

**SUPPLEMENTARY INFORMATION:** Pelagic fisheries in the U.S. western Pacific are managed under the FEP. The Council prepared Amendment 2 to address pelagic fishing concerns in the Mariana Archipelago (Guam and the CNMI). Pelagic fisheries in the Marianas consist mostly of small trolling fleets, several pelagic longline vessels, and purse seine vessels based there, but not fishing near the islands. Guam's pelagic fishery consists of 300–400 mostly small trolling boats that catch skipjack tuna, yellowfin tuna, mahimahi, wahoo, and Pacific blue marlin. Trolling is also the primary fishing method in the CNMI pelagic fishery. About 50–100 small vessels target skipjack tuna, and also catch yellowfin tuna and mahimahi.

Pelagic longline vessels in the Marianas are typically larger than 50 ft (15 m) and can fish for more than 30 days. Interest in the longline fishery has been variable; currently four Federally-permitted longline vessels are based in the CNMI and one is based in Guam. Longliners target yellowfin and bigeye tunas and retain incidental catches of albacore, blue marlin, mahimahi, skipjack tuna, and spearfish.

About 36 U.S. purse seine vessels operate in the western and central Pacific Ocean, targeting skipjack and yellowfin tuna. Vessels range from 164 to 377 ft (50 to 115 m). Fish-carrying capacities range from approximately 800 to 1,500 mt (2.2 to 3.9 million lb). The U.S. purse seine catch in the western Pacific is made on the high seas, in foreign EEZs, and in the U.S. EEZ around American Samoa and the U.S. Pacific Remote Island Areas (*i.e.*, Wake, Baker, Howland, and Jarvis Islands, Johnston Atoll, Kingman Reef, and Palmyra Atoll). Two U.S. purse seine vessels are based in Guam, but have not fished in the EEZ around the Mariana Archipelago. To date, limited purse seine activity has occurred adjacent to the EEZ around Guam since 1980, but no U.S. purse seine catches have been recorded within the EEZ.

The Council is concerned about the potential impacts if purse seine fishing effort shifts to areas fished by domestic troll and longline fishermen of Guam and the CNMI. Those smaller vessels could experience reduced catch rates due to localized depletion and catch competition, or would have to travel further to maintain catch rates, potentially resulting in lost revenue and possible safety-at-sea issues.

The Council is also concerned about the impact of purse seine fishing on the recruitment of juvenile bigeye tuna. While targeting skipjack tuna, purse seines may also catch juvenile yellowfin and bigeye tuna. Juvenile bigeye tuna

caught by purse seines may be contributing to the overfishing status of bigeye tuna in the western and central Pacific Ocean. The impacts from an increase in juvenile catch of bigeye tuna can reduce the number of mature fish, thereby decreasing reproduction. This also decreases the future availability of adult fish for fisheries that target adult bigeye tuna, such as the longline fishery.

The Council is further concerned that any future expansion of longline fishing around the Mariana Archipelago could result in adverse impacts to the CNMI troll fishery. If the number of CNMI-based longline vessels increases and move into areas traditionally utilized by the troll fleet (typically within 30 nm (55.6 km) of shore), there is potential for gear conflicts and catch competition between the two fleets, resulting in potential gear loss, increased costs, and decreased revenues.

To address their concerns about the potential impact of purse seine fishing on the troll and longline fisheries in the Marianas, the Council recommends in Amendment 2 prohibiting U.S. purse seine vessels from fishing within the EEZ around Guam and the CNMI. Furthermore, under Amendment 2, to address their concerns about the potential impact of uncontrolled expansion in the CNMI longline fishery, the Council recommends prohibiting longline fishing within 30 nm (55.6 km) of the CNMI. The Council's recommendations are intended to reduce temporary localized fish depletion, catch competition, and gear conflicts to sustain local troll and longline fisheries, and to limit the potential impacts of purse seine fishing on recruitment of juvenile bigeye tuna.

Public comments on proposed Amendment 2 must be received by May 10, 2011 to be considered by NMFS in the decision to approve, partially approve, or disapprove the amendment. NMFS expects to soon publish and request public comment on a proposed rule that would implement the measures recommended in Amendment 2.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: March 8, 2011.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 100201056-0076-01]

RIN 0648-AY65

#### Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to Pacific Cod Fishing in the Parallel Fishery in the Bering Sea and Aleutian Islands Management Area

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

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

**SUMMARY:** NMFS proposes a regulatory amendment that would limit access of Federally permitted pot and hook-and-line catcher/processors (C/P) to the Pacific cod fishery in State of Alaska waters adjacent to the Bering Sea and Aleutian Islands management area (BSAI). The affected fishery is commonly known as the "parallel" fishery. The parallel fishery occurs off the coast of Alaska, within 3 nautical miles of shore and is managed by the State of Alaska concurrent with the Federal pot and hook-and-line fishery for Pacific cod in the BSAI. This proposed rule would limit access to the parallel fishery for Pacific cod in three ways. First, it would require that an owner of a Federally permitted pot or hook-and-line C/P vessel used to catch Pacific cod in the State of Alaska parallel fishery be issued the same endorsements on their Federal fisheries permit (FFP) or license limitation program (LLP) license as currently are required for catching Pacific cod in the Federal waters of the BSAI. Second, an operator of any Federally permitted pot or hook-and-line C/P vessel used to catch Pacific cod in the parallel fishery would also be required to comply with the same seasonal closures of Pacific cod that apply in the Federal fishery. Third, an owner of a pot or hook-and-line C/P vessel who surrenders an FFP would not be reissued a new FFP within the 3-year term of the permit. These three measures are necessary to limit some C/Ps from catching a greater amount of Pacific cod in the parallel fishery than have been allocated to their sector from the BSAI Total Allowable Catch. Maintaining Pacific cod catch amounts within sector allocations would also reduce the potential for shortened Pacific cod seasons for C/Ps

in the Federal fishery. These three measures also would improve the coverage of NMFS catch accounting and monitoring requirements on vessels participating in the parallel fishery. This action is intended to promote the goals and objectives of the Fisheries Management Plan for Groundfish of the Bering Sea and Aleutians Islands Management Area, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws.

**DATES:** Written comments must be received by April 11, 2011.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN number 0648-AY65, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal Web site at <http://www.regulations.gov>.

- *Mail:* P. O. Box 21668, Juneau, AK 99802.

- *Fax:* (907) 586-7557.

- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Electronic copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from <http://www.regulations.gov> or from the Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS at the above address, e-mailed to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or faxed to 202-395-7285.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hartman, 907-586-7442.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fisheries in the exclusive economic zone (EEZ) of the Bering Sea and Aleutian Islands management area (BSAI) under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations implementing the FMP appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

### Background

The Council and NMFS annually establish biological thresholds and annual total allowable catch limits (TACs) for groundfish species to ensure the sustainability of the groundfish fisheries in the BSAI and to assist in the allocation of groundfish TACs among various user groups. To achieve these objectives, NMFS requires vessel operators participating in groundfish fisheries in the BSAI to comply with various restrictions, such as fishery closures to maintain catch within specified TACs and prohibited species catch limits, and associated sector and seasonal allocation apportionments. NMFS also requires various permits that authorize or limit access to the groundfish fisheries, such as a Federal fisheries permit (FFP) and a license limitation program (LLP) license. Many of the catch monitoring regulations that apply to vessels designated on an FFP or an LLP license while participating in Federal fisheries also apply to these vessels when fishing in parallel fisheries in State of Alaska (State) waters. Parallel fisheries are open concurrently with Federal fisheries, and groundfish catch in the parallel fisheries is deducted from Federal TACs and any sector and seasonal allocations of the Federal TACs. State waters fisheries that are not parallel are referred to as "non-parallel State fisheries". Targeted groundfish catch in the non-parallel State fisheries are deducted from a State guideline harvest level (GHL), rather than a Federal TAC. Currently, non-parallel State fisheries for BSAI groundfish are established only for pollock, Pacific cod, and sablefish in specified areas shoreward of the Aleutian Islands Subarea (AI).

Federal groundfish fisheries in the EEZ from 3 to 200 nm off the coast of Alaska may be opened by NMFS to directed fishing for selected groundfish species. Parallel fisheries for groundfish

species in State waters (from 0 nm to 3 nm) may be opened by the Commissioner for the Alaska Department of Fish and Game (ADF&G) through emergency order under the authority of State regulations at 5 AAC 28.086. Non-parallel-State fisheries (also occurring from 0 to 3 nm) may be opened and closed by the ADF&G to fishing but during distinct seasons that generally do not overlap with the parallel and Federal groundfish seasons.

### Federal Fisheries Permit Requirements

All vessels used to fish for groundfish in the Federal groundfish fisheries of the BSAI must be designated by name on an FFP. Operators of a vessel designated on an FFP must comply with NMFS observer and recordkeeping and reporting requirements in both Federal groundfish and parallel fisheries. In addition, operators of vessels designated on an FFP must comply with NMFS vessel monitoring system (VMS) reporting requirements if they participate in the directed Atka mackerel, Pacific cod, or pollock fisheries in Federal EEZ or Alaska State waters. However, a vessel used to fish exclusively in Alaska State waters is not required to be designated on an FFP, and the operator of a vessel that is not designated on an FFP is not subject to NMFS observer, VMS, or recordkeeping and reporting requirements.

An FFP is issued on a 3-year cycle and is in effect from the date of issuance through the end of the current 3-year cycle. A person issued an FFP may surrender it at any time and have the FFP reissued at any time later in the 3-year cycle. There is no limit on the number of times an FFP may be surrendered and reissued within the 3-year permit cycle. The flexibility provided by allowing a vessel owner to surrender an FFP and have it reissued in a short period of time is intended to provide a vessel opportunities to participate in Alaska State waters fisheries, for which no FFP is required, without having to comply with all the Federal requirements associated with an FFP.

FFPs may include many endorsements, such as, type of gear (pot, hook-and-line, and trawl), vessel operation category (catcher/processor (C/P) or catcher vessel (CV)), and management area (BSAI or Gulf of Alaska (GOA)) in which a licensed vessel may fish, and in some cases a species endorsement. These endorsements are required for a vessel to participate in a particular fishery. For example, vessels used to participate in Federal fisheries for Atka mackerel, Pacific cod, or pollock must be

designated on an FFP with endorsements that indicate the use of pot, trawl, or hook-and-line gear in these fisheries. With the exception of the GOA inshore processing endorsement, an FFP may be amended to remove an endorsement any number of times during a year. While any vessel owner may apply for an FFP with a C/P or CV endorsement (or both) as well as any area, gear, or species endorsements, an FFP with a specific set of endorsements, by itself, does not authorize the operator of the vessel to participate in the Pacific cod fishery in the BSAI. In most cases, an LLP license also is required to participate in this fishery.

#### *License Limitation Program Requirements*

Most vessels deployed in a directed fishery for groundfish in the BSAI are required to be named on an LLP license. The LLP authorizes a vessel to be used in a particular directed groundfish fishery under specified vessel operation, gear, area, and (where applicable) species and operation type endorsements. For some groundfish species, such as Pacific cod, additional endorsements may be required. For example, if the operator of a pot C/P wished to participate in a directed fishery for groundfish in the AI, the C/P must be named on an LLP with endorsements for C/P vessel operation, non-trawl gear, and AI area. In addition, to engage in the AI directed fishery for Pacific cod, the vessel also must be designated on an LLP license with an endorsement for Pacific cod in the AI for a C/P using pot gear. Unlike the FFP, the endorsements on an LLP license are not severable from the license. An LLP license with its associated endorsements may be assigned to a different vessel only once per year.

There are several exceptions to the requirement for a vessel to be designated on an LLP license to fish for groundfish in the BSAI: (1) Vessels less than 32 ft length overall (LOA); (2) vessels not directed fishing for LLP groundfish species that may retain incidentally caught groundfish up to the maximum retainable amounts (including individual fishing quota halibut or sablefish); and (3) catcher vessels less than 60 ft LOA that are exempted from having a Pacific cod endorsement on their LLP license to participate in the fixed gear BSAI Pacific cod fishery. In addition, vessels fishing in the parallel fisheries are not required to be designated on an LLP license because these fisheries occur only in State waters.

#### *Sectors and Sector Allocations*

The TAC for BSAI Pacific cod is divided into sector allocations, which include allocations of separate portions of the TAC to pot C/Ps, pot CVs, hook-and-line C/Ps and hook-and-line CVs. Each sector allocation for Pacific cod is further divided into two or more seasonal allocations. These sector and seasonal allocations were implemented under Amendment 67 to the BSAI FMP (67 FR 18129, April 15, 2002) and Amendment 85 to the BSAI FMP (72 FR 50788, September 4, 2007). These two FMP amendments limited the number of vessels in each sector and implemented sector allocations of Pacific cod to vessels in each sector. These amendments limited access and reduced competition in the derby-style Pacific cod fishery that has existed throughout much of the last two decades.

Amendment 67 to the BSAI FMP was intended to limit vessel participation with hook-and-line and pot gear in the BSAI Pacific cod fishery, and thus authorized exclusive participation in the hook-and-line and pot gear BSAI Pacific cod fisheries. It was implemented by issuing LLP license endorsements to LLP holders demonstrating historic and recent participation, and economic dependence in the Pacific cod fishery. Of four separate Pacific cod endorsements, one was created for Pacific cod pot C/P and one for Pacific cod hook-and-line C/P.

Amendment 85 to the BSAI FMP modified previously established allocations of Pacific cod among ten fishery sectors created in Amendment 67, to better reflect the historical dependency and use of Pacific cod by each sector. Two of the industry sectors that received modified allocations under Amendment 85 were the pot C/P sector and the hook-and-line C/P sector.

There is a substantial difference in the amount of Pacific cod allocated between the pot and hook-and-line sectors. The pot C/P sector has historically caught a small amount of Pacific cod. The Amendment 85 allocation to the pot C/P sector is only 1.5 percent of the BSAI Pacific cod TAC after subtraction of the allocation to the Western Alaska Community Development Quota (CDQ) reserve. The C/P hook-and-line allocation of Pacific cod is substantially larger at 48.5 percent of the TAC after subtraction of the allocation to the CDQ reserve. The hook-and-line C/P sector recently completed a voluntary capacity reduction program, and in January 2008 the owners of vessels in this fleet began repaying a \$35 million Federal loan. The hook-and-line C/P sector's ability to

repay the loan is based on a secure annual allocation of Pacific cod to the sector participants who have been issued the appropriate Amendment 67 endorsed LLP licenses.

#### **Statement of Problem**

At the October 2008 Council meeting, the members of the BSAI groundfish pot and hook-and-line C/P sectors informed the Council that following the implementation of Amendment 85, Federally-permitted pot and hook-and-line C/Ps have been participating in increasing numbers in the Pacific cod parallel fishery. Owners of several of these C/Ps have not been issued FFPs and LLP licenses with the endorsements necessary to fish in the Pacific cod fishery in the BSAI EEZ. However, the catch of Pacific cod in the parallel fishery from these C/P vessels accrues against the sector allocations in the Federal fishery that were designed to be available only to vessels with the appropriate Pacific cod endorsements issued under Amendment 67.

In April 2009, information prepared for the EA/RIR/IRFA (*See ADDRESSES*) confirmed that several operators of hook-and-line C/Ps that have been participating in the parallel Pacific cod fishery have not been issued all the FFP and LLP licenses and endorsements that are necessary to participate in the Federal Pacific cod fishery. The EA/RIR/IRFA also confirmed that hook-and-line C/Ps that have been issued all the FFP and LLP license endorsements required to fish as C/Ps in the Federal Pacific cod fishery, also fish as C/Ps in the parallel fishery. However, if the hook-and-line C/P sector's season closes in the Federal fishery and vessels in the hook-and-line C/P sector continue to fish in the parallel fishery as hook-and-line C/Ps, NMFS continues to credit that catch in the parallel fishery to the hook-and-line C/P sector allocation. That additional amount credited to the C/P sector allocation in the current season could result in a reduction in the allocation available to the C/P sector participants during a subsequent season of that year. The Council concluded that the additional catch of Pacific cod resulting from this activity, while only a fraction of a percent of the BSAI Pacific cod allocation, may be circumventing the intent of previous decisions made by the Council regarding license limitation and endorsements, sector allocations, and catch reporting. While the additional fishing activity had not violated Federal permit and license regulations, the Council concluded that additional fishing activity in the Pacific cod parallel fishery has reduced "or circumvented" the intended

effectiveness of Pacific cod sector allocations and the capacity reduction program.

The EA/RIR/IRFA prepared for this action (*See ADDRESSES*) highlighted how increased participation in BSAI C/P hook-and-line sector in recent parallel fisheries has undermined the capacity reduction program undertaken by particular members of that sector. The increased participation has eroded the opportunity of historical participants to harvest the Pacific cod allocated to the C/P sector under Amendment 85. The increased participation in the parallel fishery involved Federally-permitted C/Ps without an Amendment 67 Pacific cod endorsement, or an AI area endorsement. These vessel owners and operators are recent entrants to the Pacific cod fishery and have not demonstrated long-term economic dependence on the fishery.

An increase in recent parallel fishery participation by vessels in the pot and hook-and-line C/P sectors has correspondingly increased fishing competition in the BSAI Pacific cod fishery. This increased fishing pressure has resulted in shortened Federal seasons, has exacerbated the race for fish, and has increased the concentration of Pacific cod harvest in State waters relative to catch in the Federal waters. The increased fishing competition and catch from these sectors in the parallel Pacific cod fishery have also increased the complexity and difficulty in managing sector allocations and seasonal apportionments. Furthermore, owners of some vessels used to fish for Pacific cod in a Federal groundfish fishery have surrendered their FFPs before fishing in a parallel fishery or in the non-parallel-State waters Pacific cod fishery to avoid NMFS observer and recordkeeping and reporting requirements. Operators of vessels designated on an FFP are subject to NMFS observer, VMS, and recordkeeping and reporting requirements while fishing in Federal and State water groundfish fisheries. Some Pacific cod C/Ps may have avoided complying with these important NMFS enforcement and recordkeeping tools while fishing in the State waters by surrendering or amending their FFP. As a consequence, these vessels may be degrading the quality of information available to NMFS to manage the Pacific cod fishery.

#### **The Proposed Action**

In consideration of the effects of these practices on the allocation of Pacific cod and data quality, the Council recommended three actions at its June 2009 meeting to further restrict

participation of pot or hook-and-line C/Ps in the Pacific cod parallel fishery. These three actions would amend regulations for pot and hook-and-line C/Ps by extending FFP and LLP endorsement requirements that apply in Federal fisheries to the Pacific cod parallel fishery: placing restrictions on reissuing or amending an FFP, and requiring operators of these pot and hook-and-line C/Ps participating in the parallel fishery to comply with seasonal closures of Pacific cod in the BSAI.

#### *Endorsements for the State Parallel Fishery*

The first of three actions recommended by the Council would add requirements for additional endorsements on an FFP and LLP license. The endorsements would apply to vessels designated on an FFP that fish for Pacific cod in the parallel fishery, use pot or hook-and-line gear, and catch and process Pacific cod. The proposed rule would implement this recommendation by amending § 679.7(c)(3) to prohibit a person from using pot or hook-and-line gear from a vessel designated on an FFP to catch and process Pacific cod in the parallel fishery in the BSAI unless:

1. The FFP has a C/P vessel operation endorsement; a pot or hook-and-line gear endorsement; and a BSAI area endorsement; and
2. The LLP license has a C/P vessel operation endorsement; a non-trawl gear endorsement; an Aleutian Islands area endorsement or a Bering Sea area endorsement; and a BSAI C/P Pacific cod hook-and-line or BSAI C/P Pacific cod pot endorsement.

The prohibitions would clarify that under the authority of the Magnuson-Stevens Act, the endorsements listed in 1 and 2, and any conditions of these FFP and LLP endorsements, apply to Federally permitted pot or hook-and-line C/P vessels fishing for Pacific cod in the parallel fishery.

#### *Reissuing and Amending an FFP*

The second action recommended by the Council is to prohibit the owner of a C/P using pot or hook-and-line gear in the BSAI from surrendering his or her FFP during the 3-year term of the FFP. Rather than prohibiting surrender of an FFP, NMFS proposes to implement the Council's recommendation by not reissuing an FFP once it is surrendered. The proposed rule would add paragraph (B) at § 679.4(b)(4)(ii) to state that, once surrendered, NMFS will not reissue an FFP to the owner of a vessel with a C/P vessel operation, pot or hook-and-line gear type, and BSAI area endorsement

during the remainder of the 3-year term of the original FFP.

This approach would be more efficient for NMFS to administer because it would only require NMFS to track the number of vessel owners applying for a new FFP with a pot or hook-and-line C/P endorsement who had previously surrendered an FFP rather than track whether each permit holder who submitted a request to surrender an FFP had participated as a pot or hook-and-line C/P in the BSAI within the 3-year term of the surrendered permit.

The proposed rule also would add paragraph (B) to § 679.4(b)(4)(iii) to prohibit the owner of a vessel named on an FFP with endorsements for C/P vessel operation category, pot or hook-and-line gear, and BSAI area groundfish endorsement from amending the FFP by removing the C/P operation, pot or hook-and-line gear, or BSAI area endorsements.

The proposed rule also would revise § 679.4(b)(4)(iii) to refer to the "owner" of a vessel who applied for and held an FFP rather than to the "owner or operator". The term operator would be removed because FFPs may only be issued to vessel owners.

#### *Seasonal Closures*

The third action recommended by the Council is to clarify that Pacific cod seasonal closure requirements for Federally permitted pot and hook-and-line C/Ps apply in both Federal and parallel Pacific cod fisheries. The proposed rule would implement this recommendation by adding paragraph (4) to § 679.7(c), to prohibit operators of vessels in the pot or hook-and-line C/P sector that are named on an FFP from fishing for Pacific cod in the parallel fishery once the directed fishery for Pacific cod for their sector is closed in Federal waters.

#### *Notice; Pacific Cod Caught in Parallel Fisheries Are Deducted From the TAC*

Owners of Federally permitted pot or hook-and-line C/Ps, intending to catch and process Pacific cod from the parallel fishery, would receive actual and/or constructive notice from NMFS that any Pacific cod caught by that vessel in parallel fisheries will be deducted from the Federal TAC. The notice would improve enforceability of regulations proposed under § 679.7(c)(3) and (c)(4), by clarifying that a Federally permitted pot or hook-and-line C/P would be in violation of these prohibitions for catching and processing Pacific cod in parallel fisheries without the required FFP and LLP license

endorsements or during a Pacific cod seasonal closure.

#### *What the Amendments Accomplish*

The requirements in this proposed action for pot and hook-and-line C/Ps to be issued specific permits and endorsements to fish for Pacific cod in the parallel fishery, combined with proposed restrictions on surrendering and reissuing an FFP would address the Council's problem statement by requiring that, once a vessel owner of a pot or hook-and-line C/P is issued an FFP, he or she must choose to fish for Pacific cod predominantly in the Federal fishery or surrender his or her FFP and fish in State waters for the remainder of the 3-year term of the FFP. Owners of pot or hook-and-line C/Ps eligible to participate in the Federal fisheries are unlikely to surrender their FFP and give up the opportunity to continue to fish Pacific cod in the Federal fishery, unless they are close to the end of the 3-year term of the FFP. Relying exclusively on Pacific cod catch in parallel and non-parallel State fisheries for up to 3 years would represent a significant loss in revenue for many C/Ps because most Pacific cod are located in and caught in the Federal waters of the BSAI. Although these proposed regulatory amendments would not prohibit a C/P without an FFP or LLP license from participating in the parallel fishery, it would discourage the current practice of surrendering an FFP or removing an endorsement from an FFP before participating in the parallel fishery to avoid NMFS observer, VMS, and recordkeeping and reporting requirements.

#### *Conservation and Management*

This action implements the conservation and management of Federal fisheries as provided by Amendments 67 and 85 to the BSAI FMP. Amendment 67 created exclusive pot C/P and hook-and-line C/P sectors for participating in the BSAI Pacific cod fishery through a license limitation program (LLP). The creation of sectors effectively removed some vessels that did not historically participate in these Pacific cod fisheries, and reduced competition that contributed to the race for fish. Some of the C/Ps that did not qualify for the necessary LLP endorsement in Amendment 67 continue to fish for Pacific cod in the parallel fishery off of allocations for the C/P pot and hook-and-line sectors created by Amendment 85. This proposed rule would apply the same LLP endorsements required for Federally permitted pot or hook-and-line C/Ps to participate in the BSAI

Pacific cod fishery to the parallel Pacific cod fishery, limiting ability of C/Ps without an LLP or the appropriate LLP endorsements to fish off of these Pacific cod sector allocations in the parallel fishery. Thus, this proposed action would contribute to conservation and management objectives by preventing C/Ps without an LLP or the appropriate endorsements to continue to participate in parallel fishery, reducing the pool of vessels competing for limited allocations to the C/P pot and hook-and-line sectors, and limiting the race for fish in the BSAI.

The interim final rule for Steller sea lion (SSL) protection measures (75 FR 77535, December 13, 2010, corrected 75 FR 81921, December 29, 2010) establish closures in critical habitat waters 0 nm to 3 nm around certain rookeries and haulouts in the Aleutian Islands subarea. The harvest of Pacific cod in the parallel fisheries was included in the action considered in the November 2010 biological opinion on the Alaska Federal groundfish fisheries. In the analysis of the action in the biological opinion, the parallel fisheries were expected to be managed with the same closures as specific for the Federal Pacific cod fisheries as shown in Table 12 to 50 CFR part 679. The interim final rule closed State waters occurring inside Steller sea lion critical habitat. On January 11, 2011, the State issued an emergency order that allows for Pacific cod harvest by hook-and-line vessels 58 ft or less and by pot vessels 60 feet or less in State waters critical habitat between 175 degrees W longitude and 178 degrees W longitude that are closed to Federally permitted vessels. NMFS has initiated an Endangered Species Act Section 7 consultation on the State's emergency order. This proposed action would discourage a pot or hook-and-line C/P from surrendering its FFP and fishing in the parallel fisheries in those areas closed in Table 12 to 50 CFR part 679 but open under State parallel management. This proposed action would facilitate implementation of the closure areas for the protection of Steller sea lion critical habitat, as provided in the interim final rule (75 FR 77535, December 13, 2010, corrected 75 FR 81921, December 29, 2010) and required by the biological opinion.

#### **Classification**

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to

further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the RFA (RFA). The IRFA describes the economic impact 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 at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the remainder of the IRFA follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

The directly regulated entities for this proposed action are the members of the commercial fishing industry that operate groundfish pot or hook-and-line C/Ps in the BSAI and State parallel waters. Under a conservative application of the Small Business Administration criterion and the best available data, there are four small entities out of a total of 44 vessels in 2008 that would be directly regulated by the proposed action. To provide these estimates, earnings from all Alaskan fisheries for 2008 were matched with the vessels that participated in the BSAI pot or hook-and-line fishery for that year.

To minimize impacts on small entities, this action would not apply to pot or hook-and-line C/Ps of less than 32 ft LOA, or to pot or hook-and-line CVs. The CVs participating in these fisheries are generally operating in non-parallel-State and parallel fisheries only, and are not required by NMFS to be designated on an LLP license or FFP to participate in these groundfish fisheries.

In addition to the proposed alternative, the Council evaluated an alternative to prohibit any vessel with a C/P endorsement on its FFP from amending the C/P endorsement, and only allow surrender or reactivation of the FFP at the end of the FFP permit cycle. That alternative was rejected because it would have applied to jig and trawl C/Ps, and was beyond the scope of the Council's problem statement and analysis.

The Council also evaluated the no action alternative, which would maintain the fishery under the status quo, but it was rejected because it would not address the problem statement.

The majority of the directly regulated entities under this action are not considered small entities, as defined under the Regulatory Flexibility

Analysis. Within the universe of small entities that are the subject of this IRFA, impacts may accrue differently (*i.e.*, some small entities would be negatively affected and others positively affected). Thus, the proposed action represents tradeoffs in terms of impacts on small entities. However, the Council deliberately sought to provide options for the smallest of the small entities under this amendment by excluding CVs from the proposed regulatory changes. The restrictions on participation in the BSAI Pacific cod parallel fishery would only apply to pot and hook-and-line C/Ps; therefore only these C/Ps are considered here.

Overall, it is unlikely that the combination of these proposed restrictions would preclude vessels with a high degree of economic dependence upon the pot or hook-and-line groundfish fisheries from participating in the Pacific cod parallel fishery. Most of the vessel owners who are highly dependent on these fisheries were issued an LLP license with pot or hook-and-line Pacific cod endorsements, in 2003 under Amendment 67 by demonstrating recent catch history in the BSAI Pacific cod fishery. Most of the vessel owners who have not been issued an LLP license with a Pacific cod endorsement, and who have fished in parallel fisheries, are recent entrants to the fishery and have not demonstrated long-term economic dependence on the fishery. These vessel owners would continue to have access to the State Pacific cod fishery after implementation of the proposed action.

Based upon the best available scientific data, and consideration of the objectives of this action, it appears that there are no alternatives to the proposed action that have the potential to accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes and that have the potential to minimize any significant adverse economic impact of the proposed rule on small entities. The analysis did not identify any Federal rules that would duplicate, overlap, or conflict with the proposed rule. This rule requires revisions to some existing recordkeeping and reporting requirements but imposes no new requirements on the effected vessel owners or operators.

#### *Collection-of-Information Requirements*

This proposed rule contains a collection-of-information requirement subject to review and approval by Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval under

OMB Control No. 0648–0206. Public reporting burden for an Application for a Federal Fisheries Permit is estimated to average 21 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. This rule also contains a collection-of-information that has been approved by OMB under OMB Control No. 0334. Total public reporting burden for the License Limitation Program is estimated at 268 hours.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS Alaska Region at the **ADDRESSES** above, and by e-mail to *OIRA\_Submission@omb.eop.gov*, or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

#### **List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: March 8, 2011.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

#### **PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

1. The authority citation for part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447.

2. In § 679.4, paragraphs (b)(4)(ii) and (iii) are revised to read as follows:

#### **§ 679.4 Permits.**

(b) \* \* \*

(4) \* \* \*

(ii) *Surrendered permit.* (A) An FFP permit may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. Except as provided under paragraph (b)(4)(ii)(B) of this section, if surrendered, an FFP may be reissued to the permit holder of record in the same fishing year in which it was surrendered. Contact NMFS/RAM by telephone, at 907–586–7202 (Option #2) or toll-free at 800–304–4846 (Option #2).

(B) NMFS will not reissue an FFP to the owner of a vessel named on an FFP that has been issued with endorsements for catcher/processor vessel operation type, pot or hook-and-line gear type, and the BSAI area, until after the expiration date of the surrendered FFP.

(iii) *Amended permit.* (A) An owner who applied for and received an FFP must notify NMFS of any change in the permit information by submitting an FFP application found at the NMFS Web site at <http://alaskafisheries.noaa.gov>.

The owner must submit the application as instructed on the application form.

Except as provided under paragraph (b)(4)(iii)(B) of this section, upon receipt and approval of a permit amendment, the Program Administrator, RAM, will issue an amended FFP.

(B) NMFS will not approve an application to amend an FFP to remove a catcher/processor vessel operation endorsement, pot gear type endorsement, hook-and-line gear type endorsement or BSAI area endorsement from an FFP that has been issued with endorsements for catcher/processor vessel operation type, pot or hook-and-line gear type, and the BSAI area.

\* \* \* \* \*

3. In § 679.7, paragraphs (c)(3) and (c)(4) are added to read as follows:

#### **§ 679.7 Prohibitions.**

\* \* \* \* \*

(c) \* \* \*

(3) *Parallel fisheries.* Use a vessel designated or required to be designated on an FFP to catch and process Pacific cod from waters adjacent to the BSAI when Pacific cod caught by that vessel is deducted from the Federal TAC specified under section 679.20(a)(7)(ii)(A)(4) of this part for pot gear or (a)(7)(ii)(A)(6) of this part for hook-and-line gear unless that vessel is designated on both:

(i) An LLP license issued under section 679.4(k) of this part with the following endorsements:

(A) A catcher/processor endorsement;  
(B) A BSAI catcher/processor Pacific cod hook-and-line, or a BSAI catcher/processor Pacific cod pot endorsement;

(C) An Aleutian Islands area endorsement or Bering Sea area endorsement; and

(D) A non-trawl endorsement; and

(ii) An FFP issued under section 679.4(b) of this part with the following endorsements:

(A) A catcher/processor endorsement;

(B) A BSAI endorsement; and

(C) A pot or hook-and-line gear type endorsement.

(4) *Parallel fishery closures.* (i) Use a vessel designated or required to be designated on an FFP to catch and

process Pacific cod with pot gear from waters adjacent to the BSAI when Pacific cod caught by that vessel is deducted from the Federal TAC specified under section 679.20(a)(7)(ii)(A)(4) of this part for pot gear if the BSAI is open to directed fishing for Pacific cod but is not open to directed fishing for Pacific cod by a catcher/processor using pot gear.

(ii) Use a vessel designated or required to be designated on an FFP, to catch and process Pacific cod with

hook-and-line gear from waters adjacent to the BSAI when Pacific cod caught by that vessel is deducted from the Federal TAC specified under section 679.20(a)(7)(ii)(A)(6) of this part for hook-and-line gear, if the BSAI is open to directed fishing for Pacific cod but is not open to directed fishing for Pacific cod by a catcher/processor using hook-and-line gear.

\* \* \* \* \*

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