

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

[Docket No.: 010509116–1197–02; I.D. 042301B]

RIN 0648–AO87

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Restrictions on Frequency of Limited Entry Permit Transfers

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule that revises restrictions on the frequency and timing of limited entry permit transfers and clarifies NMFS regulatory requirements for transferring limited entry permits. This rule also updates and clarifies limited entry program regulations so that they are more readable for the public. This action is needed to and is intended to revise limited entry permit regulations to better address the needs of the small businesses participating in the Pacific Coast groundfish limited entry fishery.

DATES: Effective August 1, 2001.

ADDRESSES: Copies of the environmental assessment/regulatory impact review (EA/RIR) for this action are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council (Council), 7700 NE Ambassador Place, Portland, OR 97220–1384. Send comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements in this final rule, including suggestions for reducing the burden, to the Office of Management and Budget (OMB), Washington, D.C. 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier or Kevin Ford (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736 and; e-mail: yvonne.dereynier@noaa.gov, kevin.ford@noaa.gov or Svein Fougner (Southwest Region, NMFS) phone: 562–980–4000; fax: 562–980–4047 and; e-mail: svein.fougner@noaa.gov.

SUPPLEMENTARY INFORMATION: Electronic Access: This Federal Register document is also accessible via the internet at the website of the Office of the Federal Register: <http://www.access.gpo.gov/sudocs/aces/aces140.html>

This final rule revises the Pacific Coast groundfish fishery limited entry program regulations at 50 CFR 660 to modify the restriction on frequency and timing of limited entry permit transfers and also updates and re-organizes the regulations in a manner that is consistent with current NMFS permitting activities and practices. Re-organizing limited entry program regulations will not change the effect or intent of the regulations. This rule is based on recommendations of the Council, under the authority of the Pacific Coast Groundfish Fishery Management Plan (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. Further detail appears in the EA/RIR prepared by NMFS for this action.

This final rule modifies the limited entry program regulations to remove outdated provisions, rearrange and clarify currently applicable regulations into a more readable and user-friendly format, and incorporate November 2000 Council recommendations on the frequency and timing of permit transfers. At that time, the Council recommended revising the restriction on the frequency of limited entry permit transfers from once every 12 months to once per calendar year. Clarifications of existing requirements include: revising the definition of "lessee" to specify that lessees do not have the right to transfer permits; revising the prohibition against operating a limited entry vessel without a limited entry permit so that the prohibition is clear without needing reference to other regulations; rearranging the limited entry program regulations into a more logical format; removing permit regulations that deal with permit applications that are no longer accepted; and clarifying documentation needs for the different permit action requests that permit owners make to the NMFS Fisheries Permits Office.

The proposed rule to implement changes to the allowed frequency of limited entry permit transfers and to update the limited entry program regulations was published on May 30, 2001 (66 FR 29276). NMFS requested comments on the proposed rule through June 19, 2001. During the comment period on the proposed rule, NMFS received one letter of comment. The commenter expressed concern about the Federal fisheries management process and the involvement of fishers in decisions made about regulations affecting their fisheries, citing a wish

that fish remain available for future generations. This rule does not address the Federal fisheries management process, which is governed by the Magnuson-Stevens Act. Overall, this final rule is a minor action that clarifies regulations and increases business flexibility for limited entry permit holders. This final rule will not provide new or increased fishing opportunities and thus is not expected to have any effect on the environment.

Changes from the Proposed Rule

In the proposed rule for this action (May 30, 2001, 66 FR 29276), 50 CFR 660.335 (d)(3), "Effective date," ended with the sentence: "No transfer is effective until the limited entry permit has been reissued as registered with the new vessel and the permit is in possession of the new permit holder." The phrase "and the permit is in possession of the new permit holder" was removed in this final rule, as it is redundant with 50 CFR 660.306, "Prohibitions," paragraph (n), which states that it is unlawful for any person to "fail to carry on board a vessel that vessel's limited entry permit if required."

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed, that this rule, if adopted as proposed, would not have a significant economic impact on a substantial number of small entities. No comments were received on the economic impacts of this final rule on small entities and the basis for this certification has not changed. Accordingly, a regulatory flexibility analysis was not prepared.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause, namely that it would be contrary to the public interest, to waive the 30-day delay in effectiveness for this rule pursuant to 5 U.S.C. 553 (d)(3). This final rule concerns transfers of limited entry permits and affects permitting activities in the limited entry fleet. It is linked to another more complex regulation under consideration by NMFS. This is a proposed rule that was published on June 8, 2001 (66 FR 30869), that would implement Amendment 14 to the FMP by allowing permit stacking in the limited entry fixed gear sablefish fishery.

NMFS anticipates that the limited entry, fixed gear sablefish fishery will

begin on August 15, 2001. The start date and mode of management for this fishery depend upon whether NOAA approves Amendment 14 to the FMP and implements it by a final rule. If Amendment 14 is not approved, this fishery will be a brief derby-style fishery with a single sablefish cumulative limit per vessel. If Amendment 14 is approved, the fishery will be 2–3 months in duration, and each vessel will be allowed to carry up to three permits and harvest the sablefish limits associated with those permits. Limited entry permit holders with sablefish-endorsement permits are waiting for the NOAA approval decision, which is scheduled to be made by August 8, 2001, to decide whether to transfer their permits for this season.

A 30-day delay in effectiveness of this final rule could unnecessarily restrict permit transfer activities and cause financial harm to sablefish fishery participants. In some parts of the West Coast, difficult autumn ocean conditions arise in September. Thus, a delay in effectiveness of this final rule could also prevent permit holders from participating in the sablefish season during the more favorable August weather. Accordingly, the AA finds good cause, to waive the 30-day delay in effectiveness for this rule pursuant to 5 U.S.C. 553 (d)(3).

Since this final rule will give limited entry permit holders the flexibility to use their permits to their best advantage for participation in an August fishery, regardless of the NOAA decision on Amendment 14, it relieves a restriction under 5 U.S.C. 553 (d)(1), and it is not subject to a delay in the effective date.

This final rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). The requirements for limited entry permit applications, permit transfer applications, and appeals have been approved under OMB control number 0648-0203. Public reporting burden for each of these collections of information is estimated to average 20 minutes per individual response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of these data collections, including suggestions for reducing the burden to NMFS at the ADDRESSES above, and to OMB at the Office of Information and Regulatory Affairs, OMB, Washington, DC. 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

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: August 1, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.

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

PART 660—FISHERIES OFF WEST COAST STATES 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 § 660.302, the definition for “Permit lessee” is revised to read as follows:

§ 660.302 Definitions.

* * * * *

Permit lessee means a person who has the right to possess and use a limited entry permit for a designated period of time, with reversion of those rights to the permit owner. A permit lessee does not have the right to transfer a permit or change the ownership of the permit.

* * * * *

3. In § 660.306, paragraph (n) is revised to read as follows:

§ 660.306 Prohibitions.

* * * * *

(n) Fail to carry on board a vessel the limited entry permit registered for use with that vessel, if a limited entry permit is registered for use with that vessel.

* * * * *

4. Sections 660.333 through 660.334 are revised and a new § 660.335 is added to read as follows:

§ 660.333 Limited entry fishery-eligibility and registration.

(a) *General.* In order for a vessel to participate in the limited entry fishery, the vessel owner must hold (by ownership or lease) a limited entry permit and, through SFD, must register that permit for use with his/her vessel.

When participating in the limited entry fishery, a vessel is authorized to fish with the gear type endorsed on the limited entry permit registered for use with that vessel. There are three types of gear endorsements: trawl, longline, and pot (or trap). 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. A limited entry permit confers a privilege of participating in the Pacific Coast limited entry groundfish fishery in accordance with Federal regulations in 50 CFR part 660.

(b) *Eligibility.* Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102 (a) may be issued or may hold a limited entry permit.

(c) *Registration.* Limited entry permits will normally be registered for use with a particular vessel at the time the permit is issued, renewed, transferred, or replaced. If the permit will be used with a vessel other than the one registered on the permit, the permit owner must register that permit for use with the new vessel through the SFD. The reissued permit must be placed on board the new vessel in order for the vessel to participate in the limited entry fishery.

(1) Registration of a permit to be used with a new vessel will take effect no earlier than the first day of the next major limited entry cumulative limit period following the date SFD receives the transfer form and the original permit.

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

(d) *Limited entry permits indivisible.* Limited entry permits may not be divided for use by more than one vessel.

(e) *Initial decisions.* SFD will make initial decisions regarding permit endorsements, renewal, replacement, and change in vessel registration. SFD will notify the permit holder in writing with an explanation of any decision to deny a permit endorsement, renewal, replacement, or change in vessel registration. The SFD will decline to act on an application for permit endorsement, renewal, transfer, replacement, or registration of a limited entry permit if the permit is subject to sanction provisions of the Magnuson-Stevens Act at 16 U.S.C. 1858 (a) and implementing regulations at 15 CFR part 904, subpart D, apply.

§ 660.334 Limited entry permits—endorsements.

(a) *“A” endorsement.* 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 § 660.334 (d) for provisions on sablefish endorsement requirements. An “A” endorsement is transferable with the limited entry permit to another person, or to a different vessel under the same ownership under § 660.335. An “A” endorsement expires on failure to renew the limited entry permit to which it is affixed.

(b) *Gear Endorsements.* There are three types gear endorsements: trawl, longline and pot (trap). When limited entry permits were first issued, some vessel owners qualified for more than one type of gear endorsement based on the landings history of their vessels. Each limited entry permit has one or more gear endorsements. Gear endorsement(s) assigned to the permit at the time of issuance will be permanent and shall not be modified. While participating in the limited entry fishery, the vessel registered to the limited entry permit is authorized to fish with the gear(s) endorsed on the permit. During the limited entry fishery, permit holders may also fish with open access gear; except that during a period when the limited entry fixed gear sablefish fishery is restricted to those vessels with sablefish endorsements, permit holders may not fish for sablefish with open access gear.

(c) *Vessel size endorsements—(1) General.* Each limited entry permit will be endorsed with the LOA for the size of the vessel that initially qualified for the permit, except:

(i) If the permit is registered for use with a trawl vessel that is more than 5 ft (1.52 m) shorter than the size for which the permit is endorsed, it will be endorsed for the size of the smaller vessel.

(ii) When permits are combined into one permit to be registered for use with a vessel requiring a larger size endorsement, the new permit will be endorsed for the size that results from the combination of the permits as described in paragraph (c)(2)(iii) of this section.

(2) *Limitations of size endorsements—*(i) A limited entry permit endorsed only for gear other than trawl gear may be registered for use with a vessel up to 5 ft (1.52 m) longer than, the same length

as, or any length shorter than, the size endorsed on the existing permit without requiring a combination of permits under § 660.335 (b) or a change in the size endorsement.

(ii) A limited entry permit endorsed for trawl gear may be registered for use with a vessel between 5 ft (1.52 m) shorter and 5 ft (1.52 m) longer than the size endorsed on the existing permit without requiring a combination of permits under § 660.335 (b) or a change in the size endorsement under paragraph (c)(1)(i) of this section.

(iii) 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. Harvest capacity ratings for fractions of a foot in vessel length will be determined by multiplying the fraction of a foot in vessel length by the difference in the two ratings assigned to the nearest integers of vessel length. The length rating for the combined permit is that indicated for the sum of the vessel harvest capacity ratings for each permit being combined. If that sum falls between the sums for two adjacent lengths on Table 2 of this part, the length rating shall be the higher length.

(d) *Sablefish endorsement and tier assignment—(1) 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 (v) north of 36° N. lat., requires that an owner of a vessel hold a limited entry permit, registered for use with that vessel, with a longline or trap (or pot) endorsement and a sablefish endorsement. 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. Limited entry permits with sablefish endorsements are assigned to one of three different cumulative trip limit tiers, based on the qualifying catch history of the permit.

(i) A sablefish endorsement with a tier assignment will be affixed to the permit and will remain valid when the permit is transferred.

(ii) A sablefish endorsement and its associated tier assignment are not separable from the limited entry permit, and therefore may not be transferred separately from the limited entry permit.

(2) *Issuance process for sablefish endorsements and tier assignments.*

(i) No new applications for sablefish endorsements will be accepted after November 30, 1998.

(ii) The SFD will notify each owner of a limited entry permit with a sablefish endorsement, by letter of qualification status, of the tier assignment for which his or her permit qualifies, as indicated by PacFIN records. The SFD will also send to the permit owner a tier assignment certificate.

(iii) If a permit owner believes there is sufficient evidence to show that his or her permit qualifies for a different tier than that listed in the letter of qualification status, that permit owner must, within 30 days of the issuance of the SFD’s letter of qualification status, submit information to the SFD to demonstrate that the permit qualifies for a different tier. Section 660.333 (d) sets out the relevant evidentiary standards and burden of proof.

(iv) After review of the evidence submitted under paragraph (d)(2) of this section, and any additional information the SFD finds to be relevant, the SFD will issue a letter of determination notifying a permit owner of whether the evidence submitted is sufficient to alter the initial tier assignment. If the SFD determines the permit qualifies for a different tier, the permit owner will be issued a revised tier assignment certificate once the initial certificate is returned to the SFD for processing.

(v) If a permit owner chooses to file an appeal of the determination under paragraph (d)(3) of this section, the appeal must be filed with the Regional Administrator within 30 days of the issuance of the letter of determination (at paragraph (d)(3) of this section). The appeal must be in writing and must allege facts or circumstances, and include credible evidence demonstrating why the permit qualifies for a different tier assignment. The appeal of a denial of an application for a different tier assignment will not be referred to the Council for a recommendation under § 660.340 (e).

(vi) Absent good cause for further delay, the Regional Administrator will issue a written decision on the appeal within 30 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.

(e) *Endorsement restrictions.* “A” endorsements, gear endorsements, sablefish endorsements, and sablefish tier assignments may not be transferred separately from the limited entry permit.

§ 660.335 Limited Entry Permits—renewal, combination, change of permit ownership or permit holdership, and transfer.

(a) *Renewal of limited entry permits and gear endorsements*—(1) Limited entry permits expire at the end of each calendar year, and must be renewed between October 1 and November 30 of each year in order to remain in force the following year.

(2) Notification to renew limited entry permits will be issued by SFD prior to September 1 each year to the most recent address of the permit owner. The permit owner shall provide SFD with notice of any address change within 15 days of the change.

(3) Limited entry permit renewal requests received in SFD between November 30 and December 31 will be effective on the date that the renewal is approved. A limited entry permit that is allowed to expire will not be renewed unless the permit owner requests reissuance by March 31 of the following year and the SFD determines that failure to renew was proximately caused by illness, injury, or death of the permit owner.

(b) *Combining limited entry permits*. Two or more limited entry permits with “A” gear endorsements for the same type of limited entry gear may be combined and reissued as a single permit with a larger size endorsement as described in paragraph § 660.334 (c)(2)(iii). 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. If two or more permits with sablefish endorsements are combined, the new permit will receive the same tier assignment as the tier with the largest cumulative landings limit of the permits being combined.

(c) *Changes in permit ownership and permit holder*—(1) *General*. The permit owner may convey the limited entry permit to a different person. The new permit owner will not be authorized to use the permit until the change in permit ownership has been registered with and approved by the SFD. If the listing of the permit holder changes from one person to a different person, but the vessel registration remains the same on a permit, the permit owner shall submit to SFD an application requesting a change in a permit holder. Such applications shall be made to SFD in advance of the date the permit holder wishes to participate in the limited entry fishery. Permit holders cannot expect to have their applications approved immediately upon submission.

(2) *Effective date*. The change in ownership of the permit or change in the permit holder will be effective on the day the change is approved by SFD, unless there is a concurrent change in the vessel registered to the permit. Requirements for changing the vessel registered to the permit are at § 660.335 (d).

(d) *Changes in vessel registration—transfer of limited entry permits and gear endorsements*—(1) *General*. A permit may not be used with any vessel other than the vessel registered to that permit. For purposes of this section, a permit transfer occurs when, through SFD, a permit owner registers a limited entry permit for use with a new vessel. Permit transfer applications must be submitted to SFD with the appropriate documentation described at § 660.335 (e). Upon receipt of a complete application, and following review and approval of the application, the SFD will reissue the permit registered to the new vessel.

(2) *Application*. A complete application must be submitted to SFD in order for SFD to review and approve a change in vessel registration. At a minimum, a permit owner seeking to transfer a limited entry permit shall submit to SFD a signed application form and his/her current limited entry permit before the first day of the cumulative limit period in which they wish to participate. If a permit owner provides a signed application and current limited entry permit after the first day of a cumulative limit period, the permit will not be effective until the succeeding cumulative limit period. SFD will not approve a change in vessel registration (transfer) until it receives a complete application, the existing permit, a current copy of the USCG 1270, and other required documentation.

(3) *Effective date*. Changes in vessel registration on permits will take effect no sooner than the first day of the next major limited entry cumulative limit period following the date that SFD receives the signed permit transfer form and the original limited entry permit. Transfers of permits designated as participating in the “B” platoon will become effective no sooner than the first day of the next “B” platoon major limited entry cumulative limit period following the date that SFD receives the signed permit transfer form and the original limited entry permit. No transfer is effective until the limited entry permit has been reissued as registered with the new vessel.

(e) *Restriction on frequency of transfers*. Limited entry permits may not be registered for use with a different vessel (transfer) more than once per

calendar year, except in cases of death of a permit holder or if the permitted vessel is totally lost as defined in 660.302. 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.

(1) A permit owner may designate the vessel registration for a permit as “unidentified”, meaning that no vessel has been identified as registered for use with that permit. No vessel is authorized to use a permit with the vessel registration designated as “unidentified.”

(2) When a permit owner requests that the permit’s vessel registration be designated as “unidentified,” the transaction is not considered a “transfer” for purposes of this section. Any subsequent request by a permit owner to change from the “unidentified” status of the permit in order to register the permit with a specific vessel will be considered a change in vessel registration (transfer) and subject to the restriction on frequency and timing of changes in vessel registration (transfer).

(f) *Application and supplemental documentation*. Permit holders may request a transfer (change in vessel registration) and/or change in permit ownership or permit holder by submitting a complete application form. In addition, a permit owner applying for renewal, replacement, transfer, or change of ownership or change of permit holder of a limited entry permit has the burden to submit evidence to prove that qualification requirements are met. The owner of a permit endorsed for longline or trap (or pot) gear applying for a tier assignment under § 660.334 (d) has the burden to submit evidence to prove that certain qualification requirements are met. The following evidentiary standards apply:

(1) For a request to change a vessel registration and/or change in permit ownership or permit holder, the permit owner must provide SFD with a current copy of the USCG Form 1270 for vessels of 5 net tons or greater, or a current copy of a state registration form for vessels under 5 net tons.

(2) For a request to change the vessel registration to a permit, the permit holder must submit to SFD a current marine survey conducted by a certified marine surveyor in accordance with USCG regulations to authenticate the length overall of the vessel being newly registered with the permit. Marine surveys older than 3 years at the time of the request for change in vessel registration will not be considered

“current” marine surveys for purposes of this requirement.

(3) For a request to change a permit's ownership where the current permit owner is a corporation, partnership or other business entity, the applicant must provide to SFD a corporate resolution that authorizes the conveyance of the permit to a new owner and which authorizes the individual applicant to request the conveyance on behalf of the corporation, partnership, other business entity.

(4) For a request to change a permit's ownership that is necessitated by the death of the permit owner(s), the individual(s) requesting conveyance of the permit to a new owner must provide SFD with a death certificate of the permit owner(s) and appropriate legal documentation that either: specifically transfers the permit to a designated individual(s); or, provides legal authority to the transferor to convey the permit ownership.

(5) For a request to change a permit's ownership that is necessitated by divorce, the individual requesting the change in permit ownership must submit an executed divorce decree that awards the permit to a designated individual(s).

(6) Such other relevant, credible documentation as the applicant may submit, or the SFD or Regional Administrator may request or acquire, may also be considered.

(g) *Application forms available.* Application forms for the change in vessel registration (transfer) and change of permit ownership or permit holder of limited entry permits are available from the SFD (see part 600 for address of the Regional Administrator). Contents of the application, and required supporting documentation, are specified in the application form.

(h) *Records maintenance.* The SFD will maintain records of all limited entry permits that have been issued,

renewed, transferred, registered, or replaced.

§ 660.336 [Removed and reserved]

5. Section 660.336 is removed and reserved.

* * * * *

6. Section 660.338 is revised to read as follows:

§ 660.338 Limited entry permits—small fleet.

(a) Small limited entry fisheries fleets that are controlled by a local government, are in existence as of July 11, 1991, and have negligible impacts on the groundfish resource, may be certified as consistent with the goals and objectives of the limited entry program and incorporated into the limited entry fishery. Permits issued under this subsection will be issued in accordance with the standards and procedures set out in the PCGFMP and will carry the rights explained therein.

(b) A permit issued under this section may be registered only to another vessel that will continue to operate in the same certified small fleet, provided that the total number of vessels in the fleet does not increase. A vessel may not use a small fleet limited entry permit for participation in the limited entry fishery outside of authorized activities of the small fleet for which that permit and vessel have been designated.

* * * * *

7. Section 660.340 is revised to read as follows:

§ 660.340 Limited entry permit appeals.

(a) Decisions on appeals of initial decisions regarding issuance, renewal, change in vessel registration, change in permit owner or permit holder, and endorsement upgrade, will be made by the Regional Administrator.

(b) Appeals decisions shall be in writing and shall state the reasons therefor.

(c) Within 30 days of an initial decision by the SFD denying issuance, renewal, change in vessel registration, change in permit owner or permit holder, or endorsement upgrade, on the terms requested by the applicant, an appeal may be filed with the Regional Administrator.

(d) The appeal must be in writing, and must allege facts or circumstances to show why the criteria in this subpart have been met, or why an exception should be granted.

(e) At the appellant's discretion, the appeal may be accompanied by a request that the Regional Administrator seek a recommendation from the Council as to whether the appeal should be granted. Such a request must contain the appellant's acknowledgment that the confidentiality provisions of the Magnuson-Stevens Act at 16 U.S.C. 1853 (d) and part 600 of this chapter are waived with respect to any information supplied by Regional Administrator to the Council and its advisory bodies for purposes of receiving the Council's recommendation on the appeal. In responding to a request for a recommendation on appeal, the Council will apply the provisions of the PCGFMP in making its recommendation as to whether the appeal should be granted.

(f) 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, or, if a recommendation from the Council is requested, within 45 days of receiving the Council's recommendation. The Regional Administrator's decision is the final administrative decision of the Department as of the date of the decision.

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