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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

**[Docket No. 150902809-6536-01]**

**RIN 0648-BF12**

**Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Widow Rockfish Reallocation in the Individual Fishing Quota Fishery**

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

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

**SUMMARY:** In January 2011, NMFS implemented the trawl rationalization program, a type of catch share program, for the Pacific coast groundfish fishery's limited entry trawl fleet, which includes an individual fishing quota program for limited entry trawl participants. At the time of implementation, the widow rockfish stock was overfished and quota shares were allocated to quota share permit owners in the individual fishing quota program using an overfished species formula. Now that the widow rockfish stock has been rebuilt, NMFS proposes to reallocate quota shares to initial recipients based on a target species formula that will more closely represent the fishing history of permit owners when widow rockfish was a targeted species. Through this rule, NMFS also proposes to allow the trading of widow rockfish quota shares, set a deadline for divestiture in case the reallocation of widow rockfish puts any QS permit owner over an

accumulation limit, and remove the daily vessel limit for widow rockfish since it is no longer an overfished species.

**DATES:** Comments on this proposed rule must be received on or before [*Insert date 30 days after date of publication in the Federal Register*].

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2016-0037, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2016-0037*, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070; Attn: Sarah Towne.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Sarah Towne, 206-526-4140, *sarah.towne@noaa.gov*.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

In January 2011, NMFS implemented a trawl rationalization program, which is a catch share program, for the Pacific coast groundfish limited entry trawl fishery. The program was implemented through Amendments 20 and 21 to the Pacific Coast Groundfish Fishery Management Plan and the corresponding implementing regulations at 50 CFR part 660. Amendment 20 established the trawl rationalization program that consists of: an individual fishing quota (IFQ) program for the shorebased trawl fleet (including whiting and nonwhiting sectors), and cooperative programs for the at-sea mothership and catcher/processor trawl fleets (whiting only). Amendment 21 set long-term allocations for the limited entry trawl sectors of certain groundfish species.

In the IFQ fishery, NMFS initially allocated quota shares (QS) based on allocation formulas developed through the Pacific Fishery Management Council (Council). Target species QS was allocated using limited entry trawl permit catch history. Overfished species QS was allocated based on QS of 11 target species, area of catch based on logbook data, and average bycatch ratios from observer data. The widow rockfish stock was overfished at the time of initial allocation, so widow rockfish QS was allocated to QS permit owners using the overfished species formula.

Amendment 20 states that when an overfished species is rebuilt, there may be a reallocation of QS to facilitate the reestablishment of historic fishing opportunities. In its May 2012 Status of the Stocks Report, NMFS officially declared widow rockfish rebuilt. Based on the 2011 stock assessment results, which indicated that widow was rebuilt, the Council decided that it would consider a reallocation of widow rockfish QS. In June 2012

QS for all species was not yet transferrable, but the Council placed a moratorium on the future transfer of widow rockfish QS until the reallocation could be considered, to protect permit owners from trading an asset that the Council might redistribute. In November 2014 the Council adopted a range of alternatives for widow rockfish QS reallocation, and in April 2015 made a final recommendation to NMFS to reallocate widow rockfish using a modified target species formula.

Accumulation limits in the IFQ program cap the amount of QS or individual bycatch quota (IBQ) that a person, individually or collectively, may own or control (QS and IBQ control limits), and set limits on the amount of quota pounds (QP) that a vessel may catch or hold in its vessel account during the year (annual vessel limits). Overfished species such as widow rockfish also have QP vessel limits (also called daily limits) that restrict the amount of available overfished species QP that a vessel account can hold on any given day.

### **Proposed Action**

NMFS proposes this rule to: 1) reallocate widow rockfish QS in the shorebased IFQ fishery to more closely reflect historic target fishing opportunities; 2) remove the moratorium on widow QS trading once reallocation and any appeals are completed; 3) set a divestiture deadline in case the reallocation puts any QS permit owner over the widow rockfish QS control limit or the aggregate nonwhiting control limit; and 4) remove the overfished species daily vessel limit for widow rockfish that restricts the amount of available QP that any vessel owner can hold on a given day. Each of these proposed actions is described in further detail below.

### **Widow Rockfish Reallocation**

In 2011, NMFS initially allocated QS for 29 different species to limited entry trawl permit owners in the form of a new QS permit and associated online account (lingcod was later subdivided into two areas, so there are currently 30 IFQ species). Each year NMFS allocates QPs to QS permit owners in their online accounts, based on the amount of QS each permit owner holds and the current sector allocation. QS permit owners must transfer these pounds to a vessel account in order for them to be fished, and when a vessel goes out fishing in the IFQ program, the landings and discards are debited against their vessel account much like a check being debited against a checking account. In addition to transferring annual pounds to vessel accounts, QS permit owners can also permanently transfer shares between QS accounts (for all species except widow rockfish, pending the widow rockfish reallocation). When a QS permit owner transfers QS, they are permanently transferring their ability to access and use that percentage of the annual sector allocation. For example, if QS permit owner A sold all of their sablefish South of 36° N to permit owner B, permit owner A would no longer be allocated any sablefish South of 36° N QPs in future years.

The QS and IBQ that was initially allocated in 2011 was calculated in four different groups, with four different allocation formulas: 21 target species in “Group 1;” 6 incidentally caught overfished species, including widow rockfish, in “Group 2;” canary rockfish—an incidentally-caught overfished species calculated using a different formula than Group 2 species—in “Group 3;” and Pacific halibut IBQ in “Group 4.”

The widow rockfish stock was overfished at the time of initial allocation, and therefore widow QS was calculated using a Group 2 formula. Because the Group 2 formula was based on the amount of target species (Group 1 species) QS the permit

owner received, the Group 2 QS allocations purposely did not reflect the historical fishing efforts of fishermen who may have targeted those Group 2 species before they became overfished; instead the goal was to address the QS recipient's need to cover incidental catch of those overfished species based on their allocations of target species.

Consistent with Amendment 20, and at the urging of some fishermen who were interested in a redistribution of widow rockfish QS to reflect target history instead of bycatch needs, the Council adopted a range of widow reallocation alternatives for consideration in November 2014, including: Alternative 1 - status quo (no reallocation); Alternative 2 - a reallocation based on the Group 1 species formula used at the time of initial allocation, with two suboptions to determine the split of widow rockfish QS between whiting and nonwhiting trips; Alternative 3 - a reallocation based on nonwhiting groundfish revenue as a basis for recent participation; and Alternative 4 – a reallocation that was a mix between Alternatives 1 and 2, where a portion of widow QS would not be reallocated, and a portion would be reallocated using the formula from Alternative 2. In April 2015, the Council selected the midpoint between the two Alternative 2 suboptions to establish a final alternative, Alternative 5.

In coming to its final preferred alternative, Alternative 5, the Council took into account the expected impacts of each alternative on harvesters, processors, workers, investments, and communities, using the most recent data available, as reflected in the environmental assessment. The Council considered the geographic distribution of impacts among the communities in Washington, Oregon, and California. The Council chose to blend the Alternative 2 suboptions, which set proportions for reallocating widow rockfish based on whiting and nonwhiting trips, to balance impacts to the whiting and nonwhiting

fisheries. Of all the alternatives, the Council's final preferred alternative moves the most directly toward reestablishing the targeted widow rockfish fishery and is therefore expected to better achieve optimum yield and more immediately benefit struggling communities.

The proposed action would reallocate widow rockfish QS to individual QS permit owners in the IFQ program using the formula the Council selected in its final preferred alternative. This formula is very similar to the Group 1 species calculation that was initially used to allocate target species QS in 2011. Specifically, NMFS would reallocate widow rockfish in two parts: one portion based on the history of permits retired in the 2003 buyback program, divided equally among qualified limited entry trawl permits, and the other portion based on widow rockfish landings history. NMFS would continue to hold 10 percent of the total widow QS aside for the adaptive management program (AMP).

For the portion of the reallocation resulting from the buyback, this rule proposes to use landings history from Federal limited entry groundfish permits that were retired through the 2003 Federal buyback program. NMFS would calculate the total buyback permit history as a percent of the total fleet history from 1994-2003, separately for whiting and nonwhiting trips. The whiting and nonwhiting QS pools associated with the buyback permits would be divided equally among all qualifying limited entry permits.

For the portion of the reallocation resulting from widow rockfish landings history, this rule proposes to allocate one pool of QS based on the amount of Pacific whiting QS allocated for each permit, and the other pool based on the amount of widow rockfish caught on nonwhiting trips between 1994 and 2002, dropping the three lowest years. The

Council's final preferred alternative excluded 2003 from nonwhiting trip history since widow rockfish was managed for rebuilding from late 2002-2012, and the 2003 regulations aimed to eliminate widow targeting. Because only a few nonwhiting vessels made widow landings in 2003 and because the proposed reallocation formula calculates history based on a limited entry trawl permit's share of the fleet total for each year, a relatively small amount of widow landed by a single permit in 2003 would constitute a large portion of the fleet total for that year and have a disproportionate effect on the widow QS reallocation. The Council decided that this disproportionate allocation would be unfair, and that fishermen who harvested widow in the nonwhiting fishery when it was overfished should not be rewarded with additional QS from those trips. The Council therefore excluded 2003 from the nonwhiting landings history portion of the allocation formula.

The Council's final preferred alternative reallocates widow rockfish based on the Group 1 species calculation that was initially used to allocate target species QS in 2011. For the portion of the reallocation resulting from the buyback, the 1994-2003 period reflects the years used for Group 1 species at the time of initial allocation. For the portion of the reallocation resulting from widow rockfish landings history, 2003 was dropped from the nonwhiting pool for the reasons described above. 2003 landings would have a minimal impact on the amount of buyback QS allocated equally because all landings would be summed across all years and the buyback portion would be a subset of that total. Therefore no adjustment was made to the years used for the buyback portion (1994-2003). In contrast, 2003 landings would have a disproportionate impact on the portion of widow QS reallocated based on nonwhiting landings history because each permit's

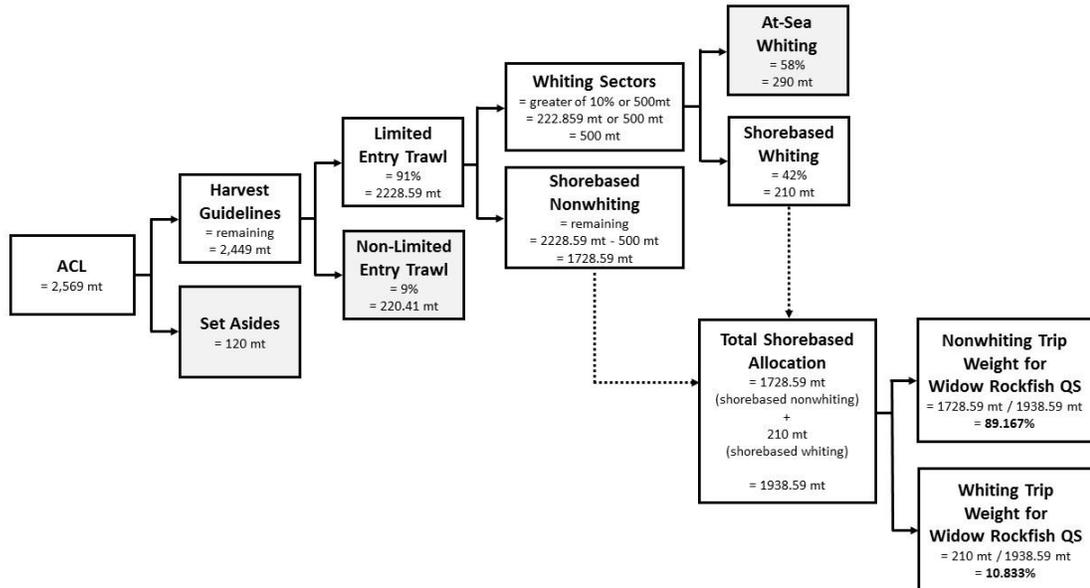
portion of landings is determined for each year. Instead of being spread equally (like buyback QS), including 2003 would allocate a disproportionate amount of widow QS directly to fishermen who targeted widow rockfish in the nonwhiting fishery when widow rockfish was overfished, as described above. For these reasons, 2003 history is included in all parts of the formula except the nonwhiting pool of the landings history portion.

To determine how much of the total QS for each limited entry permit's widow rockfish landings history would be based on whiting trips versus nonwhiting trips, NMFS proposes to weigh each pool according to the initial issuance allocation formula specified in Amendment 21 and current regulations at § 660.140(d)(8)(iv)(A)(10) (which anticipated widow rockfish rebuilding). The formula states that 10 percent or 500 metric tons (mt), whichever is greater, will be allocated to the whiting sectors (shorebased and at-sea whiting), and the remaining amount will be allocated to the nonwhiting shorebased sector.

By blending the two suboptions for Alternative 2, the Council established a one-time annual catch limit (ACL) value for widow of 2,569 metric tons (mt) to use for the initial issuance allocation formula. This ACL value is needed to determine the harvest guideline amount, limited entry trawl allocation, and whiting and nonwhiting sector allocations. The whiting sector allocation is then subdivided into shorebased and at-sea sector allocations. The shorebased whiting and non-whiting allocations can then be compared in order to set the percentages NMFS would use to weigh whiting and nonwhiting history in the reallocation formula. Figure 1 below walks through the entire calculation from the ACL value to the shorebased whiting and nonwhiting percentages

that NMFS proposes to use for widow reallocation, and a full description of the calculation follows.

**Figure 1. Calculating the whiting/nonwhiting split percentages for the widow rockfish reallocation formula.**



NMFS proposes to use an ACL value of 2,569 mt, the midpoint of the two Alternative 2 suboptions as given in the Council's final preferred alternative, in order to determine how much of the total QS for each limited entry permit's widow rockfish landings history would be based on whiting trips versus nonwhiting trips. NMFS proposes to use a set-aside amount of 120 mt, the same value used for the widow rockfish set-aside in 2016 (in Table 2a to 50 CFR part 660, subpart C), to determine the harvest guidelines amount. NMFS would subtract the set-aside amount (120 mt) from the ACL (2,569 mt) in order to determine the harvest guideline amount (2,449 mt).

Next, NMFS proposes to use a limited entry trawl/non-limited entry trawl split of 91 percent and 9 percent, respectively, the same split percentages used in the 2015-2016 harvest specifications (in Tables 1b and 2b to 50 CFR part 660, subpart C), to determine the limited entry trawl and non-limited entry trawl allocations. NMFS would multiply the harvest guidelines (2,449 mt) by 91 percent in order to determine the limited entry trawl allocation (2,228.59 mt), and by 9 percent in order to determine the non-limited entry trawl allocation (220.41 mt).

As described above, NMFS proposes to use the initial issuance allocation formula specified in Amendment 21 and current regulations at § 660.140 (d)(8)(iv)(A)(10) to determine how much of the limited entry trawl allocation (2,228.59 mt) would be allocated to the whiting and nonwhiting sectors. The formula states that 10 percent or 500 mt, whichever is greater, will be allocated to the whiting sectors (shorebased and at-sea whiting), and the remaining amount will be allocated to the shorebased nonwhiting sector. 500 mt is greater than 10 percent of the limited entry trawl allocation (222.859 mt), so NMFS would allocate 500 mt to the whiting sectors. The remaining amount of the

limited entry trawl allocation, 1,728.59 mt, would be allocated to the shorebased nonwhiting sector.

NMFS proposes to further divide the whiting allocation into shorebased and at-sea whiting sector allocations using a split of 42 percent and 58 percent, respectively, as specified in Amendment 21 and current regulations at § 660.55(f)(2). NMFS would allocate 42 percent of 500 mt (210 mt) to the shorebased whiting sector, and 58 percent of 500 mt (290 mt) to the at-sea whiting sectors.

Next, NMFS proposes to combine the shorebased whiting and nonwhiting allocations to determine the total shorebased sector allocation. Based on the proposed calculation above, the 210 mt shorebased whiting sector allocation would be added to the 1,728.59 mt shorebased nonwhiting sector allocation, for a total shorebased sector allocation of 1,938.59 mt. The shorebased whiting sector allocation is 10.833 percent of the total shorebased sector allocation (210 mt divided by 1,938.59 mt). The shorebased nonwhiting sector allocation is 89.167 percent of the total shorebased sector allocation (1,728.59 mt divided by 1,938.59 mt). NMFS proposes to use these percentages to determine how much of the total QS for each limited entry permit's widow rockfish landings history would be based on whiting trips versus nonwhiting trips.

Different ACLs cause different QS amounts to be allocated based on whiting and nonwhiting trips. The Alternative 2 suboptions, suboptions a and b, set two different ACL levels (2,000 mt and 3,790 mt, respectively), and the Council chose the midpoint of those suboptions (2,569 mt) in order to balance the impacts of widow rockfish reallocation to the shorebased whiting and nonwhiting fisheries. The midpoint ACL was chosen such that each limited entry trawl permit would receive QS based on whiting and

nonwhiting landing trip history in an amount that is the midpoint of what their QS would have been under suboptions a and b (2,569 mt), rather than the midpoint between 2,000 mt and 3,790 mt (2,895 mt). Table 1 below shows the whiting/nonwhiting split outcomes of each of the Alternative 2 suboptions, and the Council's final preferred alternative whiting/nonwhiting split, which is the midpoint of suboptions a and b.

**Table 1. Whiting/nonwhiting split suboptions and final preferred alternative (midpoint of suboptions).**

	Alt 2 - Suboption a (mt)	Alt 2 - Suboption b (mt)	Final Preferred Alternative - midpoint (mt)
ACL	2,000	3,790	2,569
Set Asides	120	120	120
Harvest Guidelines (= ACL - set asides)	1,880	3,670	2,449
Limited Entry Trawl (= 91% of harvest guidelines)	1,710.8	3,339.7	2,228.59
Non-Limited Entry Trawl (= 9% of harvest guidelines)	169.2	330.3	220.41
Whiting Sectors (= 10% of limited entry trawl allocation, or 500 mt, whichever is greater)	500	500	500
Shorebased Nonwhiting (remaining LE trawl)	1,210.8	2,839.7	1,728.59
At-Sea Whiting (= 58% of whiting sector allocation)	290	290	290
Shorebased Whiting (= 42% of whiting sector allocation)	210	210	210
Total Shorebased Allocation (= shorebased nonwhiting + shorebased whiting)	1,420.8	3,049.7	1,938.59
Whiting trip percentage for widow rockfish QS landings history	14.780%	6.886%	10.833%
Nonwhiting trip percentage for widow rockfish QS landings history	85.220%	93.114%	89.167%

QS permit owners are only eligible for a reallocation of widow rockfish if they are one of the 128 original QS permit owners who initially received a QS permit in 2011 based on limited entry trawl permit ownership. The 10 shorebased whiting processors who received initial QS permits with an allocation of Pacific whiting only are not eligible to receive reallocated widow rockfish QS. Those QS permit owners who have obtained a QS permit since 2014 when NMFS accepted new QS permit applications are not eligible to receive reallocated widow rockfish QS. However, since 2011, NMFS has received several U.S. court orders directing NMFS to transfer assets of a deceased person to a beneficiary. For those new QS permits to which NMFS administratively transferred widow rockfish QS based on a U.S. court order, NMFS will reallocate widow rockfish QS directly to these new QS permits because the shares were transferred through a legal process to a beneficiary. Limited entry trawl permit owners who did not apply for and receive a QS permit in 2011 are not eligible for reallocated widow rockfish QS; instead any history accruing to their permit will be redistributed among all other QS permit owners in proportion to their reallocated widow rockfish QS. If any QS permit owner submits a complete widow rockfish QS reallocation application but does not renew their QS permit and account for 2017, NMFS would still reallocate widow rockfish QS to the permit owner but, as stated currently in regulation, would not allocate QP for any species to a non-renewed permit. The permit owner could renew for the following year, which would enable him or her to receive and transfer QP.

Past landings history associated with each limited entry trawl permit will accrue to the current QS permit owner who received initial QS for that limited entry permit, even if the limited entry trawl permit ownership has changed since 2011. For example, if the

fictitious company XYZ Fishing owned two limited entry trawl permits in 2010: Permit A and Permit B, they would have received a QS permit (QS Permit #1) in 2011 with an initial issuance of QS that was based on the history of limited entry trawl Permits A and B. For the purposes of widow rockfish reallocation, the linkage between limited entry trawl Permits A and B and QS Permit #1 will remain in place, so that QS Permit #1 will be reallocated widow rockfish QS based on the history from limited entry trawl Permits A and B, regardless of who owns those limited entry trawl permits now. If XYZ Fishing sold both limited entry trawl permits in 2013, and therefore no longer owns them at the time widow rockfish is reallocated, the company would still receive the reallocated widow rockfish QS from limited entry Permits A and B to QS Permit #1.

Based on the Council's action, NMFS proposes to reallocate widow rockfish based on the limited entry permit and QS permit relationship described above because the limited entry permit ownership was severed from the QS permit ownership at the time QS permits became effective in 2011. After that time, limited entry trawl permits could be sold without any effect on the QS holdings, and QS percentages could be transferred without any effect on the limited entry permit. It is likely that QS permit owners would not have sold their limited entry trawl permits if they thought they would not receive the reallocated widow rockfish QS, and similarly, it is likely that any persons who purchased a limited entry trawl permit did not believe that they would receive any future QS as part of the purchase.

For purposes of the widow rockfish reallocation calculation, NMFS intends to use landings data from the Pacific States Marine Fisheries Commission's PacFIN database. Although QS permit owners had the opportunity to review and revise their data in 2009,

they may not have reviewed their widow rockfish history closely at that time, since widow rockfish was overfished and the QS allocation used a Group 2 formula that was not based on widow landings. NMFS wants to provide an opportunity for this review before we “freeze” the database for purposes of reallocation. “Freezing” the database means that NMFS intends to extract a dataset of the PacFIN database as of *[insert date 28 days after date of publication in the Federal Register]*, and will use that dataset for the reallocation of widow rockfish. QS permit owners have been on notice since 2012 that widow rockfish might be reallocated, and have been able to review their fish ticket data since that time. NMFS also specified at the April 2016 Council meeting that we intended to use landings data from the PacFIN database to calculate the reallocated widow rockfish QS, and that we planned to provide permit owners the opportunity to review their widow catch data before we take a snapshot of the database for the purpose of reallocation.

If QS permit owners in the shorebased trawl IFQ program have concerns over the accuracy of their widow rockfish data in the PacFIN database, they should contact the state in which they landed those fish to correct any errors. Any revisions to an entity’s fish tickets would have to be approved by the state in order to be accepted, and must be completed as of the date we freeze the database in order for the updated information to be used for the widow rockfish reallocation formula. State contacts are as follows: (1) Washington – Marjorie Morningstar (360-902-2854, *marjorie.morningstar@dfw.wa.gov*); (2) Oregon – Nadine Hurtado (503-947-6247, *nadine.hurtado@state.or.us*); and (3) California – Marine Fisheries Statistical Unit (562-342-7130).

### *Application Process*

After NMFS freezes the database for the purpose of reallocation, and assuming the final rule publishes, we will mail prefilled applications and widow rockfish reallocation QS amounts to each eligible QS permit owner (calculated using the formula in the final rule). On the application, the applicant (the QS permit owner) must: 1) indicate whether or not they accept NMFS' calculation of the reallocated widow rockfish QS for each limited entry trawl permit, 2) provide a written description of what part of the reallocation formula requires correction and credible information to support the request for correction if they do not accept the calculation, and 3) sign, date and declare that the information in the application is true, correct and complete. NMFS proposes that complete, certified applications would be due to NMFS West Coast Region on or before September 15, 2016, that mailed applications would be postmarked no later than September 15, 2016, and that hand-delivered applications would be received no later than 5 pm on September 15, 2016. NMFS would not accept or review any applications postmarked or received in person after the application deadline, and any QS permit owner who does not submit an application would not be eligible to receive reallocated widow rockfish QS. NMFS would not accept applications by email. NMFS would redistribute the shares from any incomplete or non-submitted applications to all other QS permit owners who are eligible for a reallocation of widow rockfish QS in proportion to their reallocated widow QS amount.

Assuming the rule will be final, for all complete, certified applications that were received by the application deadline date, NMFS would issue an initial administrative determination (IAD) on or before October 1, 2016. In the IAD, NMFS would inform the

applicant whether or not their application for reallocated widow rockfish QS was approved. Applicants would have 60 calendar days from the date of the IAD to appeal the decision. If any appeals were received, NMFS would reallocate widow QS amounts in 2017 consistent with all of the IADs and await any action resulting from an appeal until 2018. More information is provided below about how the appeals process would affect the widow rockfish QS trading start date and the divestiture deadline.

If an application is approved, the QS permit owner would receive a 2017 QS permit showing the new widow rockfish QS amount in December 2016, and the new QS percentage would show in the associated QS account on or about January 1, 2017. The 2017 IFQ sector allocation for widow rockfish would be allocated to QS accounts on or about January 1, 2017, based on the reallocated widow rockfish QS amount.

### **Widow Rockfish QS Trading**

Widow rockfish QS has not been transferrable at any time since the start of the IFQ program in 2011. The Council and NMFS initially placed a two-year moratorium on QS trading for all IFQ species in order to create stability during the transition to a new management system. In 2012, the Council decided to reconsider the initial widow rockfish QS allocations, and halted future trading of widow rockfish QS until the reconsideration could be completed. In August 2012, NMFS delayed QS trading for all species for an additional year in response to unrelated litigation that required the Council and NMFS to reconsider the initial allocation of Pacific whiting. In 2013 NMFS put into regulation a moratorium for the transfer of widow rockfish QS until the reallocation could be considered and implemented, but QS trading for all other IFQ species began on

January 1, 2014. Since that time, QS permit owners have been able to transfer QS for all species except widow rockfish.

NMFS proposes to lift the moratorium on the transfer of widow rockfish QS once the reallocation is completed and any resulting appeals have been processed; successful appeals could affect all reallocation amounts. Under the proposed rule, once QS permit owners have their reallocated QS percentages, and can be sure those percentages would not change as the result of an appeal, permit owners could begin trading. If NMFS does not receive any appeals by the appeals deadline, we propose to lift the moratorium on widow rockfish QS trading for January 1, 2017. If NMFS receives any appeals by the deadline, we propose to lift the moratorium on widow rockfish QS trading for January 1, 2018, because that is the date when any appeal outcome that might cause a change in widow allocations would be finalized. NMFS proposes to announce the official start date of widow rockfish QS trading through a public notice in December 2016, once we are able to determine whether appeals have been submitted.

### **Deadline for Divestiture**

Control limits in the IFQ program cap the amount of QS or IBQ that a person, individually or collectively, may own or control. Amendment 20 and implementing regulations set individual control limits for each of the 30 IFQ species, as well as an aggregate limit of 2.7 percent across nonwhiting species. The individual control limit for widow rockfish is 5.1 percent. Consistent with the trawl rationalization program, some QS permit owners were initially allocated an amount of QS and IBQ that exceeded one or more of the control limits, based on their catch history during the qualifying years. The regulations provided these QS permit owners an adjustment period to hold the excess

shares, but required divestiture of excess QS by November 30, 2015, for all species except widow rockfish, because widow rockfish QS was being considered for reallocation and could not be traded.

When NMFS reallocates widow rockfish, we propose to allocate the full amount the applicant qualifies for, even if it pushes the permit owner over the 5.1 percent control limit for widow, or the 2.7 percent nonwhiting aggregate limit. NMFS would allow the QS permit owner an adjustment period to hold the excess shares and divest, consistent with the process that was used during initial allocation in 2011. Should the reallocation of widow rockfish put any QS permit owner over a QS control limit, NMFS, based on the Council's recommendation, proposes to set a divestiture deadline of November 30 in the year widow rockfish QS becomes transferrable. If NMFS does not receive any appeals on the reallocation, widow QS would become transferrable on or about January 1, 2017, and any QS permit owner who exceeded the control limit as the result of the reallocation would have until November 30, 2017, to divest of their excess holdings. If NMFS does receive one or more appeals, widow QS would become transferrable on or about January 1, 2018, and any QS permit owner who exceeded the control limit as the result of the reallocation would have until November 30, 2018, to divest of their excess holdings. QS trading occurs between January 1 through November 30 each year, but trading is halted in the month of December so that NMFS can set QP allocations based on the static year-end amount of QS and mail QS permits that are effective January 1 of the following year. This 11-month adjustment period would allow the permit owner to benefit from one year of holding excess QS, and from the sale or gifting of such an excess, but they would be

required to divest of their excess in a timely manner, consistent with existing regulatory procedures.

### **Widow Rockfish Daily Vessel Limit**

Vessel limits in vessel accounts restrict the amount of QPs that any vessel can catch or hold. Annual QP vessel limits are a set percentage of the IFQ sector allocation, and NMFS calculates and publishes a table annually showing the quota pound equivalents. For example, the annual QP vessel limit for widow rockfish is 8.5 percent of the current year's sector allocation. In 2016, the IFQ sector allocation for widow rockfish is 3,131,931 pounds, so the maximum amount any vessel owner can catch or bring into their vessel account in 2016 is 8.5 percent of the sector allocation, or 266,214 pounds. Unused QP vessel limits, also called "daily vessel limits," only apply to overfished species and cap the amount of overfished species QPs any vessel account can have sitting available in their account on a given day. For example, the daily QP vessel limit for widow rockfish is 5.1 percent, or 159,728 pounds in 2016, which is lower than the annual QP vessel limit. So if a vessel account owner held the full daily vessel limit amount (159,728 pounds) available in their account and then caught 20,000 pounds, they would have 139,728 available QPs and could bring in 20,000 more, up to the daily and annual vessel limit.

The Council and NMFS established daily vessel limits to prevent hoarding of available overfished species QPs in any one vessel account, since the IFQ sector allocations of some overfished species are so low. Now that widow rockfish is rebuilt, and the ACL has increased, NMFS proposes to remove the daily vessel limit since daily vessel limits only apply to overfished species. NMFS would remove the daily vessel limit

for widow rockfish only, and would not change widow's annual vessel limit or the vessel limit of any other species. This change would better reflect the status of widow rockfish as rebuilt, and allow fishermen to hold the full annual vessel limit at any time if they chose to do so, in line with every other non-overfished IFQ species.

### **Classification**

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act (MSA), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Pacific Coast Groundfish Fishery Management Plan, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

The Council prepared an environmental assessment (EA) for this action. The draft EA is available on the Council's website at [http:// www.pcouncil.org/](http://www.pcouncil.org/) or on NMFS' website at [http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish\\_catch\\_shares/rules\\_regulations/trawl\\_regulations\\_compliance\\_guides.html](http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish_catch_shares/rules_regulations/trawl_regulations_compliance_guides.html).

NMFS is amending the supporting statement for the Pacific Coast groundfish trawl rationalization program permit and license information collection Office of Management and Business (OMB) Paperwork Reduction Act (PRA) requirements (OMB Control No. 0648-0620) to include an application form for widow rockfish reallocation. NMFS estimates the public reporting burden for this collection of information to average one hour per form, including the time for reviewing instructions, reviewing data and calculations for reallocated widow rockfish QS, and completing the form. NMFS requests any comments on the addition of the widow rockfish reallocation application form to the

PRA package, including whether the paperwork would unnecessarily burden any QS permit owners.

Pursuant to the procedures established to implement section 6 of Executive Order 12866, the Office of Management and Budget has determined that this proposed rule is not significant.

This proposed rule was developed after meaningful collaboration, through the Council process, with the tribal representative on the Council. The proposed regulations have no direct effect on the tribes.

NMFS prepared an initial regulatory flexibility analysis (IRFA) for this rule, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble and in the **SUMMARY** section of the preamble. A Regulatory Impact Review (RIR) was also prepared on the action and is included as part of the IRFA. A copy of the IRFA is available from NMFS (see **ADDRESSES**) and per the requirements of 5 U.S.C. 604(a), a summary of the IRFA follows:

When an agency proposes regulations, the RFA requires the agency to prepare and make available for public comment an IRFA that describes the impact on small businesses, non-profit enterprises, local governments, and other small entities. The IRFA aids the agency in considering all reasonable regulatory alternatives that would minimize the economic impact on affected small entities.

The Small Business Administration defines a “small” harvesting business as one with combined annual receipts of \$11 million or less for all affiliated operations

worldwide. For related fish-processing businesses, a small business is one that employs 750 or fewer persons for all affiliated operations worldwide.

This rule affects 128 QS permit owners who have received widow quota shares. When renewing their QS permits, permit owners are asked if they considered themselves small businesses based on the SBA definitions of small businesses provided above. Based on their responses, NMFS estimates that there are 110 small businesses affected by this rule.

In January 2011, NMFS implemented the trawl rationalization program (a catch share program) for the Pacific coast groundfish limited entry trawl fishery, which includes an individual fishing quota program for limited entry trawl participants. At the time of implementation, the widow rockfish stock was overfished and quota shares were allocated to quota share permit owners in the individual fishing quota program using an overfished species formula. Now that widow rockfish has been rebuilt, NMFS proposes to reallocate quota shares to initial recipients based on a target species formula that will more closely represent the fishing history of permit owners when widow rockfish was a targeted species. Through this rule NMFS also proposes to allow the trading of widow rockfish quota shares, set a deadline for divestiture in case the reallocation of widow rockfish puts any QS permit owner over an accumulation limit, and remove the daily vessel limit for widow rockfish since it is no longer an overfished species. The reallocation of widow rockfish and lifting of the moratorium are the major measures analyzed below. Setting the divestiture deadline is administrative in nature, while elimination of the daily limit is already required because widow is no longer an overfished species.

The Council adopted a range of widow rockfish reallocation alternatives for consideration in November 2014 including: Alternative 1 - status quo (no reallocation), Alternative 2 – reallocate widow using same formula (Group I species formula) that was used for other target species at the at the time of initial allocation, Alternative 3 – reallocate widow based on nonwhiting groundfish revenue as a basis for recent participation, and Alternative 4 – reallocate widow by blending Alternatives 1 and 2, where a portion of widow QS would not be reallocated, and a portion would be reallocated using the formula from Alternative 2. In April 2015, the Council selected Alternative 2 as its final preferred alternative, and blended two suboptions for the alternative into a final suboption-Alternative 5.

In assessing these alternatives, the Council took into account expected impacts of each alternative on harvesters, processors, workers, investments, and communities, using the most recent data available, as reflected in the environmental assessment. The Council recognized its final decision as drawing a balance between impacts to the whiting and nonwhiting fishery, not allocating too much away from any one sector, re-establishing historic fisheries, and the geographic distribution of impacts among the communities in Washington, Oregon, and California. This action is part of an overall program designed to ensure that conservation objectives are met and is focused on mitigating some of the distributional effects of those conservation measures. As compared to Alternatives 3 or 4, Alternative 2 and the Council’s final preferred alternative, Alternative 5, move most directly toward reestablishing the targeted widow rockfish fishery and is therefore expected to better achieve the OY and more immediately benefit struggling communities.

The economic dimensions of the fishery are as follows. Annual widow rockfish

ex-vessel revenues in the shorebased trawl sector ranged from \$5 million to \$6 million (inflation adjusted) in the mid-1990s. Annual ex-vessel revenues in the pre-trawl rationalization rebuilding era (2002-2010) averaged about \$0.1 million. Since the start of trawl rationalization (2011-2014), annual ex-vessel values averaged \$0.3 million. (Widow rockfish was determined to be rebuilt in 2011 and was no longer managed under a rebuilding plan beginning in the 2013-2014 biennial harvest specifications). Estimated widow catch has increased every year: in 2013, approximately 400 mt were caught; in 2014, approximately 650 mt were caught; and in 2015, about 840 mt were caught. With an ex-vessel price of \$0.41 per pound, the total revenues earned in the 2015 fishery are about \$760,000. The 2016 sector allocation for widow is similar to 2015, and recognizing past growth of the fishery, landings may reach 1,000 mt.

Widow rockfish is just one of many species landed on the West Coast. During 2015, landings of groundfish, crab, salmon, and other species, generated \$335 million in ex-vessel revenues. 2015 groundfish ex-vessel revenues were about \$64 million with IFQ revenues estimated at \$42 million. Widow rockfish ex-vessel revenues were about \$760,000, constituting a very small percentage of total groundfish ex-vessel revenues.

If the Council increases the 2017 ACL from 2,000 mt (No Action) to 13,508 mt (Alternative 1), revenues could grow to \$9.0 million if prices do not change, the number of non-whiting mid-water trawlers rapidly increases, and if processors could process the increased widow rockfish landings and find the proper markets. These changes would yield an increase of \$23.1 million in total West Coast income impacts, and an increase of an estimated 320 jobs.

This rulemaking proposes to reallocate widow rockfish QS and allow those shares

to be traded. With trading, QS will flow to those QS holders that most efficiently can use the QS—by using the associated QP to support their own vessels, selling or leasing the QP to other vessels, or by selling the QS to others. At the fishery level, in the long run, the alternatives reviewed here will not have a major effect on the overall amount of fish landed and processed across all the groundfish fishing communities.

At the individual quota share holder level, this rule affects the starting point by which QS is traded and the amounts that can be traded by individual QS holders. Depending on the alternative, the total amount of QS that is to be reallocated in the IFQ fishery ranges from 0% (Alternative 1, Status Quo, Bycatch) to 28.2% (Alternative 5, Alternative 2 Midpoint). Based on ex-vessel price of \$0.41 per pound, and projected sector allocations of 12,000 mt based on 2017 ACL of 13,500 mt, and projected attainment rate of 80%, the annual value of the quota pounds associated with a potential transfer of 28.2% of the quota shares is about \$2.5 million. Depending on the alternative, the potential transfer of QS among communities ranges from 0 to 18%. The annual value of quota pounds associated with QS being transferred is about \$1.5 million based on the 2017 ACL.

The proposed 2017-18 ACLs of 13,500 mt and 13,800 mt are six times higher than 2015-2016 ACLs. From a fishery-wide perspective, there should not be any negative impacts on communities, QS holders, or processors because of the increase in ACLs. This huge increase in the ACLs provides increased opportunities for all of these participants.

However, with any reallocation scheme there are some that are negatively impacted. The maximum reduction for a QS holder under either Alternative 2 or 5 is

about 1.9%. Based on 2015 revenues of \$760,000, the QP associated with this reduction would have a value of \$15,000. Under the 2017 ACL, estimated revenues are \$9.0 million, and a loss of 1.9% would be worth about \$175,000. At an individual level, these two values represent maximum 2015 losses (\$15,000) versus maximum potential future losses should the high ACL be implemented, prices stay constant, and 80 percent of the sector allocation be harvested (\$175,000). Others will be positively impacted. The maximum increase for a QS holder under any alternative is about 2%.

NMFS does not believe that small businesses as a class of QS holders will be negatively impacted by the proposed reallocation of widow rockfish QS. The reallocation options in large part decrease widow QS holdings for some small businesses while increasing QS holdings for other small businesses, based on historical reliance on widow rockfish as a target species. Trading of widow QS should also be beneficial to all small businesses as it gives these businesses the option to buy, sell, or lease their widow QS. Setting the divesture deadline gives any affected entities time to sell off their excess QS. Eliminating the no-longer-needed daily vessel limit for widow rockfish provides more flexibility to small businesses.

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

Fisheries, Fishing, Indian Fisheries.

Dated: June 23, 2016.

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Samuel D. Rauch III,  
Deputy Assistant Administrator for Regulatory Programs,  
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**

1. The authority citation for part 660 continues to read as follows:

**Authority:** 16 U.S.C. 1801 et seq., 16 U.S.C. 773 et seq., and 16 U.S.C. 7001 et seq.

2. In § 660.140:

a. Revise paragraphs (d)(3)(ii)(B)(2) and (d)(4)(v);

b. Add paragraph (d)(9); and

c. Revise paragraph (e)(4)(i) to read as follows:

**§ 660.140 Shorebased IFQ Program.**

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

(ii) \* \* \*

(B) \* \* \*

(2) *Transfer of QS or IBQ between QS accounts.* Beginning January 1, 2014, QS permit owners may transfer QS (except for widow rockfish QS) or IBQ to another owner of a QS permit, subject to accumulation limits and approval by NMFS. Beginning January 1, 2017 (if there are no appeals to the reallocation of widow rockfish), or January 1, 2018 (if there are appeals to the reallocation of widow rockfish), QS permit owners may transfer widow rockfish QS to another owner of a QS permit, subject to accumulation limits and approval by NMFS. NMFS will announce the QS transfer date for widow rockfish prior to January 1, 2017. QS or IBQ cannot be transferred to a vessel account. Owners of non-renewed QS permits may not transfer QS. QP in QS accounts cannot be transferred between QS accounts. NMFS will allocate QP based on the QS percentages as listed on a QS permit that was renewed during the previous October 1 through November 30 renewal period. QS transfers will be recorded in the QS account but will not become effective for purposes of allocating QPs until the following year. QS or IBQ may not be transferred between December 1 through December 31 each year. Any QS transaction that is pending as of December 1 will be administratively retracted. NMFS will allocate QP for the following year based on the QS percentages as of December 1 of each year.

\* \* \* \* \*

(4) \* \* \*

(v) *Divestiture*. Accumulation limits will be calculated by first calculating the aggregate non-whiting QS limit and then the individual species QS or IBQ control limits. For QS permit owners (including any person who has ownership interest in the owner named on the permit) that are found to exceed the accumulation limits during the reallocation of widow rockfish QS, an adjustment period will be provided during which they will have to completely divest their QS or IBQ in excess of the accumulation limits. If NMFS identifies that a QS permit owner exceeds the accumulation limits in 2016 or beyond, the QS permit owner must divest of the QS or IBQ in excess of the accumulation limits according to the procedure provided under paragraph (d)(4)(v)(A) or (B) of this section. Owners of QS or IBQ in excess of the control limits may receive and use the QP or IBQ pounds associated with that excess, up to the time their divestiture is completed.

(A) *Divestiture and redistribution process in 2016 and beyond*. Any person owning or controlling QS or IBQ must comply with the accumulation limits, even if that control is not reflected in the ownership records available to NMFS as specified under paragraphs (d)(4)(i) and (iii) of this section. If NMFS identifies that a QS permit owner exceeds an accumulation limit in 2016 or beyond for a reason other than the reallocation of widow rockfish, NMFS will notify the QS permit owner that he or she has 90 days to divest of the excess QS or IBQ. In the case that a QS permit owner exceeds the control limit for aggregate nonwhiting QS holdings, the QS permit owner may abandon QS to NMFS within 60 days of the notification by NMFS, using the procedure provided under paragraph (d)(4)(v)(C) of this section. After the 90-day divestiture period, NMFS will revoke all QS or IBQ held by a person (including any person who has ownership interest in the owner names on the permit) in excess of the accumulation limits following the

procedures specified under paragraphs (d)(4)(v)(D) through (G) of this section. All abandoned or revoked shares will be redistributed to all other QS permit owners in proportion to their QS or IBQ holdings on or about January 1 of the following calendar year, based on current ownership records, except that no person will be allocated an amount of QS or IBQ that would put that person over an accumulation limit.

*(B) Divestiture and redistribution process for the reallocation of widow rockfish.*

Any person owning or controlling QS or IBQ must comply with the accumulation limits, even if that control is not reflected in the ownership records available to NMFS as specified under paragraphs (d)(4)(i) and (iii) of this section. If the reallocation of widow rockfish puts any QS permit owner over an accumulation limit, the QS permit owner will have until widow rockfish becomes transferrable to divest of their excess widow rockfish QS. In the case that a QS permit owner exceeds the control limit for aggregate nonwhiting QS holdings as the result of the reallocation of widow rockfish, the permit owner may abandon QS to NMFS by November 15 of the year widow rockfish becomes transferrable, using the procedure provided under paragraph (d)(4)(v)(C) of this section. After the widow rockfish reallocation divestiture period, NMFS will revoke all QS and IBQ held by a person (including any person who has ownership interest in the owner names on the permit) in excess of the accumulation limits following the procedures specified under paragraphs (d)(4)(v)(D) through (G) of this section. All abandoned or revoked shares will be redistributed to all other QS permit owners in proportion to their QS or IBQ holdings on or about January 1 of the following calendar year, based on current ownership records, except that no person will be allocated an amount of QS or IBQ that would put that person over an accumulation limit.

(C) *Abandonment of QS.* QS permit owners that are over the control limit for aggregate nonwhiting QS holdings may voluntarily abandon QS if they notify NMFS in writing by the applicable deadline specified under paragraph (d)(4)(v)(A) or (B) of this section. The written abandonment request must include the following information: QS permit number, IFQ species, and the QS percentage to be abandoned. Either the QS permit owner or an authorized representative of the QS permit owner must sign the request. QS permit owners choosing to utilize the abandonment option will permanently relinquish to NMFS any right to the abandoned QS, and the QS will be redistributed as described under paragraph (d)(4)(v)(A) or (B) of this section. No compensation will be due for any abandoned shares.

(D) *Revocation.* NMFS will revoke QS from any QS permit owner who exceeds an accumulation limit after the divestiture deadline specified under paragraph (d)(4)(v)(A) or (B) of this section. NMFS will follow the revocation approach summarized in the following table and explained under paragraphs (d)(4)(v)(E) through (G) of this section:

<i>If, after the divestiture deadline, a QS permit owner exceeds...</i>	<i>Then...</i>
An individual species control limit in <i>one</i> QS permit	NMFS will revoke excess QS at the species level.
An individual species control limit across <i>multiple</i> QS permits	NMFS will revoke QS at the species level in proportion to the amount the QS percentage from each permit contributes to

	the total QS percentage owned.
The control limit for aggregate nonwhiting QS holdings	NMFS will revoke QS at the species level in proportion to the amount of the aggregate overage divided by the aggregate total owned.

(E) *Revocation of excess QS or IBQ from one QS permit.* In cases where a person has not divested to the control limits for individual species in one QS permit by the deadline specified under paragraph (d)(4)(v)(A) or (B) of this section, NMFS will revoke excess QS at the species level in order to get that person to the limits. NMFS will redistribute the revoked QS following the process specified in paragraph (d)(4)(v)(A) or (B) of this section. No compensation will be due for any revoked shares.

(F) *Revocation of excess QS or IBQ from multiple QS permits.* In cases where a person has not divested to the control limits for individual species across QS permits by the deadline specified under paragraph (d)(4)(v)(A) or (B) of this section, NMFS will revoke QS at the species level in proportion to the amount the QS percentage from each permit contributes to the total QS percentage owned. NMFS will redistribute the revoked QS following the process specified in paragraph (d)(4)(v)(A) or (B) of this section. No compensation will be due for any revoked shares.

(G) *Revocation of QS in excess of the control limit for aggregate nonwhiting QS holdings.* In cases where a QS permit owner has not divested to the control limit for aggregate nonwhiting QS holdings by the deadline specified under paragraph (d)(4)(v)(A) or (B) of this section, NMFS will revoke QS at the species level in

proportion to the amount of the aggregate overage divided by the aggregate total owned. NMFS will redistribute the revoked QS following the process in paragraph (d)(4)(v)(A) or (B) of this section. No compensation will be due for any revoked shares.

\* \* \* \* \*

(9) *Reallocation of widow rockfish QS.* (i) *Additional definitions.* The following definitions are applicable to paragraph (d)(9) of this section and apply to terms used for the purposes of reallocation of widow rockfish QS:

(A) *Nonwhiting trip* means a fishing trip where less than 50 percent by weight of all fish reported on the state landing receipt is whiting.

(B) *PacFIN* means the Pacific Fisheries Information Network of the Pacific States Marine Fisheries Commission.

(C) *Relative history* means the landings history of a permit 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.

(D) *Whiting trip* means a fishing trip where greater than or equal to 50 percent by weight of all fish reported on the state landing receipt is whiting.

(ii) *Eligibility criteria for receiving reallocated widow rockfish QS.* Only the owner of an original QS permit (non-shoreside processor) to which QS was initially allocated in 2011 is eligible to receive reallocated widow rockfish QS based on the history of the limited entry trawl permit(s) that accrued to that QS permit, regardless of current limited entry permit ownership. For those new QS permits to which widow rockfish was administratively transferred by NMFS under U.S. court order, NMFS will reallocate widow rockfish QS directly to the new QS permit. Any limited entry trawl

permit owners who did not submit an initial application for a QS permit will not be eligible to receive reallocated widow rockfish QS.

(iii) *Steps for widow rockfish QS reallocation formula.* The widow rockfish QS reallocation formula is applied in the following steps:

(A) First, for each limited entry trawl permit, NMFS will determine a preliminary QS allocation for non-whiting trips.

(B) Second, for each limited entry trawl permit, NMFS will determine a preliminary QS allocation for whiting trips.

(C) Third, for each limited entry trawl permit, NMFS will combine the amounts resulting from paragraphs (d)(9)(iii)(A) and (B) of this section.

(D) Fourth, NMFS will reduce the total widow QS reallocated to QS permit owners by 10 percent as a set aside for AMP.

(iv) *Reallocation formula for specific widow rockfish QS amounts.*

(A) *Reallocation formula rules.* The following rules will be applied to data for the purpose of calculating the initial reallocation of widow rockfish QS:

(1) Limited entry trawl permits will be assigned catch history or relative history based on the landing history of the vessel(s) associated with the permit at the time the landings were made.

(2) The relevant PacFIN dataset includes species compositions based on port sampled data and applied to data at the vessel level.

(3) Only landings of widow rockfish which were caught in the exclusive economic zone or adjacent state waters off Washington, Oregon and California will be used for calculating the reallocation of widow rockfish QS.

(4) History from limited entry trawl permits that have been combined with a permit that qualified for a C/P endorsement and which has shorebased permit history will not be included in the preliminary QS and IBQ allocation formula, other than in the determination of fleet history used in the calculation of relative history for permits that do not have a C/P endorsement.

(5) History of illegal landings and landings made under non-whiting EFPs that are in excess of the cumulative limits in place for the non-EFP fishery will not count toward the allocation of QS.

(6) The limited entry trawl permit's landings history includes the landings history of permits that have been previously combined with that permit.

(7) If two or more limited entry trawl permits have been simultaneously registered to the same vessel, NMFS will split the landing history evenly between all such limited entry trawl permits during the time they were simultaneously registered to the vessel.

(8) Unless otherwise noted, the calculation for the reallocation of widow rockfish QS under paragraph (d)(9) will be based on state landing receipts (fish tickets) as recorded in the relevant PacFIN dataset on [*insert date 28 days after date of publication in the Federal Register*].

(9) For limited entry trawl permits, landings under provisional “A” permits that did not become “A” permits and “B” permits will not count toward the reallocation of widow QS, other than in the determination of fleet history used in the calculation of relative history for permits that do not have a C/P endorsement.

(10) For limited entry trawl permits, NMFS will calculate the reallocation of widow rockfish QS separately based on whiting trips and nonwhiting trips, and will

weigh each calculation according to a split between whiting trips and nonwhiting trips of 10.833 percent for whiting trips and 89.167 percent for nonwhiting trips, which is a one-time proportion necessary for the reallocation formula.

(B) *Preliminary widow rockfish QS reallocation for nonwhiting trips.* The preliminary reallocation process in paragraph (d)(9)(iii)(A) of this section follows a two-step process, one to allocate a pool of QS equally among all eligible limited entry permits and the other to allocate the remainder of the preliminary QS based on permit history. Through these two processes, preliminary QS totaling 100 percent will be allocated. In later steps, this will be adjusted and reduced as indicated in paragraph (d)(9)(iii)(C) and (D) to determine the QS allocation.

(1) *QS to be allocated equally.* The pool of QS for equal allocation will be determined using the nonwhiting trip landings history from Federal limited entry groundfish permits that were retired through the Federal buyback program (*i.e.*, buyback program) (68 FR 42613, July 18, 2003). The nonwhiting trip QS pool associated with the buyback permits will be the buyback permit history as a percent of the total fleet history for the 1994 to 2003 nonwhiting trip reallocation period. The calculation will be based on total absolute pounds with no dropped years and no other adjustments. The QS pool associated with the buyback permits will be divided equally among all qualifying limited entry permits.

(2) *QS to be allocated based on each permit's history.* The pool of QS for allocation based on limited entry trawl permit nonwhiting trip history will be the QS remaining after subtracting out the QS allocated equally. This pool will be allocated to each qualifying limited entry trawl permit based on the permit's relative nonwhiting trip

history from 1994 through 2002, dropping the three lowest years. For each limited entry trawl permit, NMFS will calculate relative history using the following methodology. First, NMFS will sum the permit's widow rockfish landings on nonwhiting trips for each year in the reallocation period. Second, NMFS will divide each permit's annual sum by the shoreside limited entry trawl fleet's annual sum. NMFS will then calculate a total relative history for each permit by adding all relative histories for the permit together and subtracting the three years with the lowest relative history for the permit. The result for each permit will be divided by the aggregate sum of all total relative histories of all qualifying limited entry trawl permits. NMFS will then multiply the result from this calculation by the amount of QS in the pool to be allocated based on each permit's history.

(C) *Preliminary widow rockfish QS reallocation for whiting trips.* The preliminary reallocation process in paragraph (d)(9)(iii)(B) of this section follows a two-step process, one to allocate a pool of QS equally among all eligible limited entry permits and the other to allocate the remainder of the preliminary QS based on permit history. Through these two processes, preliminary QS totaling 100 percent will be allocated. In later steps, this will be adjusted and reduced as indicated in paragraph (d)(9)(iii)(C) and (D) to determine the QS allocation.

(1) *QS to be allocated equally.* The pool of QS for equal allocation will be determined using whiting trip landings history from Federal limited entry groundfish permits that were retired through the Federal buyback program (*i.e.*, buyback program) (68 FR 42613, July 18, 2003). The whiting trip QS pool associated with the buyback permits will be the buyback permit history as a percent of the total fleet history for the

1994 to 2003 whiting trip reallocation period. The calculation will be based on total absolute pounds with no dropped years and no other adjustments. The QS pool associated with the buyback permits will be divided equally among all qualifying limited entry permits.

(2) *QS to be allocated based on each permit's history.* The pool of QS for allocation based on each limited entry trawl permit's whiting trip history will be the QS remaining after subtracting out the QS allocated equally. Widow rockfish QS for this pool will be allocated pro-rata based on each limited entry trawl permit's whiting QS from whiting trips that was established in 2010 and used to allocate the whiting trip portion of whiting QS at the time of initial implementation in 2011. Pro-rata means a percent that is equal to the percent of whiting QS from whiting trips.

(D) *QS from limited entry permits calculated separately for non-whiting trips and whiting trips.* NMFS will calculate the portion of widow QS a limited entry trawl permit receives based on non-whiting trips and whiting trips separately, and will weight each preliminary QS in proportion to the one-time reallocation percentage between whiting trips and non-whiting trips of 10.833 percent and 89.167 percent, respectively.

(1) *Nonwhiting trips.* To determine the amount of widow QS for non-whiting trips for each limited entry trawl permit, NMFS will multiply the preliminary QS for the permit from paragraph (d)(9)(iii)(A) of this section by the one-time reallocation percentage of 89.167 percent for non-whiting trips.

(2) *Whiting trips.* To determine the amount of widow QS for whiting trips for each limited entry trawl permit, NMFS will multiply the preliminary QS for the permit from paragraph (d)(9)(iii)(B) of this section by the one-time reallocation percentage of

10.833 percent for whiting trips.

(E) *QS for each limited entry trawl permit.* For each limited entry trawl permit, NMFS will add the results for the permit from paragraphs (d)(9)(iv)(D)(1) and (D)(2) of this section in order to determine the total QS widow for that permit.

(F) *Adjustment for AMP set-aside.* NMFS will reduce the widow QS reallocated to each permit owner by a proportional amount that is equivalent to a reduction of 10 percent across all widow reallocation recipients' holdings as a set aside for AMP.

(v) *Widow rockfish QS reallocation application.* Persons may apply for issuance of reallocated widow rockfish QS by completing and submitting a prequalified application. A "prequalified application" is a partially pre-filled application where NMFS has preliminarily determined the landings history for each limited entry trawl permit that qualifies the applicant for a reallocation of widow QS. The application package will include a prequalified application (with landings history). The completed application must be either postmarked or hand-delivered to NMFS within normal business hours no later than September 15, 2016. If an applicant fails to submit a completed application by the deadline date, they forgo the opportunity to receive reallocated widow rockfish QS and their percentage will be redistributed to other QS permit owners in proportion to their reallocated widow QS amount.

(vi) *Corrections to the application.* If an applicant does not accept NMFS' calculation in the prequalified application either in part or whole, the applicant must identify in writing to NMFS which parts the applicant believes to be inaccurate, and must provide specific credible information to substantiate any requested corrections. The completed application and specific credible information must be provided to NMFS in

writing by the application deadline. Written communication must either be post-marked or hand-delivered to NMFS within normal business hours no later than September 15,

2016. Requests for corrections may only be granted for the following reasons:

(A) Errors in NMFS' use or application of data, including:

(1) Errors in NMFS' use or application of landings data from PacFIN;

(2) Errors in NMFS' application of the reallocation formula;

(3) Errors in identification of the QS permit owner, permit combinations, or vessel registration as listed in NMFS permit database;

(vii) *Submission of the application and application deadline.*

(A) *Submission of the 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 declare that the contents are true, correct and complete.

(2) The applicant must certify that they qualify to own reallocated widow rockfish QS.

(3) The applicant must indicate they accept NMFS' calculation of reallocated widow rockfish QS provided in the prequalified application, or provide a written statement and credible information if they do not accept NMFS' calculation.

(4) NMFS may request additional information of the applicant as necessary to make an IAD on reallocated widow rockfish QS.

(B) *Application deadline.* A complete, certified application must be either postmarked or hand-delivered within normal business hours to NMFS, West Coast Region, Permits Office, Bldg. 1, 7600 Sand Point Way, NE., Seattle, WA 98115, no later

than September 15, 2016. NMFS will not accept or review any applications received or postmarked after the application deadline. There are no hardship exemptions for this deadline.

(viii) *Initial Administrative Determination (IAD)*. NMFS will issue an IAD for all complete, certified applications received by the application deadline date. If NMFS approves an application for reallocated widow rockfish QS, the IAD will say so, and the applicant will receive a 2017 QS permit specifying the reallocated amount of widow rockfish QS the applicant has qualified for in December 2016. If NMFS disapproves or partially disapproves an application, the IAD will provide the reasons. As part of the IAD, NMFS will indicate to the best of its knowledge whether the QS permit owner qualifies for QS or IBQ in amounts that exceed the accumulation limits and are subject to divestiture provisions given at paragraph (d)(4)(v) of this section. If the applicant does not appeal the IAD within 60 calendar days of the date on the IAD, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(ix) *Appeals*. For reallocated widow rockfish QS issued under this section, the appeals process and timelines are specified at §660.25(g), subpart C. For the reallocation of widow rockfish QS, the bases for appeal are described in paragraph (d)(9)(vi) of this section. Items not subject to appeal include, but are not limited to, the accuracy of permit landings data in the relevant PacFIN dataset on *[insert date 28 days after date of publication in the Federal Register]*.

(e) \* \* \*

(4) \* \* \*

(i) *Vessel limits*. For each IFQ species or species group specified in this paragraph, vessel accounts may not have QP or IBQ pounds in excess of the QP vessel limit (annual limit) in any year, and, for species covered by unused QP vessel limits (daily limit), may not have QP or IBQ pounds in excess of the unused QP vessel limit at any time. The QP vessel limit (annual limit) is calculated as all QPs transferred in minus all QPs transferred out of the vessel account. The unused QP vessel limits (daily limit) is calculated as unused available QPs plus any pending outgoing transfer of QPs.

Species category	QP vessel limit (annual limit) (in percent)	Unused QP vessel limit (daily limit) (in percent)
Arrowtooth flounder	20	
Bocaccio S. of 40°10' N. lat.	15.4	13.2
Canary rockfish	10	4.4
Chilipepper S. of 40°10' N. lat.	15	
Cowcod S. of 40°10' N. lat.	17.7	17.7
Darkblotched rockfish	6.8	4.5
Dover sole	3.9	
English sole	7.5	
Lingcod:		
N. of 40°10' N. lat.	5.3	
S. of 40°10' N. lat.	13.3	
Longspine thornyhead:		
N. of 34°27' N. lat.	9	
Minor rockfish complex N. of 40°10' N. lat.:		
Shelf species	7.5	
Slope species	7.5	
Minor rockfish complex S. of 40°10' N. lat.:		
Shelf species	13.5	
Slope species	9	
Other flatfish complex	15	
Pacific cod	20	
Pacific halibut (IBQ) N. of 40°10' N. lat.	14.4	5.4

Pacific ocean perch N. of 40°10' N. lat.	6	4
Pacific whiting (shoreside)	15	
Petrale sole	4.5	
Sablefish:		
N. of 36° N. lat. (Monterey north)	4.5	
S. of 36° N. lat. (Conception area)	15	
Shortspine thornyhead:		
N. of 34°27' N. lat.	9	
S. of 34°27' N. lat.	9	
Splitnose rockfish S. of 40°10' N. lat.	15	
Starry flounder	20	
Widow rockfish	8.5	
Yelloweye rockfish	11.4	5.7
Yellowtail rockfish N. of 40°10' N. lat.	7.5	
Non-whiting groundfish species	3.2	

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