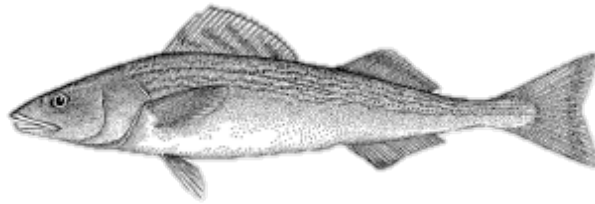


# Compliance Guide Pacific Coast Groundfish Regulations



## Joint Registration, the Limited exemption to the Own-Hold rules, and other measures

starts December 23, 2016

### December 2016

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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 new requirements in the Pacific Coast groundfish fishery (81 FR 84419, November 23, 2016). Any discrepancies between this guide and the *Federal Register* will be resolved in favor of the *Federal Register*.

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## Need Help?

### Websites:

NMFS, Pacific Coast Groundfish Management, Sablefish:

<http://www.westcoast.fisheries.noaa.gov/fisheries/management/sablefish.html>

Pacific Fishery Management Council, Groundfish Management:

<http://www.pcouncil.org/groundfish/fishery-management-plan/>

NMFS, Pacific Coast Groundfish Management, Sablefish, Electronic Tickets:

[http://www.westcoast.fisheries.noaa.gov/fisheries/management/electronic tickets.html](http://www.westcoast.fisheries.noaa.gov/fisheries/management/electronic_tickets.html)

### Have to make a declaration report?

Contact the NMFS, Office of Law Enforcement, West Coast Groundfish Declaration Line at the following:

Phone: 888-585-5518

### Question regarding permits/licenses?

Contact the NMFS, West Coast Region Permits Office at the following:

Phone: 206-526-4353, or visit the following website:

[http://www.westcoast.fisheries.noaa.gov/fisheries/management/groundfish\\_permits/groundfish fisheries permits.html](http://www.westcoast.fisheries.noaa.gov/fisheries/management/groundfish_permits/groundfish_fisheries_permits.html)

### Question regarding the program?

Contact the NMFS, West Coast Region, Groundfish Policy and Regulations Branch at:

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

### Have to contact NMFS law enforcement?

Find an enforcement office nearest you at:

<http://www.nmfs.noaa.gov/ole/index.html>

### Have to report violations?

Hotline: 800-853-1964

# 1 ■ Introduction

National Marine Fisheries Service (NMFS) is modifying fishing regulations pertaining to the Pacific Coast groundfish fishery via a final rule (81 FR 84419, November 23, 2016). The final rule implements new requirements for submission of electronic fish tickets for commercial sablefish deliveries (described in a separate Compliance Guide, effective January 1, 2017), as well as the following measures:

1. Joint registration of trawl endorsed and fixed gear endorsed limited entry permits
2. Limited exemption to ownership limitation
3. Clarifying transferability of at-sea processing exemptions
4. Requiring a declaration report for any vessel registered to a vessel monitoring system (VMS)
5. Updating electronic fish ticket hardware/software requirements

*Regulations described in this Compliance Guide are effective December 23, 2016.*

6. Correcting description of allocation of sablefish north of 36° N. lat.
7. Clarifying prohibitions on “take and retain”

This guide will help participants and interested parties understand how the new and clarified regulations, which are based on recommendations by the Pacific Fishery Management Council (Council) and implemented by NMFS, will impact them.

## **This guide applies to you if any of the following occurs:**

- You own or operate a vessel that takes and retains Pacific Coast groundfish.
- You own a limited entry permit.
- A vessel you own is registered to a sablefish-endorsed limited entry permit.
- You own or operate a vessel that is registered to a VMS
- you own or operate a vessel that has an exemption to prohibitions of at-sea processing.
- You are required to submit data via electronic fish ticket.

## 2 ▪ Joint Registration

The following information identifies requirements related to joint registration of limited entry permits (LEPs).

*Joint registration means simultaneously registering both trawl-endorsed and longline or trap/pot-endorsed limited entry permits for use with a single vessel.*

If you own or lease trawl, longline or trap/pot, or sablefish-endorsed LEPs that could be jointly registered, or if you own or operate a vessel that could be registered to multiple permits per the description above, please read the following sections for more information.

### 2.1 What does it mean to me?

Prior to December 23, 2016, a vessel cannot be simultaneously registered to both trawl permit and LE fixed gear permit (unless a permit is dual endorsed). This new regulation allows for certain combinations of fixed gear and trawl LEPs that can be registered simultaneously to a single vessel (see Section 2.2 and Section 2.3). If a vessel is jointly registered in this manner, it may switch between the trawl/IFQ fishery and the limited entry fixed gear (LEFG) fishery simply by making a declaration report with the Office of Law Enforcement (888-585-5518). No longer will a vessel have to submit an LEP transfer form and wait until the start of the next two-month cumulative limit period to switch between trawl/IFQ and LEFG fisheries.

NMFS Permits Branch will accept LEP transfer requests at any time, but joint registration permits will be effective after December 23, 2016. Some vessels may still be subject to existing rules that allow changes in vessel registration to be effective at the start of cumulative limit period, and would not be effective until January 1, 2017 (i.e., the start of the next cumulative limit period).

### 2.2 What types of LEPs may be jointly registered to a vessel?

1. A single trawl-endorsed LEP and one, two, or three sablefish-endorsed fixed gear (longline and/or fishpot endorsed) LEPs; or
2. A single trawl-endorsed LEP and one non-sablefish endorsed LEFG permit for use with a single vessel

### 2.3 How does it work?

To get to joint registration, permit owners must submit a transfer form to register the permit they were previously prohibited from registering to the vessel, and the vessel owner/operator must ensure that they have the proper declaration for the fishery they intend to participate in once the vessel is registered to both trawl and LEFG permits.

The declaration report identifies which fishery the vessel will be participating in, and the vessel must comply with all applicable regulations for that fishery while that declaration report is valid. For example, vessels declared to be using non-trawl gear in the IFQ fishery must meet all of the requirements for gear switching in the Shorebased IFQ Program, until they file a new declaration report.

## 2.4 When can I jointly register LEPs to a vessel?

Permit owners may submit LEP transfer requests to NMFS Permits Branch at any time.

The provision allowing the simultaneous registration of multiple permits to a single vessel (in one of the ways described in Section 2.2) will not be effective before December 23, 2016. The current regulation that allows a change in vessel registration on an LEP to be effective at the start of a

cumulative limit period (March, May, July, etc.) remains in effect. Individuals who want to register a vessel to an LEP to be effective on January 1, 2017, must submit a transfer form no later than December 31.

**LEP transfer requests that result in joint registration can be granted by the NMFS Permits Branch after the following date: December 23, 2016.**

## 2.5 What can I do on the same trip?

When a vessel is jointly registered, it may switch between the IFQ fishery and the LEFG fishery by filing a declaration report with OLE (see Section 2.2). Existing requirements for filing a declaration report still apply (§660.13(d)), whereas a vessel 1) must submit the declaration report before leaving port and fishing, and 2) vessels participating in the Shorebased IFQ Program may not declare more than one gear type. This means that a vessel that is jointly registered may not legally fish in both the IFQ fishery and the LEFG fishery on the same trip. Per the definition of “fishing,” this includes fishing gear deployment, such as setting pots. Therefore, a jointly registered vessel may not pull pots in the IFQ fishery and on the same trip set pots for the LEFG fishery.

## 3 ■ Exemption to Ownership Limitation

The following information identifies a process by which vessel owners who meet certain qualifying criteria may petition NMFS for a limited exemption to the ownership limitation on sablefish-endorsed LEPs.

*Ownership limitation prevents ownership interest or holding of more than three permits with sablefish endorsements. (50 CFR 660.25 (b)(3)(iv)(C)(2))*

If you have part ownership in a vessel or vessels registered to one or more sablefish-endorsed LEPs and the vessel or vessels also fish in the Alaska IFQ sablefish fishery, please read the following sections for more information.

The term “ownership limitation” refers to the existing regulations that provide that an individual, corporation, or partnership may own and/or hold no more than three sablefish permits. The term “hold” means any ownership interest in a vessel that is registered to a sablefish permit. This new regulation allows vessel owners to request an exemption from the hold count if they meet certain requirements.

### 3.1 What does it mean to me?

If you have a 20 percent or lower ownership interest in a vessel so that it may harvest your Alaska IFQ sablefish quota, and, because of this ownership, you have reached the ownership limitation for West Coast, sablefish-endorsed LEPs, you may be eligible for a limited exemption to the sablefish-endorsed LEP ownership limitation. If qualified, the exemption would allow you to have ownership interest in a vessel fishing Alaska IFQ sablefish without having any of the West Coast, sablefish-endorsed LEPs registered to that vessel count towards your ownership limitation. This may provide additional flexibility with regards to vessel choice.

**Vessel owners may seek an exemption from the ownership limitation of three sablefish-endorsed LEPs.**

### 3.2 How does it work?

To apply, you must meet these three qualifying criteria:

1. The vessel owner currently has no more than 20 percent ownership interest in a vessel registered to the sablefish endorsed permit.
2. The vessel owner currently has ownership interest in Alaska sablefish IFQ.
3. The vessel has fished in the past 12-month period in both the West Coast groundfish LEFG fishery and the Sablefish IFQ Program in Alaska.

A vessel owner must submit best evidence of having met these qualifying criteria to NMFS. The procedure is as follows:

- 1) Submit a Sablefish Permit Ownership Limitation Exemption Identification of Ownership Interest form showing the relative ownership interest percentages of all owners in the vessel.
- 2) Provide NMFS Alaska Annual IFQ Permit for the current year showing current ownership of Alaska sablefish IFQ.
- 3) Provide state fish tickets or landing receipts from the West Coast states and Alaska for the vessel from the current year.

The qualifying vessel owner may seek an ownership limitation exemption for sablefish - endorsed permits registered to no more than two vessels.

If you believe that you meet the qualifying criteria and would like to petition NMFS for a limited exemption, contact the West Coast Region Groundfish Permits Office (see contact information above). The Sablefish Permit Ownership Limitation Exemption Identification of Ownership Interest form and application instructions are available online at the following website: [http://www.westcoast.fisheries.noaa.gov/fisheries/management/groundfish\\_permits/limited\\_entry\\_permits.html](http://www.westcoast.fisheries.noaa.gov/fisheries/management/groundfish_permits/limited_entry_permits.html).

### **3.3 When can I apply for an exemption?**

Applications will be accepted at any time. They will become effective on or after December 23, 2016.

### **3.4 How will I know if I was granted an exemption?**

You will be notified by the NMFS West Coast Region Groundfish Permits and Monitoring Branch if you were granted an exemption.



## 4 ■ At-sea Processing Exemption

NMFS is clarifying how a vessel may use an exemption to at-sea processing in light of Joint Registration (see Section 2).

*At-sea processing means processing that takes place on a vessel or other platform that floats and is capable of being moved from one location to another, whether shore-based or on the water (660.11). It is generally prohibited to process (non-whiting groundfish or sablefish, depending on the sector in which the vessel is fishing) at-sea unless you meet certain qualifications, or your vessel has been granted an exemption.*

If you own or operate a vessel that has been granted an at-sea processing exemption, and that vessel is or may become jointly registered, please read the following sections for more information.

### 4.1 What does it mean to me?

NMFS issued one at sea exemption to a vessel operating in the sablefish LEFG fishery in 2006 and at-sea processing exemptions to two vessels participating in the trawl fishery in 2012. These exemptions were issued on a one-time basis, and they are not transferrable to another vessel or vessel owner. This new regulation only impacts those vessels/vessel owners that were issued the at-sea processing exemption and does not impact any other vessels/vessel owners participating in the trawl and LEFG fishery.

Prior to this final rule, vessels could not use their at-sea processing exemption outside of the fishery for which the exemption was granted because they could not be jointly registered. This final rule, effective December 23, 2016, implements joint registration and revises at-sea processing exemption regulations to make it clear that if an at-sea processing exemption was granted, the exemption only applies when the vessel is fishing in the sector to which the at-sea processing exemption was granted. Vessels with an exemption from the prohibition of at-sea processing cannot transfer that exemption when fishing under regulations that govern other sectors.

### 4.2 How does it work?

This rule does not change how current regulations apply, but it clarifies current regulations in light of flexibility allowed under new joint registration regulations.

### 4.3 When will this become effective?

Joint registration regulations, effective on December 23, 2016, will not allow vessels that have been granted an at-sea processing exemption to transfer that exemption when fishing in other sectors.

## 5 ▪ Submit a Declaration Report

As of December 23, 2016, every vessel that has been registered to a VMS must submit a declaration report, regardless of fishing activities.

*VMS means a vessel monitoring system or mobile transceiver unit approved by NMFS for use on vessels that take (directly or incidentally) species managed under the PCGFMP.*

*Declaration report means the vessel operator provides vessel information to NMFS OLE before the vessel leaves port on a trip in which the vessel is used to fish in U.S. ocean waters between 0 and 200 nm offshore of Washington, Oregon, or California.*

### 5.1 Does this apply to me?

If you own or operate a vessel that is registered to a VMS unit, but that vessel has never submitted a declaration report, this section applies to you.

### 5.2 How do I submit a declaration report?

The declaration report identifies which fishery the vessel will be participating in so that Office of Law Enforcement know which area and depth-based fishing restrictions and closures apply to the vessel on that fishing trip.

1. Call the Office of Law Enforcement at 888-585-5518 to submit a declaration report.
2. Include vessel name and/or identification number, and gear type.
3. Retain confirmation code or receipt to confirm that a declaration report was received.

**Submit a VMS declaration, even if you are not fishing.**

### 5.3 If I don't plan on fishing, what declaration do I submit?

Submit a declaration report of "(24) Other." The declaration of "(24) Other" includes other on-the-water activities that may not be fishing (e.g., scientific research activities).

## 6 ▪ Hardware and Software Requirements for Submitting Electronic Fish Tickets

As part of the “Other Measures” in this final rule, NMFS is updating the regulations for hardware and software requirements for submitting e-tickets. PSMFC has developed a web-based form, so the hardware and software requirements at § 660.15(d)(1) are no longer necessary. Please see the separate compliance guide for electronic tickets.

### 6.1 Does this apply to me?

This applies to you if you are a first receiver accepting landings with any amount of sablefish, or if you are an IFQ first receiver.

### 6.2 What are the new requirements?

- You need a personal computer system, tablet, mobile device, or other device that has software (e.g., web browser) capable of submitting information over the internet.
- You need Internet access. The first receiver is responsible for maintaining internet access sufficient to access the web-based interface and submit completed electronic fish ticket forms.
- You must ensure maintenance. The first receiver is responsible for ensuring that all hardware and software are fully operational and functional whenever they receive, purchase, or take custody, control, or possession of groundfish species for which an electronic fish ticket is required. Submission to Pacific States Marine Fisheries Commission must be executed effectively by the equipment.

### 6.3 Do I have to maintain hardware and software per the old requirements?

No. New requirements supersede the old requirements.

**Electronic fish tickets can be turned in from any web-enabled device via the password-protected E-Tickets portal.**

## 7 ■ Allocations for Sablefish North of 36° N. lat.

NMFS is correcting regulations to match the allocation scheme that is defined in the Pacific Coast Groundfish Fishery Management Plan (FMP) and that has been applied to sablefish annual catch limits (ACLs) in recent years, including 2016.

### 7.1 What was wrong?

The allocation structure for sablefish north of 36° N. lat. was established in FMP Amendment 6. Amendment 21 and its implementing regulations inadvertently changed the process for allocating sablefish north of 36° N. lat. (75 FR 60868, October 1, 2010). This final rule includes regulations aligning sablefish north of 36° N. lat. allocations with the Amendment 6 allocation structure.

### 7.2 What does this change for me?

This changes nothing, because the sablefish allocations and associated trip limits in regulation are correct and are not revised via this rulemaking.

**ACLs, allocations and trip limits for sablefish north of 36° N. lat. are unchanged by this rule.**

## 8 • Clarifying “Take and Retain” Prohibitions

NMFS is clarifying terminology consistent with the Council’s recommendations under PCGFMP Amendment 14. NMFS is replacing “taking, retaining” with “taking and retaining.”

### 8.1 What was wrong?

With the exception of the sablefish primary fishery, commercial groundfish fisheries vessels may “take” more than a single cumulative trip limit of a species while fishing for other species, but they may not “retain” any species above its cumulative trip limit. The phrase “taking, retaining” in this context is not clear, and the change improves enforceability of trip limit prohibitions and brings consistency to regulations that apply to commercial groundfish fisheries.

### 8.2 What does this change for me?

It means nothing, because sablefish daily trip limit fisheries are already managed by trip limits where it is prohibited to “take and retain” more than a single trip limit per vessel. No trip limits are revised by this rule.

**This does not change trip limits, or how they apply, but it clarifies that taking and retaining more than the applicable trip limit are not allowed.**

# Glossary

**Annual Catch Limit (ACL)** is a harvest specification set in consideration of conservation objectives, socioeconomic concerns, management uncertainty and other factors. The ACL is a harvest limit that includes all sources of fishing-related mortality including landings, discard mortality, research catches, and catches in exempted fishing permit activities.

**Endorsement** means an additional specification affixed to the limited entry permit that further restricts fishery participation or further specifies a harvest privilege, and it is non-severable from a limited entry permit.

**Groundfish species** means fish defined under “groundfish” at § 660.11 and managed under the Pacific coast groundfish FMP and regulations at 50 CFR part 660, subparts C through G.

**Individual fishing quota (IFQ)** is 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 in accordance with the Magnuson-Stevens Act.

**IFQ landing** is an offload of fish harvested under the Shorebased IFQ Program.

**Land or landing** means to begin transfer of fish, offloading fish, or to offload fish from any vessel. Once transfer of fish begins, all fish aboard the vessel are counted as part of the landing.

**Limited entry fishery** means the fishery composed of vessels registered for use with limited entry permits.

**Limited entry gear** means longline, trap (or pot), or groundfish trawl gear used under the authority of a valid limited entry permit affixed with an endorsement for that gear.

**Limited entry permit (LEP) means the following:**

- (1) The Federal permit required to fish in the limited entry endorsed fishery, and it includes any gear, size, or species endorsements affixed to the permit, or
- (2) The Federal permit required to receive and process fish as a mothership processor.

**Office of Law Enforcement or OLE** refers to the National Marine Fisheries Service, Office of Law Enforcement, Western Division.

**Open access fishery** means the fishery composed of commercial vessels using open access gear fished pursuant to the harvest guidelines, quotas, and other management measures governing the harvest of open access allocations (detailed in §660.55) or governing the fishing activities of open access vessels (detailed in subpart F of this part). Any commercial vessel that is not registered to a limited entry permit and which takes and retains, possesses, or lands groundfish is a participant in the open access groundfish fishery.

**Open access gear** means all types of fishing gear except the following:

- (1) Longline or trap (or pot) gear fished by a vessel that has a limited entry permit affixed with a gear endorsement for that gear
- (2) Groundfish trawl.

**Processing (or to process)** means the preparation or packaging of groundfish to render it suitable for human consumption, retail sale, industrial uses or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil, but does not mean heading and gutting unless additional preparation is done.

**Owner-on-board requirement** means any person who owns or has ownership interest in a limited entry permit with a sablefish endorsement, as described at §660.25(b)(3), subpart C, must be on board the vessel registered for use with that permit at any time that the vessel has sablefish on board the vessel that count toward that permit's cumulative sablefish landing limit. A permit owner is not obligated to be on board the vessel fishing sablefish if any qualifications are met at 660.231 (b)(4).

**Pacific States Marine Fisheries Commission or PSMFC** promotes and supports policies and actions to conserve, develop, and manage fishery resources in California, Oregon, Washington, Idaho, and Alaska. It accomplishes this through coordinating research activities, monitoring fishing activities, and facilitating a wide variety of projects. It works to collect data and maintain databases on salmon, steelhead, and other marine fish for fishery managers and the fishing industry.

**PSMFC E-Tix Portal** is the website used to send groundfish landing data via electronic fish ticket. It is used to collect information similar to the information required in state fish receiving tickets or landing receipts.

**Vessel Monitoring System (VMS)** means a vessel monitoring system or mobile transceiver unit approved by NMFS for use on vessels that take (directly or incidentally) species managed under the PCGFMP.

**Vessel owner or owner of a vessel** means a person identified as the current owner in the Certificate of Documentation (CG-1270) issued by the U.S. Coast Guard (USCG) for a documented vessel, or in a registration certificate issued by a state or the USCG for an undocumented vessel.