

See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97-7252 Filed 3-20-97; 8:45 am]

BILLING CODE 6712-01-F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95-93, Notice 4]

Federal Motor Vehicle Safety Standards; Accelerator Control Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of change in date of technical workshop.

SUMMARY: On March 7, 1997, NHTSA published a notice announcing a technical workshop on the accelerator control system safety standard. In this document, NHTSA changes the date of the workshop to May 20, 1997.

DATES:

Statement of intent to participate in technical workshop: Those persons wishing to provide oral comments at the workshop should contact Mr. Patrick Boyd (at the address given below) no later than May 19, 1997.

Technical workshop: The workshop will be held on May 20, 1997, beginning at 10:00 a.m.

Written comments: Written comments on the subject matter of the workshop are due June 20, 1997.

ADDRESSES:

Technical workshop: The workshop will be held in Room 2201 at the U.S. Department of Transportation building, 400 Seventh Street, S.W., Washington, D.C. Should building maintenance make Room 2201 unavailable, the workshop will be held in Room 3200.

Written comments: Written comments concerning the subject matter of the technical workshop should refer to the docket number and notice number cited at the beginning of this notice, and be submitted to: Docket Section, Room

5109, 400 Seventh Street, S.W., Washington, D.C. 20590. (Docket hours are from 9:30 a.m. to 4 p.m.) It is requested, but not required, that 10 copies of the comment be provided.

FOR FURTHER INFORMATION CONTACT:

For technical issues: Mr. Patrick Boyd, Office of Crash Avoidance Standards, NPS-21, telephone (202) 366-6346.

For legal issues: Ms. Dorothy Nakama, Office of Chief Counsel, NCC-20, (202) 366-2992.

Both may be reached at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Room 5320, Washington, DC 20590. Written comments should not be sent to these persons, but should be mailed to the Docket Section.

SUPPLEMENTARY INFORMATION:

In a **Federal Register** document of March 7, 1997 (62 FR 10514), NHTSA announced a public workshop to be held on March 24, 1997, to discuss electronic accelerator control technology and potential methods of assuring its fail-safe performance. On May 13, the American Automobile Manufacturers Association (AAMA) asked NHTSA to postpone the workshop for sixty days. AAMA asked for the additional time because the proposed date of March 24 "does not allow manufacturers adequate time to prepare for the workshop and provide meaningful input." NHTSA also received several oral requests for more time by interested parties.

NHTSA is interested in receiving well-informed and well-reasoned views from the participants in its technical workshop and believes that more preparation time will enhance the quality of participation. Therefore, it grants AAMA's request for more time. The new date of the technical workshop is May 20, 1997. The workshop's location is announced in the **ADDRESSES** section at the beginning of this document. The workshop will begin at 10 a.m.

As stated in its March 7, 1997 document, NHTSA wishes workshop participants to discuss:

(1) The principles of operation of existing and potential electronic accelerator control systems for gasoline and diesel engines;

(2) The principles of operation of existing and potential means of providing fail-safe performance in the event of loss of accelerator control by the primary system; and

(3) Suggestions for regulatory requirements that will assure the fail-

safe performance of electronic accelerator control systems.

Issued on: March 17, 1997.

John G. Womack,

Acting Chief Counsel.

[FR Doc. 97-7171 Filed 3-18-97; 10:10 am]

BILLING CODE 4910-59-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 970311053-7053-01; I.D. 020397B]

RIN 0648-AJ23

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 9

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

ACTION: Proposed rule.

SUMMARY: NMFS issues this proposed rule to implement Amendment 9 to the Fishery Management Plan for the Pacific Coast Groundfish Fishery (FMP). Amendment 9 would require a sablefish endorsement on limited entry permits for permit holders to participate in the regular limited entry fixed gear sablefish fishery north of 36°N. lat. (the U.S.-Vancouver, Columbia, Eureka, and Monterey management areas). The intended effect of this proposed sablefish endorsement is to promote safety, stability, and economic viability of the sablefish fishery by limiting or reducing harvesting capacity in the Pacific Coast sablefish fishery. This rule also would eliminate limited entry permit "B" endorsement language that expired January 1, 1997. Elimination of "B" endorsement language is a routine update of the Pacific Coast groundfish regulations.

DATES: Comments on the proposed rule must be received on or before May 5, 1997.

ADDRESSES: Comments on the proposed rule, Amendment 9, or supporting documents should be sent to Mr. William Stelle, Administrator, Northwest Region, NMFS, Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070; or to Mr. William Hogarth, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213.

Copies of Amendment 9, the Environmental Assessment (EA) and the

Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA) are available from Larry Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Ave., Suite 224, Portland, OR 97201.

Comments on the information collection requirements that would be imposed by this rule should be sent to Mr. William Stelle or to Mr. William Hogarth, at the addresses above, and to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Washington DC, 20503.

FOR FURTHER INFORMATION CONTACT:

William L. Robinson at 206-526-6140, Rodney McInnis at 310-980-4040, or the Pacific Fishery Management Council at 503-326-6352.

SUPPLEMENTARY INFORMATION: NMFS is proposing this rule based on a recommendation of the Pacific Fishery Management Council (Council), under the authority of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The background and rationale for the Council's recommendations are summarized below. More detail appears in the EA/RIR/IRFA that the Council prepared for this action.

Background

Sablefish (*Anoplopoma fimbria*) is one of the most valuable species in the groundfish fishery off Washington, Oregon, and California (WOC). Since 1987, the annual sablefish non-tribal harvest guideline has been allocated between trawl gear and fixed gear fisheries. Historically, the trawl fishery has been managed with trip or period landings limits, which means the amount of fish that may be harvested during a fishing trip or during a set time period. Trip or period landings limits are mainly imposed to extend the fishery throughout most of the year. By contrast, the limited entry, fixed gear fishery has taken most of its allocation in an intense, open competition called the "regular" or "derby" season, which had no trip limits, except for limits on small sablefish less than 22 inches (56 cm) in length. For 72 hours before the regular season, it is illegal to take and retain, possess, or land sablefish caught with fixed gear, although vessels using pot gear may begin to set their gear 24 hours in advance of the start of the regular season. In recent years, the nontrawl fleet has operated under restrictive limits (250-500 lb (113-227 kg) per day) outside of the regular season. The limited entry nontrawl fishery for sablefish involves two operationally distinct gear types, pot (or

trap) and longline, that compete for the nontrawl harvest allocation.

Problems commonly attributed to the current derby fishery relate to safety, inefficiency, resource wastage, and social conflict. There are two main problems with the derby: (1) Excess harvesting capacity in the fishery; and (2) difficulty controlling total harvest. These problems will intensify if the derby is allowed to continue, particularly if the length of the derby shortens each year.

The Council's first concern with the current limited entry, nontrawl sablefish season management is that, if this fishery is allowed to continue as a derby, the season will become even shorter and the danger of fishing in the derby will rise. Before 1990, the fixed gear sablefish fishery began on January 1 and usually lasted for the greater part of the year. However, fishing effort increased and quotas were reduced during the late 1980s and early 1990s, resulting in the recent, short "derby" seasons. In 1995 and 1996, the derby seasons were 7 and 5 days long, respectively. Seasons shorten from year to year because each vessel owner has an incentive to invest in new and better gear each year, hoping to increase the amount of fish he or she can catch per hour or per day. With seasons measured in numbers of days, the derby is not just dangerous because it gives fishers strong incentives to stay out during bad weather but also because they work at sea with heavy machinery, with little or no sleep throughout the derby. Promoting the safety of human life at sea is an important new national standard (National Standard 10) in the Magnuson-Stevens Act.

Beyond the very serious safety concerns with the derby fishery, there are also economic and conservation problems with the current management regime. Just as fishers cannot choose to fish during the best weather, they also cannot choose to fish during periods of highest sablefish market value. Fish caught under derby conditions often can not be handled or processed into the highest value sablefish products. In a derby for high-value fish like sablefish, lower-value bycatch may be thrown overboard, dead and unused. Magnuson-Stevens Act National Standard 9 supports efforts to minimize bycatch and bycatch mortality. With shortening derby seasons, fishers may also be more likely to abandon their gear at sea, leaving that gear to continue to "ghost fish" after the derby has ended. Finally, as the length of the derby decreases, it becomes more difficult for managers to accurately choose a closing

date that will prevent the harvest from exceeding the allowable catch.

When the limited entry system was first designed by the Council, that system was considered a first step in a long-term process to reduce effort levels in the groundfish fishery. Fishers had used landings of a wide range of species to qualify for limited entry permits, which meant that the limited entry program had limited overall effort in the groundfish fishery, but had not necessarily constrained effort levels in single-species fisheries. The number of vessels participating in the limited entry, fixed gear sablefish fishery has grown in recent years, corresponding with rising sablefish prices and decreasing availability of other fixed gear target stocks. Sablefish endorsements will control some of this effort increase by limiting sablefish fishery participation to those persons who have historically participated in and depended upon the sablefish fishery.

Sablefish Endorsement

The Council has recommended to the Secretary that NMFS require a sablefish endorsement on limited entry permits to limit the number of participants in the regular, limited entry, nontrawl sablefish fishery. The Council recommended the following sablefish endorsement qualifying criteria: at least 16,000 lb (7,257.5 kg) of sablefish catch from the sablefish fishery, in any one calendar year from 1984 through 1994.

Choosing appropriate qualifying criteria required careful Council consideration of lessons learned about initial limited entry permit distribution, historic characteristics of the fleet, and the dependence of current permit holders on the sablefish derby. The qualifying criteria is a compromise that recognizes historical participation by including the early years of the license limitation qualifying period, that acknowledges more recent participants in the sablefish derby by including 2 years after the Council adoption of the limited entry program, and that grants permit endorsements only to those persons who landed quantities of sablefish large enough to constitute a significant portion of their incomes. Maintaining a qualifying requirement that includes years from the mid and late 1980s prevents the disenfranchisement of vessels that were forced to choose between Alaska and West Coast fisheries during the recent years in which the Council set the West Coast opening to coincide with the Alaska opening. Households with sablefish fishery incomes less than that represented by the 16,000-lb (7,257.5-

kg) qualifying requirement are more likely to have greater reliance on other sources of fishing or nonfishing income than those who meet the 16,000-lb (7,257.5-kg) requirement.

Vessels that do not qualify for an endorsement because of failure to meet the 16,000 lb (7,257.5-kg) landing requirement may continue to harvest small amounts of sablefish in the limited entry daily trip limit fishery when the regular season is not open. For example, vessels making two trips per week over a 6-month period could land close to 16,000 lb (7,257.5 kg), and thereby suffer no reduction in gross revenue. However, while some vessels are able to generate net positive revenues from the daily trip limit fishery, larger vessels located at greater distances from the fishing grounds may not find the daily trip limit fishery profitable. The daily trip limit opportunity may also conflict with other fishing opportunities for some vessels.

Only persons holding current limited entry permits may qualify for a sablefish endorsement. Permit catch history will be used to determine whether a permit meets the qualifying criteria for a fixed gear sablefish endorsement. Permit catch history includes the catch history of the vessel(s) that initially qualified for the permit, and subsequent catch histories accrued by vessel(s) associated with the limited entry permit or permit rights. If the current permit is the result of the combination of multiple permits, then for the combined permit to qualify for an endorsement, at least one of the permits that were combined must have had sufficient sablefish history to qualify for an endorsement; or the permit must qualify based on catch occurring after it was combined, but taken within the qualifying period. The catch history of a permit also includes the catch of any interim permit held by the current owner of the permit during the appeal of an initial NMFS decision to deny the initial issuance of a limited entry permit, but only if (1) the appeal for which an interim permit was issued was lost by the appellant, and (2) the owner's current permit was used by the owner in the 1995 limited entry sablefish fishery. The catch history of an interim permit where the full "A" permit was ultimately granted will also be considered part of the catch history of the "A" permit. Only sablefish catch regulated by this part that was taken with longline or fishpot (or trap) gear will be considered for this endorsement. Harvest taken in tribal sablefish set asides will not be included in calculating permit catch histories.

A sablefish endorsement would be required for a fixed-gear, limited entry

vessel to take sablefish in the area north of 36° N. lat. (the Monterey, Eureka, Columbia and U.S.-Vancouver management areas) during the regular, limited entry, nontrawl sablefish fishery, as specified in the regulations; this harvest would count against the limited entry fixed gear allocation for the area north of 36° N. lat. Catch taken in the southern area counts against a southern area (Conception Area) acceptable biological catch (ABC). However, because the annual ABC has never been reached by vessels operating in the southern area, there is no established harvest guideline and no allocation between-gear types for this area. Fishers from the southern area have not historically focused on sablefish, and limited entry qualifications from that area were largely made with groundfish other than sablefish. Because of the under-exploitation of the available harvest, and the relatively recent development of catch history by some vessels in the southern area, the Council chose to exempt vessels fishing in the area from being required to hold a sablefish endorsement to participate in the limited entry fixed gear sablefish fishery. Implementing sablefish endorsements for the entire coast would have had a disproportionate impact on the southern area, primarily because fishers who have only recently begun to target sablefish in that area would have been eliminated from the regular limited entry season. It is expected that the Council will manage the fishing in the Conception Area differently from the northern fishery in order to avoid effort shifts.

Under the proposed sablefish endorsement system, if permits are combined to generate a single permit with a larger length endorsement, the resulting permit will receive a sablefish endorsement only if each of the combined permits has an individual sablefish endorsement. This requirement would be consistent with the current combination requirements for limited entry permit gear endorsements. Also, if the fishery continues to be managed as a derby fishery, future combination of non-endorsed permits with endorsed permits would allow more capacity into the sablefish fishery and thereby exacerbate the pressures of the derby.

The sablefish endorsement would be required for fixed gear, limited entry vessels to take sablefish against the limited entry allocation in the area north of 36° N. lat. during periods of time specified in the regulations (to be recommended by the Council). The general intent is that an endorsement be

required to take part in the major limited entry, fixed gear sablefish harvest opportunities, but no endorsement be required when management measures are intended to allow only small or incidental sablefish harvests.

Under the proposed management system, limited entry permit holders with sablefish endorsements could participate in the regular, limited entry, nontrawl sablefish fishery, under the limited entry regulations. Outside of the regular season, they would be allowed to catch sablefish with their endorsed gear under the small daily trip limits, under the limited entry regulations. Limited entry permit holders with sablefish endorsements could also catch sablefish with open access gear other than their endorsed gear, under the regulations of the open access fishery. Limited entry permit holders who do not have sablefish endorsements would still be allowed to fish for sablefish outside the regular, limited entry, nontrawl sablefish season by either using their endorsed gear and fishing under the limited entry regulations, or by using open access gear and fishing under open access regulations. Limited entry permit holders who do not have sablefish endorsements would not be allowed to fish for sablefish with either limited entry or open access gear during the regular, limited entry, non-trawl sablefish season.

Biological Impacts

Marine biological background and biological impacts of the sablefish fishery are analyzed in "Status of the Pacific Coast Groundfish Fishery Through 1996 and Recommended Acceptable Biological Catches for 1997: Stock Assessment and Fishery Evaluation" (SAFE Document), and in the Environmental Assessment for Amendment 9 to the Pacific Coast Groundfish FMP. These documents may be obtained from the Pacific Fishery Management Council (See ADDRESSES above).

NMFS expects that the biological impacts of requiring a sablefish endorsement would be negligible. The sablefish ABC and harvest guideline would not be affected by this action. The biological impacts from altering the number of vessels participating in the fishery would not be significant.

Socio-Economic Impacts

Most limited entry fixed gear fishers from central and southern California qualified for their initial limited entry permits with landings of groundfish species other than sablefish. Consequently the proposed sablefish

endorsement qualifying requirements, which are based on significant historic or recent economic dependence on sablefish, would result in greater proportional reductions to the number of southern area vessels qualified to participate in the regular fixed gear sablefish fishery. However, as explained above, vessels landing sablefish from waters south of 36° N. lat. (southern California) would not be required to hold sablefish endorsements, and the fishing in that area would be managed differently from the northern area. Conversely, if the historical landing requirements had included more recent years and had eliminated early years, this would result in more endorsements being issued in southern areas at the expense of vessels that have not participated in several recent years.

The number of longline vessels participating in the limited entry nontrawl regular sablefish fishery would decrease under the proposed qualifying criteria. The percent of longline vessels participating in the fishery from Puget Sound and the Washington coast would increase from 34 to 46 percent, while the percent of participants from central and southern California combined would decline from 28 percent to only 13 percent of the longline fleet. However vessels would be exempt from the sablefish endorsement requirement, if they are fishing south of 36° N. lat.

All pot permits would qualify for an endorsement under the proposed qualifying requirements. A review of the distribution of the pot fleet shows that 75 percent of the pot vessels were distributed in the Oregon and northern California areas (Astoria to Crescent City), 9 percent were located primarily in the central California area (Monterey to Avila Beach), 6 percent along coastal Washington, with the remainder not assigned to a geographic area because of lack of recent landings.

Most vessels are multifishery vessels. Based on 1995 landings and revenue, vessels with permits that do not qualify for a sablefish endorsement would need make up about \$750,000 of lost sablefish revenue in other fisheries. Because most vessels are underemployed, it is unlikely that the vessels gaining additional sablefish fishing opportunity from the displaced vessels would release similar amounts of opportunity in other fisheries, which would then be available for the vessels displaced from the limited entry nontrawl regular sablefish fishery. Vessels with more reliance on sablefish will have a chance for a safer, more stable fishery, and those with less reliance will lose sablefish fishing opportunity.

Sablefish Endorsement Issuance

Sablefish endorsements would be issued by NMFS, prior to the start of the regular 1997 limited entry fixed gear sablefish season. NMFS would use landings records from the Pacific States Marine Fisheries Commission's Pacific Fisheries Information Network (PacFIN) to determine which limited entry fixed gear permit holders meet the qualifications of 16,000 lb (7,257.5 kg) of catch in any one year from 1984 through 1994.

The Fishery Management Division, NMFS Northwest Region, would notify each limited entry fixed gear permit owner by letter whether PacFIN records indicate that his permit qualifies for a sablefish endorsement. Persons who do qualify for sablefish endorsements would be issued revised limited entry permits with endorsements, upon payment of a one-time fee to cover the administrative cost of PacFIN research and limited entry permit processing. Initial calculations of the agency cost of processing the sablefish endorsement system place the per-participant processing fee at about \$800.

Persons who are initially denied sablefish endorsements, but who believe that their permit or interim permit qualifies for an endorsement, may send supporting documentation, such as fish tickets, to demonstrate how the qualifying criteria have been met. An endorsement would be issued if the permit owner demonstrates that his permit met the qualifying criteria. Unlike the initial limited entry permitting process, there will be no industry appeal board to review appeals of endorsement denials.

Limited Entry Permit "B" Endorsements

The Pacific Groundfish limited entry program went into effect January 1, 1994. Because this program was a radical change from the previous fishery, which was entirely open access, the Council designed a temporary alternative to the primary "A" permit endorsement, to assist fishers with a historically low level of participation who did not qualify for an "A" permit. These temporary permits were to be phased out of the fishery over time.

"B" endorsements were initially intended to allow owners of vessels that may have participated in the fishery at a low level during the window period, or at higher levels prior to the window period, to continue in the fishery for an adjustment period before they would be required to have a permit with an "A" endorsement. The "B" endorsements were developed so that there would be at least 7 years between the

announcement of the cutoff date to qualify for an "A" endorsement and the expiration of the endorsements. All "B" endorsements expired at the end of 1996. Seven years was reported as the minimum tax depreciation period for fishing vessels, and the period commonly chosen by vessel owners. Thus, the adjustment years ensured that a large number of the vessel owners receiving "B" endorsements had the opportunity to completely depreciate their vessels before making their adjustments to other fisheries, or investing in permits with "A" endorsements.

This proposed rule would eliminate the current regulations that relate to "B" endorsements at 50 CFR 660.336. As of December 31, 1996, these regulations had no relevance.

Classification

At this time, NMFS has not determined that the FMP amendment that this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to, penalty for failure to, comply with a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA) unless the collection-of-information displays a currently valid Office of Management and Budget (OMB) control number. This proposed rule contains a collection of information burden only for those persons who are initially denied sablefish endorsements, but who wish to provide documentation to prove that they have in fact met the endorsement qualifications. It is expected that the burden will be 2 hours to make an appeal. NMFS has requested OMB approval for this collection of information. This is a one-time only collection of information, and contains no annual reporting and recordkeeping burden. Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information,

including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information burden or any other aspect of the information collection may be sent to OMB, listed in the ADDRESSES section above.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, as follows:

The proposed rule would limit participation in the limited entry fixed gear "primary" or "regular" sablefish season north of 36° N. latitude to those persons meeting the following qualifications for a sablefish endorsement to their limited entry permits: at least 16,000 pounds of sablefish catch in any one year from 1984 to 1994.

Of the 237 vessel owners that currently hold fixed gear limited entry permits, 62 (26 percent) will not receive sablefish endorsements, which is a substantial number of small entities as a portion of the limited entry, fixed gear sablefish fleet. However, only 23 vessel owners (less than 10 percent) that derived more than 5 percent of their 1995 income from the sablefish fishery will not receive sablefish endorsements; thus the number of small entities that will incur a significant impact from these regulations is not substantial. Sablefish endorsement recipients will be assessed a one-time endorsement processing fee that has been initially estimated at \$800. Costs of production and compliance costs would only increase for those permit holders who choose to purchase new permits with attached sablefish endorsements—an unlikely course of action for those persons with less than 5 percent of their gross annual revenues resulting from the sablefish fishery. There are no capital costs associated with this action, and no small businesses will be forced to cease operations through this proposed action.

This amendment is intended to promote improved safety, stability, and economic viability of the sablefish fishery by limiting or reducing harvesting capacity in the Pacific Coast sablefish fishery.

The socio-economic impacts are discussed above and contained in the EA/RIR/IRFA.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 19, 1997.

Charles Karnella,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

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

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

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

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

2. In § 660.306, new paragraphs (s) and (t) are added to read as follows:

§ 660.306 Prohibitions.

* * * * *

(s) During the "regular" or "mop-up" season described in § 660.323(a)(2)(iii) and (iv), take and retain, possess or land sablefish taken and retained north of 36° N. lat., with longline or trap (or pot) gear, by a vessel with a limited entry permit registered for use with that vessel and endorsed for longline or trap (or pot) gear, that does not have a sablefish endorsement.

(t) During the "regular" or "mop-up" season described in § 660.323(a)(2)(iii) and (iv), take and retain, possess or land sablefish taken and retained north of 36° N. lat., with open access gear, by a vessel with a limited entry permit registered for use with that vessel and endorsed for longline or trap (or pot) gear, that does not have a sablefish endorsement.

3. In § 660.323, paragraph (a)(2) introductory text is revised and paragraphs (a)(2)(i) through (a)(2)(v) are redesignated as (a)(2)(ii) through (a)(2)(vi) respectively and paragraph (a)(2)(i) is added to read as follows:

§ 660.323 Catch Restrictions.

(a) * * *

(2) *Nontrawl Sablefish.* This paragraph (a)(2) applies to the regular and mop-up season for the nontrawl limited entry sablefish fishery, except for paragraphs (a)(2)(i) and (vi) of this section, which also apply to the open-access fishery.

(i) *Sablefish endorsement.* In order to lawfully participate in the regular season or mop-up season for the nontrawl limited entry fishery, the owner of a vessel must hold (by ownership or otherwise) a limited entry permit for that vessel, affixed with both a gear endorsement for longline or trap (or pot) gear, and a sablefish endorsement.

* * * * *

4. In § 660.333, paragraphs (a), the first sentence of (c)(1), (d), and (h)(2)(iii) are revised to read as follows:

§ 660.333 Limited entry fishery - general.

(a) *General.* Participation in the limited entry fishery requires that the owner of a vessel hold (by ownership or otherwise) a limited entry permit affixed with a gear endorsement registered for

use with that vessel for the gear being fished. A sablefish endorsement is also required for a vessel to participate in the regular and/or mop-up seasons for the nontrawl, limited entry sablefish fishery, north of 36° N. lat. There are three types of gear endorsements: "A," "Provisional A," and "Designated species B." More than one type of gear endorsement may be affixed to a limited entry permit. While the limited entry fishery is open, vessels fishing under limited entry permits may also fish with open access gear; except that during a period when the limited entry fixed gear sablefish fishery is limited to those vessels with sablefish endorsements, a longline or pot (or trap) limited entry permit holder without a sablefish endorsement may not fish for sablefish with open access gear.

* * * * *

(c) *Transfer and registration of limited entry permits and gear endorsements.*

(1) Upon transfer of a limited entry permit, the FMD will reissue the permit in the name of the new permit holder with such gear and, if applicable, species endorsements as are eligible for transfer with the permit. * * *

* * * * *

(d) *Evidence and burden of proof.* A vessel owner (or person holding limited entry rights under the express terms of a written contract) applying for issuance, renewal, transfer, or registration of a limited entry permit has the burden to submit evidence that qualification requirements are met. The owner of a permit endorsed for longline or trap (or pot) gear applying for a sablefish endorsement under § 660.336(c)(2) has the burden to submit evidence to prove that qualification requirements for a sablefish endorsement are met. The following evidentiary standards apply:

* * * * *

(h) * * *

(2) * * *

(iii) Two or more limited entry permits with "A" gear endorsements for the same type of limited entry gear may be combined and reissued as a single permit with a larger size endorsement. With respect to permits endorsed for nontrawl limited entry gear, a sablefish endorsement will be issued for the new permit only if all of the permits being combined have sablefish endorsements. The vessel harvest capacity rating for each of the permits being combined is that indicated in Table 2 of this part for the LOA (in feet) endorsed on the respective limited entry permit.

* * * * *

5. In § 660.334, paragraph (a) is revised to read as follows:

§ 660.334 Limited entry permits—"A" endorsement.

(a) A limited entry permit with an "A" endorsement entitles the holder to participate in the limited entry fishery for all groundfish species with the type(s) of limited entry gear specified in the endorsement, except for sablefish harvested north of 36° N. lat. during times and with gears for which a sablefish endorsement is required. See § 660.336 for provisions regarding sablefish endorsement requirements.

* * * * *

6. In § 660.335, paragraph (a) is revised to read as follows:

§ 660.335 Limited entry permits—"Provisional A" endorsement.

(a) A "provisional A" endorsement entitles the holder to participate in the limited entry fishery for all groundfish species with the type(s) of limited entry gear specified in the endorsement, except for sablefish harvested north of 36° N. lat. during times and with gears for which a fixed gear sablefish endorsement is required. See § 660.336 for provisions regarding sablefish endorsement requirements.

* * * * *

7. § 660.336 is revised to read as follows:

§ 660.336 Limited entry permits—sablefish endorsement.

(a) *General.* Participation in the limited entry fixed gear sablefish fishery during the "regular" or "mop-up" season described in § 660.323 (a)(2)(iii) and (iv) north of 36° N. lat., requires that an owner of a vessel hold (by ownership or otherwise) a limited entry permit with a longline or trap (or pot) endorsement and a sablefish endorsement, and that the permit has been registered for use with that vessel. During a period when the limited entry sablefish fishery is restricted to those limited entry vessels with sablefish endorsements, a vessel with a longline or pot limited entry permit but without a sablefish endorsement cannot be used to harvest sablefish in the open access fishery, even with open access gear.

(1) A sablefish endorsement will be affixed to the permit and will remain valid when the permit is transferred.

(2) A sablefish endorsement is not separable from the limited entry permit,

and therefore may not be transferred separately from the limited entry permit.

(b) *Endorsement qualifying criteria.* A sablefish endorsement will be affixed to any limited entry permit that meets the sablefish endorsement qualifying criteria.

(1) Permit catch history will be used to determine whether a permit meets the qualifying criteria for a fixed gear sablefish endorsement. Permit catch history includes the catch history of the vessel(s) that initially qualified for the permit, and subsequent catch histories accrued when the limited entry permit or permit rights were associated with other vessels. If the current permit is the result of the combination of multiple permits, then for the combined permit to qualify for an endorsement, at least one of the permits that were combined must have had sufficient sablefish history to qualify for an endorsement; or the permit must qualify based on catch occurring after it was combined, but taken within the qualifying period. The catch history of a permit also includes the catch of any interim permit held by the current owner of the permit during the appeal of an initial NMFS decision to deny the initial issuance of a limited entry permit, but only if the appeal for which an interim permit was issued was lost by the appellant, and the owner's current permit was used by the owner in the 1995 limited entry sablefish fishery. The catch history of an interim permit where the full "A" permit was ultimately granted will also be considered part of the catch history of the "A" permit. Only sablefish catch regulated by this part that was taken with longline or fish trap (or pot) gear will be considered for this endorsement.

(2) The sablefish endorsement qualifying criteria are: at least 16,000 lb (7,257.5 kg) round weight of sablefish caught with longline or trap (or pot) gear in one calendar year from 1984 through 1994. All catch must be sablefish managed under this part. Sablefish taken in tribal set aside fisheries does not qualify.

(c) *Issuance process.* (1) The FMD will notify each limited entry, fixed gear permit owner by letter whether Pacific States Marine Fisheries Commission's Pacific Fisheries Information Network (PacFIN) records indicate that his

permit qualifies for a sablefish endorsement. A person whose permit qualifies based on PacFIN information will be issued a revised limited entry permit with a sablefish endorsement, upon payment of a one-time processing fee.

(2) Within 30 days of the issuance of the letter by the FMD indicating that PacFIN records do not show that the permit qualifies for a sablefish endorsement, a permit owner may submit information to the FMD to demonstrate that the permit qualifies for a sablefish endorsement. Section 660.333(d) sets out the relevant evidentiary standards and burden of proof.

(3) After review of the evidence submitted under § 660.336(c)(2), and any additional information the FMD finds to be relevant, the FMD will notify a permit owner if the permit qualifies for a sablefish endorsement. A person whose permit qualifies will be issued a revised limited entry permit with a sablefish endorsement upon payment of a processing fee.

(4) After review of the evidence submitted under § 660.336(c)(2), and any additional information the FMD finds to be relevant, the FMD will notify a permit owner in writing if his permit does not qualify for a sablefish endorsement.

(5) Within 30 days of the issuance of a letter under § 660.336(c)(4) that a permit(or interim permit) does not qualify for a sablefish endorsement, an appeal may be filed with the Regional Administrator. The appeal must be in writing and must allege facts or circumstances, and include credible evidence, demonstrating why the permit (or interim permit) qualifies for the sablefish endorsement. The appeal of a denial of a sablefish endorsement will not be referred to the Council for a recommendation under § 660.340(e).

(6) Absent good cause for further delay, the Regional Administrator will issue a written decision on the appeal within 45 days of receipt of the appeal. The Regional Administrator's decision is the final administrative decision of the Department of Commerce as of the date of the decision.

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