

state's procedures for amending its regulations. If the proposed maintenance plan is substantially changed in areas other than those identified in this notice, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made other than those areas cited in this notice, Pennsylvania will publish a Final Rulemaking Notice on the revisions. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by Pennsylvania and submitted formally to EPA for incorporation into the SIP.

#### Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed redesignation and associated maintenance plan will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed redesignation and associated maintenance plan also are not subject to Executive Order 13045

(62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

This proposed redesignation of the Pittsburgh area from nonattainment to attainment for the 1-hour ozone NAAQS does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

#### List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: May 21, 2001

**Thomas C. Voltaggio,**

*Acting Regional Administrator, Region III.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 010509116-116-01; 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:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes a rule that would revise restrictions on the frequency and timing of limited entry permit transfers and would clarify NMFS regulatory requirements for transferring limited entry permits. This proposed rule would also update and clarify limited entry program regulations so that they are more readable for the public. This action is intended to propose revisions to the limited entry permit regulations that would better address the needs of the small businesses participating in the Pacific Coast groundfish limited entry fishery.

**DATES:** Comments must be submitted in writing by June 19, 2001.

**ADDRESSES:** Send comments to Donna Darm, Acting Administrator, Northwest Region, (Regional Administrator) NMFS, 7600 Sand Point Way NE., Seattle, WA 98115; or Rebecca Lent, Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213. 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), 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

**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/su-docs/aces/aces140.html>.

## Pacific Coast Groundfish Fishery

This proposed rule would revise the Pacific Coast groundfish fishery limited entry program regulations at 50 CFR part 660 to modify the restriction on frequency and timing of limited entry permit transfers and to update and reorganize the regulations in a manner that is consistent with current NMFS permitting activities and practices. Reorganizing limited entry program regulations would not change the effect or intent of the regulations. This proposed rule is based on recommendations of the Council, operating 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 here. Further detail appears in the EA/RIR prepared by NMFS for this action.

## Background

Vessel participation in Pacific Coast groundfish fisheries is constrained in part by a limited entry permit program initially implemented in 1994. Limited entry permits were issued to vessels meeting minimum groundfish landings requirements with trawl, longline, or pot gear during a 1984 through 1988 window period.

Since the implementation of the limited entry program, the Council has made several program changes to further constrain effort in the fleet, including permit combination requirements for larger vessels participating in the fishery and further access limitation for fixed gear vessels targeting sablefish. In 1998, the Council introduced another measure intended to constrain fishing effort, a limitation on the frequency of permit transfers to once every 12 months. The Council also recommended restricting the effectiveness of a permit transfer to the first day of the cumulative limit period following the date of the transfer, to prevent more than one vessel from using that permit during a single period.

Individual vessels do not participate in the groundfish fishery every day of the year. However, with unlimited permit transfers allowed, a vessel might transfer its permit to another vessel when the original vessel is participating

in another fishery or when it is undergoing routine maintenance. When unlimited transfers were allowed, effort in the fishery expanded beyond effort levels expected from the number of limited entry permits issued. Therefore, to constrain effort, the Council recommended that a permit could be transferred only once every 12 months.

Under current regulations, a vessel is limited to harvesting a specific amount of groundfish per cumulative limit period (generally 1 or 2 months). If a permit could be transferred to a different vessel in the middle of the cumulative limit period, two vessels could each harvest a cumulative limit, doubling the effort otherwise expected from that permit. Restricting the transfer of permits to the first day of a cumulative limit period was intended to prevent more than one vessel from using a permit to harvest groundfish cumulative limits during a single cumulative limit period. NMFS implemented the Council's recommendations on restricting permit transfers on June 25, 1998 (63 FR 34606).

At its September and November 2000 meetings, the Council reconsidered these transfer restrictions and considered the need to revise and clarify other existing permit regulations. While the Council continued to support restricting the frequency and timing of permit transfers, it wanted to find a way to increase regulatory flexibility for permit holders without losing the benefits from the limitations on the number of vessels that may be attached to a permit in any 1-year or cumulative limit period. To provide this flexibility, the Council recommended restricting the frequency of limited entry permit transfers to once per calendar year, rather than once every 12 months. The Council also recommended a slight modification to permit transfer regulations, to clarify that permit transfers will be effective no sooner than the first day of a cumulative limit period after the signed permit transfer form and the original permit are submitted to the agency. This change would give an owner enough time to complete the application package, even if the owner does not have all necessary documents before the start of the cumulative limit period. This change would still ensure that the permit cannot be used by two vessels during the same cumulative limit period.

Since the transfer rule's implementation in 1998, the restriction on frequency and timing of limited entry permit transfers has applied to permit owners changing the vessel registered to the permit and to permit

owners changing the name of the person(s) owning or leading the permit without changing the vessel registration. This restriction has adversely affected some permit-owning individuals, corporations and partnerships. In recent years, some entities owning limited entry permits have merged, reorganized, added a partner, or incorporated, but have kept the permit on the same vessel. Such transactions occur in the normal course of business and do not affect fishery participation levels, but are counted against the one time transfer rule. Any change in permit ownership structure limited the permit owner from making additional changes for a period of 12 months, such as adding a new vessel to the permit and/or leasing the permit to another person or entity. In an increasingly uncertain and depressed fisheries business environment, permit holders need greater latitude in using their permits where that flexibility will achieve the original purpose of the regulation.

When NMFS learned that the Council was considering changes to the limited entry permit regulations, the agency asked for a Council recommendation for NMFS to revise and clarify the overall limited entry program regulations. Since the 1994 implementation of the limited entry program, the Council has recommended numerous regulatory revisions in keeping with the changing needs of the fishery. With each change to the management of the limited entry program, NMFS has revised the appropriate portions of the permit regulations at 50 CFR 660.333 through 660.341. Over time, these revisions, additions and deletions have resulted in a somewhat confusing and convoluted set of limited entry program regulations.

This proposed rule would modify 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 the new Council recommendations on the frequency and timing of permit transfers. 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 Fisheries Permits Office.

### Classification

This proposed 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 (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

A fish-harvesting business is considered a "small" business by the SBA if it has annual receipts not in excess of \$3.0 million. It is the limited entry fleet that would be affected by this action, and almost all limited entry permit holders are considered small businesses under SBA standards. Overall, this is a minor action that increases business flexibility for limited entry permit holders. This action is not expected to have any negative effect, and would positively benefit limited entry permit holders by: allowing them the flexibility to plan permit transfers in accordance with changes in seasonal management; improving the clarity and usability of limited entry permit regulations; and increasing their flexibility in making changes and corrections in permit ownership documentation.

As a result, a regulatory flexibility analysis was not prepared.

### 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: May 21, 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 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 § 660.302, 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 onboard 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 660.335 are revised 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 of submission of 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, or 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 paragraph (d) of this section 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 of 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 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 § 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 (i.e., lessee of permit). 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 described at paragraph (d) of this section.

(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 paragraph (e) of this section. 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, permit owners 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 and the permit is in the possession of the new permit holder.

(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 Table 1, § 600.502 of this chapter for the 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, were 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 the 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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