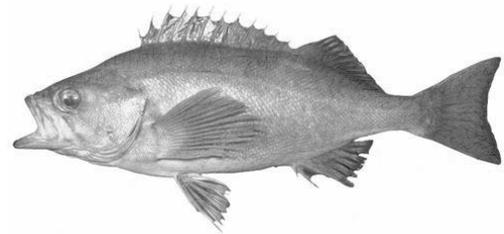


Compliance Guide Pacific Coast Groundfish Regulations



Widow Rockfish Reallocation Final rule

Effective 12/26/2017

This small entity compliance guide was prepared pursuant to section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 104-121. The statements in this document are intended solely as guidance. This document is intended to provide a plain-language summary of how small businesses can comply with new requirements in the Pacific Coast groundfish fishery (82 FR 55775, November 24, 2017). Any discrepancies between this guide and the Federal Register will be resolved in favor of the Federal Register.

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1 INTRODUCTION

National Marine Fisheries Service (NMFS) is modifying fishing regulations pertaining to the Pacific Coast Groundfish fishery via a final rule [[82 FR 55775](#)]. The final rule is a follow-on action to the 2011 trawl rationalization program, a catch share program which includes an individual fishing quota for limited entry trawl participants. When this program was implemented, the widow rockfish stock was overfished and quota shares were allocated to permit owners using an overfished species formula. Now that the stock has been rebuilt, this rule reallocates widow rockfish quota shares to more closely reflect the fishing history of permit owners when widow rockfish was a targeted species. Also, the following additional actions will go into effect with this rule:

1. The daily vessel limit for widow rockfish is removed
2. Trading of widow rockfish quota shares will be allowed
3. A new deadline is set for divestiture, in the case that the reallocation of widow rockfish puts any quota share permit owners over an accumulation limit

Regulations described in this compliance guide are effective **December 26, 2017**.

For the timelines related to each action, refer to the **Summary of Important Dates and Deadlines** at the end of this document.

2 WIDOW ROCKFISH REALLOCATION

The following information describes the reallocation process for widow rockfish quota shares in the limited entry trawl fleet.

***Reallocation** is the process of redistributing the quantity of catch attributed to people, vessels, or fishing companies.*

If you are a quota share owner in the limited entry trawl fleet and you currently own widow rockfish quota shares, please read the following sections for more information.

This guide applies to you if the following is true:

You are a quota share permit owner under the Pacific Coast trawl rationalization program

You currently own widow rockfish quota shares

2.1 WHY IS NMFS REALLOCATING WIDOW ROCKFISH?

The trawl rationalization program, implemented through Amendments 20 and 21 to the Pacific Coast Groundfish Fishery Management Plan (FMP), established an individual fishing quota (IFQ) program for the shorebased trawl fleet and cooperative programs for the at-sea mothership and catcher/processor whiting trawl fleets. This program also set long-term allocations for the limited entry trawl sectors of certain groundfish species, including widow rockfish.

When the program began in 2011, quota shares for widow rockfish were allocated based on a calculation for overfished species. The stock has since been declared rebuilt. Amendment 20 to the FMP states that when an overfished species is rebuilt, there may be a reallocation of quota shares in the IFQ sector to reestablish historic fishing opportunities. In April 2015, the Pacific Fishery Management Council (Council) made a final recommendation to NMFS to reallocate quota shares for the rebuilt widow rockfish stock to the IFQ sector.

If the Council had chosen not to reallocate widow rockfish quota shares and had lifted the moratorium on widow rockfish quota share transfer, quota share permit owners who wanted to target widow rockfish would have been forced to purchase widow rockfish quota share on the open market. This form of redistribution to enable a target fishery would take a long time and would involve high transaction costs. Reallocation allows permit owners with a history of participation in the widow rockfish fishery to more quickly reestablish a targeted fishery.

2.2 WHAT DOES IT MEAN FOR ME? AM I ELIGIBLE FOR REALLOCATION?

If you currently own a quota share permit and have an allocation of widow rockfish, you are eligible for a reallocated amount of widow rockfish. At present only 128 quota share permit owners are eligible for reallocation of widow rockfish. The 10 shorebased whiting processors who received quota share permits with an initial allocation of Pacific whiting are not eligible to receive reallocated widow rockfish quota shares.

2.3 HOW MANY QUOTA SHARE OWNERS WILL RECEIVE AN INCREASED AMOUNT OF WIDOW ROCKFISH QUOTA SHARES? HOW MANY WILL RECEIVE A DECREASED AMOUNT?

Under widow rockfish reallocation compared to status quo: NMFS estimates that 63 of 128 eligible quota share permits will lose widow rockfish quota shares, 63 will gain

widow rockfish quota shares, and 2 will hold the same amount of widow rockfish quota shares.

Despite the fact that 63 quota share permits may lose widow rockfish quota shares under reallocation, every quota share permit will be allocated more widow rockfish quota pounds (quota pounds) in 2018 than in any of the first 6 years of the IFQ program, by at least 15,000 pounds. This is due to the large increase in annual catch limit (ACL) and IFQ sector allocation following the determination that the widow rockfish stock was rebuilt, which both ensure that the quota pound equivalent of each share is now worth more. For example, a permit owner who holds one percent of widow rockfish quota shares would have been allocated 7,553 pounds in 2011 and 31,319 pounds in 2016 – over four times as much in 2016 as in 2011.

This division of reallocated quota shares is preliminary, and may be subject to change pending appeals.

2.4 HOW IS WIDOW ROCKFISH REALLOCATION CALCULATED?

NMFS will reallocate based on a calculation approved by the Council that is based on permit landing histories from years when widow rockfish was a target species. The calculation is similar to that used for the initial allocation of quota share for target species in 2011. For each limited entry trawl permit, NMFS will determine a quota share allocation for whiting and non-whiting trips. 10 percent of widow rockfish quota pounds will be allocated to the adaptive management plan. **Figure 1** shows a visual representation of the splits between whiting and nonwhiting trips. A whiting trip is defined as one where 50 percent or more of the total catch by weight is whiting. A nonwhiting trip has a total catch which is less than 50 percent whiting by weight.

The general divisions are as follows:

Sector Split: For purposes of calculating the division between whiting and nonwhiting trips, use 10.8% for whiting trips and 89.2% for nonwhiting trips.

Adaptive Management Plan: 10% of quota shares go to adaptive management. This will allow for flexible and responsive management of the widow rockfish stock.

Equal Division: 30% of widow quota shares are divided equally among all participants who had a permit in 2011.

Remainder divided between allocations for whiting and nonwhiting trips:

Allocation based indirectly on 1994-2003 whiting landings history for whiting trips

Allocation based directly on 1994-2002 widow landings history for non-whiting trips

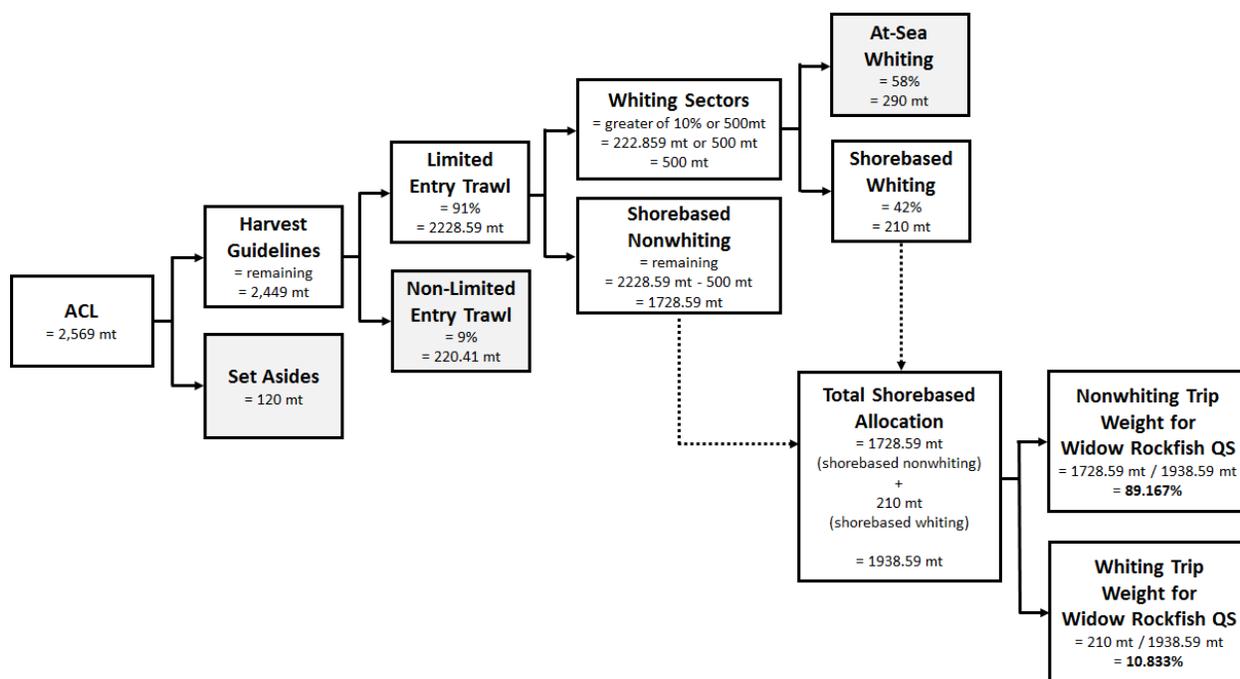


Figure 1: A flowchart showing the split of the ACL between whiting and non-whiting trips using an example ACL.

2.5 WHAT DATA WAS USED FOR REALLOCATION CALCULATIONS?

The calculation for the reallocation of widow rockfish quota shares is based on state landing receipts (fish tickets) as recorded in the relevant Pacific Fisheries Information Network (PacFIN) dataset on July 27, 2016. PacFIN is a collaboration between member state and Federal fishery agencies that supply the information needed to effectively manage fish stocks on the West Coast of the United States, providing both improved data quality and timeliness for use in fisheries management.

For specific widow rockfish quota share amounts, NMFS will determine the catch history or relative catch history for each limited entry permit. Only legal landings 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 quota shares. The limited entry trawl permit's landings history includes the landings history of permits that have been previously combined with that permit. 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.

2.6 WILL NMFS SEND OUT APPLICATIONS TO PERMIT OWNERS?

NMFS will mail widow rockfish reallocation applications, including the draft reallocation amount, to each eligible quota share permit owner on or about the day the final rule publishes.

2.7 HOW DO I COMPLETE THE APPLICATION?

Permit owners must complete a “prequalified application”, a partially pre-filled application that explains NMFS’s preliminarily determined landings history for each limited entry trawl permit that qualifies the applicant for a reallocation of widow quota shares. Each application will include a cover letter, application form, and a workbook providing detailed information on the calculation.

In Section B of the application, the applicant should review the associated limited entry permits and the reallocated quota share amounts and the preliminary reallocated widow rockfish quota share amounts accruing to the quota share permit owner.

In Section C of the application, the applicant must indicate that he/she accepts or does not accept the preliminary reallocated widow rockfish quota share amount. If you check "do not accept" you must submit with the application relevant credible evidence in support of a correction to your application.

There is no fee associated with this application.

2.8 WHAT IS THE DEADLINE FOR APPLYING FOR REALLOCATION?

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 December 26, 2017. NMFS will not accept or review any applications received or postmarked after the application deadline. There are no hardship exemptions for this deadline. NMFS will not accept emailed applications.

2.9 WHAT HAPPENS IF I DON'T SUBMIT MY APPLICATION BY THE DEADLINE?

If an applicant fails to submit a completed application by the deadline date, they forgo the opportunity to receive reallocated widow rockfish quota shares and their percentage will be redistributed to other quota share permit owners who submitted complete widow rockfish reallocation applications in proportion to their reallocated widow quota share amount.

2.10 CAN I REQUEST A CORRECTION IN MY APPLICATION, IF I FIND NMFS FAILED TO PROPERLY CARRY OUT THE CALCULATION? IF SO, HOW?

Yes. If an applicant does not accept NMFS's 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. This information must demonstrate that NMFS's application of the calculation was not carried out correctly. Fish tickets cannot be considered in correction requests, as any dispute on the data had to be identified prior to July 2016.

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 **December 26, 2017**. 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 quota share permit owner, permit combinations, or vessel registration as listed in NMFS permit database.

2.11 WILL NMFS PROVIDE ME WITH A DETERMINATION ON MY APPLICATION? IF SO HOW?

Yes. After the application deadline, NMFS will mail initial administrative determinations (IAD) to applicants. If NMFS approves an application for reallocated widow rockfish quota shares, the IAD will say so, and the applicant will receive a 2018 quota share permit specifying the reallocated amount of widow rockfish quota shares the applicant has qualified for. If NMFS disapproves or partially disapproves an application, the IAD will provide the reasons.

2.12 WILL I HAVE THE OPPORTUNITY TO APPEAL THE DETERMINATION IN MY APPLICATION?

Yes. Applicants will have 60 days from the date given on their IAD to appeal the determination. Instructions for how to appeal an IAD will be included in the IAD.

3 TRADING OF WIDOW ROCKFISH QUOTA SHARES

3.1 WHEN WILL WIDOW ROCKFISH TRADING BE ANNOUNCED?

NMFS will publish a public notice after the appeals deadline to announce when quota share permit owners may begin to transfer reallocated widow rockfish quota share.

3.2 WHEN WILL I BE ABLE TO START TRADING WIDOW ROCKFISH QUOTA SHARES?

If there are no appeals to the rule, widow rockfish quota share trading may begin on or about 2 weeks after the appeals deadline. If there are appeals to this rule, widow rockfish trading may begin on January 1, 2019.

4 DIVESTITURE

The following information details the steps which must be taken in the event that the reallocation of widow rockfish causes a quota share permit owner to exceed either the individual widow rockfish quota share limit or the aggregate non-whiting accumulation limit. This information pertains to permit owners, including any person who has ownership interest in the owner named on the permit.

Divestiture refers to the process of giving up quota shares in excess of the accumulation limit for widow rockfish.

*The **accumulation limit** is the cap on the amount of quota shares an individual, business, or non-business entity can own.*

4.1 WHAT IF MY REALLOCATED AMOUNT OF WIDOW ROCKFISH QUOTA SHARE CAUSES ME TO GO OVER THE NON-WHITING AGGREGATE ACCUMULATION LIMIT OR THE WIDOW ROCKFISH CONTROL LIMIT?

For quota share permit owners that are found to exceed the accumulation limits during the reallocation of widow rockfish quota shares, an adjustment period will be provided during which they will have to completely divest their quota share or individual bycatch quota (IBQ) in excess of the accumulation limits. If NMFS identifies that a quota share permit owner exceeds the accumulation limits in 2018 or beyond, the quota share permit owner must divest of the quota shares or individual bycatch quota (IBQ) in excess of the accumulation limits. After the widow rockfish reallocation divestiture period, NMFS will revoke all quota share 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.

4.2 WHAT IS THE DEADLINE FOR DIVESTITURE?

If there are no appeals to the rule, the divestiture deadline is **November 30, 2018**. If there are appeals to the rule, the divestiture deadline is **November 30, 2019**.

4.3 CAN I VOLUNTARILY ABANDON MY EXCESS QUOTA SHARES?

Quota share permit owners that are over the control limit for aggregate non-whiting quota share holdings or the widow rockfish control limit may voluntarily abandon quota shares if they notify NMFS in writing by the applicable deadline. The written abandonment request must include the following information: quota share permit number, IFQ species, and the quota share percentage to be abandoned. Either the quota share permit owner or an authorized representative of the quota share permit owner must sign the request. Quota share permit owners choosing to utilize the abandonment option will permanently relinquish to NMFS any right to the abandoned quota shares, and the quota shares will be redistributed. No compensation will be due for any abandoned shares.

4.4 WHAT IS THE DEADLINE FOR QUOTA SHARE ABANDONMENT?

If there are no appeals to the rule, the abandonment deadline is **November 15, 2018**. If there are appeals to the rule, the deadline is **November 15, 2019**.

4.5 WHEN WILL I KNOW THE DEADLINES FOR DIVESTITURE AND ABANDONMENT?

NMFS will announce the deadlines divestiture and abandonment in a public notice on or about 2 weeks after the appeal deadline.

5 SUMMARY OF IMPORTANT DATES AND DEADLINES

| Event or Deadline | Date |
|--|---|
| Final rule publishes | November 24, 2017 |
| NMFS mails widow rockfish reallocation applications and workbooks | November 24, 2017 |
| Final rule effective (30 days after final rule publishes) | December 26, 2017 |
| Widow rockfish reallocation application deadline (30 days after final rule publishes) | December 26, 2017 |
| NMFS mails initial administrative determinations (IADs) | On or about 2 weeks after application deadline |
| 2018 IFQ fishery starts with interim reallocated widow rockfish quota share amounts and widow rockfish quota pounds allocations based on the lesser of the initial allocation or the reallocated quota share | January 1, 2018 |
| Widow rockfish reallocation appeal deadline | On or about 60 days after IADs mailed |
| <i>If no appeals</i> , widow rockfish quota share trading starts | On or about 2 weeks after appeal deadline |
| <i>If no appeals</i> , widow rockfish abandonment deadline (only for quota share permit owners who exceed the aggregate non-whiting control limit as the result of widow rockfish reallocation) | November 15, 2018 |
| <i>If no appeals</i> , divestiture deadline (only for quota share permit owners who exceed a control limit as the result of widow rockfish reallocation) | November 30, 2018 (No quota share trading in December) |
| <i>If appeals</i> , widow rockfish quota share trading starts | January 1, 2019 |
| <i>If appeals</i> , widow rockfish abandonment deadline (only for quota share permit owners who exceed the aggregate non-whiting control limit as the result of widow rockfish reallocation) | November 15, 2019 |
| <i>If appeals</i> , divestiture deadline (only for quota share permit owners who exceed a control limit as the result of widow rockfish reallocation) | November 30, 2019 (No quota share trading in December) |

6 GLOSSARY

Accumulation limit is the cap on the amount of quota shares an individual, business, or non-business entity can own.

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

Divestiture refers to the process of giving up quota shares in excess of the accumulation limit for widow rockfish.

Groundfish species means fish defined under “groundfish” at §660.11 and managed under the Pacific coast groundfish FMP and regulations at 50 CFR part 660, subparts C through G. Individual fishing quota (IFQ) – This is a federal permit to harvest a quantity of fish, expressed as a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person. An IFQ is a harvest privilege that may be revoked at any time in accordance with the Magnuson-Stevens Act.

Land or landing means to begin transfer of fish, offloading fish, or to offload fish from any vessel. Once transfer of fish begins, all fish aboard the vessel are counted as part of the landing. Limited entry fishery means the fishery composed of vessels registered for use with limited entry permits.

Limited entry permit means the Federal permit required to fish in the limited-entry-endorsed fishery, and it includes any gear, size, or species endorsements affixed to the permit.

Pacific Fisheries Information Network (PacFIN) is a collaboration between member state and Federal fishery agencies that supply the information needed effectively to manage fish stocks on the West Coast of the United States, and it improves data quality and timeliness for use in fisheries management. The data are stored, processed, and disseminated by members of PacFIN staff. The member agencies include the California Department of Fish & Wildlife, Oregon Department of Fish & Wildlife, Washington Department of Fish & Wildlife, National Oceanic and Atmospheric Administration, Pacific States Marine Fisheries Commission, and Pacific Fisheries Management Council.

Reallocation is the process of redistributing the quantity of catch attributed to people, vessels, or fishing companies.

Whiting trip is defined as a fishing trip where 50 percent or more of the total catch by weight is whiting.

Nonwhiting trip is defined as a fishing trip where less than 50 percent of the total catch by weight is whiting.