will only serve to provide a profit for the QS holder, thereby minimizing any costs associated. As the commenter noted, QS holders were previously required by Amendment 20 to divest any non-widow rockfish QS that exceeded an aggregate control rule. Due to the practicalities of the Council process and NMFS rulemaking, NMFS was not able to expedite the divestiture of widow rockfish QS required by this final rule with the divestiture required by Amendment 20 to the FMP.

National Standard 8 of the MSA requires that an FMP take into account the importance of fishery resources to fishing communities in order to provide for the sustained participation of such communities and minimize the adverse economic impacts on such communities. The EA explains that participation by vessels and first receivers in the widow rockfish fishery in all major participating areas (Coos Bay to Morro Bay, Astoria-Newport, and Bellingham-Ilwaco) during 2011-2014 was significantly lower than in 1996 – 1998 (Section 3.3.3). Overall, the EA notes that some reallocation of wealth and short term redistribution of economic activity among communities may occur under the action, however, any change would be minimal relative to overall community fishery and general economic activity (Section 4.4.3).

Comment 10: One comment stated that the proposed reallocation of widow rockfish QS would force fishery participants to divest QS exceeding control limits,

including the nonwhiting aggregate control limit of 2.7 percent. The commenter noted its disagreement with the nonwhiting aggregate control limit of 2.7 percent.

Response: NMFS agrees that once this rule is effective, and widow QS is reallocated, some QS permit holders may be required to divest of some QS in order to comply with the aggregate control limits under Amendment 20 to the FMP. NMFS also notes that this final rule does not modify any of the aggregate control rules included in Amendment 20; therefore, this comment is outside the scope of this action.

Comment 11: One commenter alleged that the proposed rule rewards the speculative behavior of people who purchased permits in advance of allocation and subsequent reallocation.

Response: NMFS disagrees. This final rule recognizes the investments entities have made by way of purchasing permits in 2010 through the equal allocation portion of the reallocation design. However, there was no information that entities would have had prior to the initial allocation under the Shorebased IFQ Program that widow rockfish would be rebuilt, when it would be rebuilt, and that the Council would select the reallocation alternative included in this final rule. Therefore, NMFS does not believe this action rewards the speculative behavior described by the commenter.

Comment 12: One commenter stated that the proposed rule does not address the need for widow rockfish QP as bycatch in the yellowtail rockfish midwater trawl fishery.

Response: NMFS disagrees. This final rule will reallocate widow rockfish for the purposes of reestablishing a directed fishery. The main directed fishery for widow rockfish is the midwater trawl fishery, in which widow rockfish and yellowtail rockfish are commonly caught together as directed targets. Additionally, under this final rule,

fishery participants will be able to purchase additional widow rockfish QS on the open market as a means to meet their bycatch needs.

Changes from the Proposed Rule

In the event that the widow rockfish reallocations are not finalized by January 1, 2018, NMFS will have authority, per temporary regulations added at 50 CFR 660.140(d)(1)(ii)(A)(4), to issue widow rockfish QP in two parts, first issuing interim QP to accounts on or about January 1, 2018, followed by the remaining QP, if applicable, after the IAD is finalized. Without this provision, if reallocations were not finalized on or about January 1, 2018, NMFS would have to wait to issue any widow rockfish QP until the IAD is finalized, meaning vessel accounts would have zero widow rockfish QP for some time early in 2018.

NMFS changed the deadline for QS permit owners to submit their widow rockfish reallocation applications from September 15, 2016, to 30 days after the final rule publishes, which is the effective date of this rule, [*insert date 30 days after date of publication in the Federal Register*]. The proposed rule and this final rule were delayed in publishing, so the September 15, 2016, deadline was no longer feasible.

After the application deadline, NMFS will mail initial administrative determinations (IAD) to applicants, and applicants will have 60 days from the time they receive their IAD to appeal. Because the application deadline change pushed the whole timeline back, the IAD appeal deadline will now fall in early 2018, instead of in 2016. Widow rockfish QS cannot be traded until after the IAD appeal deadline since any appeals may affect the amount of widow rockfish QS each QS permit owner was reallocated. If NMFS receives no appeals, widow rockfish QS trading would be allowed

after notification from NMFS after the IAD appeal deadline. This is a change from the proposed rule, where NMFS had anticipated that the IAD appeal deadline would fall in 2016, and that if no appeals were received widow rockfish QS trading would be allowed on January 1, 2017. For this final rule, if no appeals are received, widow rockfish QS trading will be allowed in early 2018. If any IAD appeals are received, the start date for widow rockfish QS trading will be on January 1, 2019.

Last, NMFS had previously intended to put out a public notice in December 2016 detailing whether any appeals were received, when widow rockfish QS trading would start, and set the abandonment and divestiture deadlines (which are dependent on the date QS trading starts), but because of the date changes described above, NMFS will now publish a public notice detailing the same information after the IAD appeal deadline.

Classification

Pursuant to sections 304(b)(1)(A) and 305(d) MSA, the NMFS Assistant Administrator has determined that this rule is consistent with the FMP, other provisions of the MSA, and other applicable law.

The Council prepared an EA for this action and the NMFS Assistant Administrator concluded in a “Finding of No Significant Impact” that there will be no significant impact on the human environment as a result of this rule. The EA is available on the Council’s Web site at [http:// www.pcouncil.org/](http://www.pcouncil.org/) or on NMFS’s West Coast Groundfish website at http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish_catch_shares/rules_regulations/widow_rockfish_reallocation.html.

The Office of Management and Budget has determined that this action is not

significant for purposes of Executive Order 12866.

NMFS prepared a final regulatory flexibility analysis (FRFA) under section 603 of the Regulatory Flexibility Act (RFA), which incorporates the initial regulatory flexibility analysis (IRFA). A summary of any significant issues raised by the public comments in response to the IRFA, and NMFS's responses to those comments, and a summary of the analyses completed to support the action are addressed below. NMFS also prepared an RIR for this action. A copy of the RIR and FRFA are available from NMFS (see **ADDRESSES**), and per the requirements of 5 U.S.C. 604(a), the text of the FRFA follows:

Final Regulatory Flexibility Analysis

As applicable, section 604 of the Regulatory Flexibility Act (RFA) requires an agency to prepare a final regulatory flexibility analysis (FRFA) after being required by that section or any other law to publish a general notice of proposed rulemaking and when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code. The following paragraphs constitute the FRFA for this action.

This FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of any significant issues raised by the public comments, NMFS's responses to those comments, and a summary of the analyses completed to support the action. Analytical requirements for the FRFA are described in the RFA, section 604(a)(1) through (6). FRFAs contain:

1. A statement of the need for, and objectives of, the rule;

2. A statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

3. The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;

4. A description and an estimate of the number of small entities to which the rule will apply, or an explanation of why no such estimate is available;

5. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

6. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

The “universe” of entities to be considered in a FRFA generally includes only those small entities that can reasonably be expected to be directly regulated by the action. If the effects of the rule fall primarily on a distinct segment of the industry, or portion

thereof (*e.g.*, user group, gear type, geographic area), that segment will be considered the universe for purposes of this analysis.

In preparing a FRFA, an agency may provide either a quantifiable or numerical description of the effects of a rule (and alternatives to the rule), or more general descriptive statements, if quantification is not practicable or reliable.

Need for and Objective of this Final Rule

In January 2011, NMFS implemented the trawl rationalization program (a catch share program) for the Pacific coast groundfish LE trawl fishery, which includes an individual fishing quota program for LE trawl participants. At the time of implementation, the widow rockfish stock was overfished and quota shares were allocated to quota share permit owners in the individual fishing quota program using an overfished species formula. Now that widow rockfish has been rebuilt, NMFS will reallocate quota shares to initial recipients based on a target species formula that more closely represents the fishing history of permit owners when widow rockfish was a targeted species. Through this final rule NMFS will allow the trading of widow rockfish quota shares, set a deadline for divestiture in case the reallocation of widow rockfish puts any QS permit owner over an accumulation limit, and remove the daily vessel limit for widow rockfish since it is no longer an overfished species.

Summary of Significant Issues Raised During Public Comment

NMFS published the proposed rule to reallocate widow rockfish on June 29, 2016 (81 FR 42295). An IRFA was prepared and summarized in the Classification section of the preamble to the proposed rule. The comment period on the proposed rule ended on July 29, 2016. NMFS received two comment letters that included 12 substantive

comments on the proposed rule. None of these comments raise issues in response to the IRFA. The Chief Counsel for Advocacy of the SBA did not file any comments on the IRFA or the proposed rule.

Number and Description of Directly Regulated Small Entities

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

The SBA has established size criteria for all other major industry sectors in the United States, including fish processing businesses. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 750 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

The entities directly regulated by this action are QS permit holders. This rule will affect 128 QS permit owners who have received widow quota shares. When renewing their QS permits, permit owners are asked if they considered themselves small businesses based on the SBA definitions of small businesses provided above. Based on their responses, NMFS estimates that there are 110 small businesses affected by this rule.

Recordkeeping, Reporting, and Other Compliance Requirements

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0648-0620. This final rule will require that widow rockfish QS permit holders submit an application for the widow rockfish reallocation. NMFS estimates the public reporting burden for this collection of information to average one hour per form, including the time for reviewing instructions, reviewing data and calculations for reallocated widow rockfish QS, and completing the form.

Description of Significant Alternatives to this Final Rule that Minimize Economic Impacts on Small Entities

NMFS does not believe that small businesses as a class of QS holders will be negatively impacted by the proposed reallocation of widow rockfish QS. The reallocation options decrease widow QS holdings for some small businesses while increasing QS holdings for other small businesses, based on historical reliance on widow rockfish as a target species. Despite the fact that 63 QS permits will lose widow rockfish QS under reallocation, this loss may be mitigated by the substantial increase in the widow rockfish ACL that has occurred for 2017 and 2018, which will result in significantly more QP for many permit holders than they have been issued since rationalization. Trading of widow QS should also be beneficial to all small businesses as it gives these businesses the option to buy, sell, or lease their widow QS. Setting the divesture deadline gives any affected entities time to sell off their excess QS. Eliminating the no-longer-needed daily vessel limit for widow rockfish provides more flexibility to small businesses.

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 final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the West Coast Regional Office (see **ADDRESSES**), and the guide will be included in a public notice sent to all members of the groundfish email group. To sign-up for the groundfish email group, click on the “subscribe” link on the following Web site: *http://*

www.westcoast.fisheries.noaa.gov/publications/fishery_management/groundfish/public_notices/recent_public_notices.html. The guide and this final rule will also be available on the West Coast Region’s Web site (see **ADDRESSES**) and upon request.

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 email to *OIRA_Submission@omb.eop.gov*, or fax to 202-395-5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a 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. All currently approved NOAA collections of information may be viewed at: *http://www.cio.noaa.gov/services_programs/prasubs.html*.

Pursuant to Executive Order 13175, this rule was developed after meaningful collaboration with tribal officials from the area covered by the FMP. Under the MSA at 16 U.S.C. 1852(b)(5), one of the voting members of the Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. The regulations do not require the tribes to change from their current practices.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian Fisheries.

Dated: November 17, 2017.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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

PART 660—FISHERIES OFF WEST COAST STATES

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

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

2. In § 660.140:

a. Add paragraph (d)(1)(ii)(A)(4);

- b. Revise paragraphs (d)(3)(ii)(B)(2) and (d)(4)(v);
- c. Add paragraph (d)(9); and
- d. Revise paragraph (e)(4)(i) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(A) * * *

(4) In 2018, NMFS may make deposits to QS accounts for widow rockfish in two parts. If NMFS elects to issue widow rockfish QP in two parts, on or about January 1, NMFS will deposit interim QP based on the lesser of the initial allocation or the reallocation. After NMFS finalizes the IAD of widow rockfish QS, NMFS will deposit additional QP to the QS account as necessary.

* * * * *

(3) * * *

(ii) * * *

(B) * * *

(2) *Transfer of QS or IBQ between QS accounts.* Beginning January 1, 2014, QS permit owners may transfer QS (except for widow rockfish QS) or IBQ to another owner of a QS permit, subject to accumulation limits and approval by NMFS. Once the IAD deadline has been reached and no appeals to the reallocation of widow rockfish have been submitted, or on January 1, 2019, if such an appeal has been submitted, QS permit

owners may transfer widow rockfish QS to another owner of a QS permit, subject to accumulation limits and approval by NMFS. NMFS will announce the QS transfer date for widow rockfish after the IAD appeal deadline. QS or IBQ is transferred as a percent, divisible to one-thousandth of a percent (i.e., greater than or equal to 0.001%). QS or IBQ cannot be transferred to a vessel account. Owners of non-renewed QS permits may not transfer QS. QP in QS accounts cannot be transferred between QS accounts. NMFS will allocate QP based on the QS percentages as listed on a QS permit that was renewed during the previous October 1 through November 30 renewal period. QS transfers will be recorded in the QS account but will not become effective for purposes of allocating QPs until the following year. QS or IBQ may not be transferred between December 1 through December 31 each year. Any QS transaction that is pending as of December 1 will be administratively retracted. NMFS will allocate QP for the following year based on the QS percentages as of December 1 of each year.

* * * * *

(4) * * *

(v) *Divestiture*. Accumulation limits will be calculated by first calculating the aggregate nonwhiting QS limit and then the individual species QS or IBQ control limits. For QS permit owners (including any person who has ownership interest in the owner named on the permit) that are found to exceed the accumulation limits during the reallocation of widow rockfish QS, an adjustment period will be provided during which they will have to completely divest their QS or IBQ in excess of the accumulation limits. If NMFS identifies that a QS permit owner exceeds the accumulation limits in 2016 or beyond, the QS permit owner must divest of the QS or IBQ in excess of the accumulation

limits according to the procedure provided under paragraph (d)(4)(v)(A) or (B) of this section. Owners of QS or IBQ in excess of the control limits may receive and use the QP or IBQ pounds associated with that excess, up to the time their divestiture is completed.

(A) Divestiture and redistribution process in 2016 and beyond. Any person owning or controlling QS or IBQ must comply with the accumulation limits, even if that control is not reflected in the ownership records available to NMFS as specified under paragraphs (d)(4)(i) and (iii) of this section. If NMFS identifies that a QS permit owner exceeds an accumulation limit in 2016 or beyond for a reason other than the reallocation of widow rockfish, NMFS will notify the QS permit owner that he or she has 90 days to divest of the excess QS or IBQ. In the case that a QS permit owner exceeds the control limit for aggregate nonwhiting QS holdings, the QS permit owner may abandon QS to NMFS within 60 days of the notification by NMFS, using the procedure provided under paragraph (d)(4)(v)(C) of this section. After the 90-day divestiture period, NMFS will revoke all QS or IBQ held by a person (including any person who has ownership interest in the owner names on the permit) in excess of the accumulation limits following the procedures specified under paragraphs (d)(4)(v)(D) through (G) of this section. All abandoned or revoked shares will be redistributed to all other QS permit owners in proportion to their QS or IBQ holdings on or about January 1 of the following calendar year, based on current ownership records, except that no person will be allocated an amount of QS or IBQ that would put that person over an accumulation limit.

(B) Divestiture and redistribution process for the reallocation of widow rockfish. Any person owning or controlling QS or IBQ must comply with the accumulation limits, even if that control is not reflected in the ownership records available to NMFS as

specified under paragraphs (d)(4)(i) and (iii) of this section. If the reallocation of widow rockfish puts any QS permit owner over an accumulation limit, the QS permit owner will have until November 30 of the year widow rockfish becomes transferrable to divest of their excess widow rockfish QS. In the case that a QS permit owner exceeds the control limit for aggregate nonwhiting QS holdings as the result of the reallocation of widow rockfish, the permit owner may abandon QS to NMFS by November 15 of the year widow rockfish becomes transferrable, using the procedure provided under paragraph (d)(4)(v)(C) of this section. NMFS will announce the QS transfer date for widow rockfish, the divestiture deadline, and the abandonment deadline after the widow reallocation IAD appeal deadline. After the widow rockfish reallocation divestiture period, NMFS will revoke all QS and IBQ held by a person (including any person who has ownership interest in the owner names on the permit) in excess of the accumulation limits following the procedures specified under paragraphs (d)(4)(v)(D) through (G) of this section. All abandoned or revoked shares will be redistributed to all other QS permit owners in proportion to their QS or IBQ holdings on or about January 1 of the following calendar year, based on current ownership records, except that no person will be allocated an amount of QS or IBQ that would put that person over an accumulation limit.

(C) *Abandonment of QS.* QS permit owners that are over the control limit for aggregate nonwhiting QS holdings may voluntarily abandon QS if they notify NMFS in writing by the applicable deadline specified under paragraph (d)(4)(v)(A) or (B) of this section. The written abandonment request must include the following information: QS permit number, IFQ species, and the QS percentage to be abandoned. Either the QS permit owner or an authorized representative of the QS permit owner must sign the

request. QS permit owners choosing to utilize the abandonment option will permanently relinquish to NMFS any right to the abandoned QS, and the QS will be redistributed as described under paragraph (d)(4)(v)(A) or (B) of this section. No compensation will be due for any abandoned shares.

(D) *Revocation.* NMFS will revoke QS from any QS permit owner who exceeds an accumulation limit after the divestiture deadline specified under paragraph (d)(4)(v)(A) or (B) of this section. NMFS will follow the revocation approach summarized in the following table and explained under paragraphs (d)(4)(v)(E) through (G) of this section:

<i>If, after the divestiture deadline, a QS permit owner exceeds...</i>	<i>Then...</i>
An individual species control limit in <i>one</i> QS permit	NMFS will revoke excess QS at the species level.
An individual species control limit across <i>multiple</i> QS permits	NMFS will revoke QS at the species level in proportion to the amount the QS percentage from each permit contributes to the total QS percentage owned.
The control limit for aggregate nonwhiting QS holdings	NMFS will revoke QS at the species level in proportion to the amount of the aggregate overage divided by the aggregate total owned.

(E) *Revocation of excess QS or IBQ from one QS permit.* In cases where a person has not divested to the control limits for individual species in one QS permit by the deadline specified under paragraph (d)(4)(v)(A) or (B) of this section, NMFS will revoke excess QS at the species level in order to get that person to the limits. NMFS will redistribute the revoked QS following the process specified in paragraph (d)(4)(v)(A) or (B) of this section. No compensation will be due for any revoked shares.

(F) *Revocation of excess QS or IBQ from multiple QS permits.* In cases where a

person has not divested to the control limits for individual species across QS permits by the deadline specified under paragraph (d)(4)(v)(A) or (B) of this section, NMFS will revoke QS at the species level in proportion to the amount the QS percentage from each permit contributes to the total QS percentage owned. NMFS will redistribute the revoked QS following the process specified in paragraph (d)(4)(v)(A) or (B) of this section. No compensation will be due for any revoked shares.

(G) *Revocation of QS in excess of the control limit for aggregate nonwhiting QS holdings.* In cases where a QS permit owner has not divested to the control limit for aggregate nonwhiting QS holdings by the deadline specified under paragraph (d)(4)(v)(A) or (B) of this section, NMFS will revoke QS at the species level in proportion to the amount of the aggregate overage divided by the aggregate total owned. NMFS will redistribute the revoked QS following the process in paragraph (d)(4)(v)(A) or (B) of this section. No compensation will be due for any revoked shares.

* * * * *

(9) *Reallocation of widow rockfish QS.* (i) *Additional definitions.* The following definitions are applicable to paragraph (d)(9) of this section and apply only to terms used for the purposes of reallocation of widow rockfish QS:

(A) *Nonwhiting trip* means a fishing trip where less than 50 percent by weight of all fish reported on the state landing receipt is whiting.

(B) *PacFIN* means the Pacific Fisheries Information Network of the Pacific States Marine Fisheries Commission.

(C) *Relative history* means the landings history of a limited entry trawl permit for a species, year, and area subdivision, divided by the total fleet history of the sector for

that species, year, and area subdivision, as appropriate.

(D) *Whiting trip* means a fishing trip where greater than or equal to 50 percent by weight of all fish reported on the state landing receipt is whiting.

(ii) *Eligibility criteria for receiving reallocated widow rockfish QS*. Only the owner of an original QS permit (non-shoreside processor) to which QS was initially allocated in 2011 is eligible to receive reallocated widow rockfish QS based on the history of the limited entry trawl permit(s) that accrued to that QS permit, regardless of current limited entry permit ownership. For those new QS permits to which widow rockfish was administratively transferred by NMFS under U.S. court order, NMFS will reallocate widow rockfish QS directly to the new QS permit. Any limited entry trawl permit owners who did not submit an initial application for a QS permit will not be eligible to receive reallocated widow rockfish QS.

(iii) *Steps for widow rockfish QS reallocation formula*. The widow rockfish QS reallocation formula is applied in the following steps:

(A) First, for each limited entry trawl permit, NMFS will determine a preliminary QS allocation for nonwhiting trips.

(B) Second, for each limited entry trawl permit, NMFS will determine a preliminary QS allocation for whiting trips.

(C) Third, for each limited entry trawl permit, NMFS will combine the amounts resulting from paragraphs (d)(9)(iii)(A) and (B) of this section.

(D) Fourth, NMFS will reduce the total widow rockfish QS reallocated to QS permit owners by 10 percent as a set aside for AMP.

(iv) *Reallocation formula for specific widow rockfish QS amounts*—

(A) *Reallocation formula rules.* The following rules will be applied to data for the purpose of calculating the initial reallocation of widow rockfish QS:

(1) Limited entry trawl permits will be assigned catch history or relative history based on the landing history of the vessel(s) associated with the permit at the time the landings were made.

(2) The relevant PacFIN dataset includes species compositions based on port sampled data and applied to data at the vessel level.

(3) Only landings of widow rockfish that were caught in the exclusive economic zone or adjacent state waters off Washington, Oregon, and California will be used for calculating the reallocation of widow rockfish QS.

(4) History from limited entry trawl permits that have been combined with a limited entry trawl permit that qualified for a C/P endorsement and which has shorebased permit history will not be included in the preliminary QS and IBQ allocation formula, other than in the determination of fleet history used in the calculation of relative history for limited entry trawl permits that do not have a C/P endorsement.

(5) History of illegal landings and landings made under nonwhiting EFPs that are in excess of the cumulative limits in place for the non-EFP fishery will not count toward the allocation of QS.

(6) The limited entry trawl permit's landings history includes the landings history of limited entry trawl permits that have been previously combined with that limited entry trawl permit.

(7) If two or more limited entry trawl permits have been simultaneously registered to the same vessel, NMFS will split the landing history evenly between all such limited

entry trawl permits during the time they were simultaneously registered to the vessel.

(8) Unless otherwise noted, the calculation for the reallocation of widow rockfish QS under paragraph (d)(9) will be based on state landing receipts (fish tickets) as recorded in the relevant PacFIN dataset on July 27, 2016.

(9) For limited entry trawl permits, landings under provisional “A” permits that did not become “A” permits and “B” permits will not count toward the reallocation of widow rockfish QS, other than in the determination of fleet history used in the calculation of relative history for permits that do not have a C/P endorsement.

(10) For limited entry trawl permits, NMFS will calculate the reallocation of widow rockfish QS separately based on whiting trips and nonwhiting trips, and will weigh each calculation according to a split between whiting trips and nonwhiting trips of 10.833 percent for whiting trips and 89.167 percent for nonwhiting trips, which is a one-time proportion necessary for the reallocation formula.

(B) *Preliminary widow rockfish QS reallocation for nonwhiting trips.* The preliminary reallocation process in paragraph (d)(9)(iii)(A) of this section follows a two-step process, one to allocate a pool of QS equally among all eligible limited entry permits and the other to allocate the remainder of the preliminary QS based on limited entry trawl permit history. Through these two processes, preliminary QS totaling 100 percent will be allocated. In later steps, this will be adjusted and reduced as indicated in paragraph (d)(9)(iii)(C) and (D) to determine the QS allocation.

(1) *QS to be allocated equally.* The pool of QS for equal allocation will be determined using the nonwhiting trip landings history from Federal limited entry groundfish permits that were retired through the Federal buyback program (*i.e.*, buyback

program) (68 FR 42613, July 18, 2003). The nonwhiting trip QS pool associated with the buyback permits will be the buyback permit history as a percent of the total fleet history for the 1994 to 2003 nonwhiting trip reallocation period. The calculation will be based on total absolute pounds with no dropped years and no other adjustments. The QS pool associated with the buyback permits will be divided equally among all qualifying limited entry permits.

(2) *QS to be allocated based on each permit's history.* The pool of QS for allocation based on limited entry trawl permit nonwhiting trip history will be the QS remaining after subtracting out the QS allocated equally. This pool will be allocated to each qualifying limited entry trawl permit based on the permit's relative nonwhiting trip history from 1994 through 2002, dropping the three lowest years. For each limited entry trawl permit, NMFS will calculate relative history using the following methodology. First, NMFS will sum the permit's widow rockfish landings on nonwhiting trips for each year in the reallocation period. Second, NMFS will divide each permit's annual sum by the shoreside limited entry trawl fleet's annual sum. NMFS will then calculate a total relative history for each permit by adding all relative histories for the permit together and subtracting the three years with the lowest relative history for the permit. The result for each permit will be divided by the aggregate sum of all total relative histories of all qualifying limited entry trawl permits. NMFS will then multiply the result from this calculation by the amount of QS in the pool to be allocated based on each permit's history.

(C) *Preliminary widow rockfish QS reallocation for whiting trips.* The preliminary reallocation process in paragraph (d)(9)(iii)(B) of this section follows a two-

step process, one to allocate a pool of QS equally among all eligible limited entry permits and the other to allocate the remainder of the preliminary QS based on permit history. Through these two processes, preliminary QS totaling 100 percent will be allocated. In later steps, this will be adjusted and reduced as indicated in paragraph (d)(9)(iii)(C) and (D) to determine the QS allocation.

(1) QS to be allocated equally. The pool of QS for equal allocation will be determined using whiting trip landings history from Federal limited entry groundfish permits that were retired through the Federal buyback program (*i.e.*, buyback program) (68 FR 42613, July 18, 2003). The whiting trip QS pool associated with the buyback permits will be the buyback permit history as a percent of the total fleet history for the 1994 to 2003 whiting trip reallocation period. The calculation will be based on total absolute pounds with no dropped years and no other adjustments. The QS pool associated with the buyback permits will be divided equally among all qualifying limited entry permits.

(2) QS to be allocated based on each permit's history. The pool of QS for allocation based on each limited entry trawl permit's whiting trip history will be the QS remaining after subtracting out the QS allocated equally. Widow rockfish QS for this pool will be allocated pro-rata based on each limited entry trawl permit's whiting QS from whiting trips that was established in 2010 and used to allocate the whiting trip portion of whiting QS at the time of initial implementation in 2011. Pro-rata means a percent that is equal to the percent of whiting QS from whiting trips.

(D) QS from limited entry permits calculated separately for nonwhiting trips and whiting trips. NMFS will calculate the portion of widow QS a limited entry trawl permit

receives based on nonwhiting trips and whiting trips separately, and will weight each preliminary QS in proportion to the one-time reallocation percentage between whiting trips and nonwhiting trips of 10.833 percent and 89.167 percent, respectively.

(1) *Nonwhiting trips.* To determine the amount of widow QS for nonwhiting trips for each limited entry trawl permit, NMFS will multiply the preliminary QS for the permit from paragraph (d)(9)(iii)(A) of this section by the one-time reallocation percentage of 89.167 percent for nonwhiting trips.

(2) *Whiting trips.* To determine the amount of widow QS for whiting trips for each limited entry trawl permit, NMFS will multiply the preliminary QS for the permit from paragraph (d)(9)(iii)(B) of this section by the one-time reallocation percentage of 10.833 percent for whiting trips.

(E) *QS for each limited entry trawl permit.* For each limited entry trawl permit, NMFS will add the results for the permit from paragraphs (d)(9)(iv)(D)(1) and (D)(2) of this section in order to determine the total QS widow for that permit.

(F) *Adjustment for AMP set-aside.* NMFS will reduce the widow QS reallocated to each permit owner by a proportional amount that is equivalent to a reduction of 10 percent across all widow reallocation recipients' holdings as a set aside for AMP.

(v) *Widow rockfish QS reallocation application.* Persons may apply for issuance of reallocated widow rockfish QS by completing and submitting a prequalified application. A "prequalified application" is a partially pre-filled application where NMFS has preliminarily determined the landings history for each limited entry trawl permit that qualifies the applicant for a reallocation of widow QS. The application package will include a prequalified application with landings history. The completed application must

be either postmarked or hand-delivered to NMFS within normal business hours no later than *[insert date 30 days after date of publication in the Federal Register]*. If an applicant fails to submit a completed application by the deadline date, they forgo the opportunity to receive reallocated widow rockfish QS and their percentage will be redistributed to other QS permit owners who submitted complete widow rockfish reallocation applications in proportion to their reallocated widow QS amount.

(vi) *Corrections to the application.* If an applicant does not accept NMFS's calculation in the prequalified application either in part or whole, the applicant must identify in writing to NMFS which parts the applicant believes to be inaccurate, and must provide specific credible information to substantiate any requested corrections. The completed application and specific credible information must be provided to NMFS in writing by the application deadline. Written communication must either be post-marked or hand-delivered to NMFS within normal business hours no later than *[insert date 30 days after date of publication in the Federal Register]*. Requests for corrections may only be granted for the following reasons:

(A) Errors in NMFS's use or application of data, including:

(1) Errors in NMFS's use or application of landings data from PacFIN;

(2) Errors in NMFS's application of the reallocation formula; and

(3) Errors in identification of the QS permit owner, permit combinations, or vessel registration as listed in NMFS permit database.

(B) [Reserved]

(vii) *Submission of the application and application deadline—(A) Submission of the application.* Submission of the complete, certified application includes, but is not

limited to, the following:

(1) The applicant is required to sign and date the application and declare that the contents are true, correct and complete.

(2) The applicant must certify that they qualify to own reallocated widow rockfish QS.

(3) The applicant must indicate they accept NMFS's calculation of reallocated widow rockfish QS provided in the prequalified application, or provide a written statement and credible information if they do not accept NMFS's calculation.

(4) NMFS may request additional information of the applicant as necessary to make an IAD on reallocated widow rockfish QS.

(B) *Application deadline.* A complete, certified application must be either postmarked or hand-delivered within normal business hours to NMFS, West Coast Region, Permits Office, Bldg. 1, 7600 Sand Point Way, NE., Seattle, WA 98115, no later than *[insert date 30 days after date of publication in the Federal Register]*. NMFS will not accept or review any applications received or postmarked after the application deadline. There are no hardship exemptions for this deadline.

(viii) *Initial Administrative Determination (IAD).* NMFS will issue an IAD for all complete, certified applications received by the application deadline date. If NMFS approves an application for reallocated widow rockfish QS, the IAD will say so, and the applicant will receive a 2018 QS permit specifying the reallocated amount of widow rockfish QS the applicant has qualified for. If NMFS disapproves or partially disapproves an application, the IAD will provide the reasons. As part of the IAD, NMFS will indicate to the best of its knowledge whether the QS permit owner qualifies for QS or IBQ in

amounts that exceed the accumulation limits and are subject to divestiture provisions given at paragraph (d)(4)(v) of this section. If the applicant does not appeal the IAD within 60 calendar days of the date on the IAD, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(ix) *Appeals.* For reallocated widow rockfish QS issued under this section, the appeals process and timelines are specified at § 660.25(g), subpart C. For the reallocation of widow rockfish QS, the bases for appeal are described in paragraph (d)(9)(vi) of this section. Items not subject to appeal include, but are not limited to, the accuracy of permit landings data in the relevant PacFIN dataset on July 27, 2016.

(e) * * *

(4) * * *

(i) *Vessel limits.* For each IFQ species or species group specified in this paragraph, vessel accounts may not have QP or IBQ pounds in excess of the QP vessel limit (annual limit) in any year, and, for species covered by unused QP vessel limits (daily limit), may not have QP or IBQ pounds in excess of the unused QP vessel limit at any time. The QP vessel limit (annual limit) is calculated as all QPs transferred in minus all QPs transferred out of the vessel account. The unused QP vessel limits (daily limit) is calculated as unused available QPs plus any pending outgoing transfer of QPs.

Species category	QP vessel limit (annual limit) (in percent)	Unused QP vessel limit (daily limit) (in percent)
Arrowtooth flounder	20	
Bocaccio S. of 40°10' N. lat.	15.4	13.2
Canary rockfish	10	4.4
Chilipepper S. of 40°10' N. lat.	15	

Cowcod S. of 40°10' N. lat.	17.7	17.7
Darkblotched rockfish	6.8	4.5
Dover sole	3.9	
English sole	7.5	
Lingcod:		
N. of 40°10' N. lat.	5.3	
S. of 40°10' N. lat.	13.3	
Longspine thornyhead:		
N. of 34°27' N. lat.	9	
Minor rockfish complex N. of 40°10' N. lat.:		
Shelf species	7.5	
Slope species	7.5	
Minor rockfish complex S. of 40°10' N. lat.:		
Shelf species	13.5	
Slope species	9	
Other flatfish complex	15	
Pacific cod	20	
Pacific halibut (IBQ) N. of 40°10' N. lat.	14.4	5.4
Pacific ocean perch N. of 40°10' N. lat.	6	4
Pacific whiting (shoreside)	15	
Petrale sole	4.5	
Sablefish:		
N. of 36° N. lat. (Monterey north)	4.5	
S. of 36° N. lat. (Conception area)	15	
Shortspine thornyhead:		
N. of 34°27' N. lat.	9	
S. of 34°27' N. lat.	9	
Splitnose rockfish S. of 40°10' N. lat.	15	
Starry flounder	20	
Widow rockfish	8.5	
Yelloweye rockfish	11.4	5.7
Yellowtail rockfish N. of 40°10' N. lat.	7.5	
Nonwhiting groundfish species	3.2	

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