

international agreement to which the United States is a party.

Another possible interpretation for those situations in which the rebuilding period would exceed 10 years in the absence of fishing is to treat the 10-year limit as a guide in determining the length of a rebuilding program. In these cases, the question that immediately arises is, how long can the rebuilding program be? Must it be constrained, as in the scenario above, or can it be longer? If so, how much longer? NMFS believes that it is not desirable to have an unspecified time period for rebuilding and that such an indeterminate rebuilding period would be inconsistent with the other provisions of the Magnuson-Stevens Act. The guidelines could potentially use the factors in section 304(e)(4)(A)(i) to interpret "as short as possible" to limit the time period beyond 10 years, but NMFS believes that any rebuilding program that exceeded the period based on no fishing mortality would need to be justified and constrained by the life history characteristics of the stock.

The issue is the interpretation of the statutory language and how much flexibility the statutory language allows. NMFS is specifically seeking comment on whether or not it is correct in its interpretation that the duration of rebuilding programs should not be unspecified and, if so, what factors should be considered in determining that duration.

4. Mixed-stock exception. The proposed guidelines, at § 600.310(6), relied on the statute's use of the term "fishery" to justify retention of a limited exception to the requirement to prevent overfishing on all stocks. The exception would allow overfishing of one species in a mixed-stock complex, but only if certain stringent conditions are met (i.e., analysis demonstrates that it will result in long-term net benefits to the Nation and that a similar level of benefits cannot be achieved through other means; and the resulting rate of fishing mortality will not cause any species or ecologically significant unit thereof to require protection under the Endangered Species Act (ESA) or any stock or stock complex to fall below its minimum stock size threshold).

This proposed provision has been criticized by those who believe the Magnuson-Stevens Act allows no exceptions to the requirement to prevent overfishing, even in mixed-stock fisheries. Others have criticized the provision as too stringent and believe the Magnuson-Stevens Act allows overfishing on one or more stocks in mixed-stock fisheries, even if the result is to maintain, or reduce stocks to, an overfished status.

The issue is whether to delete or liberalize the limited exceptions, and whether to add other exceptions. One suggestion is that the recovery of stocks listed under the ESA should be handled under that statute, not under the Magnuson-Stevens Act. Another is that stocks whose rebuilding would not be assisted by cessation of fishing mortality in the exclusive economic zone should be exempt from the provisions of section 304(e)(4) of the Magnuson-Stevens Act.

NMFS will respond to comments received on national standard 1 during this 30-day comment period, and to all comments received on the proposed national standard guidelines during the comment period for the proposed rule, in the preamble to the final rule.

Dated: December 19, 1997.

**Gary C. Matlock,**

*Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 971208294-7294-01; I.D. 103097B]

RIN 0648-AJ20

#### **Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Restrictions on Frequency of Limited Entry Permit Transfers; Sorting Catch by Species; Retention of Fish Tickets**

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

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

**SUMMARY:** NMFS issues this proposed rule to implement management measures recommended by the Pacific Fishery Management Council (Council) that restrict the frequency of limited entry permit transfers to once every 12 months, with transfers taking effect on the first day of a cumulative landings limit period. This rule would also require the sorting of all groundfish species with trip limits, size limits, quotas, or harvest guidelines at the point of landing, and the retention of landings receipts on board the vessel that has made those landings. This proposed rule is intended to constrain the introduction of new fishing effort into the Pacific Coast groundfish

fisheries, and to improve the enforceability of Federal and state fisheries regulations. This action would be taken under the authority of the Pacific Coast Groundfish Fishery Management Plan (FMP), and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Comments must be submitted in writing by February 12, 1998.

**ADDRESSES:** Comments may be mailed to William Stelle, Jr., Administrator, Northwest Region, (Regional Administrator) NMFS, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115-0070; or to William Hogarth, Acting Administrator, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213. Information relevant to this proposed rule is available for public review during business hours at the Office of the Administrator, Northwest Region, NMFS, and at the Office of the Administrator, Southwest Region, NMFS. Copies of the Environmental Assessments/Regulatory Impact Reviews (EA/RIRs) for these issues are available from Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson at 206-526-6140, or Svein Fougner at 562-980-4034, or the Pacific Fishery Management Council at 503-326-6352.

**SUPPLEMENTARY INFORMATION:** NMFS is proposing three separate regulatory changes: (1) Restricting the frequency of limited entry permit transfers to once every 12 months, with transfers taking effect only on the first day of a cumulative landings limit period; (2) providing Federal regulatory support for existing state requirements that require the sorting of all groundfish species with trip limits, size limits, quotas, or harvest guidelines; and (3) providing consistent regulatory requirements on the retention of landings receipts throughout the management area. These regulatory changes were recommended by the Council at its October 1996 and June 1995 meetings, respectively. The background and rationale for this proposed rule are summarized below. More details appear in the EA/RIRs for these actions.

#### **Restrictions on Permit Transfer Frequency**

Background. A license limitation program for the Pacific Coast groundfish

fisheries went into effect at the beginning of the 1994 fishing season. The purpose of this program was to control the size and harvesting capacity of the Washington, Oregon, and California fleet, which had expanded far beyond the effort needed to catch the available groundfish resource. This license limitation program includes restrictions on the number of participants in a limited entry groundfish fishery, as well as restrictions on vessel length expansion and on gear used by permitted vessels, as measures to control total fleet harvesting capacity. However, the initial limited entry licensing formula was fairly liberal, capping fishery participation without reducing capacity, and in fact leaving opportunity for an increase in fishing effort.

Most of the West Coast groundfish catch is harvested by limited entry vessels, which use trawl, longline, or pot (or trap) gears. Vessels in the open access fishery use a variety of gear types, including pot and longline gears, to take the remainder of the harvest.

In 1996, the Council introduced 2-month cumulative landings limit periods for all gears. This cumulative landings approach allows each vessel to catch up to a specific amount of different groundfish species over a 2-month period, with not more than 60 percent of the cumulative period total to be taken in either month of the period. Cumulative period catch limits are set by comparing current or previous landings rates with the year's total available catch. Landing limits have been used to slow the pace of the fishery and stretch the fishing season out over as many months as possible, so that the overall harvest target is not reached until the end of the year.

Current Federal regulations place no restrictions on the frequency or timing of permit transfers, a situation that allows expansion of new effort into the fishery. In an open access fishery, the participating vessels do not participate constantly. For example, if there are 100 vessels in the fishery, they do not all participate for 12 months of the year. Most vessels are out of the fishery at times for repairs, or to participate in other fisheries. When the limited entry program went into effect, the vessels that received permits did not have a history of fishing constantly in the fishery. However, as the limited entry program has progressed, permit owners have realized that it is possible to use a permit for 12 months of the year by leasing the permit out to other vessels during times when the original vessel is not directly participating in the Pacific Coast groundfish fishery. If a permit is

shared between two or more vessels in a year, those multiple vessels will exert more effort in the fishery than if just one vessel had used the permit, with the permit lying idle during that vessel's days away from the fishery. Historically, individual vessels have not participated in the Pacific groundfish fishery every day of the year.

Permits may also be transferred at any time during a cumulative limit period, which means that two or more vessels could use the same permit during the 2-month cumulative limit period, with each vessel fishing towards its own cumulative limit. Transferring limited entry permits between vessels or owners to circumvent vessel landing limits is inconsistent with specific language of the FMP. Transfers of this nature also increase effort in the fishery.

#### Council Action

At the October 1996 Council meeting, the Council recommended constraining groundfish fleet effort expansion by restricting the frequency of limited entry permit transfers to once every 12 months, with transfers taking effect only on the first day of a major cumulative limit period. These periods will be announced each year in the **Federal Register** with the annual specifications and management measures, or with routine management measures when the cumulative limit periods are changed. Cumulative limit periods that govern just a portion of the groundfish fisheries, such as the fixed gear regular sablefish season, are not considered "major" cumulative limit periods. For permit holders participating in the "B" delivery platoon, transfer effectiveness dates would align with "B" platoon cumulative limit period dates, and the new recipient of the "B" platoon permit would be required to participate in "B" platoon deliveries for the remainder of the calendar year.

The Council expects that this proposed action would constrain effort expansion in two ways: (1) it would prevent two or more vessels from sharing a limited entry permit during a single cumulative limit period and thereby landing more than one limit on that permit, and (2) it would discourage increased fishing effort in the fishery by preventing limited entry permit holders from temporarily transferring their permits during times when the vessel is undergoing repairs, operating in other fisheries, or otherwise idle.

Of the permit leases made in 1994 and 1995, 67 percent were shorter than 6 months in length, and 89 percent were shorter than one year in length. The Council's recommendation to limit the frequency of limited entry permit

transfers to one time in any 12 month period would reduce most of the current leasing activity on limited entry permits. The average length of all limited entry permit leases, for all gears and for both years was 176 days, while the median lease length for those same conditions was 130 days, which means that the majority of permit leases have shorter than average durations.

Fixed gear permits are most frequently transferred as leases. Most fixed gear permits have longline gear endorsements. Because there are many open access vessels that fish with longline gear, there are always several open access fishers who are ready to transfer into the limited entry fisheries as longliners leasing limited entry permits. This easy transfer of additional effort from the open access fishery increases the number of potential participants in an already over-capitalized fleet. Council recommendations to restrict the frequency of limited entry permit transfer would eliminate the annual influx of short-term fixed gear participants into the large but brief, limited entry, fixed gear regular sablefish season.

Permit transfer trends for limited entry trawl vessels are more linked to sales activity than to lease transfers. Trawl permits had relatively low lease activity in 1994 and 1995, but a significant number of permits changed ownership more than once in those years. There were 105 permits that changed ownership more than once during the 1994-1995 period, 79 of which changed ownership twice during those years. The proposed Council action to limit the frequency of limited entry permit transfers to once every 12 months would eliminate documented permit activity of three, four, or five ownership changes in a 2-year period.

Members of the West Coast fishing industry commented on the crafting of this Council recommendation, and the Council's action on this issue was generally well received by the limited entry fleet. However, members of the at-sea component of the whiting fishery opposed the action, because motherships would no longer be able to lease Pacific coast permits for use by their high-power, Alaska-based catcher boats, which do not participate in the non-whiting portion of the groundfish fishery. Representatives from this sector of the fishery argued at the Council meeting that high-power catcher boats are necessary to fish farther offshore for whiting, where chances of yellowtail rockfish and salmon bycatch are lower. Certain fishing corporations that own Pacific Coast groundfish limited entry

permits have also been in the practice of leasing out their catcher boat permits during times outside of the at-sea component of the whiting fishery, and restrictions on lease transfers would eliminate that permit leasing income for those corporations. Analysis of the at-sea sector of the groundfish fleet has shown that in 1994 and 1995, out of 49 permits with at-sea deliveries, 13 permits had been transferred for periods less than 12 months in duration. The Council determined that the benefits to the fishery overall that could be gained from restricting the entrance of new effort into the fishery as a whole outweighed the concerns of the at-sea whiting sector.

### Hardship Exemptions

In its October 1996 recommendation, the Council supported waiving the restriction on transferring permits once every 12 months in cases of hardship. Hardship exemptions could not be used to waive the requirement that transfers take effect only on the first day of a cumulative limit period. Hardship exemptions were defined for this issue as either death of the permit holder, or loss of the permitted vessel. In previous meetings, the Council and its advisory bodies had also considered exemptions in cases of serious illness of the permit holder, but then decided to define "hardship" narrowly, to limit the discretion in using the exemption. This narrow definition covers the cases most likely to require a transfer, but restricts the possibility of abuse of the process.

If a limited entry permit holder applies to transfer his or her permit within 12 months of the last transfer, the permit holder will be required to submit documents demonstrating that the transfer meets the exceptions of death of the permit holder or loss of the vessel. Loss of vessel is defined in the Pacific Coast groundfish regulations at § 660.302, "Totally lost means the vessel being replaced no longer exists in specie, or is absolutely and irretrievably sunk or otherwise beyond the possible control of the owner, or the costs of repair (including recovery) would exceed the repaired value of the vessel." Death of a permit holder would be documented by a copy of the death certificate of the permit holder.

If the permit is owned by a partnership or a corporation, a transfer within 12 months of the last transfer would be allowed if a person or persons owning 50 percent or more of the ownership interest in the partnership or corporation has died. NMFS understands the Council's recommendation for allowance of a hardship exemption in cases of death to

mean that a transfer should be allowed in cases where the primary owner of the permit has died. NMFS is also aware that many of the limited entry permits are owned by partnerships or corporations, entities that do not "die" in the same sense that a human person would die. However, the Pacific Coast groundfish fishery does include several permit-owning partnerships and corporations whose only shareholders are limited to one of the following: an individual, a husband and wife, or a parent and child.

NMFS includes the provision that the hardship exemption may be applied in cases of the death of a person who owned 50 percent or greater interest in the permit so that individuals and small businesses will not be denied use of the hardship exemption in cases where the businesses have been incorporated, but the primary owner of the business has died. In these situations, the business is more likely to be significantly affected by the death of the owner. For a larger corporation or partnership, the death of one stockholder or partner is much less likely to severely affect the operation of the business. NMFS selected the 50 percent ownership limit to have a clear, easy to implement standard that still accommodates those most likely to be adversely affected by death of an owner. NMFS particularly seeks comment on this provision.

If a request for transfer is denied, the Fisheries Management Division (FMD), NMFS Northwest Region, will explain in writing why the transfer request has been denied. Further, if the transfer is denied, the permit owner may appeal that decision within 30 days to the Regional Administrator, explaining the basis for the appeal. The Regional Administrator will decide upon the appeal within 45 days in a final agency action.

### Sorting of Groundfish Catch by Species

Under current regulations at § 660.306, fishers landing groundfish at West Coast ports must sort, before the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, if the weight of the total delivery exceeds 1,361 kg (3,000 lb) round weight. NMFS introduced this regulation in 1990, when a 1,361 kg (3,000 lb) landing was thought to be almost insignificant. When the Council decided to revisit this issue in 1995, however, the Council's analysis found that landings of less than 1,361 kg (3,000 lb) may comprise a significant portion of the catch, especially among landings to California ports. According to the July 1996 EA/RIR for this issue, in the 1993 California

rockfish fishery, 96 percent of the hook-and-line trips (53 percent by weight) and 75 percent of the trawl trips (14 percent by weight) landed less than 1,361 kg (3,000 lb).

The Council has a policy of maintaining a year round groundfish fishery through adjustable 2-month cumulative limits. Capitalization of the fleet continues to rise, which means that individual vessels are more able to catch the available cumulative limits faster than in the past. To keep this overcapitalized fleet from exceeding harvest guidelines on the groundfish stocks that it manages, the Council has had to periodically decrease the 2-month cumulative limits. As these limits are decreased, small trips make up a greater portion of the overall catch. In order to improve enforcement efforts and prevent loss of data in a fishery with shrinking landings limits, the Council has proposed requiring the sorting of all species managed by trip limits, size limits, quotas, or harvest guidelines. This measure is consistent with regulations that Washington and Oregon already have in place; although Washington does not require sorting of species with harvest guidelines but with no trip limits. This regulation introduces a new requirement for California fishers landing less than 3,000 lb (1,361 kg) per trip, but most fishers, already sort their catch by species prior to offloading as part of the marketing transaction between fisher and fish processor. California commonly models its fisheries management regime on Federal regulations and is likely to change its state regulations to match the Federal sorting regulations if such regulations become final. Fishers landing shortbelly rockfish or jack mackerel in Washington would also be affected by this requirement, but these species are underutilized and neither species has been landed in Washington in any great quantity to date. Requiring the sorting of species with harvest guidelines but with no trip limits could have a future impact if the Council decides to implement new harvest guidelines for species not yet managed by harvest guidelines without also implementing trip limits for those species. This requirement would facilitate enforcement because agents would not have to examine unsorted catches. Compliance could be enhanced if fishers sorted at sea because fishers would be more aware of the harvest amount of individual species.

### Retaining Fish Tickets On Board the Vessel

Groundfish trip limits are now specified as a cumulative amount that

may be retained in any calendar month or 2-month period. Most vessels make multiple trips during a month or two-month period, and enforcement personnel at the dock would have difficulty determining whether a vessel has exceeded its limits if all the vessel's landings receipts were not readily accessible. Current Federal regulations at § 660.303 require that fishers comply with state law on retaining and filing all reports of groundfish landings. Each state has requirements for retaining fish tickets on board vessels for enforcement purposes; however, the regulations are inconsistent from state to state and there are no unifying Federal regulations on this subject.

Fishers landing groundfish in Washington and Oregon are required to keep their landings receipts on board for 90 days. In California, fish tickets must be kept throughout the cumulative trip limit period of the landings and for 15 days thereafter. When the Council addressed this issue at its June 1995 meeting, they recommended a change to Federal regulations that would both standardize the record retention requirements coastwide, and set regulatory language that would accommodate the different cumulative limit periods of the different sectors of the fishery. Consistency along the coast under Federal regulations is needed to ensure that enforcement agents have consistent access to on board landings records.

The Council forwarded a recommendation to NMFS on this issue because they saw a need to improve enforceability of landings restrictions across the three states with Federal regulatory language that recognizes a flexible management system with potentially changing cumulative limit period durations. This Proposed Rule would require that all West Coast groundfish fishers retain landings receipts on board their vessels throughout the cumulative trip limit period of the landings and for 15 days thereafter. The proposed rule also clarifies that the fish tickets must be provided to an authorized officer upon request. This is a minor regulatory change that is expected to eliminate confusion among fishers as to which state's landings receipts should be kept on board for what length of time.

### **Biological Impacts**

Marine biological background and biological impacts of the groundfish 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 Assessments for these actions. These documents may be obtained from the Pacific Fishery Management Council. (See **ADDRESSES** above).

Restricting the frequency of limited entry permit transfers is not expected to have a direct biological impact on the West Coast groundfish fishery, although it may trigger positive secondary impacts following the reduction of fishery effort. By reducing effort in the limited entry groundfish fishery, harvesting pressure on the targeted stocks will also decline, and annual harvest guidelines for the groundfish stocks will be achieved at a slower rate than under a system of unrestricted permit transfers.

Requiring fishers to sort their groundfish landings under 3,000 lb (1,361 kg) would also have minor, positive biological impacts. To the extent that more and better data on species composition become available, harvest monitoring would be improved. Complete sorting information is already required under Washington and Oregon State regulations, so the primary benefit would result from improved data on California groundfish landings from small vessels. In addition, enforcement would be facilitated, allowing for expanded enforcement coverage for the same amount of agent effort. No biological impacts, positive or negative, are expected to result from standardizing the required period of fish ticket retention.

Biological impacts from these actions are not significant, and where they occur, will likely be positive. The acceptable biological catches and harvest guidelines of West Coast groundfish stocks would not be affected by these actions.

### **Socio-Economic Impacts**

Permit holders would be unable to lease their permits for short periods of time under the proposed action, as they might wish to do when pursuing another fishery, or when the permitted vessel is under repair. Thus, permit holders will lose the possibility of the dual revenues that might be made by both leasing out their own permit and simultaneously pursuing a fishery outside of the groundfish limited entry fishery.

This proposed measure would slow the rate of permit transfers, as it would reduce incentives for temporary permit transfers. If the benefits of temporarily transferring permits are reduced, the value of the permits will decrease. However, by reducing the benefits of temporary permit transfers, permit

holders with minimal interest in the fishery may be more likely to sell their permits. As more permanent permit transfers are made, the permit prices should rise to compensate for the initial drop that may follow restrictions on permit transfer frequency. This proposed action may also lead to more fleet stability, as it will discourage the permit speculators who might lease out permits to several different boats throughout the year. Similarly, persons who have been temporarily transferring into the fishery will have a greater incentive to make long-term commitments to the fishery by buying a permit. The benefit of this restriction is that due to the reduction of effort, the value of the groundfish resource would be increased for permitted fisheries. The levels of trip limits should be higher than it would be without this restriction.

Requiring the sorting of groundfish species with trip limits, size limits, quotas, or harvest guidelines would not impose an additional burden on Washington and Oregon fishers, as those two states already have similar state regulations in place for landings sorting. Washington fishers are not required to sort harvest guideline species, but the only species for which there are harvest guidelines but no trip limits are shortbelly rockfish and jack mackerel, both of which are underutilized and infrequently caught. The additional burden of sorting would fall on fishers landing less than 3,000 lb (1,361 kg) per trip in California. However, many of the species landed in this sector of the fishery are already sorted during the sales transaction between fisher and processor into marketing categories that are the same as species sorting categories. This requirement would not affect the amount of fish that are harvested.

The measure to standardize fish ticket retention requirements may lead to some initial confusion among fishers from the three different states, but that should be resolved by the fact that state and Federal requirements will be consistent with each other. The sorting requirement, and the clear directive to make fish tickets available to authorized officers would facilitate enforcement.

### **Classification**

The Assistant Administrator for Fisheries, NOAA, has initially determined that this action is consistent with the FMP and the national standards and other provisions of the Magnuson-Stevens Act.

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

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 that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Most of the permit holders and vessels in the Pacific Coast fleet are considered small entities. NMFS considers an impact to be "significant" if it results in a reduction in annual gross revenues by more than 5 percent, an increase in annual compliance costs of greater than 5 percent, compliance costs at least 10 percent higher for small entities than for large entities, compliance costs that require significant capital expenditures, or the likelihood that 2 percent of the small entities would be forced out of business. NMFS considers a "substantial number" of small entities to be more than 20 percent of those small entities affected by the regulation engaged in the fishery.

The provision of the rule limiting the frequency of limited entry permit transfers would prevent permit holders from leasing their permits for periods shorter than 12 months. There may be economic losses resulting from this provision for permit holders who generate more income from short-term permit leases than they would from fishing those permits.

NMFS analyzed the transfer actions for each permit that existed in 1996. If a permit was transferred in 1996, 1995 and 1997 records would show whether that transfer had occurred within 12 months of a previous or subsequent transfer. At the time that the EA/RIR was written for this action, only 1994 and 1995 permit data were available, which made a full analysis of 1995 permit transfers impossible. In 1996, approximately 539 vessels were licensed to participate in the Pacific Coast limited entry groundfish fishery. Of those 539 permits, 75 permits (approximately 14 percent of permits held in 1996) were sold or leased for a duration of shorter than 12 months, with some of those permits being sold or leased more than once in 1996. Because 14 percent is below the 20 percent "substantial number" threshold, this provision would not impact a substantial number of small entities.

NMFS cannot quantify the level of economic impact to the 14 percent of the fleet that would be expected to transfer their permits more often than once every twelve months. The fishing strategies, permit lengths, gear endorsements, and reasons for transferring permits differ for each affected fisher. Permit holders who lease

out their permits and permit lessees may both suffer economic losses from reduced opportunities to enter into short-term leases. It is not known how these individuals would change their fishing strategies if they cannot make leases for shorter than twelve months. Permit holder strategies may include increased personal participation in the groundfish fishery, hiring skippers to fish their groundfish permits, year-long leases for their permits, or sale of their permits. Persons who have taken short-term leases on permits in the past may change their fishing strategies to concentrate on non-groundfish species, fish for groundfish in the open access fishery, take year-long leases on limited entry permits, or buy limited entry permits. Therefore, the degree of economic loss that these two types of people would suffer will depend upon individual ability to alter fishing and business strategies. It is reasonable to expect that some small businesses may suffer significant economic losses if this rule is implemented. However, NMFS is not able to determine how many small businesses in the Pacific Coast groundfish fleet would have a reduction in annual gross revenues by more than 5 percent, for more than 20 percent of the participants; an increase in total costs of production of more than 5 percent as a result of an increase in compliance costs, for 20 percent or more of the affected small entities; compliance costs as a percent of sales for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities, for 20 percent or more of the affected small entities; capital costs of compliance that represent a significant portion of capital available to small entities, considering internal cash flow and external financing capabilities; or two percent of the small business entities affected being forced to cease business operations.

The provision to require sorting of groundfish species with trip limits, size limits, quotas, or harvest guidelines is expected to have a minimal impact, if any, on small entities. Oregon and Washington already have species sorting requirements similar to those proposed by this rule; although Washington does not require the sorting of species with harvest guidelines but with no trip limits. The only species for which there are harvest guidelines but no trip limits are shortbelly rockfish and jack mackerel, both of which are underutilized and infrequently caught. California has similar species sorting requirements for groundfish landings greater than 3,000 pounds. Thus, only

persons making landings of less than 3,000 pounds of groundfish in California will be affected by this rule. Because many of these persons already sort their catch by species during the sale of the fish to processors, this sorting requirement is expected to impose very little economic or other burdens on small entities. Furthermore, the time and effort that would be necessary to comply with this proposed sorting requirement would be minimal and would not be expected to result in a reduction in annual gross revenues by more than 5 percent, an increase in annual compliance costs of greater than 5 percent, compliance costs at least 10 percent higher for small entities than for large entities, compliance costs that require significant capital expenditures, or the likelihood that 2 percent of the small entities would be forced out of business.

The provision to require retention of landings receipts on board the vessel that has made the landing is expected to have no economic impact on small entities. All three Pacific Coast states already require the retention of landings receipts on board the vessel that has made the landing. Because Federal requirements for landings receipt retention would standardize the requirements across the three states, these requirements are expected to eliminate the regulatory burden of following different rules when landing in different states.

This rule, if adopted, would not change the amount of fish caught or retained by limited entry permit holders or the number of vessels licensed in the limited entry fleet. None of the requirements of this proposed rule would have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

NMFS issued Biological Opinions under the ESA on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, and May 14, 1996 pertaining to the impacts of the groundfish fishery on Snake River spring/summer chinook, Snake River fall chinook, and Sacramento River winter chinook. The opinions concluded that implementation of the FMP for the Pacific Coast Groundfish Fishery is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat. This proposed rule is within the scope of these consultations. Because the impacts of this action fall within the scope of the impacts considered in these Biological Opinions,

NMFS has determined that additional consultations are not required for this action. In addition, coho salmon south of Cape Blanco, OR, recently have been listed as threatened (northern CA/southern OR) and endangered (central CA) under the ESA. This action will not affect coho salmon.

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

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

Dated: December 19, 1997.

#### Rolland A. Schmitt, Jr.

Assistant Administrator for Fisheries,  
National Marine Fisheries Services.

For the reasons set forth 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 § 660.303, paragraph (c) is added to read as follows:

#### § 660.303 Reporting and recordkeeping.

\* \* \* \* \*

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

3. In § 660.306, paragraph (h) is revised and paragraph (x) is added to read as follows:

#### § 660.306 Prohibitions.

\* \* \* \* \*

(h) Fail to sort, prior to the first weighing after offloading, those

groundfish species or species groups for which there is a trip limit, size limit, quota, or harvest guideline, if the vessel fished or landed in an area during a time when such trip limit, size limit, harvest guideline or quota applied.

\* \* \* \* \*

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

4. In § 660.333, paragraphs (c)(1) and (c)(2) are revised; paragraphs (c)(3) and (c)(4) are redesignated as (c)(4) and (c)(5) and a new (c)(3) is added; paragraph (d) introductory text is revised; paragraphs (f)(2) and (f)(3) are redesignated as (f)(3) and (f)(4) and a new (f)(2) is added to read as follows:

#### § 660.333 Limited entry fishery - general.

\* \* \* \* \*

(c) \* \* \*

(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 endorsements, and, if applicable, species endorsements as are eligible for transfer with the permit. Permit transfers will take effect on the first day of the next major limited entry cumulative limit period following the date of the transfer. Transfers of permits designated as participating in the "B" platoon will become effective on the first day of the next "B" platoon major limited entry cumulative limit period following the date of the transfer. No transfer is effective until the limited entry permit has been reissued and is in the possession of the new permit holder.

(2) A limited entry permit may not be used with a vessel unless it is registered for use with that vessel. Limited entry permits will normally be registered for use with a particular vessel at the time the permit is issued, renewed, transferred, or replaced. A permit not

registered for use with a particular vessel may not be used. If the permit will be used with a vessel other than the one registered on the permit, a registration for use with the new vessel must be obtained from the FMD and placed aboard the vessel before it is used under the permit. Registration of a permit to be used with a new vessel will take effect on the first day of the next major limited entry cumulative limit period following the date of the transfer.

(3) The major limited entry cumulative limit periods will be announced in the **Federal Register** each year with the annual specifications and management measures, or with routine management measures when the cumulative limit periods are changed.

\* \* \* \* \*

(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, replacement, transfer, or registration of a limited entry permit has the burden to submit evidence to prove that qualification requirements are met. A permit holder applying to register a limited entry permit has the burden to submit evidence to prove that registration requirements are met. The following evidentiary standards apply:

\* \* \* \* \*

(f) \* \* \*

(1)

(2) Limited entry permits may not be transferred to a different holder or registered for use with a different vessel more than once every 12 months, except in cases of death of the permit holder or if the permitted vessel is totally lost, as defined at § 660.302. The exception for death of a permit holder applies for a permit held by a partnership or a corporation if the person or persons holding at least 50 percent of the ownership interest in the entity dies.

\* \* \* \* \*

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