

Compliance Guide Pacific Coast Groundfish Trawl Rationalization Program

Application Process for:

Quota Share Permit

Mothership Permit

Mothership Catcher Vessel Endorsement

Catcher Processor Endorsement

October 2010

This small entity compliance guide was prepared pursuant to section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 104-121. The statements in this document are intended solely as guidance. This document is intended to provide a plain-language summary of how small businesses can comply with regulations implementing the Pacific Coast groundfish trawl rationalization program (published in the *Federal Register* on October 1, 2010).



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Program Overview

The Pacific Coast groundfish fishery is scheduled to transition to a trawl rationalization program beginning January 1, 2011. This guide applies to a subset of the regulations implementing the trawl rationalization program (published in the *Federal Register* on October 1, 2010). It focuses on initial issuance of permits and endorsements, including the applications process, eligibility requirements, and appeals process. The process for the initial issuance of the following permits and endorsements will be described in this guide:

1. Quota share (QS) permit;
2. Mothership (MS) permit;
3. Mothership catcher vessel (MS/CV) endorsement on a limited entry trawl permit; and
4. Catcher/processor (C/P) endorsement on a limited entry trawl permit.

While this guide does not go into detail on intersector (trawl versus non-trawl) allocations, the regulations published in the Federal Register on October 1, 2010, specify allocations of groundfish between the trawl and nontrawl sectors of the groundfish fishery and within trawl sectors. The regulations also restructure the entire Pacific Coast groundfish fishery regulations at 50 CFR part 660.

The trawl rationalization program is a limited access privilege program (LAPP), a conditional privilege that is conveyed through catch shares or QS to harvest a predetermined quantity of fish. This privilege, however, can be revoked, limited, or modified at any time.

Amendments 20 and 21 to the Pacific Coast Groundfish Fishery Management Plan (FMP) update the FMP to include a trawl rationalization program and intersector allocations, respectively.

Who Should Read This Guide?

This guide is useful for anyone participating in the Pacific Coast groundfish fishery's trawl rationalization program. It outlines the application and appeals process for new permits and endorsements. Initially, potential participants in the trawl rationalization program are: Owners of current trawl-endorsed limited entry permits, shoreside processors of Pacific whiting, and owners of mothership vessels.

Permits & Endorsments
Application Deadline:

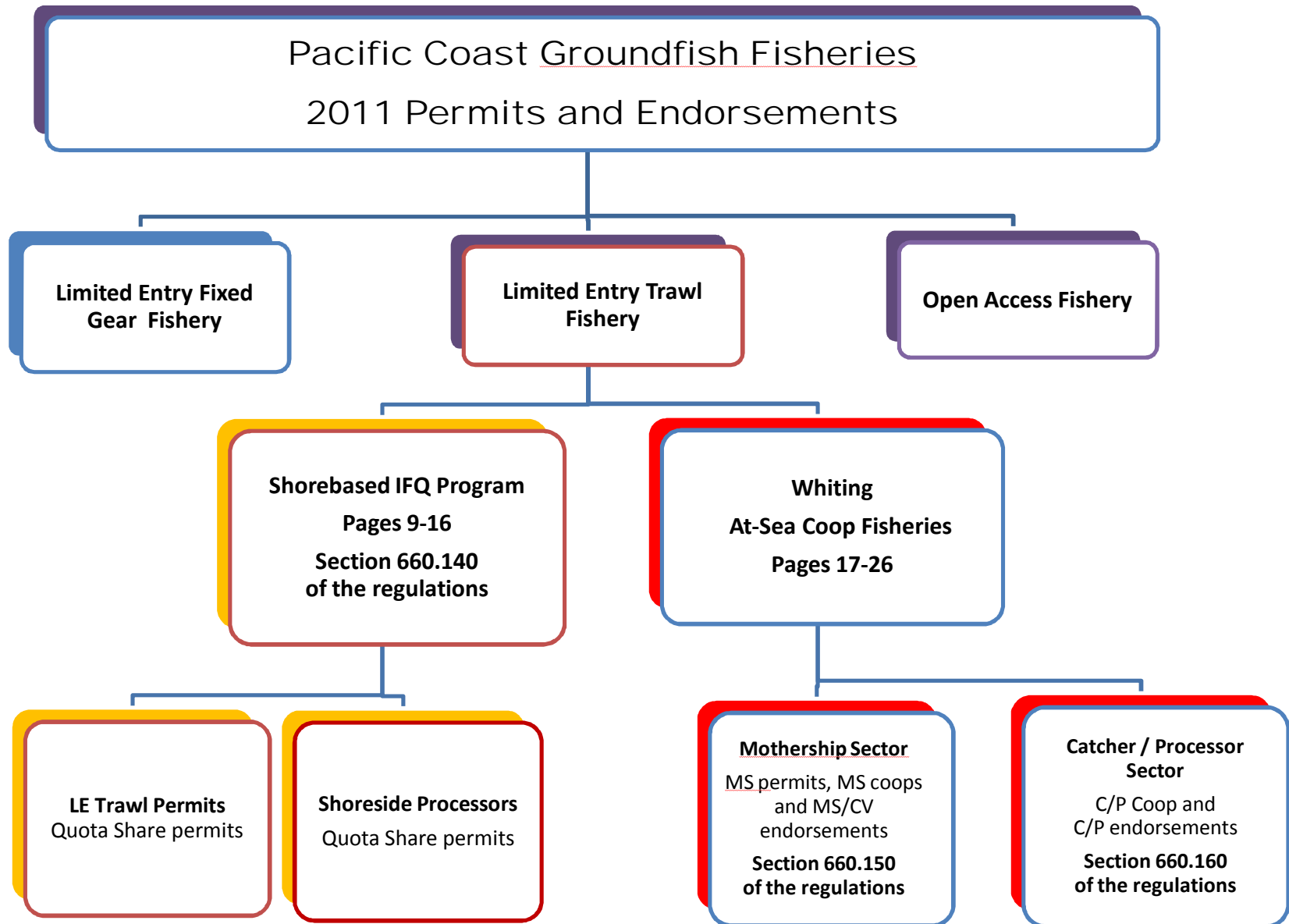
November 1, 2010

Components of Amendment 20 of the trawl rationalization program include: 1) individual fishing quota (IFQ) for the shorebased fleet and 2) cooperative (coop) programs for the at-sea trawl fleet. The shorebased trawl fleet will consist of IFQ participants who land groundfish to shorebased processors and first receivers. The at-sea trawl fleet will consist of fishery participants harvesting whiting with midwater trawl gear (i.e., whiting catcher/processor vessels, whiting motherships, and whiting catcher vessels associated with motherships). The coop programs for the at-sea trawl fleet will be further divided as follows: (1) the whiting catcher/processor coop (C/P coop); and (2) whiting mothership coops (MS coops).

Amendment 21 modifies how annual harvest amounts for select species are distributed in the groundfish fishery. The available harvest amounts are divided between the trawl fishery and non-trawl fisheries (recreational, limited entry fixed gear, and directed open access) based on percentages or processes identified in Amendment 21. The distribution of harvest among the non-trawl fisheries is established during the biennial specifications process.

In order to implement the IFQ and coop programs, it will be necessary for each of the trawl sectors, shorebased, mothership and catcher/processor, to have a specific allocation of catch that could be divided among participants. Species not covered by Amendment 21 will continue to be allocated through the biennial specifications process. In addition, Amendment 21 will establish a total catch limit and a set-aside for Pacific halibut caught in the trawl fishery.

National Marine Fisheries Service (NMFS) will implement additional regulations in future rulemaking that will provide further details on components of the trawl rationalization program, including: measures applicable to gear switching for the IFQ program; observer program; retention requirements; equipment requirements; catch monitors; catch weighing requirements; coop permit provisions, requirements for coop agreements; first receiver site licenses; QS/IBQ (Incidental bycatch quota) accounts; vessel accounts; further tracking and monitoring components; and economic data collection requirements. NMFS plans to develop a guide for these additional program details in December, 2010.



Shorebased IFQ Program

The Shorebased IFQ Program consists of the following:

1. Vessels registered to limited entry trawl permits that harvest groundfish for delivery to shorebased first receivers;
2. Owners of limited entry trawl permits;
3. Owners of QS permits; and
4. Shorebased first receivers with a first receiver site license eligible to receive groundfish landings from participants in the IFQ program.

Both the QS permit and the first receiver site license are new requirements for the shorebased trawl fishery. However, only the issuance of the QS permit is covered under this guide. The first receiver site license will be issued and further described under the guide for the next set of regulations, expected in late 2010.

QS Permit

NMFS will issue a QS permit and an associated amount of QS and individual bycatch quota (IBQ) to qualifying applicants. The QS permit conveys the conditional privilege to own QS/IBQ. Two types of trawl fishery participants may be eligible for a QS permit:

1. Owners of a current qualifying limited entry trawl permit; and
2. Eligible whiting shoreside processors.

NMFS will calculate the initial issuance of QS/IBQ for a QS permit using allocation formulas and data from the Pacific Fisheries Information Network (PacFIN) of the Pacific States Marine Fisheries Commission and the Northwest Region, Sustainable Fisheries Division Permits Office.

At-Sea Coop Programs

The at-sea trawl fleet will include fishery participants harvesting whiting with midwater trawl gear under either the MS Coop Program or the C/P Coop Program. In December 2010, NMFS will publish further information on the coop programs in an additional small entity compliance guide that covers issues beyond the initial issuance of permits and endorsements addressed in this guide.

MS Coop Program

The MS Coop Program consists of one or more coops and the non-coop fishery. The coop fishery consists of the following:

1. Owners of MS/CV-endorsed limited entry trawl permits that are members of a coop and harvesting vessels registered to those permits;
2. Owners of MS permits and processing vessels registered to those permits; and
3. Vessels authorized to fish for the coop that are not members and are registered to a limited entry trawl permit but not necessarily one with an MS/CV endorsement.

The non-coop fishery consists of the following:

1. Owners of MS/CV-endorsed limited entry trawl permits that are not members of a coop and harvesting vessels registered to those permits; and
2. Owners of MS permits and vessels registered to those permits.

For the MS Coop Program, NMFS establishes new requirements for MS permits and for MS/CV endorsements on limited entry trawl permits.

MS Permit

Beginning January 1, 2011, in order to process whiting in the MS sector, a processing vessel will be required to be registered to an MS permit. The current restriction preventing mothership vessels from operating as catcher vessels or C/Ps during a year in which they operate as motherships **will be** maintained. Owners of a vessel with processing history in the mothership fishery may be eligible for an MS permit. NMFS will calculate the initial issuance for an MS permit using allocation formulas and data from the Northwest Fisheries Science Center's Pacific whiting Observer data from NORPAC (database of North Pacific Fisheries and Pacific whiting information) and the Northwest Region, Sustainable Fisheries Division Permits Office.

MS/CV Endorsement and Catch History Assignment

In order to fish in the MS sector beginning January 1, 2011, a catcher vessel will be required to be registered to an MS/CV-endorsed limited entry trawl permit. Each trawl-endorsed limited entry permit with an MS/CV endorsement will have attached to it a catch history assignment (CHA), representing its percentage of the allocation of Pacific whiting in the mothership sector. Owners of current limited entry trawl permits with history in the mothership fishery may be eligible for an MS/CV endorsement and associated catch history assignment. Vessels registered to a MS/CV-endorsed limited entry permit will be able to elect to fish in either the coop or non-coop fishery within the mothership sector, and accordingly, the permit's CHA will be assigned to either the coop which the permit belongs to or the non-coop fishery. Vessels registered to a C/P-endorsed limited entry permit will not be able to fish in the MS sector. Vessels fishing as catcher vessels in the MS sector could not function as motherships or C/Ps during the same calendar year.

NMFS will determine permits that qualify for the MS/CV endorsement and the CHA on a limited entry permit using allocation formulas and data from the Northwest Fisheries Science Center's Pacific whiting Observer data from NORPAC (a database of North Pacific Fisheries and Pacific whiting information) and the Northwest Region, Sustainable Fisheries Division Permits Office.

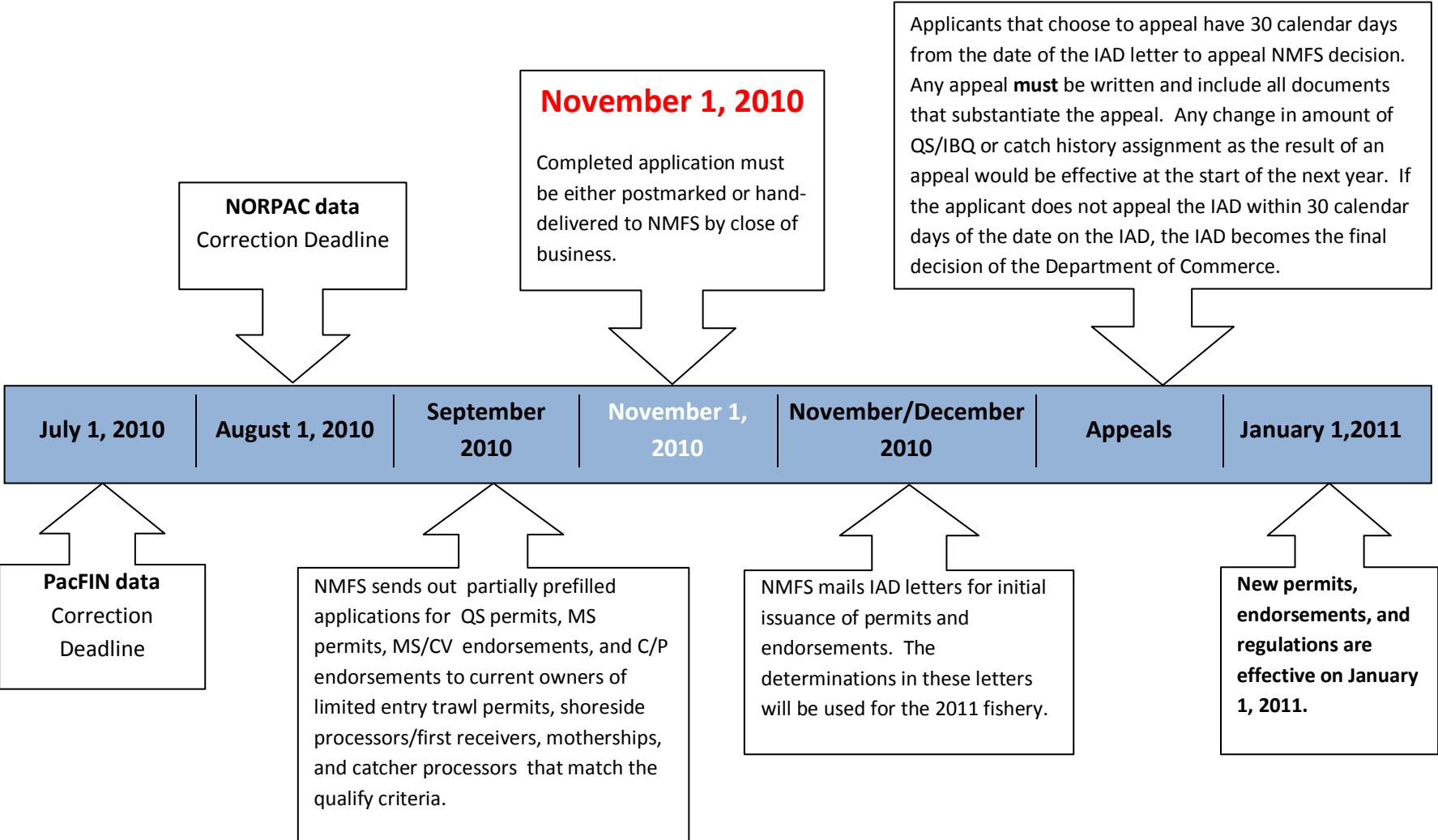
C/P Coop Program

The catcher/processor sector is composed of catcher/processors, which are vessels that both harvest and process whiting during a calendar year. Under the C/P Coop Program, the catcher/processor sector will continue to operate under a single voluntary coop, much like it has for many years. The coop fishery consists of members of the coop (C/P-endorsed limited entry trawl permit owners) and the vessels registered to member permits.

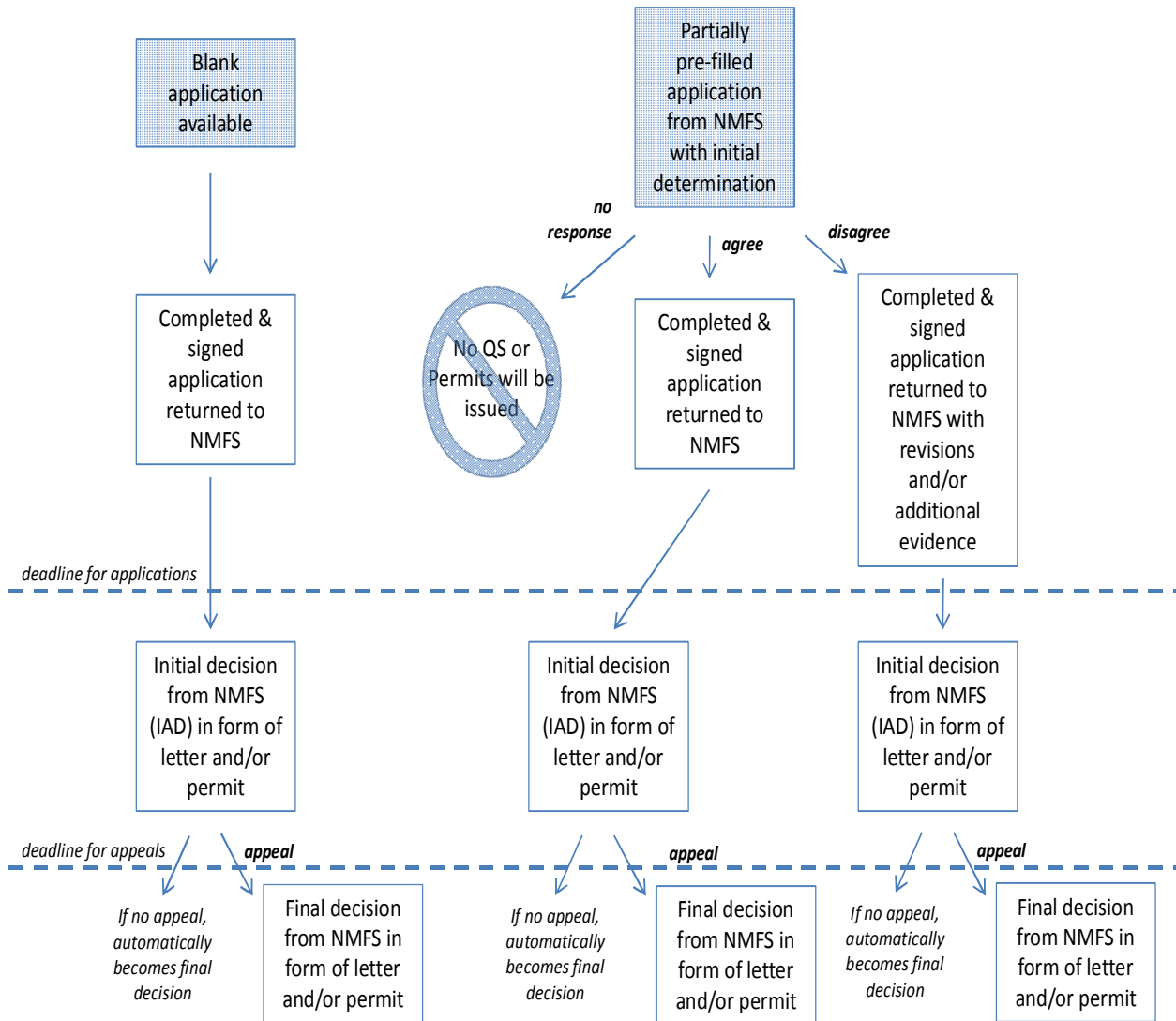
C/P Endorsement

In order to harvest and process whiting in the catcher/processor sector beginning January 1, 2011, an owner of a catcher/processor must be registered to a limited entry trawl permit with a C/P endorsement. Owners of current limited entry trawl permits with history of participation in the catcher/processor fishery may be eligible for a C/P endorsement. NMFS will determine which limited entry trawl permits qualify for a C/P endorsement using data from the Northwest Fisheries Science Center's Pacific whiting Observer data from NORPAC (a database of North Pacific Fisheries and Pacific whiting information) and the Northwest Region, Sustainable Fisheries Division Permits Office.

Trawl Rationalization Program Important Dates



The application/appeals process for the QS permit, MS permit, MS/CV endorsement, and C/P endorsement



For more information on eligibility requirements and qualifying criteria for harvesters and processors please see sections 660.140, 660.150, and 660.160 of the regulations.

Shorebased IFQ Program

Frequently asked questions regarding initial issuance and the QS application process:

Who is eligible to apply for and receive a QS permit?

Anyone can apply for a QS permit, but only the following individuals or business entities are eligible to receive a QS permit on initial issuance: 1) current owners of Pacific Coast Groundfish trawl-endorsed limited entry permits (not including permits registered to catcher/processors); and 2) whiting shoreside processors that received deliveries of 1 metric ton (mt) or more of whiting from whiting trips (defined as fishing trips on which 50 percent or more of all fish reported on the state landing receipt is whiting) in each of any 2 years from 1998 – 2004.

Any past landing history associated with the current limited entry trawl permit accrues to the current permit owner. NMFS **will not** recognize any person as the limited entry permit owner other than the person currently listed as limited entry permit owner in the NMFS permit database. Any application based on a current trawl-endorsed limited entry permit that has been registered to a vessel operating in the C/P sector or that will receive a C/P endorsement does not qualify for initial issuance of a QS permit.

One-time opportunity

NMFS will not accept or review any applications received or postmarked after November 1, 2010.

There are no hardship exemptions for this deadline.

If an applicant does not return a completed application to NMFS by November 1, 2010, they forgo the opportunity to receive consideration for initial issuance of QS/IBQ.

How will NMFS notify applicants it initially determines may qualify for a QS permit?

NMFS will make a preliminary determination of who may qualify for a QS permit and initial issuance of the QS/IBQ based on PacFIN data. NMFS will mail a partially prefilled application to those trawl-endorsed limited entry permit owners and Pacific whiting shoreside first receivers who appear to be qualified for initial issuance of a QS permit and QS/IBQ. NMFS will mail the application by certified mail. The application package will include:

1. A partially prefilled application, including preliminary QS/IBQ allocation amounts and data for the qualifying years that are the used in NMFS' calculation of initial issuance of QS/IBQ for each species group; and
2. A Trawl Identification of Ownership Interest form.

An applicant that receives a prefilled application will have an opportunity to review the information before completing and submitting the application to NMFS by the application deadline. All prefilled applications must be completed, signed, and returned to NMFS by the application deadline to receive a QS permit and its associated QS/IBQ.

What if a potential applicant does not receive a prefilled application for a QS permit?

If any person believes they are qualified for a QS permit and an initial issuance of QS/IBQ and did not receive a prefilled application, they must complete an application package. The applicant must submit a completed QS permit application form, a trawl identification of ownership interest form and provide valid PacFIN data (as recorded in the PacFIN database as of July 1, 2010) for all qualifying years, application fee, and any other relevant information that substantiates the applicant's qualification for a QS permit and an initial issuance of QS/IBQ. Application packages are available on NMFS' website at: (<http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Permits/index.cfm>). Individuals can also contact the Sustainable Fisheries Division by writing to NMFS, Northwest Region, Permit's Office, 7600 Sand Point Way NE, Seattle, WA 98115, or by calling 206-526-4353.

What is the deadline to submit an application for QS permit and initial issuance of QS?

A complete application must be either postmarked or hand-delivered to NMFS, Northwest Region Sustainable Fisheries Division office during business hours (8 am-5 pm), by close of business on Monday, **November 1, 2010**.

What is considered a complete application?

Submission of a complete, certified application includes, but is not limited to, the following:

1. The applicant is **required** to sign and date the application and have the document notarized by a licensed Notary Public;
2. The applicant **must** indicate whether they accept or do not accept NMFS' calculation of initial issuance of QS/IBQ provided in the prefilled application. If they do not accept the

calculation of QS/IBQ in part or in whole, the applicant must provide, in writing with the application, which calculations the applicant contends to be inaccurate and must also provide credible information that substantiates any requested corrections;

3. The applicant is required to provide a completed Trawl Identification of Ownership Interest Form;
4. The applicant **must** include the **application fee of \$600.00**, made by check or money order payable to the U.S. Department of Commerce/NOAA. If the applicant is a trawl permit owner, the Pacific Coast Groundfish limited entry permit number should be noted on the check or money order. Whiting shoreside processors/first receivers should make sure the full name of the applicant as given on the application form is provided on the check or money order.

Where did the data used to establish permit history originate from?

Current trawl limited entry permits and shoreside processor/first receiver whiting landing history was taken from state fish tickets, as reported in the PacFIN database. The relevant data used existed in the PacFIN database, effective July 1, 2010.

What data is included in the permit history calculation?

- For current trawl-endorsed limited entry permit owners, the permit history data is based on PacFIN data, reflecting yearly landings from the allocation period of 1994-2003.
 - For each year, NMFS will calculate the permit's yearly landings for whiting trips and nonwhiting trips separately, expressed as a percent of all whiting or nonwhiting trip landings in that year, known as "relative history." For nonwhiting trips, NMFS will add all nonwhiting trip relative histories together, dropping the 3 years with the lowest percent, to determine the permit's total cumulative nonwhiting relative history. For whiting trips, NMFS will add all whiting trip relative histories together, dropping 2 years with the lowest percent, to determine the permit's total cumulative whiting relative history.
- Landings history of permits that have been previously combined is included.
- If a vessel has had two or more limited entry trawl permits simultaneously registered to it, NMFS will split the history evenly between all of those limited entry trawl permits during the time they were simultaneously registered to the vessel.
- NMFS has also included the landings history of the permits retired under the Federal buyback program (i.e., buyback permits) (70 FR 45695, August 8, 2005) in calculations of QS for all species from whiting trips, which will be divided equally among all qualifying limited entry trawl permits.
- NMFS is also including the landings history of the buyback permits for all species from nonwhiting trips except bocaccio, cowcod, darkblotched rockfish, Pacific ocean perch, widow rockfish, and yelloweye rockfish, for equal distribution among all qualifying limited entry trawl permits.

- For shoreside processors, calculation of whiting QS is based on the relative history of the eligible shoreside processor's receipts of whiting from whiting trips. NMFS will calculate whiting QS based on the processor's relative history from 1998-2004, dropping the 2 years with the worst relative history.

How is QS/IBQ calculated?

Owners of limited entry trawl permits will receive 90% of the non-whiting QS. The remaining 10% of the QS for non-whiting species is set aside for use in the Adaptive Management Program (AMP) under development by the Council. In years 1 and 2 of the program, the quota pounds associated with the 10% allocated to the AMP will be distributed to all QS owners in proportion to their QS. Owners of limited entry trawl permits will also receive 80% of the whiting QS. Eligible shoreside processors will receive the remaining 20% of the whiting QS.

- Allocation formulas for limited entry trawl permits will be combined from several formulas before adjusting for the AMP and the whiting QS for shoreside processors:
 - Whiting trip allocations:
 - Equal division for QS pool associated with buyback history, using absolute pounds.
 - Relative history for QS pool associated with permit's own relative history, dropping two worst years.
 - Nonwhiting trip allocations:
 - Target species (referred to as "Group 1 species") will be calculated using both equal distribution for the QS pool associated with buyback history (similar to the equal allocation component for whiting trips), and also by the relative history formula based on permit history (dropping three worst years).
 - Overfished species caught incidentally (referred to as "Group 2 species") will be calculated using the permit owner's initial issuance of QS from nonwhiting trips for 11 of the Group 1 target species, logbook information to determine areas fished, and bycatch ratios for each area determined from West Coast Groundfish Observer Program data.
 - Canary rockfish (referred to as "Group 3 species") will be calculated using both equal distribution for the QS pool associated with buyback history (similar to Group 1 species), and also by using the permit owner's target species QS, logbook information, and area-specific bycatch ratios (similar to the equal allocation component for Group 2 species).
 - IBQ for Pacific halibut N. of 40° 10' will be calculated using the permit owner's initial issuance of QS from nonwhiting trips for arrowtooth flounder and petrale sole, logbook information, and area-specific bycatch ratios (similar to the Group 2 species formula).
- Whiting QS for shoreside processors will be calculated using the relative history formula based on relevant PacFIN data (dropping two worst years), multiplied by the 20% of whiting QS allocated to shoreside processors.

More information and details regarding allocation formulas are available in section 660.140 of the regulations.

What if there is an error in NMFS' pre-filled application?

Applicants who believe errors exist in the use or application of the relevant data from PacFIN, or in the calculation of QS/IBQ, may request a correction, which **must** identify, in writing, which part the applicant believes to be inaccurate. Written correction requests must be included with the submission of the application. **The applicant must also provide PacFIN data or other relevant information to support their claim.** The basis for a correction request may include the following:

1. Errors in NMFS' use or application of landings data from PacFIN;
2. Errors in NMFS' use or application of state logbook data from PacFIN;
3. Errors in NMFS' application of the QS /IBQ allocation formula;
4. Errors in identification of the permit owner's permit combinations or vessel registration as listed in NMFS permit database;
5. Errors in identification of ownership information for the first receiver or the processor that first processed the fish; and
6. Errors in NMFS' use or application of ownership interest information.
7. The data included in the PacFIN database represents the best scientific information of past participation in the shorebased groundfish trawl fishery and has been subject to extensive verification and quality assurance processes including opportunities for potential applicants to submit corrections to the raw data; thus, NMFS will not accept requests for corrections to raw data in PacFIN.

What will NMFS do when it receives an application?

After the deadline date of November 1, 2010, NMFS will review all completed applications. NMFS will recalculate all QS and IBQ allocation formulas based on all complete applications received by the deadline. An individual applicant's expected allocation may go up or down based on the total of all applications received. NMFS may receive more or fewer applications than it projects, and may redistribute QS over the accumulation limits for owners of permits transferred after November 1, 2008. Once NMFS completes these calculations, NMFS will issue each applicant a letter, called an Initial Administrative Determination (IAD). The IAD will indicate whether NMFS has approved or disapproved the application for a QS permit, and if approved, the amount of QS/IBQ allocations for all species. If approved, a QS permit for 2011 will be mailed with the IAD letter.

On what basis can an applicant appeal an IAD on their application?

If an applicant disagrees with the IAD, the applicant can appeal the decision. The basis for an appeal may include the following:

1. Errors in NMFS' use or application of landings data from PacFIN;
2. Errors in NMFS' use or application of state logbook data from PacFIN;
3. Errors in NMFS' application of the QS/IBQ allocation formula;
4. Errors in identification of the permit owner permit combination, or vessel registration as listed in NMFS permit database;
5. Errors in identification of ownership information for the first receiver or the processor that first processed the fish; and
6. Errors in NMFS' use or application of ownership interest information.

There is no option to appeal a decision due to incomplete or inadequate data. This means the relevant data given in PacFIN as of July 1, 2010 cannot be further revised.

How does an applicant file an appeal to the IAD and what is the deadline date?

Any applicant that disagrees with a NMFS IAD on their application has the option to submit a written appeal, within 30 calendar days of the date on the IAD, to:

Mr. William W. Stelle, Jr.
Regional Administrator
NOAA/NMFS Northwest Region
Attn: Appeals Officer
7600 Sand Point Way NE, Bldg #1
Seattle, WA 98115

The appeal must provide documentation, or relevant evidence that substantiates any identified errors in the application or use of the relevant data from PacFIN or errors in the calculation of QS/IBQ, or any other basis alleged as the reason for the appeal. If the applicant does not submit an appeal within 30 calendar days of the date of the IAD letter, the IAD becomes the final decision of the Regional Administrator, on behalf of the Secretary of the Department of Commerce. Only the applicant on the IAD may appeal the determination.

Will the QS permit owner have access to QS/IBQ during an appeal?

Yes. However, the QS/IBQ amount available to the QS permit owner would be the amount issued in the IAD. If the appeal is for a denial of a QS permit and any associated QS/IBQ, the appellant would not have access to QS/IBQ during the appeal. If the final appeal decision results in a revision to the QS/IBQ allocation for a specific IFQ species, the revised QS/IBQ amount will be effective at the start of the next calendar year after the appeal decision (example: if the

final appeal decision is made in 2011, the QS/IBQ allocation revision will be reflected in the QS/IBQ account at the beginning of 2012).

Can an applicant transfer ownership of a trawl-endorsed limited entry permit during the application period?

No. NMFS prohibits transfers of permit ownership during the application period, which starts either 30 days after publication of the final rule in the Federal Register or on the date upon which the application is received by NMFS, whichever occurs first, until the final decision has been made on the application. The final decision is considered either the IAD (once the appeal deadline has passed, if not appealed) or the final decision by NMFS Regional Administrator on any appeal of the IAD. However, a permit owner may transfer the registration of a trawl-endorsed limited entry permit from one vessel to another vessel consistent with regulations at 50 CFR 660.25.

Can a whiting processor/first receiver reassign their whiting landings history?

Yes. Landings history may be reassigned from the Pacific whiting first receiver identified in the PacFIN database to a shoreside processor that was in fact the first processor of the whiting fish.

How does a whiting first receiver reassign whiting landings history?

As part of submitting a QS permit application, to reassign landings history, an authorized representative of the first receiver must include a letter with the application identifying the dates of the specific landings history, and associated amounts that they are requesting to be reassigned. **The letter must be signed and dated by an authorized representative for both parties (i.e., the first receiver listed on the state landing receipt and the processor to which the history is requested to be reassigned).** Also, the letter **must** contain the name of the shoreside processor to which the Pacific whiting landings history is to be reassigned, as well as their tax identification/date of birth, business address, phone number, fax number, and email address. Before making any request for reassignment of whiting landings history, both parties should be aware that whiting QS issued to shoreside processors will be subject to the accumulation limits.

Why does an applicant need to complete an ownership interest form?

NMFS requires an ownership interest form to help NMFS determine whether the applicant is in compliance with the QS/IBQ accumulation limits. The intent of these QS/IBQ accumulation limits (also called control limits) is to prevent excessive control by a participant. NMFS will determine ownership interest based on the “individual and collective rule” which means the QS/IBQ that counts towards a person’s accumulation limit includes both any QS/IBQ owned by that person and a portion of any QS/IBQ owned by an entity in which that person has an interest equal to the share of interest the person has in that entity.

How does the applicant complete the ownership interest form?

For owners of limited entry trawl permits that have previously submitted an ownership interest form, NMFS will provide a prefilled form using the ownership interest information previously submitted to NMFS. An applicant receiving a prefilled form must review the information and either certify that it is correct or revise the form as necessary. Revisions may include: adding new shareholders and providing ownership interest amounts; deleting shareholders who no longer have an interest; and modifying individual ownership amounts.

Any applicant who did not previously submit a completed ownership interest form must provide the names of all shareholder(s) who have ownership interest amounts that are equal to or greater than 2 percent.

NMFS **will not** issue a QS Permit unless the Ownership Interest Form has been completed and submitted to NMFS. All ownership interest information is considered confidential and will not be released to the public. Ownership interest forms are available on NMFS NWR permit website: <http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Permits/index.cfm>.

How will NMFS apply accumulation limits for initial issuance of QS/IBQ?

Only owners of limited entry trawl permits that have been registered with NMFS by November 30, 2008 for transfers that occurred by November 8, 2008 will be issued QS/IBQ in excess of accumulation limits. Any person that qualifies for an initial allocation of QS/IBQ in excess of the accumulation limits must divest themselves of the excess QS/IBQ during years three and four of the IFQ program. At the end of year 4 of the IFQ program, any QS/IBQ held by a person in excess of the accumulation limits will be revoked and redistributed to the remainder of the QS/IBQ holders in proportion to the QS/IBQ holdings in year 5. No compensation will be due for any revoked QS/IBQ.

The owner of any limited entry trawl permit transferred after November 8, 2008 or not registered with NMFS by November 30, 2008 will only be eligible to receive an initial allocation of QS/IBQ for that permit that are within the accumulation limits. Any QS/IBQ in excess of the accumulation limits will be redistributed to the remainder of the initial recipients of QS/IBQ in proportion to each recipient's initial allocation of QS/IBQ for each species.

If an applicant submitted multiple QS applications, will the applicant receive multiple QS permits and allocations?

No. In situations where an identical person or business entity submitted multiple QS applications (i.e., because they own more than one trawl-endorsed limited entry permit), NMFS will issue a single QS permit and aggregate the QS/IBQ allocation based on all of the qualifying permit histories associated with each limited entry trawl permit. This aggregate history will be subject to accumulation limits as described in the answer to the previous question.

At-Sea Coop Programs

Frequently asked questions regarding the MS permit, MS/CV endorsement, and C/P endorsement application process:

Do I need to apply to continue participating in the at-sea whiting fishery?

In order to continue participation in the whiting mothership fishery or catcher-processor fishery as of January 1, 2011, owners of catcher vessels or catcher-processors registered to limited entry trawl permits must apply for and obtain a MS/CV or C/P endorsement, respectively. MS/CV and C/P endorsements will be endorsements on existing limited entry trawl permits. Similarly, owners of whiting mothership processor vessels must apply for and obtain an MS permit to continue processing whiting in the mothership fishery. MS permits will be a new limited entry permit. In a future rulemaking, NMFS will provide the requirements for registering for an MS coop permit or the C/P coop permit.

One-time opportunity

NMFS will not accept or review any applications received or postmarked after November 1, 2010.

There are no hardship exemptions for this deadline.

If an applicant does not return a completed application to NMFS by November 1, 2010, they forgo the opportunity to receive consideration for initial issuance of an MS permit, MS/CV endorsement and its associated catch history assignment, or C/P endorsement.

Who is eligible to apply for a MS permit, MS/CV endorsement or a C/P endorsement?

Anyone can apply for these permits and endorsements, but only the following individuals or business entities are eligible to receive them:

MS permit:

Only the current owner of a vessel that processed at least 1,000 mt of Pacific whiting in the mothership sector in each of any two years from 1997 – 2003 is eligible.

The bareboat charterer may receive an MS permit, instead of the vessel owner. As used in this section, “bareboat charterer” means a vessel charterer operating under a bareboat charter, defined as a complete transfer of possession, command, and navigation of a vessel from the vessel owner to the charterer for the limited time of the charter agreement.

MS/CV endorsement and whiting catch history assignment:

Only an owner of a current trawl-endorsed limited entry permit with a history of whiting deliveries in the mothership sector of the Pacific whiting fishery is eligible to receive an MS/CV endorsement and whiting catch history assignment. In order to qualify for an MS/CV endorsement, vessels registered to a trawl-endorsed limited entry permit must have caught and delivered at least 500 mt of whiting to motherships from 1994 through 2003. If a limited entry permit is eligible to receive both a C/P endorsement and an MS/CV endorsement, the permit owner must choose which endorsement to apply for (i.e., the permit owner may not receive both).

C/P Endorsement:

Only the current owner of a trawl-endorsed limited entry permit registered to vessels that caught and processed any amount of whiting during a primary catcher/processor season at any time from 1997-2003 is eligible for a C/P endorsement. Only whiting that was taken with midwater (or pelagic) trawl gear counts towards eligibility for initial issuance of the C/P endorsement.

How will NMFS notify applicants it initially determines qualify for an MS Permit, an MS/CV endorsement, or a C/P endorsement?

NMFS will make a preliminary determination of those vessel or permit owners that may qualify for MS permits, MS/CV endorsements, and C/P endorsements. NMFS will mail a prefilled application to these owners by certified mail to the current address as listed in the NMFS permit database. The application package will include:

- A prefilled permit or endorsement application, using Pacific whiting observer data from the relevant NORPAC dataset on August 1, 2010 for the qualifying years to determine qualification for an MS permit, an MS/CV endorsement and whiting catch history assignment, or a C/P endorsement; and

- A Trawl Identification of Ownership Interest form (C/P permit owners are not required to complete this form).

An applicant that receives a prefilled application will have an opportunity to review the information before completing and submitting the application to NMFS by the application deadline. All prefilled applications must be completed, signed, and returned to NMFS by the application deadline to a permit or endorsement.

What if a potential applicant does not get a prefilled application for an MS Permit, MS/CV endorsement, or C/P Endorsement?

If any person believes they are qualified for an MS permit, MS/CV endorsement, or C/P endorsement and did not receive a prefilled application, they must complete an application package. The applicant **must** submit a completed application form, a trawl identification of ownership interest form (not required for a C/P endorsement application), and provide valid NORPAC data for the qualifying years or other relevant information that substantiates the applicant's qualification for an MS permit, MS/CV endorsement, or C/P endorsement and application fee.

Application packages are available on NMFS' website: (www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Permits/index.cfm)

Individuals can also contact the Sustainable Fisheries Division by writing to NMFS, Northwest Region, Permit's Office, 7600 Sand Point Way NE, Seattle, WA 98115, or by calling 206-526-4353.

What is the deadline to submit an application for an MS permit, MS/CV endorsement, or C/P endorsement?

A complete application must be either postmarked or hand-delivered to the NMFS, Northwest Region Sustainable Fisheries Division office during business hours (8 am-5 pm), by close of business on Monday, **November 1, 2010**.

What is considered a complete application?

Submission of the complete, certified application includes, but is not limited to, the following:

1. The applicant is required to sign and date the application and have the document notarized by a licensed Notary Public.
2. Applicants for an MS/CV endorsement **must** indicate they accept or do not accept NMFS' calculation of whiting catch history assignment provided in the prefilled application; applicants for an MS permit or C/P endorsement **must** indicate they accept or do not accept NMFS' calculation of qualifying landings. If the applicant does not accept the calculation in part or in whole, the applicant must provide, in writing with the

application, which part of the calculations the applicant contends to be inaccurate and must also provide credible information that substantiates any requested corrections.

3. Both MS permit applicants and MS/CV endorsement applicants are required to provide a complete Trawl Identification of Ownership Interest Form.
4. Business entities may be required to submit a corporate resolution or other credible documentation as proof that the representative of the entity is authorized to act on behalf of the entity; and
5. The applicant **must** include the application fee, made by check or money order payable to the U.S. Department of Commerce/NOAA. For MS permit applicants, please provide your vessel number (USCG Doc. No.) on the check or money order. For endorsement applications, please provide the Pacific Coast groundfish limited entry permit number on the check or money order. Fees for permits and endorsements are as follows:

MS permit application fee is **\$195.00**.

C/P endorsement application fee is **\$70.00**.

MS/CV endorsement application fee is **\$120.00**.

What is a whiting catch history assignment?

A whiting catch history assignment is an amount of Pacific whiting, expressed as a percent, based on a limited entry permit's qualifying history and specified on an MS/CV-endorsed limited entry trawl permit. It determines the amount of the mothership sector's Pacific whiting allocation associated with that MS/CV-endorsed permit that contributes to a specific mothership coop's allocation or to the non-coop fishery for the year. The catch history assignment is non-severable from the MS/CV-endorsed limited entry permit.

What data is included in the calculation of catch history assignment?

The calculation of a catch history assignment will be based on the history of whiting deliveries of vessels registered to a limited entry trawl permit in each year from 1994 through 2003, using Pacific whiting observer data recorded in the NORPAC database as it existed on August 1, 2010. The qualifying catch history includes any deliveries of whiting by vessels registered to a permit that were combined to generate the current permit. If a vessel has had two or more limited entry trawl permits simultaneously registered to it, NFMS will split the history evenly between all such limited entry trawl permits during the time they were simultaneously registered to the vessel.

What data is excluded from the catch history assignment?

Illegal landings would not count towards the qualifying catch history; nor would landings history from Federal limited entry groundfish permits that were revoked or retired through the Federal buyback program. Any landings history associated with provisional "A" permits that did not result in an "A" permit and landings history associated with "B" permits would not count towards the qualifying catch history.

How is the catch history assignment calculated?

NMFS will determine the catch history assignment for each permit from the qualifying catch history 1994 through 2003 calculated as a percent of all deliveries in the mothership fishery in those years (i.e., relative history). NMFS will add the relative histories for each year together, dropping the two worst years (years with the lowest relative history, unless the applicant indicates two different years to drop) to generate the permit's total relative history. NMFS will then divide the permit's total relative history by the sum of all qualifying permits' total relative histories to determine the permit's catch history assignment, expressed as a percent. More information and details regarding catch history assignment calculations are available in section 660.150 of the regulations.

For the catch history assignment calculation in the MS/CV application, can an applicant select different "dropped" years than those selected by NMFS in a prefilled application?

Yes. The applicant must identify in writing, those years that the applicant chooses to use in the catch history assignment calculation (and which years the applicant chooses to have "dropped"), and submit to NMFS along with their application.

What if there is an error in NMFS' prefilled application for the MS permit, MS/ CV endorsement and catch history assignment, or C/P endorsement?

Applicants who believe errors exist in the use, or the application of the relevant NORPAC data, or in NMFS' calculation in the prefilled application, whether in part or whole, may request a correction, which must identify, in writing, which part the applicant believes to be inaccurate. Written correction requests must be included with the submission of the application. The applicant must provide specific relevant information to substantiate any requested corrections. The basis for a correction request may include the following:

For MS permit

1. Errors in NMFS' use or application of data from NORPAC;
2. Errors in NMFS' calculations; and
3. Errors in the vessel registration as listed in the NMFS permit database, or in the identification of the mothership owner or bareboat charterer.

For MS/CV endorsement and catch history assignment

1. Requests for changes to the selection of the eight years with the highest relative history of whiting
2. Errors in NMFS' use or application of data from NORPAC;
3. Errors in NMFS' calculations;

4. Errors in the identification of the permit owner, permit combinations, or vessel registration as listed in the NMFS permit database; and
5. Errors in NMFS' use or application of ownership interest information.

For C/P endorsement

1. Errors in NMFS' use or application of data from NORPAC;
2. Errors in NMFS' calculations; and
3. Errors in the identification of the permit owner permit combinations, or vessel registration as listed in the NMFS permit database.

The data included in the NORPAC database represents the best scientific information of past participation in the at-sea whiting fishery and has been subject to extensive verification and quality assurance processes including opportunities for potential applicants to submit corrections to the raw data; thus, NMFS will not accept requests for corrections to raw data in NORPAC.

What will NMFS do when it receives an application?

For each application submitted by the deadline date, NMFS will review the qualifying criteria for the permit or endorsement and make a determination on the issuance of an MS permit, MS/CV endorsement and catch history assignment, or C/P endorsement. For the catch history assignment on an MS/CV-endorsed limited entry permit, an individual applicant's expected allocation may go up or down based on the total of all applications received. NMFS may receive more or fewer applications than it projects. Once NMFS completes these determinations, NMFS will issue each applicant a letter, called an Initial Administrative Determination (IAD). An IAD will indicate whether NMFS has approved or disapproved the application, and for MS/CV-endorsed permits, will indicate the amount of whiting catch history assignment. If approved, the MS permit, or MS/CV or C/P endorsement on a limited entry trawl permit for 2011 will be mailed with the IAD letter.

On what basis can an applicant appeal an IAD made on their application?

If an applicant disagrees with the IAD, the applicant can appeal the decision. The basis for appeal may include the following:

For MS permit

1. Errors in NMFS' use or application of data from NORPAC;
2. Errors in NMFS' calculations; and
3. Errors in the vessel registration as listed in the NMFS permit database, or in the identification of the mothership owner or bareboat charterer.

For MS/CV endorsement and catch history assignment

1. Requests for changes to the selection of the eight years with the highest relative history of whiting
2. Errors in NMFS' use or application of data from NORPAC;
3. Errors in NMFS' calculations;
4. Errors in the identification of the permit owner, permit combinations, or vessel registration as listed in the NMFS permit database; and
5. Errors in NMFS' use or application of ownership interest information.

For C/P endorsement

1. Errors in NMFS' use or application of data from NORPAC;
2. Errors in NMFS' calculations; and
3. Errors in the identification of the permit owner permit combinations, or vessel registration as listed in the NMFS permit database.

There is no option to appeal a decision on incomplete or inadequate data. This means the relevant observer data given in NORPAC; as of August 1, 2010, cannot be further revised.

How does an applicant file an appeal to the IAD and what is the deadline date?

Any applicant that disagrees with a NMFS IAD on their application has the option to submit a written appeal, within 30 calendar days of the date on the IAD, to:

Mr. William W. Stelle, Jr.
Regional Administrator
NOAA/NMFS Northwest Region
Attn: Appeals Officer
7600 Sand Point Way NE, Bldg #1
Seattle, WA 98115

The appeals must be in writing and must provide documentation or relevant evidence to substantiate the basis for the appeal. If the applicant does not submit an appeal within 30 calendar days of the date of the IAD letter, the IAD becomes the final decision of the Regional Administrator, on behalf of the Secretary of the Department of Commerce. Only the applicant on the IAD may appeal the determination.

If NMFS denies an application for an MS permit, MS/CV endorsement, or C/P endorsement, can the applicant participate in the at-sea whiting fishery during the appeal?

If the IAD denies the application and NMFS does not issue an MS permit, MS/CV endorsement, or C/P endorsement, the applicant will not be able to participate in the at-sea whiting fishery after December 31, 2010. The final decision on the appeal will state if and when the applicant will be allowed to participate in the at-sea whiting fishery.

What if a recipient of an MS/CV-endorsed limited entry trawl permit appeals their catch history assignment?

If the IAD approves the application for an MS/CV endorsement on a limited entry trawl permit, but the applicant appeals the catch history assignment on the permit, the MS/CV-endorsed limited entry trawl permit may be used to fish in the MS Coop Program with the catch history assignment assigned as given in the IAD during the pendency of the appeal. Any change in the amount of the catch history assignment from the final decision on the appeal would be effective at the start of the next calendar year.

Who must submit an ownership interest form?

Applicants for an MS permit or an MS/CV endorsement must submit a completed ownership interest form as part of their application package.

Why are these applicants required to submit an ownership interest form?

NMFS requires an ownership interest form to help NMFS determine whether the applicant is in compliance with the accumulation limits. The intent of these accumulation limits is to prevent excessive control by a participant.

NMFS will determine ownership interest based on the “individual and collective rule” which means, for an MS/CV-endorsed permit, the whiting catch history assignment that counts towards a person’s accumulation limit would include both any whiting catch history assignment on a MS/CV-endorsed permit owned by that person and any of portion of the whiting catch history assignment owned by an entity in which that person has an interest. Catch history assignments are subject to accumulation limits and divestiture. No person may own MS/CV-endorsed permits for which the total aggregate catch history assignment exceeds 20 percent. If any person receives from initial issuance MS/CV-endorsed permits with an aggregate catch history assignment greater than 20 percent, they would have two years from the start of the program to divest of one or more permits in order to come into compliance with this limit.

For an MS permit, the accumulation limit prohibits any person owning an MS permit from processing more than 45 percent of the whiting allocated to the MS Coop Program; the ownership interest form provides the information NMFS needs to enforce this prohibition. The

“individual and collective rule” applies to the processing participation of any mothership registered to an MS permit in a similar manner.

How does an applicant complete the ownership interest form?

For owners of limited entry trawl permits that have previously submitted an ownership interest form, NMFS will provide a prefilled form using the ownership interest information previously submitted to NMFS. An applicant receiving a prefilled form must review the information and either certify that it is correct or revise as necessary. Revisions may include adding a new shareholder and providing that individual’s ownership interest amount, deleting shareholders who no longer have an interest, and modifying existing shareholders’ individual ownership amounts.

Any applicant who did not previously submit a completed ownership interest form **must** provide the names of all shareholder(s) who have ownership interest amounts that are equal to or greater than 2 percent.

NMFS **will not** issue an MS permit or an MS/CV endorsement unless the ownership interest form has been completed and submitted to NMFS. All ownership interest information is considered confidential and will not be released to the public. Ownership interest forms are available on NMFS NWR permit website: <http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Permits/index.cfm>

Can an applicant transfer ownership of a trawl-endorsed limited entry permit during the application period?

No. NMFS prohibits transfers of permit ownership during the application period for an MS/CV endorsement or a C/P endorsement, which starts either 30 days after publication of the final rule in the Federal Register or on the date upon which the application is received by NMFS, whichever occurs first, until the final decision has been made on the application. The final decision is considered either the IAD (once the appeal deadline has passed, if not appealed) or the final decision by NMFS Regional Administrator of any appeal of the IAD. However, a permit owner may transfer the registration of a trawl-endorsed limited entry permit from one vessel to another vessel consistent with regulations given 50 CFR 660.25.

How will NMFS apply accumulation limits for MS/CV-endorsed permits?

No person may own MS/CV-endorsed permits for which the aggregate catch history assignment exceeds 20 percent. Any person that NMFS determines, as a result of the initial issuance of MS/CV-endorsed permits, to own in excess of 20 percent of the total catch history assignment in the MS Coop Program (applying the “individual and collective rule”) will be allowed to receive such permit(s), but must divest themselves of the excess ownership during years one and two of the MS Coop Program. At the end of year two of the MS Coop Program, any MS/CV-endorsed permits owned by a person in excess of the accumulation limits will not be issued (renewed) until the permit owner complies with the accumulation limits.

Can a catcher/processor vessel also operate as catcher vessel or a mothership within the same year?

No. A vessel registered to a C/P-endorsed limited entry trawl permit may not also act as a catcher vessel delivering unprocessed whiting to another processor in the same calendar year in which it participates in the C/P Coop Program, nor may it operate as a mothership in the whiting fishery during the same calendar year it participates in the CP Coop Program.

Need Help?

Websites:

National Marine Fisheries Service, Northwest Region,
Pacific Coast Groundfish Management,
Trawl Rationalization Program :

<http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Trawl-Program/index.cfm>

Forms/Applications are available on the Permits office website:

<http://www.nwr.noaa.gov/groundfish-halibut/fisheries-permits/index.cfm>

Questions regarding permits or mailings?

Contact the Fisheries Permit Office at:

National Marine Fisheries Service
Northwest Region, Sustainable Fisheries Division
Attn: Fisheries Permit Office
7600 Sand Point Way NE, Bldg #1
Seattle, WA 98115-0070
Phone: 206-526-4353
Fax: 206-526-6736

Question regarding the regulations?

Contact the Groundfish Policy and Regulations Branch at:

Phone: 206-526-6140
Fax: 206-526-6736

Glossary

Allocation - The direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals.

Catch history assignment – The percentage of allocation of the Pacific whiting for the mothership sector based on a limited entry permit’s qualifying history, which is specified on the MS/CV-endorsed limited entry trawl permit.

Catcher/Processor Coop or C/P Coop - A harvester group that includes all eligible C/P-endorsed limited entry trawl permit owners as members that voluntarily form a coop and manage the catcher/processor-specified allocations through private agreements and contracts.

C/P endorsement - A C/P endorsement on a trawl limited entry permit conveys a conditional privilege that allows a vessel registered to it to harvest and process fish in the C/P Coop Program.

Coop member - A permit owner of an MS/CV-endorsed limited entry trawl permit for the MS Coop Program that is a party to an MS coop agreement, or a permit owner of a C/P-endorsed limited entry trawl permit that is legally obligated to the CP coop.

Initial Administrative Determination or IAD - A formal, written determination made by NMFS on an application or permit request that is subject to appeal.

Individual bycatch quota (IBQ) - The amount of bycatch quota for an individual species/species group and area expressed as a percentage of the annual allocation of allowable bycatch mortality to the Shorebased IFQ Program. IBQ is used as the basis for the annual calculation and allocation of a QS permit owner’s IBQ pounds in the Shorebased IFQ Program. Both IBQ and QS may be listed on a QS permit and in the associated QS account. At initial issuance, Pacific halibut N 40°10’ will be the only species for which IBQ will be issued.

Individual fishing quota (IFQ) - A federal permit to harvest a quantity of fish, expressed as a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person. An IFQ is a harvest privilege that may be revoked at any time with in accordance with the Magnuson-Stevens Act.

IFQ landing - An offload of fish harvested under the Shorebased IFQ Program.

First receiver - A person who receives, purchases, or takes custody, control, or possession of catch onshore directly from a vessel that harvested the catch while fishing under the Shorebased IFQ Program.

MS/CV endorsement – An endorsement on a limited entry trawl permit that conveys a conditional privilege that allows a vessel registered to the permit to fish either in a coop or in the non-coop fishery in the MS Coop Program.

Nonwhiting trip – For the purpose of calculating initial issuance of QS in the Shorebased IFQ Program, “nonwhiting trip” means a fishing trip where less than 50% by weight of all fish reported on the state landing receipt is whiting.

Ownership interest– Participation in ownership of a corporation, partnership, or other entity.

PacFIN – The Pacific Fisheries Information Network databases of the Pacific States Marine Fisheries Commission that contain the landings and logbook data that will be used to determine initial issuance of QS/IBQ in the Shorebased IFQ Program.

Pre-filled application - A partially completed application generated by NMFS where NMFS has preliminarily determined that an applicant may qualify for an initial issuance of QS/IBQ, an MS permit, an MS/CV endorsement and associated catch history assignment, or a C/P endorsement.

Quota pounds (QP) – The quotas, expressed in round weight of fish, that are issued annually to QS permit owners in the Shorebased IFQ program based on the amount of QS they own and the amount of fish allocated to the Shorebased IFQ Program. QP have the same species/species group and area as the QS from which they are issued.

Quota share (QS) - The amount of fishing quota for an individual species/species group and area, expressed as a percentage of annual allocation of fish to Shorebased IFQ Program. The QS is used as the basis for the annual calculation and allocation of the QS permit owner’s QP in the Shorebased IFQ program. Both QS and IBQ may be listed on a QS permit and in the associated QS account.

QS permit - Conveys a conditional privilege to a person to own QS or IBQ in the Shorebased IFQ program.

Relative history - The landings history for a species, year and area subdivision, divided by the total fleet history of the sector for that species, year and area subdivision, as appropriate. Relative history is expressed as a percent.

Shoreside processor – An operation, working on US soil, that takes delivery of trawl caught groundfish that has not been processed; and that thereafter engages that fish in shoreside processing. Entities that received fish that have not undergone at-sea processing or shoreside processing and sell that fish directly to consumers shall not be considered a processor for purposes of QS allocations. Shoreside processing is defined as either of the following:

1. Any activity that takes place shoreside; and that involves: cutting groundfish into smaller portions; or freezing, cooking, smoking, drying groundfish; or packaging that groundfish for resale into 100 pound units or smaller for sale or distribution into a wholesale or retail market.
2. The purchase and redistribution in to a wholesale or retail market of live groundfish from a harvesting vessel.

Whiting trip - For the purpose of calculating initial issuance of QS in the Shorebased IFQ Program, “whiting trip” means a trip where greater than or equal to 50%, by weight, of all fish reported on the state landing receipt is whiting.

Trawl Rationalization Program Species List

IFQ Program Species

Lingcod
Pacific Cod
Pacific Whiting
Sablefish N. of 36°
Sablefish S. of 36°
Shortspine Thornyhead - N. of 34°27'
Shortspine Thornyhead - S. of 34°27'
Longspine Thornyhead - N. of 34°27'
Chilipepper Rockfish
Splitnose Rockfish
Yellowtail Rockfish
Minor Rockfish North - Shelf Species
Minor Rockfish South - Shelf Species
Minor Rockfish North - Slope Species
Minor Rockfish South - Slope Species
Dover Sole
English Sole
Petrale Sole
Arrowtooth Flounder
Starry Flounder
Other Flatfish complex
Bocaccio
Cowcod
Darkblotched Rockfish
Pacific Ocean Perch (POP)
Widow Rockfish
Yelloweye Rockfish
Canary Rockfish
Pacific Halibut IBQ N. of 40°10'

At-sea Program Species (MS & C/P)

Pacific Whiting
Pacific Ocean Perch (POP)
Widow Rockfish
Canary Rockfish
Darkblotched Rockfish