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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 120416007-2150-01]

RIN 0648-BB67

Fisheries of the Exclusive Economic Zone off Alaska; Monitoring and Enforcement

Requirements in the Bering Sea and Aleutian Islands Freezer Longline Fleet

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule that would modify equipment and operational requirements for freezer longliners (catcher/processors) named on License Limitation Program (LLP) licenses endorsed to catch and process Pacific cod at sea with hook-and-line gear in the Bering Sea and Aleutian Islands Management Area (BSAI). If approved, the proposed regulations would require vessel owners to select between two monitoring options: carry two observers so that all catch can be sampled, or carry one observer and use a motion-compensated scale to weigh Pacific cod before it is processed. The selected monitoring option would be required to be used when the vessel is operating in either the BSAI or Gulf of Alaska groundfish fisheries when directed fishing for Pacific cod is open in the BSAI, or while the vessel is fishing for groundfish under the Western Alaska Community Development Quota (CDQ) Program. A vessel owner who notifies NMFS that the vessel will not be used to conduct directed fishing for

Pacific cod in the BSAI or to conduct groundfish CDQ fishing at any time during a particular year would not be required to select one of the monitoring options and would continue to follow observer coverage and catch reporting requirements that apply to catcher/processors not subject to this proposed action. These regulatory amendments address the need for enhanced catch accounting, monitoring, and enforcement created by the formation of a voluntary cooperative by the BSAI longline catcher/processor subsector in 2010, and are necessary to improve the precision of the accounting for allocated quota species. This action is intended to promote the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, the Fishery Management Plan for Groundfish of the Gulf of Alaska, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws.

DATES: Written comments must be received no later than 1700 hours, Alaska local time (A.L.T.) [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by FDMS Docket Number NOAA-NMFS-2011- 0278, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal, first click the “Submit a Comment” icon, then enter NOAA-NMFS-2011-0278 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.
- Mail: Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail

comments to P. O. Box 21668, Juneau, AK 99802-1668.

- Fax: Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907-586-7557.
- Hand delivery to the Federal Building: Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Comments must be submitted by one of the above methods to ensure that they are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. 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 will be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

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

Electronic copies of NOAA Technical Memorandum NMFS-F/AKR-10 “Investigation of Weight Loss in Pacific cod (*Gadus macrocephalus*) Due to Exsanguination” may be obtained at

[http://docs.lib.noaa.gov/noaa\\_documents/NMFS/AlaskaRegionalOfc/TM-FAKR/NOAA-TM-FAKR-10.pdf](http://docs.lib.noaa.gov/noaa_documents/NMFS/AlaskaRegionalOfc/TM-FAKR/NOAA-TM-FAKR-10.pdf).

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 (see ADDRESSES) and by e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or by fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Jennifer Watson, 907-586-7228

SUPPLEMENTARY INFORMATION: NMFS manages the U.S. groundfish fisheries of the exclusive economic zone off Alaska under the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP) and the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP). The FMPs were prepared by the North Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce under authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson-Stevens Act). The FMPs are implemented by regulations at 50 CFR parts 679 and 680.

## Background

NMFS proposes new monitoring and enforcement provisions applicable to vessels participating in the BSAI longline catcher/processor (C/P) subsector as a result of several pieces of legislation passed by Congress and recent changes to fishery management regulations. NMFS uses the term “longline catcher/processor subsector” in this proposed rule consistent with the term as used in section 219(a)(6) of the Department of Commerce and Related Agencies Appropriations Act, 2005 (Public Law No. 108-447, 118 Stat. 2887 (Dec. 8, 2004)), which is described later in the proposed rule. Specifically, the legislative and regulatory changes that necessitate this proposed action are (1) legislation that created a defined class of participants in

the BSAI longline C/P subsector, (2) regulatory amendments that allocated a specific quantity of Pacific cod resources in the BSAI to the defined class of longline C/P subsector participants, and (3) legislation that allowed BSAI longline C/P subsector participants to receive exclusive catch privileges. In combination, these changes create the opportunity for the BSAI longline C/P subsector to form a voluntary fishing cooperative whose members have a de facto catch share program because they control fishing for the longline C/P subsector's allocation of Pacific cod in the BSAI. For reasons described in more detail below, vessels fishing under a voluntary cooperative require a higher level of monitoring to ensure accurate reporting of the catch of species allocated to the subsector. The following sections describe the legislation and regulatory changes, how those changes create the need for the proposed action, and the specific measures proposed to improve NMFS' monitoring of catch by the BSAI longline C/P subsector.

#### The BSAI Longline C/P Subsector

Under the LLP, which was implemented by NMFS on January 1, 2000, an LLP license is required for all vessels directed fishing for groundfish in the BSAI. With limited exemptions for smaller vessels and vessels using a limited amount of jig gear, a vessel must be designated on an LLP license to directed fish for groundfish. For a vessel designated on an LLP license, the LLP license authorizes the type of fishing gear that may be used by the vessel, the maximum size of the vessel, and whether the vessel may catch and process fish at sea (C/P) or if it is limited to delivering catch without at-sea processing.

Until 2003, an LLP license carried gear and operational type (C/P or catcher vessel) endorsements, but did not carry a species endorsement. NMFS modified the LLP in 2003 to include a species endorsement for Pacific cod in the BSAI. A vessel can directed fish for Pacific cod in the BSAI only if the vessel is designated on an LLP license that has this specific

endorsement. NMFS added Pacific cod endorsements to existing LLP licenses based on eligibility criteria, primarily whether the license or the vessel had been used to harvest Pacific cod. Additional detail on the development and rationale for the LLP and Pacific cod endorsements in the BSAI can be found in the final rule implementing the Pacific cod endorsement requirement (68 FR 44666, July 30, 2003) and is not repeated here.

The LLP Pacific cod endorsement requirement has, in effect, limited the number of vessels that are eligible to fish for Pacific cod in the BSAI. Congress further clarified the total number of eligible participants in the longline C/P subsector in section 219(a)(6) of Public Law 108-447, 118 Stat. 2887, Dec. 8, 2004, as holders of the license to catch and process Pacific cod at sea in the BSAI using hook-and-line gear. Hook-and-line gear is commonly known as longline gear.

Section 219(a)(6) defines the longline catcher processor subsector as follows:

**LONGLINE CATCHER PROCESSOR SUBSECTOR.**—The term “longline catcher processor subsector” means the holders of an LLP license that is noninterim and transferable, or that is interim and subsequently becomes noninterim and transferable, and that is endorsed for Bering Sea or Aleutian Islands catcher processor fishing activity, C/P, Pcod, and hook and line gear.

There are 37 LLP licenses that meet the criteria for inclusion in the BSAI longline C/P subsector. A person cannot use a vessel to catch and process Pacific cod at sea in the BSAI unless it is assigned at least one of the 37 LLP licenses that comprise the longline C/P subsector. In 2011, 33 vessels actively fished under these LLPs. Vessels participating in the longline C/P subsector primarily target Pacific cod in the CDQ and non-CDQ fisheries in the BSAI, but many also participate in the Greenland turbot and sablefish fisheries, as well as in fisheries in the Gulf

of Alaska (GOA).

### Allocation of Pacific Cod to the Longline C/P Subsector

The Council and NMFS annually establish total allowable catch limits (TACs) for Pacific cod in the BSAI and GOA. TAC amounts are annual catch limits based on the scientifically determined acceptable biological catch and ensure the sustainability of the Pacific cod fishery. The TAC amounts are allocated among user groups as part of the annual specifications process. In the BSAI, Pacific cod is apportioned among allocations made to the CDQ Program and non-CDQ participants. Allocations to the CDQ Program are assigned as exclusive catch privileges to specific CDQ groups as defined by section 305(i) of the Magnuson-Stevens Act. The CDQ groups harvest almost all their Pacific cod allocations with vessels that are members of the longline C/P subsector.

In 2007, NMFS implemented Amendment 85 to the BSAI FMP (72 FR 50788, September 4, 2007). Regulations implementing Amendment 85 apportion 10.7 percent of the Pacific cod TAC to the CDQ reserve for use by the CDQ Program. The non-CDQ TAC is further apportioned between seasons, gear types, and processing modes. The longline C/P sector receives 48.7 percent of the non-CDQ allocation as two separate seasonal allowances. An A season allowance of 60 percent of the total allocation is made available on January 1 and a B season allowance of 40 percent is made available on June 20.

Because halibut is incidentally caught by vessels using longline gear, the longline C/P subsector is allocated a limited amount of halibut to be used as prohibited species catch (PSC) in the Pacific cod fishery. The halibut PSC allocation ensures that total incidental mortality of halibut does not exceed a specified limit while at the same time allowing participants to conduct their target fisheries. Prior to the implementation of Amendment 85, halibut PSC was

apportioned to the hook-and-line sector, but was not further apportioned between C/Ps and catcher vessels. Amendment 85 sub-apportioned the available hook-and-line halibut PSC between the catcher vessel and C/P sectors, which gave the longline C/P subsector a separate apportionment of halibut PSC.

Regulations at § 679.21(e)(2) and (4) specify that 760 metric tons of halibut mortality be made available to the BSAI longline C/P subsector. This halibut PSC may be further allocated seasonally through the annual specifications process.

Congress' definition of the longline C/P subsector and the allocation of Pacific cod and halibut PSC specifically to the longline C/P subsector created conditions that lead owners of longline C/P LLP licenses to form a voluntary cooperative and divide the Pacific cod catch and halibut PSC allocations among its members. Cooperatives allow multiple quota recipients to aggregate their annual quota amounts, coordinate their collective fishing operations, and benefit from the resulting efficiencies. Beginning with the 2010 B season, 100 percent of the owners of the eligible longline C/P subsector LLP licenses had joined the Freezer Longline Conservation Cooperative (FLCC). This voluntary cooperative has established private contractual arrangements that divide the sector's Pacific cod and halibut PSC allocations among the member vessels.

The allocation of exclusive catch privileges can be accomplished through regulation, or by private contractual arrangements, as is the case with the FLCC. The general term to describe programs that allocate exclusive catch privileges is "catch share programs." Catch share programs assign specific catch privileges to specific fishery participants.

Catch share programs address many of the problems that occur when harvesters compete for catch and do not receive an exclusive catch privilege. Competition for fish creates economic

inefficiencies and incentives to increase harvesting and processing capacity. For example, harvesters may increase the fishing capacity of their vessels and accelerate their rate of fishing to outcompete other vessels. High-paced fishing reduces the ability of harvesters to improve product quality and extract more value from the fishery by producing high-value products that require additional processing time. Catch share programs provide greater security to harvesters and result in a slower-paced fishery that enables the harvester to choose when to fish.

### Longline C/P Cooperative Act

The Longline Catcher Processor Subsector Single Fishery Cooperative Act was enacted in 2010 (Pub. L. No. 111-335). Under this Act, NMFS must implement a single, mandatory cooperative with exclusive catch privileges for each BSAI LLP license holder if requested to do so by persons holding at least 80 percent of the LLP licenses eligible to participate in the Longline C/P subsector (i.e., at least 30 of the 37 LLP licenses). To date, NMFS has not received any such request. However, the fact that such a mandatory cooperative is explicitly authorized by Congress ensures that if the voluntary cooperative established by the FLCC is unable to continue, regulations to establish a mandatory cooperative with exclusive catch privileges could be implemented by NMFS upon request of a sufficient number of the members of the subsector.

### Changes in Fishing Patterns in the Longline C/P Subsector and Background on Monitoring Provisions

The formation of a voluntary cooperative has resulted in a significant change in the operations of the non-CDQ longline C/P Pacific cod fishery in the BSAI. Between 2003 and 2009, the Pacific cod fishery was open an average of 116 days each year. Since the formation of the voluntary cooperative in August 2010, seasonal Pacific cod and halibut PSC limits have not

been reached and the fishery has not been closed at all between January 1 and December 31.

While the formation of a voluntary cooperative has ended the race for fish and increased economic efficiency for the fleet, it has also created management challenges. Catch share programs create new demands for enhanced catch accounting, monitoring, and enforcement. They increase incentives for participants to misreport catch through unauthorized discards or inaccurate catch reports. If catch can be successfully misreported or underreported, the fishing season continues longer than it should, and the vessel owners and operators are able to catch more Pacific cod than are allocated to the subsector. The fact that the vessel owners and operators are fishing cooperatively under contract to maximize the harvest and value of the Pacific cod allocation for a given halibut PSC limit provides additional opportunities for them to communicate and cooperate to underreport catch.

Catch share programs require participants to cease fishing when their individual quota allocations are reached. In the case of the voluntary cooperative, NMFS retains the authority to issue a closure to directed fishing for Pacific cod by the BSAI longline C/P sector if its allocation is reached. However, because the cooperative has divided the Pacific cod and halibut PSC sector allocations among its members, industry participants need near-real time catch accounting data so they can closely monitor their catch and prevent fishing in excess of the allocation. For all catch share programs implemented since 1998, NMFS requires the use of observer data as the best available source of information about the catch of the allocated species. Observer data is used as the basis for NMFS's "catch accounting system," and participants in the catch share programs access their vessel's observer data to monitor catch against their allocations on a daily basis. All concerned parties (NMFS, other management agencies, and fishery participants) must have access to a single, authoritative database that clearly and accurately details the amount of

quota harvested. If NMFS makes corrections when reviewing observer data during the observer debriefing process, all parties must receive, or have access to, the edited data.

To meet the increased monitoring needs in other GOA and BSAI catch share programs, NMFS developed a suite of monitoring and enforcement measures designed to ensure accurate and near real-time catch accounting for allocated species. These measures include observer coverage requirements, observer sampling protocols, at-sea scale requirements, electronic reporting, and other measures to ensure that catch is accurately accounted for. Additional detail on the range of monitoring and enforcement measures generally applicable to catch share programs in the BSAI—and the rationale for those specific measures—can be found in the final rule implementing Amendment 80 to the BSAI FMP, a catch share program for several non-pollock trawl fisheries (72 FR 52668, September 14, 2007), and is not repeated here. NMFS proposes that monitoring and enforcement measures similar to those required in other catch share programs are necessary for the longline C/P subsector. However, as described in this proposed rule, longline C/Ps present unique challenges, so some of the monitoring and enforcement measures proposed in this action differ from those applied in the other catch share programs.

Increased observer coverage and equipment and operational requirements to improve catch accounting and monitoring were first implemented in 1994 for trawl C/Ps and motherships in the pollock CDQ fisheries (59 FR 25346; May 16, 1994). The CDQ allocations provided an exclusive harvest privilege to the six CDQ groups and represented the first catch share program implemented in Federal waters off Alaska. A significant expansion of catch monitoring requirements for the CDQ fisheries were implemented in 1999 when allocations to the program expanded to all groundfish and prohibited species (63 FR 30381; June 4 1998). Under the CDQ final rule, NMFS first implemented requirements to weigh catch at sea on trawl C/Ps and

motherships, observer sampling stations on all C/Ps, two observers on C/Ps using longline gear, requirements for the observers to have prior experience and increased training (“level 2” and “lead level 2”) on all C/Ps and motherships, and the requirement that each set on C/Ps using hook-and-line gear be sampled by an observer for species composition. This was the first time that enhanced observer coverage and equipment and operational requirements were applied to longline C/Ps. NMFS determined that data collected by observers were the best estimates of catch for the longline C/Ps and that observer sampling stations and two observers to sample each set for species composition was necessary to provide catch and bycatch estimates needed to manage the CDQ allocations.

The 1998 final rule required motion-compensated scales to weigh total catch on trawl C/Ps and motherships because all the catch on these processing vessels could be made to pass through a single point on a conveyor belt in the factory before any sorting or processing was done. As described below, the operations on a longline C/P did not provide a single point where all catch could be weighed on a motion-compensated scale and, in 1998, the technology for weighing catch at sea on longline C/Ps was not well developed. Therefore, NMFS’ enhanced catch monitoring requirements for longline C/Ps focused on improving observer data as much as was possible at the time. These monitoring requirements for longline catcher processors in the CDQ fisheries remained largely unchanged until the 2006 amendments to the Magnuson-Stevens Act, which are described below.

In the non-CDQ groundfish fisheries, longline C/Ps equal to or greater than 125 feet length overall (LOA) are required to carry an observer 100 percent of the time. Vessels less than 125 feet LOA must carry an observer 30 percent of the time. The observer estimates the total catch and species composition by sampling a portion of the longline sets. These data are

extrapolated to give an estimate of catch for unsampled sets. The current sampling methodologies produce accurate catch estimates on a seasonal level, but they are not designed to give a precise estimate of the catch for each set of hook-and-line gear. In addition to the observer coverage requirements, vessel operators also must comply with specified recordkeeping and reporting requirements (R&R) in § 679.5 (primarily logbooks, daily electronic production reports, and product transfer reports) and with vessel monitoring system requirements (VMS). The R&R and VMS requirements also apply while these vessels are CDQ fishing.

In 2006, section 305(i)(1) of the Magnuson-Stevens Act was amended by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Public Law No. 109–241). Section 305(i)(1)(B)(iv) requires that the harvest of CDQ allocations for fisheries with individual quotas or fishing cooperative shall be regulated no more restrictively than fisheries with individual quotas or fishing cooperatives. In a note to section 305, the term “fishing cooperative” is defined to include a voluntary fishing cooperative. More information about the “CDQ regulation of harvest provision” of the Magnuson-Stevens Act and how it applies to voluntary cooperatives is included in a final rule published on February 8, 2012 (77 FR 6492), and is not repeated here.

In April 2011, the Western Alaska Community Development Association notified NMFS of the formation of a voluntary cooperative in the longline C/P subsector and requested that NMFS apply the regulation of harvest provisions of the Magnuson-Stevens Act to these vessels while they were participating in the CDQ fisheries. NMFS agreed and suspended enforcement of the regulations in 50 CFR part 679 that were more restrictive on the longline C/Ps while they were CDQ fishing. Included in the regulations suspended were the requirements for two observers, level 2 and lead level 2 requirements, observer sampling station requirements, and the

requirement that each set be sampled. Therefore, since May 31, 2011, the observer coverage and catch monitoring requirements have been the same for longline C/Ps fishing in the CDQ and non-CDQ groundfish fisheries in the BSAI. These requirements are observer coverage based on vessel length overall and the standard R&R and VMS requirements that apply to longline C/Ps in general.

In the meantime, the Council and NMFS have been working for many years to restructure the groundfish observer program and expand observer coverage to the halibut fleet. On April 18, 2012 (77 FR 23326), NMFS published a proposed rule to implement Amendment 86 to the BSAI FMP and Amendment 76 to the GOA FMP. If approved, Amendments 86 and 76 would require all C/Ps to carry at least one observer at all times (100 percent or full observer coverage). This would increase observer coverage for the longline C/Ps less than 125 feet LOA in both the CDQ and non-CDQ fisheries starting in 2013.

#### The Proposed Action

With the changes in the BSAI Pacific cod fishery and experience from the CDQ Program monitoring requirements, the BSAI longline C/P subsector members and NMFS recognized the need to develop an enhanced monitoring and catch accounting system. NMFS decided that the best approach for developing an effective monitoring and catch accounting system was through the Council process. At its October 2009 meeting, the Council requested that NMFS prepare a discussion paper on options for enhanced monitoring for the BSAI longline C/P subsector, including increased observer coverage and the use of motion-compensated scales in lieu of an additional observer. NMFS staff held a public workshop in Dutch Harbor on December 1, 2009, to learn about the vessels participating in the freezer longline fishery and how to monitor their Pacific cod harvest. Following this workshop, NMFS staff visited a representative group of 21

longline C/P vessels in Dutch Harbor, AK, and Seattle, WA, and discussed catch handling protocols and factory operations with vessel crew. In July 2010, NMFS staff accompanied the F/V Bristol Leader to observe the operation of a motion-compensated flow scale recently installed on the vessel. On May 10, 2011, NMFS staff and industry representatives met for a workshop on longline C/P vessel monitoring and enforcement in Seattle, WA. The results of the workshop are included in the draft RIR/EA for this proposed rule, which was provided to the Council for review and comment at its October 2011 meeting. NMFS informed the Council of the agency's intent to promulgate a regulatory amendment that, if approved by the Secretary, would be effective at the beginning of 2013. The Council received public comment on NMFS' report but took no action to recommend changes or to explicitly endorse the proposed action.

This proposed action would apply to the owners and operators of any vessel named on an LLP license with a Pacific cod catcher-processor hook-and-line endorsement for the Bering Sea, Aleutian Islands, or both Bering Sea and Aleutian Islands. It would affect these vessels when they operate (1) in either the BSAI or GOA groundfish fisheries when directed fishing for Pacific cod is open in the BSAI, or (2) while the vessel is groundfish CDQ fishing.

Except for vessel owners that opt out of fisheries that are subject to the monitoring requirements, these requirements would apply to members of the longline C/P subsector while they fish in the GOA when directed fishing for Pacific cod is open in the BSAI. These vessels frequently move between the GOA and the BSAI without stopping to offload catch. Vessel owners and operators could find it difficult to comply with differing observer coverage and catch accounting requirements for the same trip. It would also be difficult for NOAA's Office of Law Enforcement to determine whether these vessels were complying with the correct observer coverage and catch monitoring requirements if the requirements differed for Pacific cod caught

in the GOA versus the BSAI on the same trip. If directed fishing for Pacific cod in the BSAI by longline C/Ps continues to remain open all year, as it has since formation of the voluntary cooperative, these requirements would effectively apply all year to any longline C/P subject to the requirements.

The proposed requirements also would apply while the vessel is groundfish CDQ fishing, which is defined in § 679.2 to mean “fishing that results in the retention of any groundfish CDQ species, but that does not meet the definition of pollock CDQ fishing, sablefish CDQ fishing, or halibut CDQ fishing.” NMFS does not use directed fishing closures to control fishing effort in the CDQ fisheries unless the closures apply to species that are not allocated to the CDQ Program. CDQ groups are allocated multiple groundfish and PSC species, and are prohibited from exceeding any of these allocations.

As noted earlier, the Magnuson-Stevens Act requires that the CDQ fisheries for species managed with individual quotas or cooperatives in the non-CDQ fisheries be regulated no more restrictively than those non-CDQ fisheries. Aligning the CDQ regulations with regulations governing the halibut and sablefish IFQ Program, the American Fisheries Act pollock fisheries (managed under cooperatives), and the “Amendment 80” trawl fisheries (managed under a cooperative) required NMFS to separately define halibut CDQ fishing, sablefish CDQ fishing, pollock CDQ fishing, and groundfish CDQ fishing (see definitions at § 679.2). Groundfish CDQ fishing refers to fishing under the CDQ Program for any groundfish other than pollock or sablefish. Therefore, groundfish CDQ fishing includes Pacific cod which is the primary target species of vessels in the longline C/P sector while they are participating in the CDQ fisheries.

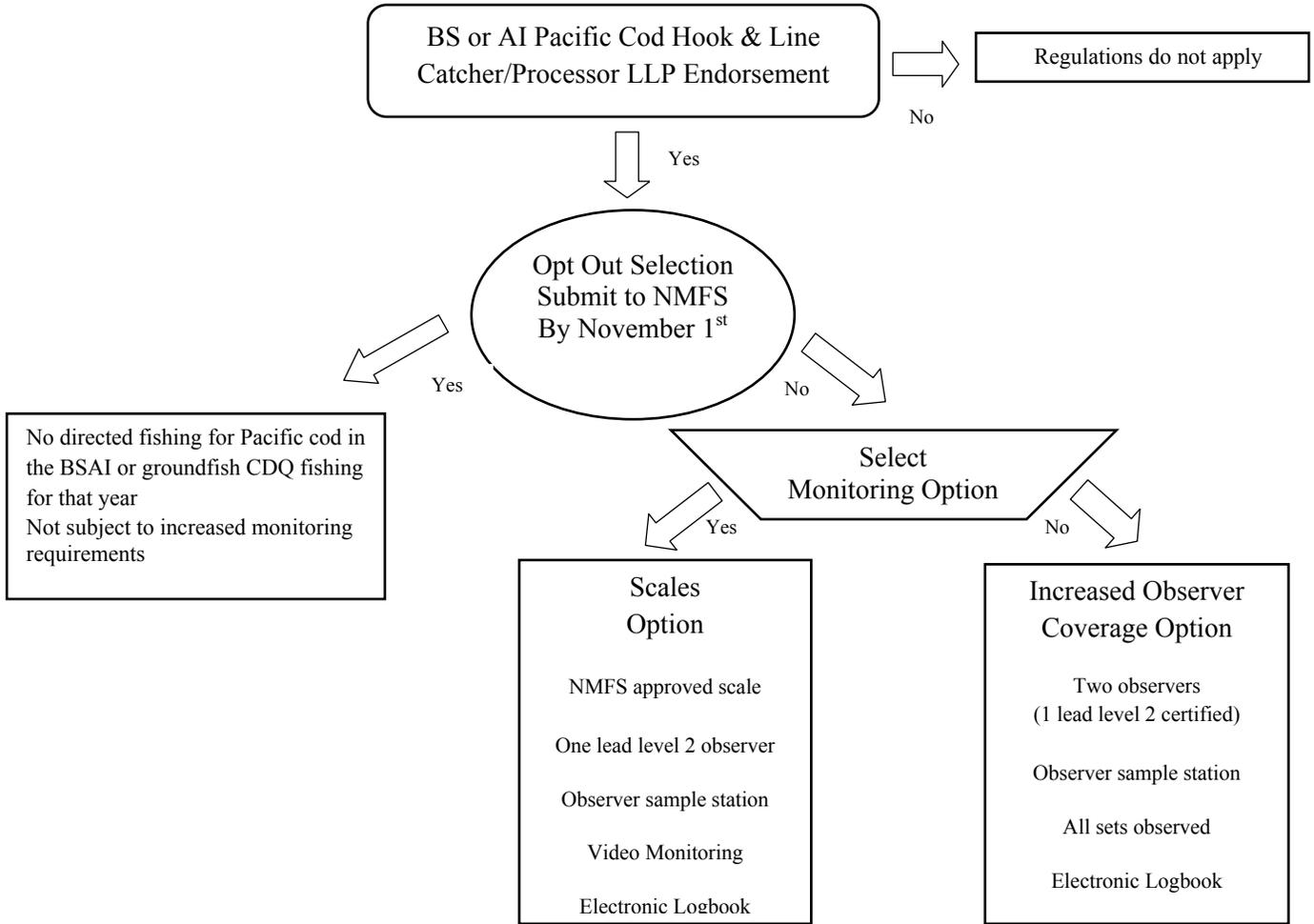
As described earlier in this proposed rule, the voluntary cooperative and the CDQ Program present NMFS with similar monitoring and enforcement challenges. Therefore, this

proposed action would apply the same requirements to the longline C/Ps in both the CDQ and non-CDQ fisheries. Currently, the same observer coverage and monitoring requirements apply to the longline C/Ps in the CDQ and non-CDQ fisheries for Pacific cod. Continuing to maintain the same monitoring measures under the proposed action would ensure consistent methods of catch accounting, avoid confusion for observers, and reduce the risk of data processing or catch accounting errors that may occur if monitoring provisions change onboard a vessel while fishing.

The proposed action would require owners of affected vessels to either annually opt out of the fisheries subject to the increased monitoring requirements, or select between two monitoring options: increased observer coverage or scales. NMFS has examined both options and determined that either option would improve catch accounting on the longline C/Ps and provide the data needed to properly manage the Pacific cod and groundfish CDQ fisheries. Once a vessel owner makes a selection (opt out, increased observer coverage, or scales), the vessel would be required to operate under that option for the entire year. Except for the first year of implementation, NMFS proposes that a selected monitoring option must be used for an entire year to reduce the risk for data processing or catch accounting errors that may occur if monitoring options are changed during the season. Further rationale for this exception in the first year of implementation is provided in a later section of the proposed rule.

Figure 1 illustrates the proposed action.

Figure 1: Summary of Proposed Monitoring Options



### Opt Out and Monitoring Option Provisions

Under this proposed action, each year, prior to November 1, each vessel owner in the longline C/P subsector would be required to opt out of the proposed monitoring program if that vessel owner does not intend to directed fish for Pacific cod in the BSAI or conduct groundfish CDQ fishing at any time during the following calendar year, or to select one of two monitoring options. The vessel owner would be required to submit a completed notification form for the opt out or one of the two monitoring options to NMFS by November 1 of the calendar year prior to fishing. NMFS proposes a November 1 deadline to provide NMFS adequate time to inspect all vessels to ensure proper installation of necessary equipment, and make necessary adjustments to the catch accounting system to properly track catch according to the monitoring option selected by vessel owners.

Vessel owners who opt out would be prohibited from using their vessel as a C/P to directed fish with hook-and-line gear for Pacific cod in the BSAI or to conduct groundfish CDQ fishing during the specified year. Vessel owners, however, could use their vessels to participate in directed fisheries in the GOA, the halibut or fixed gear sablefish CDQ fisheries, or BSAI-directed fisheries other than hook-and-line C/P Pacific cod. Some vessels in this subsector also have LLP endorsements for catcher vessel or pot gear, which enables these vessels to fish other sectors. NMFS proposes this opt out provision to allow vessel owners who are not actively fishing in the BSAI Pacific cod longline C/P or groundfish CDQ fishing to be exempted from the requirements and additional compliance costs applicable to these catch share programs if they are not active in those fisheries. Vessel owners that opt out from directed fishing for Pacific cod in the BSAI or groundfish CDQ fishing would continue to be subject to all other monitoring requirements when the vessels are used in other fisheries.

Vessel owners who intend to participate in groundfish CDQ or Pacific cod fisheries in the BSAI would be required to meet additional monitoring requirements. These requirements would apply (1) when the vessel is operating in either the BSAI or GOA groundfish fisheries when directed fishing for Pacific cod is open in the BSAI, or (2) while the vessel is groundfish CDQ fishing. Vessel owners would be allowed to select one of two monitoring options. An increased observer coverage option would require the vessel to carry two observers. As an alternative to increased observer coverage, vessel owners could select the scales option. Under the scales option, the vessel owner and operator would be required to ensure that all Pacific cod was weighed on a NMFS-approved scale and to provide an electronic monitoring system that records all activities that take place on the vessel between the location where catch is first sorted or bled and the location where all Pacific cod have been sorted and weighed. Under both monitoring options, vessel operators would be required to use an electronic logbook (ELB) during the entire year for reporting catch, and provide a NMFS-approved observer sampling station. Vessels could not change monitoring options except prior to November 1 of the upcoming calendar year. The rationale for each of these proposed provisions is described below.

A vessel owner that failed to select a monitoring option or to opt out by November 1 of each year would be required to operate under the increased observer coverage option in the following year. NMFS proposes to assign vessels that do not select a monitoring option to the observer coverage option to ensure that adequate catch records are available. If a vessel owner does not apply by November 1 of each year, NMFS would not be able to assign that vessel to the scales option because NMFS would not be able to ensure that a scale could be purchased, installed, and inspected before the Pacific cod fishery opens on January 1 of the following year.

During the first year of the program, projected as 2013, NMFS proposes to allow vessel owners that chose the increased observer coverage option to make a one-time change to the scales option during the year. The change from the increased observer coverage option to the scales option would occur between the A and B seasons. Vessel owners would need to submit a monitoring option notification form by May 1, 2013, and must comply with the scales option requirements beginning on June 10, 2013, which would be the opening of the B season. NMFS proposes to allow this one-time change in monitoring options during the first year of implementation because NMFS expects that many vessel owners or operators will not be able to purchase, make factory modifications, install flow scales, and have those scales approved by NMFS in time for the beginning of the program on January 1, 2013. Additionally, NMFS expects that there may be a shortage of flow scales manufactured in time for the beginning of the program.

#### Increased Observer Coverage Option

Under the increased observer coverage option, NMFS would require observer coverage similar to other catch share programs. Vessel owners and operators would be required to provide two observers at all times (1) when the vessel is operating in either the BSAI or GOA groundfish fisheries when directed fishing for Pacific cod is open in the BSAI, or (2) while the vessel is groundfish CDQ fishing. One of those observers must have a lead level 2 certification. This additional experience and training requirement ensures that at least one observer deployed in this program has prior experience sampling in a longline or pot fishery.

In other catch share programs in Alaska, NMFS requires observers who have additional training and experience to ensure the highest quality data for debiting quota accounts.

Regulations at § 679.50 provide for two levels of observers with additional experience: level 2 and lead level 2.

To become a level 2 observer, an observer must be a prior observer in the groundfish fisheries off Alaska who has completed at least 60 days of data collection, has received an evaluation by NMFS for his or her most recent deployment that indicated that his or her performance met North Pacific Groundfish Observer Program (Observer Program) expectations for that deployment, and has successfully completed a NMFS-approved level 2 observer training as required by the Observer Program. Level 2 training is now included in the basic observer training.

To become a lead level 2 observer for nontrawl gear, an observer must have completed two observer cruises (contracts) of at least 10 days each and sampled at least 60 sets on a vessel using longline or pot gear. Additional detail on the lead level 2 requirement is provided later in this preamble in the section titled “Elements Common to Both Monitoring Options.”

The level 2 requirement ensures that observers have experience at sea; the “lead” requirement ensures that they have had experience with longline or pot gear and that, having taken at least two cruises, they have experience with various fixed-gear operations. In other quota-based C/P fisheries, allocations are debited from applicable quota accounts based on observer data. Because the data collected by observers is directly used to debit quota accounts, the observer estimates are carefully reviewed and scrutinized by catch share participants. NMFS has found that observers with prior experience with a specific gear type are more likely to collect usable data for quota management.

#### Scales Option

Under the scales option, vessels would be required to use motion-compensated scales and

electronic monitoring as an alternative to increased observer coverage. Vessels would be required to carry a single lead level 2 observer, but instead of a second observer, vessels would be required to weigh all Pacific cod on a NMFS-approved scale and provide an electronic monitoring system.

Motion-compensated flow or hopper scales are intended to provide an accurate record of catch. They are successfully used in the American Fisheries Act pollock, Central GOA rockfish, trawl CDQ, Crab Rationalization crab, and Amendment 80 catch share programs. As in other catch share programs, regulations would require that these scales be inspected and approved annually by NMFS and tested daily when in use. In C/P trawl fisheries, scales are used to weigh the total catch, and observer sampling is used to determine the fraction of that weight each species comprises. Because longline C/Ps do not bring all bycatch onboard the vessel and crew are required to release halibut as quickly as possible, it would be impractical to require vessel operators to obtain a scale weight of the total catch. Therefore, NMFS proposes that only the Pacific cod brought onboard the vessel be weighed. For the purpose of accounting for Pacific cod catch, NMFS would use the weight of all catch that passes over the scale. Observer data still would be used to estimate the weight of the catch of species other than Pacific cod and halibut PSC, and to estimate the weight of Pacific cod that was caught but did not enter the vessel.

In the longline C/P Pacific cod fishery, product quality is dependent on rapid bleeding of catch. On most vessels, Pacific cod are cut and bled almost immediately upon entering the vessel and then allowed to complete the bleeding process in a saltwater-filled tank. Because of the need to preserve product quality, NMFS has determined that it may not be feasible for all vessels to weigh Pacific cod prior to bleeding. NMFS uses a product recovery rate (PRR) for bled fish of .98 to estimate the original round weight of the catch. To determine the round

weight equivalent of a fish, NMFS divides the weight of the product by the PRR. In this case, the weight of bled fish is divided by .98. However, the bled fish PRR is based on catch that has fully completed the bleeding and soaking process and is not necessarily applicable to catch that has been cut but not fully bled. Based on research conducted by NMFS staff (see ADDRESSES), NMFS proposes to use a PRR that is designated for each vessel for catch accounting depending on the location where catch is weighed in relation to the location that cutting and bleeding occurs. These PRRs would be specific to vessels using the scales monitoring option under § 679.100 and would not be added to Table 3 to part 679. If Pacific cod are weighed prior to cutting, no PRR would be applied to the scale weights reported by the vessel operator in the ELB and 100 percent of the scale weight would be used to account for Pacific cod catch. If Pacific cod are weighed after cutting but before any bleeding holding area, a PRR of 0.99 would be applied to the reported scale weights and 101 percent of the scale weight would be used to account for Pacific cod catch. If Pacific cod are weighed after a bleeding holding area, the standard bled PRR of 0.98 would be applied to the scale weights and 102 percent of the scale weight would be used to account for Pacific cod catch. NMFS staff would determine the applicable PRR rate at the time of the annual scale inspection based on the location of the scale and bleeding holding area on a particular vessel. NMFS would notify each vessel owner and operator in writing of the PRR that would be applied to the scale weights from that vessel.

Because this option only requires a single observer, it would not be possible for an observer to be on site at all times when catch is being sorted and weighed. In order to ensure that all Pacific cod is accurately weighed, NMFS proposes to require that each vessel using this option be equipped with a NMFS-approved electronic monitoring system capable of recording crew activity. The system, consisting of cameras, a digital video recorder, and a monitor would

be required to:

- Provide sufficient resolution and field of view to monitor all areas where Pacific cod are sorted from the catch, all fish passing over the motion-compensated scale, and all crew actions in these areas.
- Have sufficient data storage capacity to record all video data from an entire trip.
- Time/date stamp each frame of video in Alaska local time (A.l.t.).
- Include at least one external USB (1.1 or 2.0) port or other removable storage device approved by NMFS.
- Use commercially available software.
- Use color cameras that have at a minimum 470 TV lines of resolution, auto-iris capabilities, and output color video to the recording device with the ability to revert to black and white video output when light levels become too low for color recognition.
- Record at a speed of no less than 5 frames per second at all times when Pacific cod are being sorted or weighed.
- Provide a 16-bit or better color monitor that can display all cameras simultaneously.

Data from the system would have to be maintained on board for at least 120 days and made available to NMFS staff, or any individual authorized by NMFS, upon request. The system would be inspected and approved annually by NMFS to ensure that it meets the above standards. This type of electronic monitoring system has also been effectively used in other catch share programs, such as the Amendment 80 catch share program and the Amendment 91 BSAI Chinook salmon bycatch management measures.

#### Elements Common to Both Monitoring Options

Vessels would be required to carry a lead level 2 observer. NMFS would require at least

one observer to be lead level 2 certified because NMFS needs the highest quality data available for catch share management in catch share programs, and observer experience is important to help reduce the potential for data loss. NMFS has consistently required lead level 2 observers in other catch share programs to ensure proper catch accounting. Data loss can occur when inexperienced observers suffer from sea sickness or conduct sampling incorrectly. Performance issues with new observers can impact NMFS' monitoring of scale performance, halibut catch estimates, halibut mortality estimates, and all discard estimates, including Pacific cod. All these factors are important to properly account for the voluntary cooperative's Pacific cod and halibut PSC allocations.

The presence of at least one observer with the experience and confidence associated with lead level 2 qualifications will be important under the two-observer approach, for several reasons: (1) it would follow the monitoring model used in catch share programs; (2) it would reduce the time required for observers to understand sampling techniques on a new longline vessel assignment; (3) it would help identify efforts to create misleading data and to stand up to challenges to observer-collected information; and (4) it would provide for better organization among the observers on the vessel, and allow for mentoring of the less experienced observer during a cruise.

Under the scales option, the sole observer aboard the vessel would be required to have a lead level 2 certification. While the scales would weigh retained Pacific cod, the single observer would be responsible for obtaining Pacific cod discard estimates and halibut PSC estimates for debiting the voluntary cooperatives quota accounts. Therefore, this proposed rule would require that the sole observer would be lead level 2 certified. A lead level 2 observer is more likely to have the skills necessary to deal with unexpected issues concerning sampling and data collection.

Additional detail on the training, availability and costs of deploying lead level 2 observers for the longline C/P fleet is provided in section 1.3.4 of the RIR/EA (see ADDRESSES) and is not repeated here.

At the October 2011 Council meeting, observer provider companies expressed concerns about a shortage of lead level 2 observers available for this program. While NMFS does not believe that a shortage of lead level 2 observers is likely, NMFS proposes to reduce the required number of sampled sets on vessels using longline or pot gear for a lead level 2 endorsement from 60 sets to 30 sets. Based on section 1.3.4 of the RIR/EA (see ADDRESSES), NMFS predicts this change would increase the pool of available lead level 2 observers by approximately 20 percent. The requirement for 60 sampled sets was implemented in 1999 in the final rule for the CDQ Program (63 FR 30381, June 4, 1998). At that time, most observer experience was gained on longline C/P vessels that conducted multiple sets each day and made relatively long trips of up to 45 days. The majority of these trips were directed fishing for Pacific cod and there was little variability in the sets (length of set, soak time, species encounters). NMFS considered sixty sampled sets sufficient to ensure that observers were proficient in all the sampling duties and could adjust to changing circumstances aboard a fixed gear vessel. NMFS anticipates that future observers would qualify for a lead level 2 endorsement by deployment on smaller longline catcher vessels. Typically, these vessels deploy fewer sets per day. However, because of the small vessel size and diversity of fisheries, they create a more challenging sampling situation where an observer is likely to obtain diverse sampling experiences in a fewer number of sets.

Vessel owners and operators would be required to provide an observer sampling station where an observer can work safely and effectively. The same requirements that have applied since 1999 to longline C/Ps groundfish CDQ fishing would be extended to all vessels in the

longline C/P subsector that do not opt out under proposed new § 679.100(a). An observer sampling station would need to meet specifications for size and location and be equipped with an observer sampling station scale, a table, adequate lighting, floor grating, and running water. Details of the sampling station requirements are set forth at § 679.28(d). Each observer sampling station would be inspected and approved annually by NMFS. This proposed rule does not modify current observer sampling station inspection and approval regulations or processes.

Under both monitoring options, vessel operators would be required to use an ELB instead of a paper logbook during the entire year for reporting catch. This requirement would increase the speed and accuracy of data transmission to NMFS and would assist in accurate quota monitoring. Some C/Ps use longline as well as pot gear, during the year. Under this proposed rule, if an ELB is required when a vessel is operating as a C/P using longline gear, the requirement also would apply when that vessel is operating as a C/P using pot gear in the same year. Switching between electronic and paper logbooks during the same year would complicate both compliance and monitoring of logbook requirements. In addition, NMFS expects that vessel operators would prefer to use ELBs over the paper logbooks because the electronic features generally make completing the logbooks easier for vessel crew.

#### Removing CDQ Alternative Fishing Plan Regulations

This action would remove regulations at § 679.32(e)(3) that allow CDQ groups to propose to NMFS an alternative fishing plan to use only one observer where two are required, to sort and weigh catch by species on processors vessels, or to use larger sample sizes than those that can be collected by one observer. Since these regulations were implemented in 1999 (63 FR 30381, June 4, 1998), they have been used by the CDQ groups to obtain approval from NMFS for one lead level 2 observer on longline C/Ps rather than the two observers required in current

regulations. The alternative fishing plan was required to ensure that each set was available to be sampled by a lead level 2 observer and that the single lead level 2 observer was not required to work more than 12 hours in a 24-hour period to complete all their duties. The CDQ groups have never used the alternative fishing plan for C/Ps using trawl gear, motherships, or catcher vessels of any kind. Apparent reasons for non-use of alternative fishing plans are that trawl C/Ps and motherships cannot conduct efficient CDQ fisheries with a single observer, and no catcher vessels participating in the CDQ fisheries are required to carry two observers. Therefore, the alternative fishing plans have been a viable option only for some of the longline C/Ps while CDQ fishing.

This proposed rule would standardize the observer coverage and catch monitoring options for longline C/Ps in both the CDQ and non-CDQ fisheries because the monitoring and enforcement challenges in these fisheries are similar. Each of the monitoring options for groundfish CDQ fishing under this proposed rule would require either two observers, one of whom must be a lead level 2 observer, or a lead level 2 observer and a motion compensated scale. With this standardization in observer coverage requirements between the CDQ and non-CDQ fisheries, the alternative fishing plan regulations would no longer be necessary. If operators of vessels groundfish CDQ fishing want to fish with one observer, they could continue to do so provided the vessel owner selects the scales option under § 679.100.

#### Classification

Pursuant to section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMPs, 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.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

#### Description and Estimate of the Number of Small Entities to which the Rule Applies

This rule would directly regulate the activities of 33 vessels active in the longline C/P subsector fishing for a smaller number of separate entities. Although up to 37 LLP licenses comprise the longline C/P subsector, based on current trends of consolidation among vessel owners, NMFS anticipates that it is likely that 33 or fewer vessels will be active in the longline C/P sector. NMFS does not currently have data to precisely track ownership patterns in North Pacific fisheries. NMFS has reviewed vessel ownership, as recorded on the website of the FLCC. On the basis of this information, NMFS estimates that in 2011 these vessels were owned by no more than 13 separate for-profit entities.

For the purpose of this Regulatory Flexibility Act (RFA) analysis, NMFS believes that all of the directly regulated entities are large entities. According to the SBA size criteria, a business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of \$4.0 million for all its affiliated operations worldwide. In 2010, the most recent year for which the necessary gross revenues information is available, 17 of 36 active vessels had less than \$4 million in gross revenues from fishing for Pacific cod. Although the vessels target Pacific cod predominately and most of their revenues are from this source, some obtain revenues

from other fisheries or fishery support activities, such as tendering or processing salmon in the summer. Thus, this analysis uses a conservative measure of vessel and entity revenues.

Likewise, most of the entities operating vessels in this fishery have gross revenues in excess of \$4 million. In 2009, fewer than 3 of an estimated 11 entities operating vessels in the fishery had gross revenues from fishing for Pacific cod less than the \$4 million threshold. These estimates are based on data supplied by the Alaska Fisheries Information Network and evaluated by NMFS Alaska Region. Firm affiliations are estimated from lists created by the FLCC. Small and large business entity determinations under the RFA are based on entity revenues from all sources. In the present instance, where a clear determination can be made on the basis of Pacific cod revenues and known cooperative affiliations, additional information on total groundfish and other entity revenues was not collected.

Even though small numbers of directly regulated vessels and entities may be described as small with respect to their own gross revenues, when affiliations among entities are considered, as required under the RFA, there are no small entities in this fishery. As described in the RIR prepared for this action (see ADDRESSES), the directly regulated vessels in this fleet have formed a fisheries cooperative that effectively allocates to each vessel a share of the Pacific cod TAC, and of the available halibut PSC. These vessel-specific individual quotas are enforced under a private contract among the entities. Therefore, for the purpose of this analysis, the directly regulated entities are all affiliated, with all the entities that would otherwise be characterized as small having affiliations with larger entities. Thus, there are no directly regulated small entities under this action.

#### Estimate of Economic Impact on Small Entities, by Entity Size and Industry

Since there are no directly regulated small entities under this action within the definition

of small entities used in the RFA, there are no economic impacts from this action on small entities.

#### Criteria Used to Evaluate Whether the Rule Would Impose Impacts on “a Substantial Number” of Small Entities

This analysis uses the criteria described in the NMFS guidelines for economic reviews of regulatory actions:

The term “substantial number” has no specific statutory definition and the criterion does not lend itself to objective standards applicable across all regulatory actions. Rather, “substantial number” depends upon the context of the action, the problem to be addressed, and the structure of the regulated industry. The SBA casts “substantial” within the context of “more than just a few” or *de minimis* (“too few to care about”) criteria. In some cases consideration of “substantial number” may go beyond merely counting the number of regulated small entities that are impacted significantly. For example, a fishery may have a large number of participants, but only a few of them may account for the majority of landings. In such cases, a substantial number of small entities may be adjudged to be significantly impacted, even though there may be a large number of insignificantly impacted small entities.

Generally, a rule is determined to affect a substantial number of entities if it impacts more than just a few small entities. In a borderline case, the rules effect on the structure of the regulated industry or the controversiality of the rule might tip the balance in favor of determining that a substantial number of entities would be affected.

#### Criteria Used to Evaluate Whether the Rule Would Impose “Significant Economic Impacts”

The two criteria recommended to determine significant economic impact are disproportionality and profitability of the action. Disproportionality relates to the potential for the regulations to place a substantial number of small entities at a significant competitive disadvantage to large entities. Profitability relates to the potential for the rule to significantly reduce profit for a substantial number of small entities. However, given the absence of small entities these criteria were not used for the certification decision.

#### Description of, and an Explanation of the Basis for, Assumptions Used

Catch and revenue information for the directly regulated entities was supplied by the Alaska Fisheries Information Network. Ownership of directly regulated vessels by different entities was estimated from information on the website of the FLCC.

The economic analysis contained in the RIR for this action (see ADDRESSES) further describes the regulatory and operational characteristics and history of this fishery, including the origins and operation of the fishery cooperative, the history of this action, and the details of the alternatives considered for this action, including the preferred alternative.

#### Collection-of-Information Requirements

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. The collections-of-information are presented below by OMB control number.

#### OMB Control No. 0648-0213

The reporting requirements for the C/P longline or pot gear daily cumulative logbook (DCPL) are removed for certain C/Ps with this proposed rule; the electronic logbook (see OMB 0648-0515) is used in place of the DCPL by freezer longliners (C/Ps) named on License

Limitation Program licenses (LLPs) endorsed to catch and process Pacific cod at sea with hook-and-line gear in the BSAI.

OMB Control No. 0648-0318

The Observer Program requirements are mentioned in this proposed rule; however, the public reporting burden for this collection-of-information is not directly affected by this proposed rule.

OMB Control No. 0648-0330

Public reporting burden is estimated to average 30 minutes for Pacific Cod Monitoring Option or Opt-out Notification Form; 2 hours for Inspection Request for an Electronic Monitoring System; 6 minutes for At-Sea Scales Inspection Request; 2 minutes for notification to observers of at-sea scale tests; 45 minutes for Record of Daily Flow Scale Test; 1 minute for printed output from at-sea scale; and 2 hours for Observer Sampling Station Inspection Request.

OMB Control No. 0648-0334

LLP license requirements are mentioned in this proposed rule; however, the public reporting burden for this collection-of-information is not directly affected by this proposed rule.

OMB Control No. 0648-0515

Public reporting burden is estimated to average 15 minutes for eLogbook registration and 41 minutes per active response, and 5 minutes inactive response for the C/P longline and pot gear eLogbook.

These reporting burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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 at the ADDRESSES above, and by e-mail to [OIRA\\_Submission@omb.eop.gov](mailto: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, Recordkeeping and reporting requirements.

Dated: June 12, 2012.

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Alan D. Risenhoover,  
Acting Deputy Assistant Administrator  
For Regulatory Programs,  
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 § 679.5, revise paragraph (f)(1)(ii) and add paragraph (f)(1)(viii) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(ii) Catcher/processor longline and pot gear ELB. Except for catcher/processors subject to § 679.100(b), the operator of a catcher/processor using longline or pot gear may use a combination of a NMFS-approved catcher/processor longline and pot gear ELB and eLandings to record and report groundfish information. The operator may use a NMFS-approved catcher/processor longline and pot gear ELB to record daily processor identification information and catch-by-set information. In eLandings, the operator must record daily processor identification, groundfish production data, and groundfish and prohibited species discard or disposition data.

\* \* \* \* \*

(viii) Longline catcher/processor subsector. The operator of a catcher/processor subject to § 679.100(b) must use a NMFS-approved catcher/processor longline and pot gear ELB to record processor identification information, catch-by-set information, and, if required to weigh Pacific cod on a NMFS-approved scale, the total Pacific cod weight from the scale for each set.

This requirement applies for the entire year that the vessel is subject to § 679.100(b) and operating as a catcher/processor using either longline or pot gear.

\* \* \* \* \*

3. In § 679.7, add paragraph (c)(1) to read as follows:

§ 679.7 Prohibitions.

\* \* \* \* \*

(c) \* \* \*

(1) For vessel owners and operators subject to § 679.100(a), to use the vessel as a catcher/processor to conduct directed fishing for Pacific cod with hook-and-line gear in the BSAI or to conduct groundfish CDQ fishing.

\* \* \* \* \*

4. In § 679.28, add paragraph (k) to read as follows:

§ 679.28 Equipment and operational requirements.

\* \* \* \* \*

(k) Electronic monitoring in the longline catcher/processor subsector. The owner and operator of a catcher/processor subject to § 679.100(b)(2) must provide and maintain a NMFS-approved electronic monitoring system at all times when the vessel is operating in either the BSAI or GOA groundfish fisheries when directed fishing for Pacific cod is open in the BSAI, or while the vessel is groundfish CDQ fishing.

(1) In order to be approved by NMFS, the vessel owner and operator must provide an electronic monitoring system that include cameras, a monitor, and a digital video recorder that must—

(i) Provide sufficient resolution and field of view to monitor all areas where Pacific cod are sorted from the catch, all fish passing over the motion-compensated scale, and all crew actions in these areas.

(ii) Have sufficient data storage capacity to record all video data from an entire trip. Each frame of stored video data must record a time/date stamp in Alaska local time (A.l.t.).

(iii) Include at least one external USB (1.1 or 2.0) port or other removable storage device approved by NMFS.

(iv) Use commercially available software.

(v) Use color cameras, with a minimum of 470 TV lines of resolution, auto-iris capabilities, and output color video to the recording device with the ability to revert to black and white video output when light levels become too low for color recognition.

(vi) Record at a speed of no less than 5 frames per second at all times when Pacific cod are being sorted or weighed.

(2) NMFS staff, or any individual authorized by NMFS, must be able to view any footage from any point in the trip using a 16-bit or better color monitor that can display all cameras simultaneously and must be assisted by crew knowledgeable in the operation of the system.

(3) The vessel owner and operator must maintain the video data and make the data available to NMFS staff or any individual authorized by NMFS, upon request. The data must be retained onboard the vessel for no less than 120 days after the date the video is recorded, unless NMFS has notified the vessel owner in writing that the video data may be retained for less than this 120-day period.

(4) The vessel owner or operator must arrange for NMFS to inspect the electronic monitoring system and maintain a current NMFS-issued electronic monitoring system inspection

report onboard the vessel at all times when the vessel is required to provide an approved electronic monitoring system.

(5) The vessel owner or operator must submit an Inspection Request for an Electronic Monitoring System to NMFS with all information fields accurately filled in. The application form is available on the NMFS Alaska Region website (<http://alaskafisheries.noaa.gov/>). NMFS will coordinate with the vessel owner to schedule the inspection no later than 10 working days after NMFS receives a complete request form.

(6) Additional information required for an electronic monitoring system inspection. (i) A diagram drawn to scale showing all sorting locations, the location of the motion-compensated scale, the location of each camera and its coverage area, and the location of any additional video equipment must be submitted with the Inspection Request for an Electronic Monitoring System form.

(ii) Any additional information requested by the Regional Administrator.

(7) Any change to the electronic monitoring system that would affect the system's functionality or ability to meet the requirements described at paragraph (k)(1) of this section must be submitted to, and approved by, NMFS in writing before that change is made.

(8) Inspections will be conducted on vessels tied to docks at Dutch Harbor, Alaska; Kodiak, Alaska; and in the Puget Sound area of Washington State.

(9) After an inspection, NMFS will issue an electronic monitoring system inspection report to the vessel owner, if the electronic monitoring system meets the requirements of paragraph (k) of this section. The electronic monitoring system report is valid for 12 months from the date it is issued by NMFS. The electronic monitoring system inspection report must be made available to the observer, NMFS personnel, or to an authorized officer upon request.

5. In § 679.32, revise paragraph (c)(3)(i)(E) introductory text and paragraph (c)(3)(i)(E)(1), and remove paragraph (c)(3)(ii)(G) to read as follows:

§ 679.32 CDQ fisheries monitoring and catch accounting.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(i) \* \* \*

(E) Catcher/processors using nontrawl gear. Operators of catcher/processors using hook-and-line gear must comply with § 679.100. Operators of catcher/processors using pot gear must comply with the following requirements:

(1) Each CDQ set on a catcher/processor using pot gear must be sampled by an observer for species composition and weight.

\* \* \* \* \*

6. § 679.51, as proposed to be added at 77 FR 23326, April 18, 2012, is proposed to be further amended to remove and reserve paragraph (a)(2)(vi)(A)(3) and add paragraph (a)(2)(vi)(E) to read as follows:

§ 679.51 Observer requirements for vessels and plants.

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(vi) \* \* \*

(E) Longline catcher/processor subsector. The owner and operator of a catcher/processor subject to § 679.100(b) must comply with the following observer coverage requirements:

(1) Increased observer coverage option. If the vessel owner selects the increased observer coverage option under § 679.100(b)(1), at least two observers must be aboard the vessel at all times when the vessel is operating in either the BSAI or GOA groundfish fisheries when directed fishing for Pacific cod is open in the BSAI, or while the vessel is groundfish CDQ fishing. At least one of the observers must be certified as a lead level 2 observer as described at § 679.53(a)(5)(v)(C). More than two observers are required if the observer workload restriction at paragraph (a)(2)(iii) of this section would otherwise preclude sampling as required under § 679.100(b)(1)(iv).

(2) Scales option. If the vessel owner selects the scales option under § 679.100(b)(2), one lead level 2 observer as described at § 679.53(a)(5)(v)(C) must be aboard the vessel at all times when the vessel is operating in either the BSAI or GOA groundfish fisheries when directed fishing for Pacific cod is open in the BSAI, or while the vessel is groundfish CDQ fishing.

\* \* \* \* \*

7. § 679.53, as proposed to be added at 77 FR 23326, April 18, 2012, is proposed to be further amended to revise paragraph (a)(5)(v)(C) to read as follows:

§ 679.53 Observer certification and responsibilities.

(a) \* \* \*

(5) \* \* \*

(v) \* \* \*

(C) A “lead” level 2 observer on a vessel using nontrawl gear must have completed two observer cruises (contracts) of at least 10 days each and sampled at least 30 sets on a vessel using nontrawl gear.

\* \* \* \* \*

8. Under part 679, add subpart I to read as follows:

Subpart I--Equipment and Operational Requirements for the Longline Catcher/Processor

Subsector

Sec.

679.100 Applicability

§ 679.100 Applicability.

The owner and operator of a vessel named on an LLP license with a Pacific cod catcher-processor hook-and-line endorsement for the Bering Sea, Aleutian Islands or both the Bering Sea and Aleutian Islands must comply with the requirements of this subpart.

(a) Opt out selection. Each year, the owner of a vessel subject to this subpart who does not intend to directed fish for Pacific cod in the BSAI or conduct groundfish CDQ fishing at any time during a year may, by November 1 of the year prior to fishing, submit to NMFS a completed notification form to opt out of directed fishing for Pacific cod in the BSAI and groundfish CDQ fishing in the upcoming year. The notification form is available on the NMFS Alaska Region website (<http://alaskafisheries.noaa.gov/>). Once the vessel owner has selected to opt out, the owner must ensure that the vessel is not used as a catcher/processor to conduct directed fishing for Pacific cod with hook-and-line gear in the BSAI or to conduct groundfish CDQ fishing during the specified year.

(b) Monitoring option selection. Each year, the owner of a vessel subject to this subpart that does not opt out under paragraph (a) of this section must, by November 1 of the year prior to fishing, submit a completed notification form for one of two monitoring options to NMFS. The notification form is available on the NMFS Alaska Region website (<http://alaskafisheries.noaa.gov/>). The vessel owner must comply with the selected monitoring

option at all times when the vessel is operating in either the BSAI or GOA groundfish fisheries when directed fishing for Pacific cod is open in the BSAI, or while the vessel is groundfish CDQ fishing for the entire upcoming calendar year. If NMFS does not receive a notification to opt out or a notification for one of the two monitoring options by November 1 of the year prior to fishing, NMFS will assign that vessel to the increased observer coverage option under paragraph (b)(1) of this section for the upcoming calendar year.

(1) Increased observer coverage option. Under this option, the vessel owner and operator must ensure that—

(i) The vessel is in compliance with observer coverage requirements described at § 679.51(a)(2)(vi)(E)(1).

(ii) The vessel is in compliance with observer workload requirements described at § 679.51(a)(2)(iii).

(iii) An observer sampling station meeting the requirements at § 679.28(d) is available at all times, unless otherwise approved by NMFS.

(iv) All sets are made available for sampling by an observer.

(2) Scales option. Under this option—

(i) The vessel owner and operator must ensure that—

(A) The vessel is in compliance with observer coverage requirements described at § 679.51(a)(2)(vi)(E)(2).

(B) All Pacific cod brought onboard the vessel is weighed on a NMFS-approved scale in compliance with the scale requirements at § 679.28(b), and that each set is weighed and recorded separately.

(C) An observer sampling station meeting the requirements at § 679.28(d) is available at all times, unless otherwise approved by NMFS.

(D) The vessel is in compliance with the electronic monitoring requirements described at § 679.28(k).

(ii) NMFS will use the weight of all catch that passes over the scale for the purposes of accounting for Pacific cod catch.

(iii) At the time NMFS approves the scale used to weigh Pacific cod, NMFS will provide the vessel owner or operator with one of the following designations on the scale inspection report that will be used for catch accounting of Pacific cod for the duration of the approval period:

(A) Scale prior to bleeding. If the scale is located before the location where Pacific cod are bled, a PRR of 1.00 will be applied to all catch weighed on the motion-compensated scale.

(B) Scale between bleeding and holding area. If Pacific cod are bled before being weighed and prior to the bleeding holding area, a PRR of 0.99 will be applied to all catch weighed on the scale.

(C) Scale after holding area. If Pacific cod are bled and placed in a bleeding holding area before being weighed, a PRR of 0.98 will be applied to all catch weighed on the scale.

(c) Electronic logbooks. The operator of a vessel subject to paragraph (b) of this section at any time during a year must comply with the requirements for electronic logbooks at § 679.5(f) at all times during that year.

(d) During 2013, the vessel owner that has selected the increased observer coverage option under paragraph (b)(1) of this section may make a one-time change to the scales option as described under paragraph (b)(2) of this section. The owner must submit a completed

notification form no later than May 1 to change monitoring options. The change in monitoring options will become effective June 10 and will remain effective until December 31.

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