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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

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[Docket No. 191001-0049]

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Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Whiting; Pacific Coast Groundfish Fishery Management Plan; Amendment 21-4; Catch Share Program, 5-Year Review, Follow-on Actions

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes this measure to enact a range of Follow-on Actions identified in the course of conducting the Pacific Coast Groundfish Trawl Catch Share Program 5-Year Review. These actions are intended to complete outstanding elements of the Pacific Coast Groundfish Trawl Catch Share Program, respond to problems identified after implementing the program, and modify outdated regulations. This action proposes regulations in accordance with Amendment 21-4 to the Pacific Coast Groundfish Fishery Management Plan, and would revise elements in four areas of the Catch Share Program.

DATES: Comments on this proposed rule must be received no later than October 29, 2019.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2019-0106 by any of the following methods:

· *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0106, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

· *Mail:* Colin Sayre, Sustainable Fisheries Division, West Coast Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic Access

This proposed rule is accessible via the Internet at the Office of the Federal Register Web site at <https://www.federalregister.gov>. Background information and documents are available at the NMFS West Coast Region Web site at:

<http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish/index.html> and at the Pacific Fishery Management Council's website at <http://www.pcouncil.org/groundfish/fishery-management-plan/groundfish-amendments-in-development/>.

FOR FURTHER INFORMATION CONTACT: Colin Sayre, phone: 206-526-4656, or e-mail: colin.sayre@noaa.gov.

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I. Background

The proposed action would complete outstanding elements of the Pacific Coast Groundfish Trawl Catch Share Program (Catch Share Program), respond to problems identified after Catch Share Program implementation, and modify outdated regulations. The proposed measures would: allow the at-sea whiting sector to more fully and efficiently harvest its allocation through more flexible set-aside management of constraining bycatch species; improve utilization of Individual Fishing Quota (IFQ) and overall economic efficiency for the shorebased IFQ trawl sector; ensure fair and equitable access to resources in the event of at-sea Pacific Whiting Catcher-Processor (C/P) coop failure; and provide a more robust evaluation of Catch

Share Program performance. This action also includes clarifying non-substantive changes to the regulatory language for the Cost Recovery Program.

The Council deemed the proposed regulations necessary and appropriate to implement these actions in an August, 23rd, 2019, letter from Council Executive Director, Chuck Tracy, to Regional Administrator Barry Thom. Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), NMFS is required to publish proposed rules for comment after preliminarily determining whether they are consistent with applicable law. We are seeking comment on the proposed regulations in this action and whether they are consistent with the Pacific Coast Groundfish Fishery Management Plan (FMP), the Magnuson-Stevens Act and its National Standards, and other applicable law.

Pacific Coast Groundfish Trawl Catch Share Program

On January 1, 2011, NMFS implemented the Catch Share Program through Amendment 20 and Amendment 21 (75 FR 60867; October 1, 2010) to the Pacific Coast Groundfish FMP. Amendment 20 established a limited entry IFQ system for shorebased trawl vessels and cooperatives for the at-sea Pacific whiting mothership (MS) and C/P sectors. The intent of the Catch Share Program was to increase net economic benefits and create economic stability for individual trawl fishery participants, provide full utilization of the trawl sector allocation, and achieve individual accountability for catch and bycatch in the Pacific Coast groundfish fishery. Amendment 21 established fixed allocations for limited entry trawl participants. These allocations are intended to improve management under the Catch Share Program by streamlining its administration, providing stability to the fishery, and addressing bycatch.

Catch Share Program 5-Year Review Follow-on Actions

Section 303A of the Magnuson-Stevens Act requires periodic reviews of limited access privilege programs (LAPPs), such as the Catch Share Program, starting five years after implementation. This review provides managers with information to determine whether Catch Share Program outcomes have been consistent with program goals and objectives and expected environmental impacts. Starting with implementation of the Catch Share Program in 2011, NMFS collected both baseline and annual socioeconomic data to judge the effectiveness of the Catch Share Program for the 5-Year Review. The Council approved the final version of the first 5-Year Review at its November 2017 meeting.

To aid in reviewing and refining the Catch Share Program, the Council appointed an ad hoc committee called the Community Advisory Board (CAB) at its September 2016 meeting. The CAB provides the perspective of fishing communities on Catch Share Program performance, potential improvements, and other advice the Council requests to inform the program review. In May 2017, the CAB developed a list of issues for the Council to consider for rulemakings after completing the 5-Year Review. At its June 2017 meeting, the CAB provided the Council with a priority list of follow-on actions from which six were selected for further development. The action issues the CAB selected were: meeting the at-sea whiting fishery bycatch needs; trawl sablefish area-management; revising shoreside IFQ accumulation limits to increase attainment; meeting shoreside IFQ sector harvest complex needs; setting limits on fixed-gear gear switching; and setting C/P sector accumulation limits on permit ownership and harvesting/processing.

At its November 2017 meeting, in a single package, called the “Follow-on Actions,” the Council adopted the 5-Year Review document and provided preliminary guidance for developing a range of alternatives from a subset of the action issues selected by the CAB, as follows:

- Adjust the management approach and FMP formulas for previously-overfished non-whiting stocks caught in the at-sea Pacific whiting fishery;
- Revise individual species annual quota pound (QP) vessel limits;
- Allow post-season QP trading and provide post-season relief from vessel QP limits;
- Eliminate the September 1 expiration for QP that have not been moved to a vessel account;
- Establish accumulation limits for C/P-endorsed permit ownership and processing amount;
- Require the submission of C/P-endorsed permit ownership information during the annual permit renewal process; and
- Require Quota Share (QS) permit owners to provide information on ownership and participation to the NMFS Northwest Fishery Science Center Economic Data Collection Program.

At its November 2017 meeting, the Council decided to analyze alternatives for a range of action issues identified for follow-on action as part of 2019-2020 biennial Pacific Coast groundfish harvest specifications (83 FR 66638; December 27, 2018), and deferred several others issues for consideration in future groundfish actions. In March 2018, the CAB provided input and recommendations as the Council adopted a final range of alternatives to be included in the follow-on actions for analysis. At its September 2018 meeting, the Council adopted preliminary preferred alternatives for each issue included in the Follow-on Action package. The Council selected the final preferred alternatives for the remaining follow-on actions to be included in Amendment 21-4 at its November 2018 meeting.

Concurrent with this proposed rule, NMFS also published a Notice of Availability to announce the proposed Amendment 21-4 to the Pacific Coast Groundfish FMP. The Notice of

Availability requests public review and comment on proposed changes to the Council FMP document (84 FR 45706; August 30, 2019).

II. Summary of Proposed Regulations

A. At-sea Whiting Fishery Set-Aside Bycatch Management

The Pacific Coast groundfish FMP accounts for non-whiting groundfish bycatch in the at-sea Pacific whiting C/P and MS sectors in a number of different ways. For most stocks, the Council recommends an expected annual bycatch level for the at-sea Pacific whiting fishery, and deducts it before allocating catch to the trawl sector. These deductions, known as set-asides, do not require closure of the at-sea Pacific whiting sectors, nor do they require any other management action if catch exceeds the expected amount of a set-aside. However, as a part of Amendment 21, the Council set formal allocations for four species, all of which were overfished at the time. The Council established allocations of these stocks for the at-sea Pacific whiting fishery in order to constrain catch. If catch in the at-sea C/P sector or MS sector exceeds the allocation for these stocks, NMFS is required to automatically close the sector. Canary rockfish, widow rockfish, darkblotched rockfish, and Pacific ocean perch (POP) were managed as allocations for the at-sea Pacific whiting fishery under Amendment 21.

In the past five years, the at-sea sectors have encountered these species with greater frequency as stocks increased under rebuilding efforts. In October of 2014 the MS sector experienced an unexpectedly large bycatch of darkblotched rockfish in a single haul that caused the sector to exceed its allocation for this species. The automatic closure provision in regulations at 50 CFR 660.60(d)(1) requires NMFS to close the at-sea Pacific whiting MS or C/P sectors when a non-whiting groundfish species with allocations is reached or projected to be reached. This early fishery closure left a significant portion of the MS sector's Pacific whiting allocation

unattained. NMFS took inseason action to reapportion darkblotched rockfish from the C/P sector in order to reopen and allow the MS sector to fully attain its whiting allocation (79 FR 67095; November 12, 2014).

In 2018 widow rockfish was reapportioned from the MS cooperative sector to the C/P cooperative sector to avoid a fishery closure similar to the one that occurred in 2014 (83 FR 5952; September 15, 2018). In January 2018 the final rule for Amendment 21-3 (83 FR 757; January 8, 2018) converted darkblotched rockfish and POP from allocations to set-asides. Formulas in the regulations at § 660.55(c)(1)(i)(A) and (B) are used to determine set-aside amounts of darkblotched rockfish and POP. To ensure the action did not increase the risk of exceeding darkblotched rockfish or POP annual catch limits (ACLs), the final rule for Amendment 21-3 also added exceedance of the set-aside amount, plus an available buffer reserve for unforeseen catch events, to the list of circumstances requiring automatic closure for the at-sea sectors (MS and C/P). In the 2019-20 biennial harvest specifications and management measures (December 12, 2018; 83 FR 63970), the Council recommended, and NMFS approved, an action that removed the requirement that NMFS automatically close the at-sea sector if the set-asides for darkblotched rockfish or POP are exceeded. Amendment 21-3 further increased the flexibility of at-sea sectors to target their whiting allocation and provided economic relief from automatic fishery closures. Under regulations at § 660.150(c)(2)(B) and § 660.160(c)(3) NMFS still has the authority to take inseason action should a sector's catch of species exceed its set-aside amount with risk of exceeding harvest specifications, cause unforeseen impact on another fishery, or result in other conservation concerns.

In the at-sea Pacific whiting fishery, bycatch of canary rockfish and widow rockfish are currently managed as allocations. Under this management approach each at-sea sector receives

allocations of canary rockfish and widow rockfish bycatch, and automatic closure of an at-sea sector is required if the allocation is exceeded. The amount of canary rockfish bycatch available to the at-sea sectors is determined and allocated each biennium. The available widow rockfish bycatch allocation is determined using a set formula in the groundfish FMP and regulations at § 660.55(c)(1)(i)(C).

This proposed action would remove the allocations of widow rockfish and canary rockfish and instead create set-asides in the at-sea sectors, consistent with set-aside management for POP and darkblotched rockfish. This action would also remove from the regulations formulas used to determine set-aside or allocation amounts for darkblotched rockfish, POP, and widow rockfish, and instead use the biennial specification process to determine set-aside amounts available to the at-sea Pacific whiting sectors. The Council recommended using the existing FMP formulas to establish initial amounts in the biennial harvest specifications and management measure process. The status quo methods for determining set-asides or allocations available for harvest of these rockfish species, and changes proposed by Amendment 21-4 are provided in Table 1.

Table 1 -- Current and Proposed Allocation and Management Measures for Bycatch Rockfish Stocks in the At-Sea Pacific Whiting Sectors

Species	Status Quo Allocation Method	Status Quo Management Measures	Proposed Allocation Method	Proposed Management Measures
Canary Rockfish	Determined through biennial harvest specifications	Allocation – Automatic closure when fully harvested	Set-aside amount based on expected Pacific whiting fishery bycatch of this species determined during biennial harvest specifications process	When set-aside is reached no action is taken, the Council may choose to take inseason action if there is a risk of a harvest specification being exceeded, unforeseen impact on other fisheries, or
Darkblotched Rockfish	FMP Formula: 9 percent or 25 mt, whichever is greater, of the total limited entry (LE) trawl allocation.	Set-aside – No action required if catch exceeds set-aside		
Pacific Ocean Perch (POP)	FMP Formula; 17 percent or 30 mt,	Set-aside – No action required if catch		

	whichever is greater, of the total LE trawl allocation	exceeds set-aside		conservation concerns
Widow Rockfish	FMP Formula: 10 percent or 500 mt, whichever is greater, distributed proportional to the sectors' Pacific whiting allocation	Allocation – Automatic closure when fully harvested		

Changing the method used to determine set-asides from set formulas to management through the biennial specifications process would provide greater flexibility to managers when determining bycatch amounts for these four rockfish species, allowing managers to appropriately anticipate bycatch in the at-sea whiting sector within the process of setting biennial harvest specifications and management measures. As with previous changes to bycatch management for the at-sea Pacific whiting fishery, this action would reduce the risk of constraining attainment of the full at-sea sector whiting allocation in the event that bycatch limits of these rockfish species are exceeded. Under the proposed set-aside management, the sector would not automatically close, and other management measures would not be required if bycatch of these species exceeds set-aside amounts. If catch of any of these four species exceeds the set-aside and there is risk of exceeding a harvest specification, unforeseen impact on other fisheries, or conservation concerns, NMFS and the Council may take inseason action (*e.g.*, time or area closures) to slow catch in the trawl fishery. Currently, all other non-whiting species in the Pacific whiting fishery are managed as set-asides with amounts set during the biennial specifications process. Expected bycatch levels set during the specification process are generally high enough to cover maximum Pacific whiting fishery bycatch each year without risk to other harvest guidelines. Set-aside amounts of darkblotched rockfish and POP determined in the 2019-20 harvest specifications are higher than have historically been caught by the at-sea sector. In addition, the biomass for both canary rockfish and widow rockfish has increased greatly in recent years as a result of rebuilding efforts. Therefore, the Council determined it is unlikely that catch in the at-sea Pacific whiting sectors will exceed set-asides for these four rockfish species at a level that would result in overfishing.

B. Shorebased IFQ Trawl Sector Quota Transfers

The proposed measures would adjust the quota trading provisions for participants in the shorebased IFQ sector. The changes would allow for post-season quota trading, remove the annual vessel limit for post-season trades, and remove a quota transfer deadline.

Currently, shorebased IFQ fishery participants who have caught more than their available QP for any stock or stock complex during a given fishing year enter the following fishing year with their vessel accounts in deficit. Participants must cover deficits with the following year's QP allocation. In most fishing years, there are remaining unused QP available in other vessel accounts at the end of the fishing year. The proposed action would expand the quota trading provision to allow participants to cover deficits after the end of the fishing year by either (1) using QP from the immediately following fishing year (status quo) or (2) trading with other participants to acquire surplus QP from the fishing year in which the deficit occurred (base year), or a combination of both methods. After the end of the groundfish fishing year on December 31st, QS permit owners would be able to trade surplus QP to QS permit owners with a deficit of QP from the base fishing year during a post-season transfer period. The post-season trading window would last from January 1st until on or about March 14th of the immediately following fishing year; NMFS would provide fishery participants advance notice of the dates of the post-season trading window through public notice. Surplus QP traded during the post-season trading window could only be transferable for the purpose of curing vessel account deficits, and would not be eligible for fishing. For example, a QS permit owner starts the 2020 fishing year with 2,000 quota pounds of POP quota on January 1, and ends the year on December 31 with POP catch totaling 2,250 quota pounds, accruing a deficit of 250 quota pounds. The QS permit owner would be able to choose to use 250 quota pounds of their 2021 POP quota allocation to cover the deficit, or to purchase unused 2020 POP quota left over from other QS permit owners during the

post-season trading window; the QS permit owner would also be able to choose a combination of both of these options.

The post-season trading provision interacts with existing carryover provisions in regulations at § 660.140(e)(5). Surplus QP and QP deficits at the end of a fishing year can be carried-over to the following fishing year. The surplus carryover limit is the amount of surplus QP from the base year that can be fished in the immediately following fishing year. Surplus QP carryover is limited to a maximum of 10 percent of a QS permit owner's total allocation for a stock or stock complex, provided that total carryover for the stock or stock complex does not exceed the ABC for the following year, consistent with provisions of the Magnuson-Stevens Act National Standard 1 Guidelines. The deficit carryover limit is the amount of deficit QP that a vessel may carry into the following fishing year without violating the carryover regulations. The deficit carryover limit is a maximum of 10 percent of a QS permit owners total cumulative QP (used and unused) in the vessel account 30 days after the date the deficit is documented. Under the current regulations, a QS permit owner that has 25 percent of their total QP for a given stock unused after December 31 may carryover and fish unused QP equal to 10 percent of the base year's total, forgoing the remaining 15 percent from the base year. There is no limit on the amount of deficit QP that QS permit owners carryover from the base year into the following fishing year, and all deficits require pound-for-pound payback before the vessel is considered eligible to fish in the shorebased IFQ fishery in the following year. As an example of the interaction between the proposed post-season trading provision and surplus carryover, a QS permit owner with a QP surplus of 25 percent for a given stock, rather than forgoing 15 percent of the surplus QP over the carryover limit, may instead trade the unused QP to another QS permit owner with a deficit for the same given stock. The trade described in this example would occur

during the post-season trading window (January 1st to on or about March 14th of each year), and prior to NMFS issuing carryover surplus QP into the following year vessel accounts. The carryover provisions for QP surplus and deficits will remain in place, allowing QS permit owners the option to either conduct post-season trading or use surplus carryover to maximize opportunities to use surplus QP and cover QP deficits.

An additional component of this proposed action would also allow vessels to cover end-of-the-year deficits that exceed the annual vessel limit with post-season QP trading, QP allocation for the following fishing year, or a combination, without restriction from the annual QP vessel limit of the base or following year. The Catch Share Program initially included annual vessel limits to ensure no individual or entity acquired excess, or otherwise unfair access, to fishing privileges. Deficits exceeding the annual QP vessel limit have occurred in the fishery when an unexpectedly high bycatch event known as a “lightning-strike” takes place. These events are extremely rare and can result from unpredictable and dense congregations of a single bycatch species in one area where trawling occurs. Though infrequent, lightning-strike hauls over the annual QP vessel limit can greatly impact the ability of the affected QS permit owner to operate in subsequent years. QS permit owners are required to cover the QP deficits that result from lightning strikes, but are also constrained by the annual QP vessel limit from the base fishing year. For this reason, the QS permit owner must forego fishing until they cover the QP deficit with QP from the following fishing year under the base year annual QP vessel limit, in some cases over multiple fishing years. This action would allow QS permit owners with deficits exceeding the annual QP vessel limit to cover the deficit by trading post-season for available unused QP, or to use their QP allocations from the following fishing year to cure the deficit. While QS permit owners would no longer be limited by the annual vessel QP limits in curing

deficits, they would violate the carryover regulations if the deficit exceeds the deficit carryover limit. Vessels affected by lightning-strike hauls would have the ability to cover deficits more easily, and return to fishing in a shorter timeframe under the proposed action.

Finally, this action would eliminate the September 1st quota transfer deadline for shorebased IFQ fishery participants. Current regulations in § 660.140 (d) require QS permit owners to transfer QP from a QS account to a vessel account by September 1st. Each year, QS permit owners receive disbursements of a percentage of the total allocations for each IFQ stock or stock complex directly to QS accounts. This allocated percentage is expressed in QPs and cannot be fished until the QP is transferred to a vessel account. Any unused QP that have not been transferred from a QS account to a vessel account expire September 1 of the year they were issued. The proposed action would make unused QP in QS accounts available for transfer to a vessel account, for trading and fishing, until December 31st of the fishing year for which they were issued. Under the proposed action, unused QP would remain in a QS account after January 1st and would be available for transfer to a vessel account for use in post-season trading in the following year until the end of the post-season trading period.

This proposed action would help reduce the overall costs of participation in the shorebased IFQ sector and ensure the maximum amount of annual IFQ allocations are used to harvest fish rather than to cover the base year's QP deficits. The Council's analysis of these proposed measures did not indicate that they are likely to encourage participants to engage in fishing practices that regularly exceed annual QP vessel limits. Because QS permit owners are still required to cover deficits pound-for-pound, fishing into deficit would carry the cost of purchasing QP to cover deficits the following fishing year.

C. Catcher Processor (C/P) Permit Accumulation Limits

The proposed action would establish a limit of five at-sea whiting C/P permits that any individual or entity may own or control in the event the C/P sector cooperative fails. When developing a limited access privilege program, the Magnuson-Stevens Act requires that the Council “ensure that limited access privilege holders do not acquire an excessive share of the total limited access privileges in the program by— (i) establishing a maximum share, expressed as a percentage of the total limited access privileges, that a limited access privilege holder is permitted to hold, acquire, or use; and (ii) establishing any other limitations or measures necessary to prevent an inequitable concentration of limited access privileges.” During implementation of the Catch Share Program, accumulation limits were included for the shorebased IFQ sector and the at-sea MS sector, to meet requirements under Section 303A(c)(5)(D) of the Magnuson-Stevens Act. However, no maximum share of limited access privileges in the C/P sector was established.

At the time of the Catch Share Program’s development, the C/P sector had a single voluntary coop that divided by agreement among coop members the entire catch allocated to this sector. The Council and NMFS decided that the rationalization program adopted through Amendment 20 would incorporate the voluntary coop structure already in place and require the annual issuance of a coop permit for the privilege of harvesting the allocated catch in this particular sector. In the event the coop failed in the future, Amendment 20 provided for the management of the CP sector with an IFQ program. The previously existing self-organized coop did not include accumulation limits, and none were added when the coop was incorporated as a LAPP through Amendment 20.

During the Catch Share program 5-year review, the Council discussed C/P coop sector accumulation limits and adopted a June 13, 2017, control date to support future consideration of accumulation limits (83 FR 18259; April 26, 2018). In this proposed action, an accumulation limit of owning or controlling a maximum of five C/P-endorsed permits would be applied to the C/P sector only in the event that the current C/P cooperative fails and NMFS subsequently implements an IFQ system for the C/P sector. NMFS will determine that the cooperative has failed after any C/P-endorsed permits owners withdraw from the coop, one or more members voluntarily choose to dissolve the coop, or the coop agreement is no longer valid. The designated coop manager is required to notify NMFS of the failure, or the Regional Administrator may conduct an independent investigation to determine whether coop failure has occurred. Under the proposed action, after receiving notification from the coop manager or if NMFS has made an independent determination of a coop failure, NMFS will begin the process of implementing an IFQ program for the at-sea C/P sector. Through public notice, NMFS will announce the date on which an IFQ program will become effective for the C/P sector. Before that date, a publicly announced divestiture period will be provided in which any entities that control C/P-endorsed permits must take action to comply with the C/P accumulation limit. The proposed rule for this action provides regulatory language that sets forth criteria for the purpose of determining ownership or control a person or entity has over a C/P endorsed permit. This language is modeled after the regulatory language currently applicable to the shorebased IFQ sector. After NMFS implements the IFQ-based C/P fishery, no individual or entity may own or control more than five C/P-endorsed permits, and no person or entity may own or control any quota associated with permits in excess of the five permit limit. Any individual or entity found to own or control more than five C/P-endorsed permits will be required to divest ownership of any excess permits

following a divestiture period. Upon determination of a coop failure, a divestiture period will occur starting with the date the coop failed and ending on the date an IFQ program is implemented for the C/P whiting sector. Prior to the date an IFQ program is implemented, there will be a divestiture period during which any person owning more than five C/P-endorsed permits will be required to divest of excess permits. After the date in which an IFQ program is implemented, any C/P-endorsed permits in excess of the accumulation limit may be revoked by NMFS and associated QS redistributed to other C/P-endorsed permit owners.

The Council also considered whether to limit the amount of at-sea whiting allocation a single entity or individual possessing a C/P permit could process with the intent that no single entity could process an excessive proportion of the sector allocation for Pacific whiting. After taking into account analysis and public comments, the Council selected the status quo (“No Action” alternative) as the final preferred alternative for C/P processing limits. Under the status quo, a single entity may process up to 100 percent of the C/P sector whiting allocation. This decision was made to maintain the flexibility that the coop system provides. Currently three fishing companies control the ten C/P endorsed permits in the coop; if one company’s vessels were unable to make it to the fishing grounds, it is possible that a processing limit could impede another company’s harvest of fish on behalf of the absent vessels, thereby restricting full attainment of the at-sea sectors’ whiting allocation. The Council also determined C/P permit accumulation limits and conversion to IFQ system in the event of coop failure would achieve the same goal as processing accumulation limits in the absence of the cooperative management structure.

D. New Data Collections

1. C/P Endorsed Permit Ownership Interest

The proposed action would establish a data collection for C/P permit owners. The Catch Share Program requires mandatory submission of ownership information from catcher vessels and MS vessels at the time of permit application or renewal. The data collection, known as the Trawl Identification of Ownership Interest form, helps NMFS enforce accumulation limits and ensures no individual or entity obtains excessive limited access privileges. When the Catch Share Program was established, it did not include an accumulation limit and consequently did not require a collection of ownership information. This action would establish a requirement for the at-sea whiting C/P sector permit owners to complete the Trawl Identification of Ownership Interest form annually during C/P endorsed permit renewal.

The form is used to collect basic trawl vessel or permit owner information, such as vessel name, permit number, owner name and legal address, and the names and addresses of other individuals and entities that have an ownership interest and percentage of ownership for the vessel or permit. This proposed rule would also support future consideration by the Council in the event accumulation limits are required for the at-sea C/P sector as described in Section C of this preamble.

2. Quota Share Permit Owner Participation and Economic Data

The proposed action would establish an economic data collection for quota share (QS) permit owners. Currently, any owners, charterers, or lessees of any vessel, shorebased processor, and first receiver sites participating in the Catch Share Program are required to submit annual Economic Data Collection (EDC) forms. The information collected through EDC forms includes but is not limited to annual data related to costs, earnings, value, labor, operations, physical characteristics, ownership and leasing information for vessels, first receiver sites or processors. The EDC forms also include questions related to costs and earnings from quota trading

(including sales and leases) and the pattern of owner participation in the fishery. However, these forms do not currently collect information from QS permit owners who are not also owners, charterers or lessees of vessels, shorebased processors, or first receiver sites.

Some participants in the Catch Share Program owned a vessel in the past, and received an allocation of IFQ and associated QS permit when the program was first implemented in 2011, but have since sold their vessel while retaining their QS permit. Reducing the number of active vessels was one of the intended outcomes of rationalizing the trawl fishery under the Catch Share Program, and the Council anticipated that some participants would own and trade quota, but not actively fish or process catch. The Catch Share Program was designed to provide historic fishery participants who exited the fishery continued benefits through QS ownership. The existing EDC form was designed to collect detailed economic data on only active fishery participation associated with vessel, processor, or first receiver ownership; the same level of economic and participation data is not currently collected from the category of QS permit owner that does not also own or operate a vessel or shorebased processor/first receiver. Because historic fishery participants are not required to complete an EDC form, the Council and NMFS lack knowledge about how economic benefits from these inactive or non-fishing permit owners impact fishing communities.

This action would create a mandatory requirement for all categories of QS permit owners to complete an EDC Quota Share Permit Owner survey form that collects information related to QS permit owner annual participation in the fishery, and costs and earnings related to QS permit ownership. This survey will be collected electronically via webform during the online QS permit application and renewal process. Information collected on this survey will provide NMFS and the Council with better understanding of Catch Share Program performance, economic costs and

benefits conferred to fishery dependent communities. Better evaluation of program performance will support the sustained fishing community participation in the Catch Share Program, and to the extent practicable, minimize adverse economic impacts on fishing communities.

E. Clarifications to Cost Recovery Regulatory Text

On March 20, 2014, NMFS published a Public Notice (NMFS-SEA-14-12) discussing two clarifications to the Pacific Coast Groundfish Trawl Rationalization Cost Recovery Program that went into effect in January 2014 (78 FR 75268; December 11, 2013). This proposed rule would implement regulatory language necessary to reflect these two program clarifications. The first proposed adjustment clarifies that the deposit principal may be used to refund cost recovery payments made by credit card through *Pay.gov*. The second proposed clarification specifies that in the C/P sector only retained fish, and not discards, are used in calculating ex-vessel revenue as it relates to determining cost recovery fees.

F. Technical Corrections

In addition to proposed regulatory changes to implement the Council's recommendations, this rule also proposes minor technical corrections. Specifically, these minor technical corrections remove obsolete baseline dates that were included during implementation of the Catch Share Program, such as the years when initial trawl allocations were issued, the first date on which quota transfers were permitted, and the dates when economic data collections were initiated.

Correction and Clarification for the Amendment 21-4 Notice of Availability

NMFS is making the following correction and clarification to text published in the Notice of Availability (NOA) on August 30, 2019 (84 CFR 45706). On page 45708 of the NOA, language stating "The proposed FMP amendment is intended to allow the Council increased

flexibility to adjust bycatch limits inseason for the at-sea whiting sectors...” should omit the word “inseason”, because the Council does not adjust set-asides through inseason action. The Council can adjust set-asides during each biennial harvest specification cycle, as described earlier in the same paragraph in the NOA and also in this preamble in section II, A, “At-sea Whiting Fishery Set-Aside Bycatch Management.”

We are also clarifying the meaning of the language on page 45708 of the NOA that describes Quota Share permit owners who would be responsible for completing EDC forms under the proposed rule. Following is the NOA language, as clarified, with additional language noted in italics: "The proposed action would also require *all* Quota Share permit owners, *including those* that do not also own charter or lease a vessel, shorebased processor or first receiver site to submit participation and quota cost/earning information through a subset of the Catch Share Economic Data Collection program.”

III. Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with the Pacific Coast Groundfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law. In making the final determination, NMFS will consider the data, views, and comments received during the public comment period.

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 603). The IRFA describes the economic

impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action is contained in the **SUMMARY** section and at the beginning of the **SUPPLEMENTARY INFORMATION** section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

The RFA (5 U.S.C. 601 *et seq.*) requires government agencies to assess the effects that regulatory alternatives would have on small entities, defined as any business/organization independently owned and operated, not dominant in its field of operation (including its affiliates). A small *harvesting business* has combined annual receipts of \$11 million^[1] or less for all affiliated operations worldwide.

[1] On December 29, 2015, the National Marine Fisheries Service (NMFS) issued a final rule establishing a small business size standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015; codified at 50 CFR 200.2). The \$11 million standard became effective on July 1, 2016, and after that date it is to be used in all NMFS rules subject to the RFA. *Id.* at 81194. This NMFS rule is to be used in place of the U.S. Small Business Administration's (SBA) current standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry, respectively.

A small *fish-processing business* is one that employs 750 or fewer persons for all affiliated operations worldwide. NMFS is applying this standard to C/Ps for the purposes of this rulemaking, because these vessels earn the majority of their revenue from selling processed fish.

For *marinas and charter/party boats*, a small business is one that has annual receipts not in excess of \$7.5 million. A *wholesale business* servicing the fishing industry is a small business

if it employs 100 or fewer persons on a full- time, part- time, temporary, or other basis, at all its affiliated operations worldwide.

For the purposes of this rulemaking, a *nonprofit organization* is determined to be “not dominant in its field of operation” if it is considered small under one of the following SBA size standards: *environmental, conservation, or professional organizations* are considered small if they have combined annual receipts of \$15 million or less, and *other organizations* are considered small if they have combined annual receipts of \$7.5 million or less. The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

When an agency proposes regulations, the RFA requires the agency to prepare and make available for public comment an IRFA that describes the impact on small businesses, non-profit enterprises, local governments, and other small entities. The IRFA is to aid the agency in considering all reasonable regulatory alternatives that would minimize the economic impact on affected small entities.

Description of the Reasons Why Action by the Agency is Being Considered

This action proposes changes to the Catch Share Program intended to complete outstanding elements of the program, respond to problems identified after implementing the program, and modify outdated regulations. A complete description of the action, why it is being considered, and the legal basis for this action are contained in Amendment 21-4, and elsewhere in the preamble to this proposed rule, and are not repeated here.

Description and estimate of the number of small entities to which the rule applies, and estimate of economic impacts by entity size and industry

For the purpose of the RFA analysis, this proposed rule will impact entities that own quota share permits and entities that both process and harvest groundfish. For RFA purposes NMFS classifies a business primarily engaged in commercial fishing (NAICS code 11411) 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. Based on the holdings of first receiver permits in the West Coast Region permits database, 22 non-whiting quota share permit owners are estimated to be primarily engaged in seafood product preparation and packaging. According to the NMFS size standard, three of the entities that own three first receiver permits are considered small. These small processing entities were issued 1.7 percent of the non-whiting QP issued in 2018, the most recent year available. Some of these small processing entities also own groundfish permits, required on both catcher vessels and C/Ps, which would be regulated by the proposed rule; three small entities primarily engaged in seafood processing own two limited entry groundfish permits.

Limited entry groundfish permit vessels are required to self-report size across all affiliated entities. Of the businesses that earn the majority of their revenue from commercial fishing, 30 groundfish vessel permits are owned by seven entities that are considered large according to the SBA size standard and as self-reported on groundfish permits and first receiver site license permits. Six of these seven large processing entities were issued 10.2 percent of the non-whiting QP issued in 2018 across sixteen quota share permits.

Entities that are not registered as trusts, estates, governments, or non-profits are assumed to earn the majority of their revenue from commercial fishing. This definition is used for 124 QS permit owners, who collectively received 76.5 percent of the quota pounds issued in 2018. Of 118 trawl endorsed permits, 117 are owned by commercial fishing entities in 2019; 5 of these

entities self-reported as large. Of the businesses who earn the majority of their revenue from commercial fishing, one that self-reported as large, owns four groundfish permits and one quota share permit. Many groundfish trawl permit owners also own quota share permits; however, it is not possible with available data to tabulate unique ownership across quota share permits and groundfish permits, so the numbers provided likely represent the maximum number of entities impacted.

The RFA recognizes and defines a small governmental jurisdiction as any government or district with a population of less than 50,000 persons. According to the public IFQ Account database as of June 19, 2018, the City of Monterey owns quota shares of ten species. The U.S. Census estimates the population of Monterey to be 28,454 as of July 1, 2017, so the City of Monterey would be considered a small governmental jurisdiction under the RFA definition. The City of Monterey received 0.5 percent of the quota pounds issued for 2018, according to the public IFQ Account database.

According to the public IFQ Account database, six not-for-profit organizations own quota share in the Catch Share Program and would be impacted by this proposed rule. The RFA defines a small organization as any not-for-profit enterprise that is independently owned and operated and not dominant in its field. NMFS uses the SBA size standards to determine whether a not-for-profit organization is a “small organization.” By SBA size standards, a small organization has combined annual receipts of \$15 million or less for environmental, conservation, or professional organizations, and \$7.5 million or less for other organizations.

Five of these not-for-profit organizations would be considered small by the RFA definition and the SBA size standard, using 2016 annual receipts of \$120-500 thousand dollars, as reported on IRS form 990. One not-for-profit organization self-reported as large, based on

fiscal year 2017 receipts of \$1.1 billion. Collectively, the five small not-for-profit organizations received 7.2 percent of the non-whiting quota pounds issued in 2018 (issued annually through a separate rulemaking process) and the large not-for-profit organization received 0.5 percent. The large not-for-profit organization also owned two limited entry trawl permits that would be impacted by the management measures of the rule. The small not-for-profits owned 3 permits.

Finally, 11 personal or family trusts/estates owned quota share permits and would potentially be impacted by the trawl sector allocation under this proposed rule. All of these are assumed to be smaller than the RFA size standard. Collectively, these eight small entities received 4.2 percent of the non-whiting quota pounds issued for 2018. Five of these entities owned five groundfish permits.

This action is expected to have a significant economic impact on a substantial number of small entities; however, the effects on the regulated small entities identified in this analysis are expected to range from neutral to positive. Under the proposed action, small entities would not be placed at a competitive disadvantage relative to large entities, and the regulations would not reduce the profits for any small entities. An initial regulatory flexibility analysis was prepared to support this conclusion.

Description of Record-Keeping, and Reporting, Requirements of this Proposed Rule

This proposed rule would require modifications to current recordkeeping and reporting requirements for two information collections. Under the Pacific Coast Groundfish Trawl Rationalization Program Permit and License Information Collection (OMB Control Number 0648-0620) C/P-endorsed permit owners would be required by the proposed rule to submit annual ownership interest information via the Trawl Identification of Ownership Interest form. Under the West Coast Groundfish Trawl Economic Data Collection (OMB Control Number

0648-0618) a new Quota Share Permit Owner survey form would be implemented by this proposed rule, and all owners of a quota share permit would be required to submit the completed form annually. A description of the revision for the two existing information collection requirements follows.

C/P Endorsed Permit Ownership Interest Form

The modifications would require C/P endorsed permit owners to complete Trawl Owner Identification of Interest forms during annual permit renewal under OMB Control Number 0648-0620. Currently there are 10 C/P endorsed permits approved by NMFS in the Catch Share program. These permits are held by three companies with no single company owning more than five permits. As each company is a controlling entity, three is the minimum number of affected entities that would be expected to require submission of one Trawl Identification of Ownership Interest form for each C/P endorsed permit. The requested change in information collection would require from C/P permit owners the same level of ownership interest identification as required of mothership and catcher vessel permit owners. The current cooperative structure of the C/P sector helps to ensure no single entity acquires excessive privilege in the sector. However, in the event of a coop failure, it would be necessary to set accumulation limits, which would require NMFS to track ownership interest in C/P endorsed permits. Additionally, NMFS does not anticipate any new fishery entrants will apply for C/P endorsed permits, nor will NMFS approve any new C/P endorsed permits.

Economic Data Collection from Quota Share Permit Owners

The proposed action would require changes to the Catch Share Program Economic Data Collection OMB Control Number 0648-0618. The proposed rule would change reporting requirements for owners of quota share permits to submit information to the Catch Share

Program Economic Data Collection (EDC) Program. Participants in the Catch Share Program who own, lease or charter vessels, shorebased processors, or first receiver sites are required to submit annual economic data to the EDC Program through survey forms corresponding to these characteristics of participation. The EDC Program currently does not require submission of forms from quota share permit owners who do not also own, lease or charter vessels, shorebased processors, or first receiver sites. The proposed rule would add a requirement for submission of EDC forms from all participants who own a quota share permit, including those who do not otherwise participate in the fishery other than by owning a quota share permit. Quota share permit owners will submit this form electronically via webform during the annual quota share account application and renewal process. The proposed submission deadline for the Quota Share Permit Owner survey will be November 30th in order to align with other quota share account application and renewal materials, rather than September 1st, as is required for other EDC forms.

Federal Rules Which May Duplicate, Overlap, or Conflict with this Proposed Rule

The proposed action does not duplicate, overlap, or conflict with any other Federal rules.

Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities

This rule is not expected to result in adverse impacts to small entities. Thus, there are no significant alternatives to the proposed rule that would minimize adverse economic impacts on small entities. The Council did consider alternatives to the proposed rule which would have had a lower level of benefits to small entities; however, the Council did not consider alternatives that would have had greater benefits to small entities, as these would not have been consistent with other applicable laws.

Paperwork Reduction Act (PRA) Collection-of-information Requirements

This action contains a revision of two existing information collection requirements, which have previously been approved by the Office of Management and Budget (OMB). The changes under this proposed rule are subject to review and approval by OMB. NMFS has submitted these requirements to OMB for approval under Control Number 0648-0620 Pacific Coast Groundfish Trawl Rationalization Program Permit and License Information Collection, and under Control Number 0648-0618 West Coast Groundfish Trawl Economic Data Collection.

Under this proposed rule, modifications to OMB Control Number 0648-0620 would require completion of the Trawl Identification of Ownership Interest form by three different fishing companies that own the 10 at-sea Pacific Whiting C/P-endorsed limited entry permits. The public reporting burden is expected to require approximately 3.5 minutes to complete each form once per year during C/P-endorsed permit renewal. In the first year, respondents may require more time to complete the forms, requiring a one-time estimate of 45 minutes per form for a total annual burden increase of 7.5 hours in the first year, and 35 minutes in following years. The total copy costs per form under this collection would be \$0.35, for a total increase of \$3.5 to annual public burden costs

Based on 2018 data from EDC responses and the public QS permit database, the public reporting burden for the change in requirement under Control Number 0648-0618 is expected to include approximately 178 Quota Share permit owners. The new reporting requirement would add to the EDC collection approximately 73 new respondents who are QS permit owners, who are not also owners, charterers, or lessees of vessels, or processors and other first receiver sites, and as a result have not previously completed EDC forms. Current burden time estimates for the EDC are approximately 8 hours per year and include questions relating to both QS permit

ownership and vessel operations. The new form would collect more detailed QS permit ownership information than in prior years, increasing the total public burden hours. The new QS Permit owner survey is expected to take approximately 1 hour, once per year, for all 178 respondents to complete, adding 178 hours to the total (for an increase from 2,224 hours to 2,402 hours) These forms would be collected electronically during the QS permit renewal process, thereby reducing the mailing costs to respondents. Respondents would be asked to retain a copy of the survey for their records (at \$0.20 per survey), and would increase total costs by \$36 (from \$4,120 to \$4,156).

Public comment is sought regarding: whether the proposed collection of information requirements are necessary for the proper performance of the agency, including whether the information shall have practical utility; the accuracy of the burden statement; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collected information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information, 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 penalty for failure to comply with, a collection of information subject to the requirement 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: https://www.cio.noaa.gov/services_programs/prasubs.html

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indians.

Dated: October 2, 2019.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

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

PART 660--FISHERIES OFF WEST COAST STATES

1. 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 § 660.55:

- a. Revise paragraphs (a), (c)(1), (d), and (j), and
- b. Remove and reserve paragraph (f)(2).

The revisions read as follows:

§ 660.55 Allocations.

(a) *General.* The opportunity to harvest Pacific Coast groundfish is allocated among participants in the fishery when the ACLs for a given year are established in the biennial harvest specifications. For any stock that has been declared overfished, any formal allocation may be temporarily revised for the duration of the rebuilding period. For certain species, primarily trawl-dominant species, separate allocations for the trawl and nontrawl fishery (which for this purpose includes limited entry fixed gear, directed open access, and recreational fisheries) will be

established biennially or annually using the standards and procedures described in Chapter 6 of the PCGFMP. Chapter 6 of the PCGFMP provides the allocation structure and percentages for species allocated between the trawl and nontrawl fisheries. Also, for those species not subject to the trawl and nontrawl allocations specified under Amendment 21 and in paragraph (c)(1) of this section, separate allocations for the limited entry and open access fisheries may be established using the procedures described in Chapters 6 and 11 of the PCGFMP and this subpart. Allocation of sablefish north of 36° N. lat. is described in paragraph (h) of this section and in the PCGFMP. Allocation of Pacific whiting is described in paragraph (i) of this section and in the PCGFMP. Allocation of black rockfish is described in paragraph (l) of this section. Allocation of Pacific halibut bycatch is described in paragraph (m) of this section. Allocations not specified in the PCGFMP are established in regulation through the biennial harvest specifications and are listed in Tables 1 a through d and Tables 2 a through d of this subpart.

* * * * *

(c)*** (1) Species/species groups and areas allocated between the trawl and non-trawl fisheries are allocated based on the amounts and percentages in the table below. IFQ species not listed in the table below are allocated between the trawl and nontrawl fisheries through the biennial harvest specifications process.

Allocation Amounts and Percentages for Limited Entry Trawl and Non-Trawl Sectors Specified for FMP Groundfish Stocks and Stock Complexes

Stock or complex	All non-treaty LE trawl sectors %	All non-treaty non-trawl sectors %
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Lingcod	45	55
Pacific Cod	95	5
Sablefish S. of 36° N. lat.	42	58
PACIFIC OCEAN PERCH	95	5
WIDOW	91	9
Chilipepper S. of 40°10' N. lat.	75	25
Splitnose S. of 40°10' N. lat.	95	5
Yellowtail N. of 40°10' N. lat.	88	12
Shortspine N. of 34°27' N. lat.	95	5
Shortspine S. of 34°27' N. lat.	50 mt	Remaining Yield
Longspine N. of 34°27' N. lat.	95	5
DARKBLOTCHED	95	5
Minor Slope RF North of 40°10' N. lat.	81	18
Minor Slope RF South of 40°10' N. lat.	63	37
Dover Sole	95	5
English Sole	95	5

Petrale Sole	95	5
Arrowtooth Flounder	95	5
Starry Flounder	50	50
Other Flatfish	90	10

(i) *Trawl fishery allocation.* The allocation for the limited entry trawl fishery is derived by applying the trawl allocation amounts and percentages as specified in paragraph (c) of this section and as specified during the biennial harvest specifications process to the fishery harvest guideline for species/species groups and areas. For IFQ species the trawl allocation is further subdivided within each of the trawl sectors (MS, C/P, and IFQ) as specified in § 660.140, 660.150, and 660.160 of subpart D. The whiting allocation is further subdivided among the trawl sectors as specified in paragraph (c)(1)(i) of this section.

(ii) *Nontrawl fishery allocation.* For each species/species group and area, the nontrawl fishery allocation is derived by subtracting from the corresponding harvest guideline the trawl allocations specified in paragraph (c) of this section and during the biennial harvest specifications. The nontrawl allocation will be shared between the limited entry fixed gear, open access, and recreational fisheries as specified through the biennial harvest specifications process and consistent with allocations in the PCGFMP.

* * * * *

(d) *Commercial harvest guidelines.* To derive the commercial harvest guideline, the fishery harvest guideline is further reduced by the recreational set-asides. The commercial

harvest guideline is then allocated between the limited entry fishery (both trawl and fixed gear) and the directed open access fishery, as appropriate.

* * * * *

(j) *Fishery set-asides.* Annual set-asides are not formal allocations but they are amounts which are not available to the other fisheries during the fishing year. For Pacific Coast treaty Indian fisheries, set-asides will be deducted from the TAC, OY, ACL, or ACT when specified. For the catcher/processor and mothership sectors of the at-sea Pacific whiting fishery, set-asides will be deducted from the limited entry trawl fishery allocation. Set-aside amounts may be adjusted through the biennial harvest specifications and management measures process.

* * * * *

3. In § 660.60:

- a. Revise paragraphs (d) introductory text, (d)(1) introductory text, and (d)(1)(i);
- b. Remove paragraph (d)(1)(iii);
- c. Redesignate paragraphs (d)(1)(iv) through (vii) as (d)(1)(iii) through (vi), respectively.

The revisions read as follows:

§ 660.60 Specifications and management measures.

* * * * *

(d) *Automatic actions.* The NMFS Regional Administrator or designee will initiate automatic management actions without prior public notice, opportunity to comment, or a Council meeting. These actions are nondiscretionary, and the impacts must have been taken into account prior to the action. Unless otherwise stated, a single notice will be published in the Federal Register making the action effective if good cause exists under the APA to waive notice and comment.

(1) Automatic actions will be initiated in the following circumstances:

(i) Close the MS or C/P sector when that sector's Pacific whiting allocation is reached, or is projected to be reached. The MS sector non-coop fishery will be closed by automatic action when the Pacific whiting or non-whiting allocation to the non-coop fishery has been reached or is projected to be reached.

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Table 1b to Part 660, Subpart C—2019, Allocations by Species or Species Group [Amended]

4. In Table 1b to Part 660, Subpart C—2019, Allocations by Species or Species Group, Remove footnotes ‘c’ through ‘f’, and redesignate footnote ‘g’ as ‘c’.

Table 1d to Part 660, Subpart C—At-Sea Whiting Fishery Annual Set-Asides, 2019 [Removed]

5. Remove Table 1d to Part 660, Subpart C—At-Sea Whiting Fishery Annual Set-Asides, 2019, and footnotes

Table 1e to part 660, Subpart C—Whiting and non-whiting initial issuance allocation percentage for IFQ decided through the harvest specifications, 2011 [Redesignated]

6. Redesignate Table 1e to part 660, Subpart C—Whiting and non-whiting initial issuance allocation percentage for IFQ decided through the harvest specifications, 2011 as Table 1d to part 660, Subpart C—Whiting and non-whiting initial issuance allocation percentage for IFQ decided through the harvest specifications, 2011.

Table 2d to Part 660, Subpart C—At-Sea Whiting Fishery Annual Set-Asides, 2020 [Removed]

7. Remove Table 2d to Part 660, Subpart C—At-Sea Whiting Fishery Annual Set-Asides, 2020 and Beyond and footnotes

8. In § 660.111, amend the definition of *Ex-vessel value* by revising paragraph (3) to read as follows:

§ 660.111 Trawl fishery—definitions.

* * * * *

Ex-vessel value * * *

(3) For the C/P Coop Program, the value as determined by the aggregate pounds of all groundfish species catch (as defined in § 660.11) retained on board, by the vessel registered to a C/P-endorsed limited entry trawl permit, multiplied by the MS Coop Program average price per pound as announced pursuant to § 660.115(b)(2).

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9. In § 660.113, add paragraph (b)(1)(iv), and revise paragraphs (d)(5)(ii)(A)(2), (d)(5)(ii)(A)(4) and (5) to read as follows:

§ 660.113 Trawl fishery—recordkeeping and reporting.

* * * * *

(b) * * *

(1) * * *

(iv) All owners of a quota share (QS) permit as defined at § 660.25(c)

* * * * *

(d) * * *

(5) * * *

(ii) * * *

(A) * * *

(2) The weight of each species of groundfish retained on board.

* * * * *

(4) The ex-vessel value of each species of groundfish retained on board,

(5) The net ex-vessel value of each species of groundfish retained on board,

* * * * *

10. In § 660.114, revise paragraphs (a), (b), and (c) to read as follows:

§ 660.114 Trawl fishery—economic data collection program.

(a) *General.* The economic data collection (EDC) program collects mandatory economic data from participants in the trawl rationalization program. NMFS requires submission of EDC forms to gather ongoing, annual economic data, including, but not limited to the following categories of information related to participation in the trawl rationalization program:

(1) Annual data related to QS permit owner activity and characteristics of participation in the fishery, costs and earnings from quota trades, and quota leasing.

(2) Annual data related to costs, earnings, value, labor, operations, physical characteristics, ownership and leasing information for vessels, first receiver sites, or shorebased processors.

(b) *Economic data collection program requirements.* The following fishery participants in the limited entry groundfish trawl fisheries are required to comply with the following EDC program requirements:

Fishery participant	Economic data collection	Who is required to submit an EDC?	Consequence for failure to submit (In addition to consequences listed below, failure to submit an EDC may be a violation of the MSA.)
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<p>(1) Limited entry trawl catcher vessels</p>	<p>(i) Annual/ongoing economic data</p>	<p>(A) All owners, lessees, and charterers of a catcher vessel registered to a limited entry trawl endorsed permit</p>	<p>(1) For permit owner, a limited entry trawl permit application (including MS/CV-endorsed limited entry trawl permit) will not be considered complete until the required EDC for that permit owner associated with that permit is submitted, as specified at §660.25(b)(4)(i).</p> <p>(2) For a vessel owner, participation in the groundfish fishery (including, but not limited to, changes in vessel registration, vessel account actions, or if own QS permit, issuance of annual QP or IBQ pounds) will not be authorized until the required EDC for that owner for that vessel is submitted, as specified, in part, at §660.25(b)(4)(vi) and §660.140(e).</p>
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			<p>(3) For a vessel lessee or charterer, participation in the groundfish fishery (including, but not limited to, issuance of annual QP or IBQ pounds if own QS or IBQ) will not be authorized, until the required EDC for their operation of that vessel is submitted.</p>
		(B) [Reserved]	
(2) Motherships	(i) Annual/ongoing economic data	<p>(A) All owners, lessees, and charterers of a mothership vessel registered to an MS permit</p> <p>(B) [Reserved]</p>	<p>(1) For permit owner, an MS permit application will not be considered complete until the required EDC for that permit owner associated with that permit is submitted, as specified at §660.25(b)(4)(i).</p> <p>(2) For a vessel owner, participation in the groundfish fishery (including, but not limited to, changes in vessel registration) will not be</p>

			authorized until the required EDC for that owner for that vessel is submitted, as specified, in part, at §660.25(b)(4)(vi).
			(3) For a vessel lessee or charterer, participation in the groundfish fishery will not be authorized, until the required EDC for their operation of that vessel is submitted.
(3) Catcher processors	(i) Annual/ongoing economic data	(A) All owners, lessees, and charterers of a catcher processor vessel registered to a C/P-endorsed limited entry trawl permit (B) [Reserved]	(1) For permit owner, a C/P-endorsed limited entry trawl permit application will not be considered complete until the required EDC for that permit owner associated with that permit is submitted, as specified at §660.25(b)(4)(i). (2) For a vessel owner, participation in the groundfish

			fishery (including, but not limited to, changes in vessel registration) will not be authorized until the required EDC for that owner for that vessel is submitted, as specified, in part, at §660.25(b)(4)(vi).
			(3) For a vessel lessee or charterer, participation in the groundfish fishery will not be authorized, until the required EDC for their operation of that vessel is submitted.
(4) First receivers/shorebased processors	(i) Annual/ongoing economic data	(A) All owners of a first receiver site license	(1) A first receiver site license application will not be considered complete until the required EDC for that license owner associated with that license is submitted, as specified at §660.140(f)(3). See paragraph (b)(4)(i)(A) of this table.

		(B) All owners and lessees of a shorebased processor (as defined under “processor” at §660.11, for purposes of EDC) that received round or headed-and-gutted IFQ species groundfish or whiting from a first receiver	
(5) Quota Share Permit Owners	(i) Annual/ongoing economic data	(A) All owners of a Quota Share permit and account (as defined under §660.25 (c)) (B) [Reserved]	(1) A Quota Share permit application or permit renewal package will not be considered complete until the required EDC for that permit is submitted, as specified at §660.140, subpart D (2) [Reserved]

(c) *Submission of the EDC forms, and deadline*—(1) *Submission of the EDC form.* The complete, certified EDC forms must contain valid responses for all data fields, and must be submitted either by paper or web form submission as follows:

(i) *Paper form submission.* Paper forms must be submitted to ATTN: Economic Data Collection Program (FRAM Division), NMFS, Northwest Fisheries Science Center, 2725 Montlake Boulevard East, Seattle, WA 98112.

(ii) *Web form submission.* Completed EDC web forms must be submitted electronically via the Economic Data Collection Program Web Form portal through *NOAA.gov/fisheries* and the signature page faxed, mailed, or hand-delivered to NWFSC.

(2) *Deadline.* Complete, certified EDC forms must be mailed and postmarked by or hand-delivered to NMFS NWFSC no later than September 1 each year for the prior year's data.

(3) *Quota Share Permit Owner Survey Submissions and Deadline.* Quota Share Permit Owner survey forms are submitted by webform only during the quota account application and renewal process specified at § 660.140 (d)(2). The complete certified Quota Share Permit Owner survey must be submitted no later than November 30 of each year.

* * * * *

11. In § 660.115, revise paragraphs (d)(1)(ii)(B) and (C) to read as follows:

§ 660.115 Trawl fishery—cost recovery program.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(B) *Fee collection deposits.* Each fish buyer, no less frequently than at the end of each month, shall deposit, in the deposit account established under paragraph (d)(1)(ii)(A) of this section, all fees collected, not previously deposited, that the fish buyer collects through a date not more than two calendar days before the date of deposit. The deposit principal may not be pledged, assigned, or used for any purpose other than aggregating collected fee revenue for disbursement to the Fund in accordance with paragraph (d)(1)(ii)(C) of this section. The fish buyer is entitled, at any time, to withdraw deposit interest, if any, but never deposit principal, from the deposit account for the fish buyer's own use and purposes. If the fish buyer has used a credit card to pay the cost recovery fee, the deposit principal may be used to reimburse the credit card in the same amount as the fee payment.

(C) *Deposit principal disbursement.* Not later than the 14th calendar day after the last calendar day of each month, or more frequently if the amount in the account exceeds the account limit for insurance purposes, the fish buyer shall disburse to NMFS the full deposit principal then in the deposit account. The fish buyer shall disburse deposit principal by electronic payment to the Fund subaccount to which the deposit principal relates. If the fish buyer has used a credit card to pay the cost recovery fee, the deposit principal may be used to reimburse the credit card in the same amount as the fee payment. NMFS will announce information about how to make an electronic payment to the Fund subaccount in the notification on fee percentage specified in paragraph (b)(2) of this section. Each disbursement must be accompanied by a cost recovery form provided by NMFS. Recordkeeping and reporting requirements are specified in paragraph (d)(4) of this section and at § 660.113(b)(5) for the Shorebased IFQ Program and § 660.113(c)(5) for the MS Coop Program. The cost recovery form will be available on the *pay.gov* Web site.

* * * * *

12. In § 660.140, revise paragraphs (d)(1)(ii) introductory text, (d)(2)(iii) introductory text, paragraphs (d)(3)(i)(D), (d)(3)(ii)(B)(2), (d)(3)(ii)(B)(3), (e)(3)(iii)(A) and (B), paragraphs (e)(4)(i) introductory text, and paragraphs (e)(4)(ii), and (e)(5) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(d) * * *

(1) * * *

(ii) *Annual QP and IBQ pound allocations.* QP and IBQ pounds will be deposited into QS accounts annually. QS permit owners will be notified of QP deposits via the IFQ Web site and their QS account. QP and IBQ pounds will be issued to the nearest whole pound using standard rounding rules (*i.e.*, decimal amounts less than 0.5 round down and 0.5 and greater round up). NMFS will distribute such allocations to the maximum extent practicable, not to exceed the total allocation. QS permit owners must transfer their QP and IBQ pounds from their QS account to a vessel account in order for those QP and IBQ pounds to be fished. QP and IBQ pounds must be transferred in whole pounds (*i.e.*, no fraction of a QP or IBQ pound can be transferred). All QP and IBQ pounds in a QS account must be transferred to a vessel account between January 1 and December 31 of the year for which they were issued in order to be fished.

* * * * *

(2) * * *

(iii) *QS permit application process.* NMFS will accept a QS permit application from January 1 to November 30 of each calendar year. QS permit applications received between December 1 and December 31 will be processed by NMFS in the following calendar year. NMFS will issue only one QS permit to each unique person, as defined at § 660.11 subject to the

eligibility requirements at paragraph (d)(2)(i) of this section. Each applicant must submit a complete application. A complete application includes a QS permit application form, payment of required fees, complete documentation of QS permit ownership on the Trawl Identification of Ownership Interest Form as required under paragraph (d)(4)(iv) of this section, and a complete economic data collection form as required under § 660.114. NMFS may require additional documentation as it deems necessary to make a determination on the application. The QS permit application will be considered incomplete until the required information is submitted.

* * * * *

(3) * * *

(i) * * *

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

* * * * *

(ii) * * *

(B) * * *

(2) *Transfer of QS or IBQ between QS accounts.* QS permit owners may transfer QS or IBQ to another owner of a QS permit, subject to accumulation limits and approval by NMFS. QS or IBQ is transferred as a percent, divisible to one-thousandth of a percent (*i.e.*, greater than or equal to 0.001 percent). 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.

(3) *Transfer of QP or IBQ pounds from a QS account to a vessel account.* QP or IBQ pounds must be transferred in whole pounds (*i.e.*, no fraction of a QP can be transferred). QP or IBQ pounds must be transferred to a vessel account in order to be used. Transfers of QP or IBQ pounds from a QS account to a vessel account are subject to annual vessel accumulation limits and NMFS' approval. Once QP or IBQ pounds are transferred from a QS account to a vessel account (accepted by the transferee/vessel owner), they cannot be transferred back to a QS account and may only be transferred to another vessel account. QP or IBQ pounds may not be transferred from one QS account to another QS account. All QP or IBQ pounds from a QS account must be transferred to one or more vessel accounts by December 31 each year in order to be fished. All QP or IBQ pounds expire at the end of the post-season transfer period of the year after which they were issued. If, in any year, the Regional Administrator makes a decision to reapportion Pacific whiting from the tribal to the non-tribal fishery or NMFS releases additional QP consistent with § 660.60(c) and paragraph (d)(1)(ii) of this section, NMFS will credit QS accounts with additional QP proportionally, based on the QS percent for a particular QS permit

owner and the increase in the shorebased trawl allocation specified at paragraph (d)(1)(ii)(D) of this section.

* * * * *

(e) * * *

(3) * * *

(iii) * * *

(A) *General.* QP or IBQ pounds may only be transferred from a QS account to a vessel account or between vessel accounts. QP or IBQ pounds cannot be transferred from a vessel account to a QS account. Transfers of QP or IBQ pounds are subject to annual vessel accumulation limits. QP or IBQ pounds must be transferred in whole pounds (*i.e.*, no fraction of a QP or IBQ pound can be transferred). During the year there may be situations where NMFS deems it necessary to prohibit transfers (*i.e.*, account reconciliation, system maintenance, or for emergency fishery management reasons).

(B) *Transfer procedures.* QP or IBQ pound transfers from one vessel account to another vessel account must be accomplished via the online vessel account. To make a transfer, a vessel account owner must initiate a transfer request by logging onto the online vessel account. Following the instructions provided on the Web site, the vessel account owner must enter pertinent information regarding the transfer request including, but not limited to: IFQ species, amount of QP or IBQ pounds to be transferred for each IFQ species (in whole pound increments); name and any other identifier of the eligible transferee (e.g., USCG documentation number or state registration number, as applicable) of the eligible vessel account receiving the transfer; and the value of the transferred QP or IBQ pounds. The online system will verify whether all information has been entered and whether the transfer complies with vessel limits, as

applicable. If the information is not accepted, an electronic message will record as much in the transferor's vessel account explaining the reason(s). If the information is accepted, the online system will record the pending transfer in both the transferor's and the transferee's vessel accounts. The transferee must approve the transfer by electronic signature. If the transferee accepts the transfer, the online system will record the transfer and confirm the transaction in both accounts through a transaction confirmation notice. Once the transferee accepts the transaction, the transaction is final and permanent. QP or IBQ pounds may be transferred between vessel accounts at any time during January 1 through December 31 each year unless otherwise notified by NMFS. Unused QP from the previous fishing year (base year) may be transferred for the purpose of covering end-of-the-year vessel account deficits through the end of the post-season transfer period described at paragraph (e)(5)(iv) of this section.

(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 annual QP vessel limit in any year, except as allowed by paragraph (e)(5)(iii) of this section. The annual QP vessel limit is calculated as all QPs transferred in minus all QPs transferred out of the vessel account.

* * * * *

(ii) *Trawl identification of ownership interest form.* Any person that owns a vessel registered to a limited entry trawl permit and that is applying for or renewing a vessel account shall document those persons that have an ownership interest in the vessel greater than or equal to 2 percent. This ownership interest must be documented with the SFD via the Trawl Identification of Ownership Interest Form. SFD will not generate and issue a vessel account unless the Trawl Identification of Ownership Interest Form has been completed. NMFS may

request additional information of the applicant as necessary to verify compliance with accumulation limits.

(5) *Carryover of Surplus and Deficit QP or IBQ.* The carryover provision allows a limited amount of surplus QP or IBQ pounds in a vessel account to be carried over from one year (the base year) to the next immediately following year or allows a deficit in a vessel account from fishing during the base year to be covered in the immediately following year with QP or IBQ pounds from the base year or the a immediately following year, up to a carryover limit without violating the provisions of this section.

(i) *Surplus QP or IBQ pounds.* A vessel account with a surplus of QP or IBQ (unused QP or IBQ pounds) for any IFQ species following the post-season transfer period specified at paragraph (e)(5)(iv) of this section, may carryover for use in the year immediately following the base year amounts of unused QP or IBQ pounds up to its carryover limit specified at (e)(5)(ii) of this section, and subject to the limitations of this paragraph. After the post-season transfer period is concluded, NMFS will complete determination of surplus QP or IBQ pound amounts that may be carried over into the following year up to the surplus carryover limit specified at paragraph (e)(5)(ii) of this section. The amount of surplus QP or IBQ pounds issued as carryover will be reduced in proportion to any reduction in the ACL-between the base year and the immediately following year. At the end of the post-season transfer period, any base year QP or IBQ pounds remaining in vessel accounts will be suspended from use while NMFS calculates annual surplus carryover amounts. NMFS will consult with the Council in making its final determination of the IFQ species and total QP or IBQ amounts to be issued as annual surplus carryover. After NMFS completes determination of the annual surplus carryover amounts for each vessel account, suspended QP or IBQ pounds in excess of the annual surplus carryover amount will expire.

NMFS will subsequently release any remaining suspended QP or IBQ pounds for issuance as surplus carryover to vessel accounts from which they were suspended, and notify vessel account owners of the issuance. Surplus carryover QP or IBQ pounds are valid for the year in which they are issued (i.e. the year immediately following the base year). Surplus carryover amounts that would place a vessel above the annual QP vessel limits for the immediately following year (specified at paragraph (e)(4) of this section) will not be issued. Amounts issued as surplus QP or IBQ pounds do not change the shorebased trawl allocation in the year in which the carryover was issued. Surplus QP or IBQ pounds may not be carried over for more than one year.

(ii) *Surplus Carryover Limit.* The limit for the surplus carryover is calculated by multiplying 10 percent by the cumulative total QP or IBQ pounds (used and unused) transferred into a vessel account for the base year, less any transfers out of the vessel account, QP resulting from reapportionment of whiting specified at § 660.60(d), additional QP issued to the account during the year (as specified at § 660.60(c)(3)(ii)), and previous carryover amounts. The percentage used for the carryover surplus limit may be changed by Council recommendation during the biennial specifications and management measures process or by routine management measures as specified in § 660.60(c).

(iii) *Deficit QP or IBQ pounds* After the end of the base year, a vessel account may cover the full amount of any deficit (negative balance) of QP or IBQ pounds using QP or IBQ from the following year, base year QP or IBQ pounds, through the post-season transfer period, or a combination, without restriction by annual QP vessel limits. A vessel account acquiring QP or IBQ after the base year to cover a deficit resulting from catch in excess of the base year annual QP vessel limits may still be in violation of annual vessel QP limit provisions specified at paragraph (e)(4)(i) of this section, or other provisions of this section, if the deficit exceeds the

deficit carryover limit specified at paragraph (e)(5)(iii)(B) of this section. If an IFQ species is reallocated between the base year and the following year due to changes in management areas or subdivision of a species group as specified at paragraph (c)(3)(vii) of this section, a vessel account will not carryover the deficit for that IFQ species into the following year. A vessel account with a deficit for any IFQ species in the base year, may cover that deficit during the post-season transfer period or with QP or IBQ pounds from the following year without violating the provisions of this section if all of the following conditions are met:

(A) The vessel account owner declares out of the Shorebased IFQ Program for the remainder of the year in which the deficit occurred. The vessel account owner must submit a signed, dated, and notarized letter to OLE, declaring out of the Shorebased IFQ Program for the remainder of the year and invoking the carryover provision to cover the deficit. Signed, dated, and notarized letters may be submitted to NMFS, West Coast Region, Office of Law Enforcement, ATTN VMS, Bldg. 1, 7600 Sand Point Way NE., Seattle, WA 98115. If the vessel account owner covers the deficit later within the same calendar year, the vessel may re-enter the Shorebased IFQ Program. If the deficit is documented less than 30 days before the end of the calendar year, exiting out of the Shorebased IFQ Program for the remainder of the year is not required.

(B) The amount of QP or IBQ pounds required to cover the deficit from the current fishing year is less than or equal to the vessel's carryover limit for a deficit. The carryover limit for a deficit is calculated as 10 percent of the total cumulative QP or IBQ pounds (used and unused, less any transfers out of the vessel account, and any previous carryover amounts) in the vessel account 30 days after the date the deficit is documented;

(C) Sufficient QP or IBQ pounds are transferred into the vessel account to cure the deficit within 30 days of NMFS' issuance of QP or IBQ pounds to QS accounts in the following year or the date the deficit is documented (whichever is later) but not later than the end of the post-season transfer period; and

(D) The total QP required to cover the vessel's total catch from the base year is not greater than the annual QP vessel limit for the base year.

(iv) *Post-Season QP or IBQ transfers.* A vessel account with a deficit (negative balance) of QP or IBQ pounds after December 31 for any IFQ species may conduct post-season transfers to cure the deficit by obtaining available unused QP or IBQ pounds remaining in other vessel accounts from the base fishing year. Vessel account owners may conduct post-season transfers of QP and IBQ pounds according to transfer procedures specified in paragraph (e)(3)(iii) of this section, and subject to the following conditions:

(A) Post-season transfers may be conducted during a period starting January 1 and ending 14 calendar days after NMFS has completed its determination of the total base year IFQ catch for all vessels for end-of-the-year account reconciliation. NMFS will issue a public notice when end-of-the-year account reconciliation has been completed, on or about March 1 of each year.

(B) QP or IBQ pounds from the base fishing year transferred during the post-season transfer period may not be fished in any way, and may only be transferred for the purpose of covering deficits carried into the immediately following fishing year from the base fishing year.

(C) After the post-season transfer period, remaining QP and IBQ pounds surplus and deficits from the base fishing year are subject to carryover provisions specified at paragraphs (e)(5)(ii) and (e)(5)(iii) of this section.

* * * * *

13. In § 660.150 revise paragraphs (c) and (d)(1)(iii)(A)(I)(v) to read as follows:

§ 660.150 Mothership (MS) Coop Program.

* * * * *

(c) *MS Coop Program species and allocations*— (1) *MS Coop Program species*. All species other than Pacific whiting are managed with set-asides for the MS and C/P Coop Programs, as described in Table 1d to subpart C of this part.

(2) *Annual mothership sector sub-allocations*. Annual allocation amount(s) will be determined using the following procedure:

(i) *MS/CV catch history assignments*. Catch history assignments will be based on catch history using the following methodology:

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

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

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

(B) *Non-whiting groundfish species catch*—(1) At-sea set-asides of non-whiting groundfish species will be managed on an annual basis unless there is a risk of a harvest specification being exceeded, unforeseen impact on other fisheries, or conservation concerns, in which case inseason action may be taken. Set asides may be adjusted through the biennial specifications and management measures process as necessary.

(2) Groundfish species not addressed in paragraph (c)(2)(i)(B)(1) of this section, will be managed on an annual basis unless there is a risk of a harvest specification being exceeded, unforeseen impact on other fisheries, or conservation concerns, in which case inseason action may be taken.

(3) *Halibut set-asides*. Annually a specified amount of the Pacific halibut will be held in reserve as a shared set-aside for bycatch in the at-sea Pacific whiting fisheries and the shorebased trawl sector south of 40°10' N. lat.

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

(ii) *Annual coop allocations—(A) Pacific whiting.* Each permitted MS coop is authorized to harvest a quantity of Pacific whiting that is based on the sum of the catch history assignments for each member MS/CV-endorsed permit identified in the NMFS-accepted coop agreement for a given calendar year. Other limited entry permits registered to vessels that will fish for the coop do not bring catch allocation to a permitted MS coop.

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

(iii) *Annual non-coop allocation—(A) Pacific whiting.* The non-coop whiting fishery is authorized to harvest a quantity of Pacific whiting that is remaining in the mothership sector annual allocation after the deduction of all coop allocations.

(B) *Announcement of the non-coop fishery allocations.* Information on the amount of Pacific whiting and non-whiting groundfish with allocations that will be made available to the non-coop fishery when the final Pacific whiting specifications for the mothership sector is established and will be announced to the public through a FEDERAL REGISTER announcement and/or public notice and/or the NMFS Web site.

(3) *Reaching an allocation or sub-allocation.* When the mothership sector Pacific whiting allocation, or Pacific whiting sub-allocation is reached or is projected to be reached, the following action may be taken:

(i) Further harvesting, receiving or at-sea processing by a mothership or catcher vessel in the mothership sector is prohibited when the mothership sector Pacific whiting allocation is projected to be reached. No additional unprocessed groundfish may be brought on board after at-sea processing is prohibited, but a mothership may continue to process catch that was on board before at-sea processing was prohibited. Pacific whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the mothership sector.

(ii) When a permitted MS coop sub-allocation of Pacific whiting is reached, further harvesting or receiving of groundfish by vessels fishing in the permitted MS coop must cease, unless the permitted MS coop is operating under an NMFS-accepted inter-coop agreement.

(iii) When the non-coop fishery sub-allocation of Pacific whiting is projected to be reached, further harvesting or receiving of groundfish by vessels fishing in the non-coop fishery must cease.

(4) [Reserved]

(5) *Announcements.* The Regional Administrator will announce in the Federal Register when the mothership sector allocation of Pacific whiting is reached, or is projected to be reached, and specify the appropriate action. In order to prevent exceeding an allocation and to avoid underutilizing the resource, prohibitions against further taking and retaining, receiving, or at-sea processing of Pacific whiting may be made effective immediately by actual notice to fishers and processors, by e-mail, internet, phone, fax, letter, press release, and/or USCG Notice to Mariners (monitor channel 16 VHF), followed by publication in the Federal Register, in which instance public comment will be sought for a reasonable period of time thereafter.

(6) *Redistribution of annual allocation—(i) Between permitted MS coops (inter-coop).*

(A) Through an inter-coop agreement, the designated coop managers of permitted MS coops may

distribute Pacific whiting allocations among one or more permitted MS coops, provided the processor obligations at paragraph (c)(7) of this section have been met or a mutual agreement exception at paragraph (c)(7)(iv) of this section has been submitted to NMFS.

(B) In the case of a MS coop failure during the Pacific whiting primary season for the mothership sector, unused allocation associated with the catch history will not be available for harvest by the coop that failed, by any former members of the coop that failed, or any other MS coop for the remainder of that calendar year.

(1) *Between the MS coop and non-coop fisheries.* Pacific whiting may not be redistributed between the coop and non-coop fisheries.

(2) *Between Pacific whiting sectors.* Pacific whiting may not be redistributed between the mothership sector and catcher/processor sector. Whiting may not be redistributed to the Shorebased IFQ Program.

(7) *Processor obligation and mutual agreement exceptions—(i) Processor obligation.* Through the annual MS/CV-endorsed limited entry permit renewal process, the MS/CV-endorsed permit owner must identify to NMFS to which MS permit the MS/CV permit owner intends to obligate the catch history assignment associated with that permit if they are participating in the MS coop fishery. Only one MS permit may be designated for each MS/CV endorsement and associated catch history assignment.

(ii) *Expiration of a processor obligation.* Processor obligations expire at the end of each calendar year when the MS Coop Permit expires.

(iii) *Processor obligation when MS coop allocation is redistributed.* When a permitted MS coop redistributes Pacific whiting allocation within the permitted MS coop or from one permitted MS coop to another permitted MS coop through an inter-coop agreement, such

allocations must be delivered to the mothership registered to the MS permit to which the allocation was obligated under the processor obligation submitted to NMFS, unless a mutual agreement exception has been submitted to NMFS.

(iv) *Mutual agreement exception.* An MS/CV-endorsed permit's catch history assignment can be released from a processor obligation through a mutual agreement exception. The MS/CV-endorsed permit owner must submit a copy to NMFS of the written agreement that includes the initial MS permit owner's acknowledgment of the release of the MS/CV-endorsed permit owner's processor obligation and the MS/CV-endorsed permit owner must identify a processor obligation for a new MS permit.

(v) *MS permit withdrawal.* If an MS permit withdraws from the mothership fishery before the resulting amounts of catch history assignment have been announced by NMFS, any MS/CV-endorsed permit obligated to the MS permit may elect to participate in the coop or non-coop fishery. In such an event, the MS permit owner must provide written notification of its withdrawal to NMFS and all MS/CV-endorsed permits that are obligated to the MS permit, and the owner of each MS/CV-endorsed permit obligated to the MS permit must provide written notification to NMFS of their intent to either participate in the non-coop fishery or the coop fishery, and if participating in the coop fishery must identify a processor obligation for a new MS permit.

(vi) *Submission of a mutual agreement exception or MS permit withdrawal.* Written notification of a mutual exception agreement or MS permit withdrawal must be submitted to NMFS, Northwest Region, Permits Office, Bldg. 1, 7600 Sand Point Way, NE., Seattle, WA 98115.

(d) * * *

(1) * * *

(iii) * * *

(A) * * *

(I) * * *

(v) A description of the coop's plan to adequately monitor and account for the catch of Pacific whiting and non-whiting groundfish, and to monitor and account for the catch of prohibited species.

* * * * *

14. In § 660.160:

a. Revise paragraph (c)(1) introductory text, paragraphs (c)(1)(i), (c)(3)(i) and (ii);

b. Remove paragraph (c)(3)(iii);

c. Remove and reserve paragraph (c)(5);

d. Revise paragraphs (c)(6), (c)(7), and (d)(1)(iii)(A)(1)(iii), and paragraph (e)(1) introductory text;

e. Add paragraph (e)(1)(iv);

f. Revise paragraph (h)(1) introductory text, and paragraphs (h)(2) through (4);

g. Add paragraph (h)(5).

The revisions and additions read as follows:

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

* * * * *

(c) * * *

(1) *C/P Coop Program species*. All species other than Pacific whiting are managed with set-asides for the MS and C/P Coop Programs.

(i) Species with formal allocations to the C/P Coop Program: Pacific whiting.

* * * * *

(3) * * *

(i) At-sea sector set-asides of non-whiting groundfish species will be managed on an annual basis unless there is a risk of a harvest specification being exceeded, unforeseen impact on other fisheries, or conservation concerns, in which case inseason action may be taken. Set asides may be adjusted through the biennial specifications and management measures process as necessary.

(ii) Groundfish species not addressed in paragraph (c)(3)(i) of this section, will be managed on an annual basis unless there is a risk of a harvest specification being exceeded, unforeseen impact on other fisheries, or conservation concerns, in which case inseason action may be taken.

* * * * *

(5) [Reserved]

(6) *Reaching the catcher/processor sector allocation.* When the catcher/processor sector allocation of Pacific whiting is reached or is projected to be reached, further taking and retaining, receiving, or at-sea processing by a catcher/processor is prohibited. No additional unprocessed groundfish may be brought on board after at-sea processing is prohibited, but a catcher/processor may continue to process catch that was on board before at-sea processing was prohibited. The catcher/processor sector will close when the allocation of any one species is reached or projected to be reached.

(7) *Announcements.* The Regional Administrator will announce in the FEDERAL REGISTER when the catcher/processor sector allocation of Pacific whiting is reached, or is

projected to be reached, and specify the appropriate action. In order to prevent exceeding an allocation and to avoid underutilizing the resource, prohibitions against further taking and retaining, receiving, or at-sea processing of Pacific whiting may be made effective immediately by actual notice to fishers and processors, by e-mail, Internet, phone, fax, letter, press release, and/or USCG Notice to Mariners (monitor channel 16 VHF), followed by publication in the FEDERAL REGISTER, in which instance public comment will be sought for a reasonable period of time thereafter.

(d) * * *

(1) * * *

(iii) * * *

(A) * * *

(I) * * *

(iii) A description of the coop's plan to adequately monitor and account for the catch of Pacific whiting and non-whiting groundfish, and to monitor and account for the catch of prohibited species.

* * * * *

(e) * * *

(1) *General.* Any vessel participating in the C/P sector of the non-tribal primary Pacific whiting fishery-must be registered to a valid limited entry permit with a C/P endorsement- subject to the limited entry permit provisions given at § 660.25(b).

* * * * *

(iv) *Trawl identification of ownership interest form.* Any person that is applying for or renewing a C/P-endorsed permit shall document those persons that have an ownership interest in

the permit greater than or equal to 2 percent. This ownership interest must be documented with the SFD via the Trawl Identification of Ownership Interest Form. SFD will not issue a C/P-endorsed permit unless the Trawl Identification of Ownership Interest Form has been completed.

* * * * *

(h) * * * (1) *Conditions for determination of coop failure.* The Regional Administrator will determine that a permitted C/P coop has failed if any one of the following occurs:

* * * * *

(2) *Notification of coop failure.* If the permitted C/P coop dissolves, the designated coop manager must notify NMFS SFD in writing of the dissolution of the coop to allow the Regional Administrator to make a determination of coop failure. The Regional Administrator may also make an independent determination of a coop failure based on factual information collected by or provided to NMFS. NMFS will notify the designated coop manager in writing in the event the Regional Administrator determines the coop has failed.

(3) *Coop permit no longer in effect.* Upon determination of a coop failure, the C/P coop permit will no longer be in effect.

(4) *Conversion to IFQ Fishery.* The C/P sector will convert to an IFQ-based fishery beginning the following calendar year after a determination of a coop failure, or as soon as practicable thereafter. NMFS will develop additional regulations, as necessary to implement an IFQ-based fishery for the C/P sector. Each C/P-endorsed permit will receive an equal amount of QS from the total C/P sector allocation. That QS will not be transferable separate from the C/P-endorsed permit until a determination is made to allow such transfers, necessary regulations are implemented, and public notice is provided. Any use of QP or IBQ pounds associated with C/P endorsed permits is prohibited until the regulations for a C/P sector IFQ system are implemented.

(5) *Accumulation Limits.* C/P Sector accumulation limits will take effect in the event that the C/P coop fails and converts to an IFQ-based fishery. If an IFQ fishery is implemented, any individual or entity may own or control a maximum of five C/P endorsed permits and QS allocations associated with those permits, as described in paragraph (e)(5)(iv) of this section. C/P endorsed permit accumulation limits will only take effect after determination of a coop failure is made and the following administrative process occurs:

(i) *Divestiture Period.* Upon determination of a coop failure, a divestiture period will occur starting with the date that co-op failure has been determined and running through the date on which an IFQ program is implemented for the C/P sector or another date specified in the IFQ program implementing regulations. During the divestiture period, an individual or entity may not acquire ownership or control over a total of more than five C/P-endorsed permits. Any entity that already owns or controls more than five C/P-endorsed permits may not acquire additional permits. During the divestiture period any entity who owns or controls C/P-endorsed permits may sell or trade any permits it owns. C/P-endorsed permits may be voluntarily abandoned to NMFS using the procedures provided under paragraph (h)(5)(iii) of this section.

(ii) *Divestiture and redistribution process.* After conversion to an IFQ fishery and completion of the divestiture period, any person owning or controlling C/P-endorsed permits must be in compliance with accumulation limits, even if that ownership is not reflected in the ownership records available to NMFS as specified at § 660.140 (e)(1)(iv). Permit owners found to exceed the five permit accumulation limit for C/P-endorsed permits after the divestiture period are in violation of the accumulation limits and required to completely divest of ownership or control of C/P-endorsed permits that exceed the accumulation limit. C/P-endorsed permits may be voluntarily abandoned to NMFS using the procedures provided under paragraph (h)(5)(iii) of

this section. If NMFS finds that any entity owns or controls more than five C/P-endorsed permits, NMFS will make an Initial Administrative Determination (IAD) that the entity must divest of control or ownership of permits that exceed the accumulation limit within 30 days or NMFS will revoke the excess permits in accordance with § 660.25(h)(2)(ii). The permit owner will have the opportunity to appeal the IAD through the National Appeals Office under the provisions established at 15 CFR part 906. All QS associated with revoked permits will be redistributed to all other C/P-endorsed permit owners in proportion to their QS holdings, based on current ownership records, on or about January 1 of the calendar year following the year in which the permits are revoked. This redistribution process will not allow any entity to receive more than 50 percent of the total QS allocations for the C/P sector.

(iii) *Abandonment of C/P-endorsed permits.* C/P-endorsed permits owners that own or control more than the five permit accumulation limit may voluntarily abandon C/P-endorsed permits if they notify NMFS in writing during the divestiture period specified at paragraph (h)(5)(i) of this section or within 30 days of conversion to an IFQ fishery. The written abandonment request must include the C/P endorsed permit number and the associated QS allocation percentage that will be abandoned. Either the C/P-endorsed permit owner or an authorized representative of the C/P-endorsed permit owner must sign the request. C/P-endorsed permit owners choosing to utilize the abandonment option will permanently relinquish to NMFS any right to the abandoned C/P-endorsed permit, and the QS associated with that permit will be redistributed as described under paragraph (h)(5)(ii) of this section. No compensation will be due for any abandoned permit, or associated QS or QP.

(iv) *Review of C/P-permit ownership interest and accumulation limits.* NMFS may request additional information from C/P-permit owners as necessary to verify compliance with

accumulation limits in the event of C/P coop failure and conversion to IFQ fishery. If NMFS discovers through review of the Trawl Identification of Ownership Interest Form that a person is not in compliance with accumulation limits, the person will be subject to divestiture provisions specified in paragraph (h)(5)(ii) of this section.

(v) *Definition of Ownership or Control.* For the purpose of determining ownership or control a person or entity has over a C/P endorsed permit, all of the following criteria apply:

(A) The person or entity has the right to direct, or does direct, in whole or in part, the business of the entity to which the permits are registered, with the exception of those activities allowed under paragraphs (h)(5)(v)(C) and (G) of this section.

(B) The person or entity has the right to limit the actions of or replace, or does limit the actions of or replace, the chief executive officer, a majority of the board of directors, any general partner, or any person serving in a management capacity of the entity to which the C/P permits are registered, with the exception of those activities allowed under paragraphs (h)(5)(v)(C) and (G) of this section.

(C) With the exception of banks and other financial institutions that rely on permits as collateral for loans as described under paragraphs (h)(5)(v)(G) of this section, the person or entity has the right to direct, or does direct, and/or the right to prevent or delay, or does prevent or delay, the transfer of the C/P permit associated QS, or the resulting QP.

(D) The person or entity, through loan covenants or any other means, has the right to restrict, or does restrict, and/or has a controlling influence over the day to day business activities or management policies of the entity to which the permits are registered, with the exception of those activities allowed under paragraphs (h)(5)(v)(C) and (G) of this section.

(E) The person or entity has the right to restrict, or does restrict, any activity related to the C/P permit, associated QS or the resulting QP, including, but not limited to, use of permits, or associated QS, or disposition of fish harvested and processed under the resulting QP, with the exception of those activities allowed under paragraphs (h)(5)(v)(C) and (G) of this section.

(F) The person or entity has the right to control, or does control, the management of, or to be a controlling factor in, the entity to which the C/P permit, associated QS, or the resulting QP, are registered, with the exception of those activities allowed under paragraphs (h)(5)(v)(C) and (G) of this section.

(G) With the exception of banks and other financial institutions that rely on permits as collateral for loans, the person or entity has the right to cause or prevent, or does cause or prevent, the sale, lease or other disposition of C/P permits, associated QS, or the resulting QP.

(I) To qualify for this exception for banks and other financial institutions that rely on permits as collateral for loans, a bank or other financial institution must be regularly or primarily engaged in the business of lending, and must not be engaged in business with, or be controlled by, entities whose primary business is the harvesting, processing, or distribution of fish or fish products.

(2) Any state or federally chartered bank or financial institution that meets the requirement of paragraph (h)(5)(v)(G)(1) of this section does not need to submit additional information to NMFS.

(3) Any entity that is not a state or federally chartered bank or financial institution must submit a letter requesting the exception and disclose the identity and interest share of any shareholder with a 2 percent or more ownership interest in the lender through submission of the Trawl Identification of Ownership Interest Form (see paragraph (e)(1)(iv) of this section). The

lender must make subsequent annual submissions of the letter and Trawl Identification of Ownership Interest Form to maintain the exception. Letters requesting the exception and complete Trawl Identification of Ownership Interest Forms may be submitted to NMFS, West Coast Region, Permits Office, ATTN: Fisheries Permit Office, Bldg. 1, 7600 Sand Point Way NE., Seattle, WA 98115. NMFS will only accept complete applications.

(H) The person or entity has the ability through any means whatsoever to control or have a controlling influence over the entity to which a permit associated QS is registered, with the exception of those activities allowed under paragraphs (h)(5)(v)(C) and (G) of this section.

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