

§ 660.334

50 CFR Ch. VI (10–1–07 Edition)

into the initially combined component permits.

[66 FR 40919, Aug. 6, 2001, as amended at 66 FR 41158, Aug. 7, 2001; 68 FR 52523, Sept. 4, 2003; 72 FR 27764, May 17, 2007]

§ 660.334 Limited entry permits-endorsements.

(a) *“A” endorsement.* A limited entry permit with an “A” endorsement entitles the holder to participate in the limited entry fishery for all groundfish species with the type(s) of limited entry gear specified in the endorsement, except for sablefish harvested north of 36° N. lat. during times and with gears for which a sablefish endorsement is required. See § 660.334 (d) for provisions on sablefish endorsement requirements. An “A” endorsement is transferable with the limited entry permit to another person, or to a different vessel under the same ownership under § 660.335. An “A” endorsement expires on failure to renew the limited entry permit to which it is affixed.

(b) *Gear endorsements.* There are three types of gear endorsements: trawl, longline and pot (trap). When limited entry permits were first issued, some vessel owners qualified for more than one type of gear endorsement based on the landings history of their vessels. Each limited entry permit has one or more gear endorsement(s). Gear endorsement(s) assigned to the permit at the time of issuance will be permanent and shall not be modified. While participating in the limited entry fishery, the vessel registered to the limited entry permit is authorized to fish the gear(s) endorsed on the permit. While participating in the limited entry, primary fixed gear fishery for sablefish described at § 660.372, a vessel registered to more than one limited entry permit is authorized to fish with any gear, except trawl gear, endorsed on at least one of the permits registered for use with that vessel. During the limited entry fishery, permit holders may also fish with open access gear; except that vessels fishing against primary sablefish season cumulative limits described at § 660.372(b)(3) may not fish with open access gear against those limits.

(c) *Vessel size endorsements—(1) General.* Each limited entry permit will be

endorsed with the LOA for the size of the vessel that initially qualified for the permit, except:

(i) If the permit is registered for use with a trawl vessel that is more than 5 ft (1.52 m) shorter than the size for which the permit is endorsed, it will be endorsed for the size of the smaller vessel. This requirement does not apply to a permit with a sablefish endorsement that is endorsed for both trawl and either longline or pot gear and which is registered for use with a longline or pot gear vessel for purposes of participating in the limited entry primary fixed gear sablefish fishery described at § 660.372.

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

(2) *Limitations of size endorsements—(i)* A limited entry permit endorsed only for gear other than trawl gear may be registered for use with a vessel up to 5 ft (1.52 m) longer than, the same length as, or any length shorter than, the size endorsed on the existing permit without requiring a combination of permits under § 660.335 (b) or a change in the size endorsement.

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

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

lengths on Table 2 of this part, the length rating shall be the higher length.

(3) *Size endorsement requirements for sablefish-endorsed permits.* Notwithstanding paragraphs (c)(1) and (2) of this section, when multiple permits are “stacked” on a vessel, as described in §660.335(c), at least one of the permits must meet the size requirements of those sections. The permit that meets the size requirements of those sections is considered the vessel’s “base” permit, as defined in §660.302. Beginning in the Fall of 2006 with the limited entry permit renewal process (§660.335(a)), if more than one permit registered for use with the vessel has an appropriate length endorsement for that vessel, NMFS SFD will designate a base permit by selecting the permit that has been registered to the vessel for the longest time. If the permit owner objects to NMFS’s selection of the base permit, the permit owner may send a letter to NMFS SFD requesting the change and the reasons for the request. If the permit requested to be changed to the base permit is appropriate for the length of the vessel as provided for in paragraph (c)(2)(i) of this section, NMFS SFD will reissue the permit with the new base permit. Any additional permits that are stacked for use with a vessel participating in the limited entry primary fixed gear sablefish fishery may be registered for use with a vessel even if the vessel is more than 5 ft (1.5 m) longer or shorter than the size endorsed on the permit.

(d) *Sablefish endorsement and tier assignment—(1) General.* Participation in the limited entry fixed gear sablefish fishery during the primary season described in §660.372 north of 36° N. lat., requires that an owner of a vessel hold (by ownership or lease) a limited entry permit, registered for use with that vessel, with a longline or trap (or pot) endorsement and a sablefish endorsement. Up to three permits with sablefish endorsements may be registered for use with a single vessel. Limited entry permits with sablefish endorsements are assigned to one of three different cumulative trip limit tiers, based on the qualifying catch history of the permit.

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

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

(2) Endorsement and tier assignment qualifying criteria.

(i) *Permit catch history.* Permit catch history will be used to determine whether a permit meets the qualifying criteria for a fixed gear sablefish endorsement and to determine the appropriate tier assignment for endorsed permits. Permit catch history includes the catch history of the vessel(s) that initially qualified for the permit, and subsequent catch histories accrued when the limited entry permit or permit rights were associated with other vessels. The catch history of a permit also includes the catch of any interim permit held by the current owner of the permit during the appeal of an initial NMFS decision to deny the initial issuance of a limited entry permit, but only if the appeal for which an interim permit was issued was lost by the appellant, and the owner’s current permit was used by the owner in the 1995 limited entry sablefish fishery. The catch history of an interim permit where the full “A” permit was ultimately granted will also be considered part of the catch history of the “A” permit. If the current permit is the result of the combination of multiple permits, then for the combined permit to qualify for an endorsement, at least one of the permits that were combined must have had sufficient sablefish history to qualify for an endorsement; or the permit must qualify based on catch occurring after it was combined, but taken within the qualifying period. If the current permit is the result of the combination of multiple permits, the combined catch histories of all of the permits that were combined to create a new permit before March 12, 1998, will be used in calculating the tier assignment for the resultant permit, together with any catch history (during the qualifying period) of the resultant permit. Only sablefish catch regulated by this

part that was taken with longline or trap (pot) gear will be considered for the sablefish endorsement, except that vessels qualifying for the sablefish endorsement based on longline or trap (pot) landings may include setnet sablefish landings defined at (d)(2)(ii)(B) of this section in meeting tier assignment qualifications. Sablefish harvested illegally or landed illegally will not be considered for this endorsement.

(ii) Sablefish endorsement tier assignments. Only limited entry, fixed gear permits with sablefish endorsements will receive cumulative trip limit tier assignments.

(A) The qualifying weight criteria for Tier 1 are at least 898,000 lb (407,326 kg) cumulative round weight of sablefish caught over the years 1984–1994. The qualifying weight criteria for Tier 2 are at least 380,000 lb (172,365 kg), but no more than 897,999 lb (407,326 kg) cumulative round weight of sablefish caught over the years 1984–1994. Fixed gear permits with less than 380,000 lb (172,365 kg) cumulative round weight of sablefish caught over the years 1984–1994 qualify for Tier 3. All qualifying sablefish landings must be caught with longline or trap (pot), although setnet landings defined at sub-paragraph (B) of this section may also be included in tier assignment qualifying landings. Sablefish taken in tribal set aside fisheries does not qualify.

(B) Setnet sablefish landings are included in sablefish endorsement tier assignment qualifying criteria if those landings were made north of 38° N. lat. under the authority of an EFP issued by NMFS in any of the years 1984–1985, by a vessel that landed at least 16,000 lb (7,257 kg) of sablefish with longline or trap (pot) gear in any one year between 1984–1994.

(iii) *Evidence and burden of proof.* A vessel owner (or person holding limited entry rights under the express terms of a written contract) applying for issuance, renewal, replacement, transfer, or registration of a limited entry permit has the burden to submit evidence to prove that qualification requirements are met. The owner of a permit endorsed for longline or trap (pot) gear applying for a sablefish endorsement or a tier assignment under this section has the burden to submit

evidence to prove that qualification requirements are met. The following evidentiary standards apply:

(A) A certified copy of the current vessel document (USCG or State) is the best evidence of vessel ownership and LOA.

(B) A certified copy of a State fish receiving ticket is the best evidence of a landing, and of the type of gear used.

(C) A copy of a written contract reserving or conveying limited entry rights is the best evidence of reserved or acquired rights.

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

(3) Issuance process for sablefish endorsements and tier assignments. (i) No new applications for sablefish endorsements will be accepted after November 30, 1998.

(ii) All tier assignments and subsequent appeals processes were completed by September 1998. If, however, a permit owner with a sablefish endorsement believes that his permit may qualify for a change in tier status based on qualifications in paragraph (d)(2)(ii)(B) of this section, the SFD will accept applications for a tier change through December 31, 2002. The application shall consist of a written letter stating the applicant's circumstances, requesting action, be signed by the applicant, and submitted along with the relevant documentation (fish tickets) in support of the application for a change in tier status.

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

(iv) If a permit owner chooses to file an appeal of the determination under paragraph (iii) of this section, the appeal must be filed with the Regional

Administrator within 30 days of the issuance of the letter of determination. The appeal must be in writing and must allege facts or circumstances, and include credible evidence demonstrating why the permit qualifies for a different tier assignment. The appeal of a denial of an application for a different tier assignment will not be referred to the Council for a recommendation under §660.340 (e).

(v) Absent good cause for further delay, the Regional Administrator will issue a written decision on the appeal within 30 days of receipt of the appeal. The Regional Administrator's decision is the final administrative decision of the Department of Commerce as of the date of the decision.

(4) Ownership requirements and limitations. (i) No partnership or corporation may own a limited entry permit with a sablefish endorsement unless that partnership or corporation owned a limited entry permit with a sablefish endorsement on November 1, 2000. Otherwise, only individual human persons may own limited entry permits with sablefish endorsements.

(ii) No individual person, partnership, or corporation in combination may have ownership interest in or hold more than 3 permits with sablefish endorsements either simultaneously or cumulatively over the primary season, except for an individual person, or partnerships or corporations that had ownership interest in more than 3 permits with sablefish endorsements as of November 1, 2000. The exemption from the maximum ownership level of 3 permits only applies to ownership of the particular permits that were owned on November 1, 2000. An individual person, or partnerships or corporations that had ownership interest in 3 or more permits with sablefish endorsements as of November 1, 2000, may not acquire additional permits beyond those particular permits owned on November 1, 2000. If, at some future time, an individual person, partnership, or corporation that owned more than 3 permits as of November 1, 2000, sells or otherwise permanently transfers (not holding through a lease arrangement) some of its originally owned permits, such that they then own fewer than 3 permits, they may then acquire additional per-

mits, but may not have ownership interest in or hold more than 3 permits.

(iii) A partnership or corporation will lose the exemptions provided in paragraphs (d)(4)(i) and (ii) of this section on the effective date of any change in the corporation or partnership from that which existed on November 1, 2000. A "change" in the partnership or corporation is defined at §660.302. A change in the partnership or corporation must be reported to SFD within 15 calendar days of the addition of a new shareholder or partner.

(iv) During 2006 when a permit's ownership interest is requested for the first time, NMFS anticipates sending a form to legally recognized corporations and partnerships (i.e., permit owners or holders that do not include only individual's names) that currently own or hold sablefish-endorsed permits that requests a listing of the names of all shareholders or partners as of November 1, 2000, and a listing of that same information as of the current date in 2006. Applicants will be provided at least 60 calendar days to submit completed applications. If a corporation or partnership fails to return the completed form by the deadline date of July 1, 2006, NMFS will send a second written notice to delinquent entities requesting the completed form by a revised deadline date of August 1, 2006. If the permit owning or holding entity fails to return the completed form by that second date, August 1, 2006, NMFS will void their existing permit(s) and reissue the permit(s) with a vessel registration given as "unidentified" until such time that the completed form is provided to NMFS. For the 2007 fishing year and beyond, any partnership or corporation with any ownership interest in or that holds a limited entry permit with a sablefish endorsement shall document the extent of that ownership interest or the individuals that hold the permit with the SFD via the Identification of Ownership Interest Form sent to the permit owner through the annual permit renewal process defined at §660.335(a) and whenever a change in permit owner, permit holder, and/or vessel registration occurs as defined at §660.335(d) and (e). SFD will not renew

a sablefish-endorsed limited entry permit through the annual renewal process described at § 660.335(a) or approve a change in permit owner, permit holder, and/or vessel registration unless the Identification of Ownership Interest Form has been completed. Further, if SFD discovers through review of the Identification of Ownership Interest Form that an individual person, partnership, or corporation owns or holds more than 3 permits and is not authorized to do so under paragraph (d)(4)(ii) of this section, the individual person, partnership or corporation will be notified and the permits owned or held by that individual person, partnership, or corporation will be void and reissued with the vessel status as “unidentified” until the permit owner owns and/or holds a quantity of permits appropriate to the restrictions and requirements described in paragraph (d)(4)(ii) of this section. If SFD discovers through review of the Identification of Ownership Interest Form that a partnership or corporation has had a change in membership since November 1, 2000, as described in paragraph (d)(4)(iii) of this section, the partnership or corporation will be notified, SFD will void any existing permits, and reissue any permits owned and/or held by that partnership or corporation in “unidentified” status with respect to vessel registration until the partnership or corporation is able to transfer those permits to persons authorized under this section to own sablefish-endorsed limited entry permits.

(v) For permit owners with one individual listed and who were married as of November 1, 2000, and who wish to add their spouse as co-owner on their permit(s), NMFS will accept corrections to NMFS’ permit ownership records. Permit owners may add a not-listed spouse as a co-owner without losing their exemption from the owner-on-board requirements (i.e., grandfathered status). Their new grandfathered status will be as a partnership, as defined at § 660.302 which includes married couples. Individual permit owners will lose their individual grandfathered status when they add their not-listed spouse unless they also owned at least one permit as an individual and did not retroactively add a spouse as co-owner

on that permit. In cases where married couples are listed as co-owners of the same permit, both individuals will be counted as owning one permit each and will have grandfathered status as a partnership. An individual within the married couple will not, however, be able to retain their exemption from owner-on-board requirements if they choose to buy another permit as an individual and did not own a permit as an individual as of the control date in NMFS “corrected” records (i.e., NMFS records after allowing a not-listed spouse to be added as co-owner). Members of partnerships and corporations will not be allowed to add their spouses to the corporate ownership listing as of November 1, 2000, for purposes of exempting them from the owner-on-board requirements. NMFS will send a form to permit owners with one individual listed on the permit as of November 1, 2000, to allow married individuals who wish to declare their spouses as having permit ownership interest as of November 1, 2000. Applicants will be required to submit a copy of their marriage certificate as evidence of marriage. Applicants will be provided at least 60 calendar days to submit an application to add a spouse as co-owner. Failure to return the completed form to NMFS SFD by July 1, 2006, will result in the individual listed on the permit in SFD records as of November 1, 2000, remaining on the permit. SFD will not accept any declarations to add a spouse as co-owner for couples married as of November 1, 2000, postmarked after the July 1, 2006, deadline.

(vi) For an individual person, partnership, or corporation that qualified for the owner-on-board exemption, but later divested their interest in a permit or permits, they may retain rights to an owner-on-board exemption as long as that individual person, partnership, or corporation obtains another permit by March 2, 2007. An individual person, partnership or corporation could only obtain a permit if it has not added or changed individuals since November 1, 2000, excluding individuals that have left the partnership or corporation or that have died. NMFS will send out a letter to all individuals, partnerships or corporations who owned a permit as of November 1, 2000, and who no longer

own a permit to notify them that they would qualify as a grandfathered permit owner if they choose to buy a permit by March 2, 2007.

(vii) A person, partnership, or corporation that is exempt from the owner-on-board requirement may sell all of their permits, buy another sablefish-endorsed permit within up to a year from the date the last permit was approved for transfer, and retain their exemption from the owner-on-board requirements. An individual person, partnership or corporation could only obtain a permit if it has not added or changed individuals since November 1, 2000, excluding individuals that have left the partnership or corporation or that have died.

(e) *Sablefish at-sea processing prohibition and exemption*—(1) *General*. Beginning January 1, 2007, vessels are prohibited from processing sablefish at sea that were caught in the primary sablefish fishery without sablefish at-sea processing exemptions at § 660.306(e)(3). A permit and/or vessel owner may get an exemption to this prohibition if his/her vessel meets the exemption qualifying criteria provided in paragraph (e)(2) of this section. The sablefish at-sea processing exemption is issued to a particular vessel and the permit and/or vessel owner who requested the exemption. The exemption is not part of the limited entry permit. The exemption is not transferable to any other vessel, vessel owner, or permit owner for any reason. The sablefish at-sea processing exemption will expire upon transfer of the vessel to a new owner or if the vessel is totally lost, as defined at § 660.302.

(2) *Qualifying criteria*. A sablefish at-sea processing exemption will be issued to any vessel registered for use with a sablefish-endorsed limited entry permit that meets the sablefish at-sea processing exemption qualifying criteria and for which the owner submits a timely application. The qualifying criteria for a sablefish at-sea processing exemption are: at least 2,000 lb (907.2 mt), round weight, of frozen sablefish landed by the applicant vessel during any one calendar year in either 1998 or 1999, or between January 1 and November 1, 2000. The best evidence of a vessel having met these qualifying

criteria will be receipts from frozen product buyers or exporters, accompanied by the state fish tickets or landings receipts appropriate to the frozen product. Documentation showing investment in freezer equipment without also showing evidence of how poundage qualifications have been met is not sufficient evidence to qualify a vessel for a sablefish at-sea processing exemption. All landings of sablefish must have occurred during the regular and/or mop-up seasons and must have been harvested in waters managed under this part. Sablefish taken in tribal set aside fisheries or taken outside of the fishery management area, as defined at § 660.302, does not meet the qualifying criteria.

(3) *Issuance process for sablefish at-sea processing exemptions*.

(i) The SFD will mail sablefish at-sea processing exemption applications to all limited entry permit owners with sablefish endorsements and/or fixed gear vessel owners and will make those applications available online at www.nwr.noaa.gov/Groundfish-Halibut/Fisheries-Permits/index.cfm. Permit and/or vessel owners will have at least 60 calendar days to submit applications. A permit and/or vessel owner who believes that their vessel may qualify for the sablefish at-sea processing exemption will have until July 1, 2006, to submit evidence showing how their vessel has met the qualifying criteria described in this section at paragraph (e)(2) of this section. Paragraph (e)(4) of this section sets out the relevant evidentiary standards and burden of proof. SFD will not accept applications for the sablefish at-sea processing exemption postmarked after July 1, 2006.

(ii) Within 30 calendar days of the deadline or after receipt of a complete application, the SFD will notify applicants by letter of determination whether their vessel qualifies for the sablefish at-sea processing exemption. A person who has been notified by the SFD that their vessel qualifies for a sablefish at-sea processing exemption will be issued an exemption letter by SFD that must be onboard the vessel at all times. After the deadline for the receipt of applications has expired and all applications processed, SFD will publish a list of vessels that qualified

§ 660.335

50 CFR Ch. VI (10–1–07 Edition)

for the sablefish at-sea processing exemption in the FEDERAL REGISTER.

(iii) If a permit and/or vessel owner chooses to file an appeal of the determination under paragraph (e)(3)(ii) of this section, the appeal must be filed with the Regional Administrator within 30 calendar days of the issuance of the letter of determination. The appeal must be in writing and must allege facts or circumstances, and include credible evidence demonstrating why the vessel qualifies for a sablefish at-sea processing exemption. The appeal of a denial of an application for a sablefish at-sea processing exemption will not be referred to the Council for a recommendation, nor will any appeals be accepted by SFD after September 1, 2006.

(iv) Absent good cause for further delay, the Regional Administrator will issue a written decision on the appeal within 30 calendar days of receipt of the appeal. The Regional Administrator's decision is the final administrative decision of the Department of Commerce as of the date of the decision.

(4) *Evidence and burden of proof.* A permit and/or vessel owner applying for issuance of a sablefish at-sea processing exemption has the burden to submit evidence to prove that qualification requirements are met. The following evidentiary standards apply:

(i) A certified copy of the current vessel document (USCG or state) is the best evidence of vessel ownership and LOA.

(ii) A certified copy of a state fish receiving ticket is the best evidence of a landing, and of the type of gear used.

(iii) A copy of a written receipt indicating the name of their buyer, the date, and a description of the product form and the amount of sablefish landed is the best evidence of the commercial transfer of frozen sablefish product.

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

(f) *Endorsement and exemption restrictions.* "A" endorsements, gear endorsements, sablefish endorsements and sablefish tier assignments may not be

transferred separately from the limited entry permit. Sablefish at-sea processing exemptions are associated with the vessel and not with the limited entry permit and may not be transferred at all.

[66 FR 40919, Aug. 6, 2001, as amended at 66 FR 41158, Aug. 7, 2001; 67 FR 65905, Oct. 29, 2002; 69 FR 42351, July 15, 2004; 69 FR 57881, Sept. 28, 2004; 71 FR 10621, Mar. 2, 2006]

§ 660.335 Limited entry permits—renewal, combination, stacking, change of permit ownership or permit holdership, and transfer.

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

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

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

(4) Limited entry permits with sablefish endorsements, as described at § 660.334(d), will not be renewed until SFD has received complete documentation of permit ownership as required under § 660.334(d)(4)(iv).

(b) *Combining limited entry permits.* Two or more limited entry permits with "A" gear endorsements for the same type of limited entry gear may be combined and reissued as a single permit with a larger size endorsement as described in paragraph § 660.334(c)(2)(iii). With respect to permits endorsed for nontrawl limited entry gear, a sablefish endorsement will be issued for the new permit only if all of the permits being combined have sablefish