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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

**[Docket No. 191212-0112]**

**RIN 0648-BJ02**

**Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod Management in the Groundfish Fisheries of the Bering Sea and Aleutian Islands and the Gulf of Alaska**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations to implement Amendment 120 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands (BSAI) Management Area (BSAI FMP) and Amendment 108 to the FMP for Groundfish of the Gulf of Alaska (GOA) (GOA FMP). Amendment 120 and this final rule limit the number of catcher/processors (C/Ps) eligible to operate as motherships receiving and processing Pacific cod from catcher vessels (CVs) directed fishing in the BSAI non-Community Development Quota Program Pacific cod trawl fishery. Amendment 120, Amendment 108, and this final rule prohibit replaced Amendment 80 C/Ps from receiving and processing Pacific cod harvested and delivered by CVs directed fishing for Pacific cod in the BSAI and GOA. This final rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act),

Amendments 120 and 108, the BSAI and GOA FMPs, and other applicable laws.

**DATES:** This rule is effective on January 20, 2020.

**ADDRESSES:** Electronic copies of Amendment 120 to the BSAI FMP, Amendment 108 to the GOA FMP, the Regulatory Impact Review (RIR; also referred to as the Analysis) and the National Environmental Policy Act (NEPA) Categorical Exclusion evaluation document may be obtained from *www.regulations.gov*. Electronic copies of Amendments 61, 80, 85, and 97 to the BSAI FMP, and the Environmental Assessments (EAs)/RIRs or Environmental Impact Statements prepared for those actions may be obtained from *https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/sustainable-fisheries-alaska*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted by mail to NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Glenn Merrill; in person at NMFS Alaska Region, 709 West 9th Street, Room 401, Juneau, AK; by e-mail to *OIRA\_Submission@omb.eop.gov*; or by fax to 202-395-5806.

**FOR FURTHER INFORMATION CONTACT:** Bridget Mansfield, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** This final rule implements Amendment 120 BSAI FMP and Amendment 108 to the GOA FMP, collectively referred to as Amendments 120/108. The Council submitted Amendments 120/108 for review by the Secretary of Commerce (Secretary), and a Notice of Availability of Amendments 120/108 was published in the **Federal Register** on August 21, 2019 with comments invited through October 21, 2019 (84 FR 43576). The Secretary approved Amendments 120/108 on November 19, 2019. The proposed rule to implement Amendments 120/108

published in the Federal Register on September 27, 2019 (84 FR 51092) with comments invited through October 28, 2019. NMFS received six comment letters containing nine individual comments from six unique individuals during the comment periods for Amendments 120/108 and the proposed rule. The six commenters consisted of one association representing shoreside processors, one individual representing five communities in one Alaskan Borough, and four companies representing C/Ps. A summary of these comments and the responses by NMFS are provided under the heading “Comments and Responses” below.

A detailed review of the provisions of Amendments 120/108, the proposed regulations to implement Amendments 120/108 (84 FR 51092, September 27, 2019), and the rationale for this action is provided in the preamble to the proposed rule and is briefly summarized in this final rule. This preamble uses specific terms (*e.g.*, Amendment 80 sector, directed fishing) that are described in regulation and in the preamble to the proposed rule. We refer the reader to the preamble to the proposed rule for additional detail.

## **Background**

NMFS manages the BSAI Pacific cod fishery under a total allowable catch (TAC) limit with portions of the TAC allocated to the Western Alaska Community Development Quota (CDQ) Program, the Amendment 80 sector, and the BSAI trawl limited access sector, which, in part, includes the American Fisheries Act (AFA) and the BSAI trawl catcher vessel sectors. CVs directed fishing in the BSAI non-CDQ Pacific cod trawl CV fishery deliver to shoreside processors and motherships offshore. A “mothership” is defined as a vessel that receives and processes groundfish from other vessels (see

definition at 50 CFR 679.2).

The BSAI Pacific cod trawl CV fishery has seen rapid increases in CV and mothership participation from 2016 through 2018 as compared to fishery participation patterns prior to 2016 (*i.e.*, from 2003 through 2015, as described in Section 2.7.1 of the Analysis). This increase in trawl CVs delivering Pacific cod to an increased number of C/Ps operating as motherships has resulted in a corresponding decrease in Pacific cod landings at BSAI shoreside processing facilities. Also since 2016, the BSAI Pacific cod TAC has been more fully harvested and the fishing season has grown shorter as the TAC has been reached earlier. Section 2.7.1 of the Analysis prepared for this action notes that the potential exists for up to 40 additional Amendment 80 C/Ps and AFA C/Ps to participate as motherships in the fishery, providing processing capacity for additional CVs, which would put greater fishing pressure on the fishery.

The Council determined, and NMFS agrees, that limiting access to the BSAI Pacific cod fishery by motherships receiving and processing Pacific cod from CVs directed fishing using trawl gear is needed, given the expectation of additional capacity entering the fishery. The Council adopted its preferred alternative for Amendments 120/108 at its April 2019 meeting.

This final rule balances the need to limit the number of C/Ps operating as motherships in the fishery with the need to provide continued access and benefits from the fishery for long-time participants with sustained activity, given the increasing number of participants in the fishery and shorter fishing seasons. This final rule promotes stability in the fishery by reducing the risk of a race for fish, stabilizing the length of the fishing season, and creating a safer, more predictable fishery. That stability will also

minimize the potential for increased prohibited species catch (PSC) rates, particularly for halibut. Regulations at § 679.21(b)(4)(i)(B) require NMFS to close BSAI trawl limited access fisheries when halibut PSC limits are reached. Regulations at § 679.7(o)(7) prohibit Amendment 80 cooperatives from exceeding PSC halibut caps. These closures and caps could limit the ability of harvesters to fully harvest the TAC.

This final rule establishes the requirement that a C/P used to receive and process Pacific cod harvested and delivered by CVs directed fishing in the BSAI non-CDQ Pacific cod trawl CV fishery must be designated on a groundfish License Limitation Program (LLP) license with a BSAI Pacific cod trawl mothership endorsement. This final rule also establishes the eligibility criteria and issuance process for this new endorsement. C/Ps not designated on groundfish LLP licenses that receive the endorsement are prohibited from receiving and processing Pacific cod delivered by a CV directed fishing in the BSAI non-CDQ Pacific cod trawl CV fishery. This final rule does not preclude any vessel from delivering BSAI Pacific cod to a shoreside processor. This final rule also does not preclude a C/P without a BSAI Pacific cod trawl fishery mothership endorsement from receiving and processing incidental catch of Pacific cod that is caught by a CV while directed fishing for other species. This final rule does not preclude a vessel from participating as a C/P and processing its own catch in the BSAI non-CDQ Pacific cod fishery. Finally, true motherships (*i.e.*, vessels that only receive catch from other vessels and that do not operate as C/Ps), other at-sea processors, and shoreside processors are not restricted by this action.

Under this action, NMFS will issue a BSAI Pacific cod trawl mothership endorsement to a groundfish LLP license with Bering Sea or Aleutian Islands area and

C/P operation endorsements if the groundfish LLP license is credited with receiving and processing at least one legal mothership trip target landing of Pacific cod in the BSAI non-CDQ Pacific cod trawl CV fishery in each year of the qualifying period (2015 through 2017). NMFS anticipates that a total of two groundfish LLP licenses will receive a BSAI Pacific cod trawl fishery mothership endorsement under this final rule, resulting in up to two vessels that have also operated as C/Ps being eligible to receive and process Pacific cod delivered by a CV directed fishing in the BSAI non-CDQ Pacific cod trawl CV fishery. Under this action, NMFS will also prohibit Amendment 80 sector C/Ps not designated on an Amendment 80 Quota Share (QS) permit and an Amendment 80 LLP license, or not designated on an Amendment 80 LLP/QS license, from receiving and processing Pacific cod harvested by vessels directed fishing for Pacific cod in the BSAI and GOA.

### **Overview of Measures Implemented by this Rule**

This final rule limits access to the BSAI non-CDQ Pacific cod trawl CV fishery by motherships receiving and processing Pacific cod harvested and delivered by CVs directed fishing in that fishery to those C/Ps designated on a groundfish LLP license with a BSAI Pacific cod trawl mothership endorsement.

In order to implement Amendment 120, this final rule—

- Authorizes receiving and processing of BSAI Pacific cod harvested and delivered by CVs directed fishing in the BSAI non-CDQ Pacific cod trawl CV fishery by only those C/Ps designated on a groundfish LLP license with a BSAI Pacific cod trawl mothership endorsement.

- Includes the provisions that are necessary for a groundfish LLP license to qualify for and receive a BSAI Pacific cod trawl mothership endorsement.
- Prohibits a vessel endorsed to operate as a C/P from receiving and processing of BSAI Pacific cod harvested and delivered by CVs directed fishing in the BSAI non-CDQ Pacific cod trawl CV fishery without a copy of a valid LLP license with a BSAI Pacific cod trawl mothership endorsement.
- Lists those groundfish LLP licenses that NMFS has determined are eligible, will be credited with qualifying landings, and will receive a BSAI Pacific cod trawl mothership endorsement under this final rule.
- Establishes the process for notifying groundfish LLP license holders of eligibility for a BSAI Pacific cod trawl mothership endorsement.
- Establishes the process for the issuance of revised groundfish LLP licenses with a BSAI Pacific cod trawl mothership endorsement.
- Establishes an administrative adjudicative process to challenge NMFS's determinations on eligibility for a BSAI Pacific cod trawl mothership endorsement.
- Prohibits Amendment 80 sector C/Ps not designated on an Amendment 80 QS permit and an Amendment 80 LLP license, or not designated on an Amendment 80 LLP/QS license, from receiving and processing Pacific cod harvested by vessels directed fishing for Pacific cod in the BSAI.

In order to implement Amendment 108, this final rule—

- Prohibits Amendment 80 sector C/Ps not designated on an Amendment 80 QS permit and an Amendment 80 LLP license, or not designated on an Amendment 80 LLP/QS license, from receiving and processing Pacific cod harvested by vessels directed fishing for Pacific cod in the GOA.

Additional detail about the rationale for and effect of the regulatory changes in this rule is provided in the preamble to the proposed rule (84 FR 51092, September 27, 2019) and in the Analysis for this action.

### **Summary of Regulatory Changes**

The following provides a brief summary of the regulatory changes made by this final rule.

#### *Revisions to Permits at § 679.4*

This final rule adds § 679.4(k)(15) to include the provisions that are necessary to qualify for and receive a BSAI Pacific cod trawl mothership endorsement. Section 679.4(k)(15) establishes a notification process for holders of groundfish LLP licenses eligible and ineligible for a BSAI Pacific cod trawl mothership endorsement. This section also establishes an administrative adjudicative process to challenge NMFS's determinations on eligibility for a BSAI Pacific cod trawl mothership endorsement.

#### *Revisions to Prohibitions at § 679.7*

This final rule adds § 679.7(i)(12) to prohibit the receiving and processing by a C/P operating as a mothership of Pacific cod harvested and delivered by a CV directed

fishing in the BSAI non-CDQ Pacific cod trawl CV fishery unless that C/P has a legible copy on board of a valid groundfish LLP license with endorsements for 1) the Bering Sea or Aleutian Islands area, 2) C/P operation type, and 3) BSAI Pacific cod trawl mothership operation.

This final rule also adds § 679.7(o)(3)(v) to prohibit the use of an Amendment 80 C/P to receive and process Pacific cod harvested by vessels directed fishing for Pacific cod in the BSAI or GOA, if that C/P is not designated on an Amendment 80 QS permit and an Amendment 80 LLP license or on an Amendment 80 LLP/QS license.

#### *Revisions to Tables to Part 679*

This final rule adds Table 57 to part 679 to list those groundfish LLP licenses that NMFS has determined are eligible, will be credited with qualifying receipts of legal mothership trip targets, and will receive a BSAI Pacific cod trawl mothership endorsement under this final rule.

#### **Comments and Responses**

NMFS received six comment letters containing nine individual comments from six unique commenters during the comment periods for Amendments 120/108 and the proposed rule. The six commenters consisted of one association representing shoreside processors, one individual representing five communities in one Alaskan Borough, and four companies representing C/Ps. Seven of the nine individual comments supported this action. One comment did not support the action. One comment from three separate commenters suggested a clarification to the proposed regulatory language to support the intent of the action as described in the preamble to the proposed rule.

In the following responses to these comments, reference to the phrase

“Amendment 120 or 108”, unless otherwise noted, means Amendment 120 or 108 and this final rule implementing Amendments 120/108.

*Comment 1:* NMFS received five comment letters that supported this action. Commenters noted that the action is consistent with the Council’s purpose and need statement, which recognized that the negative impacts on historical participants arising from a management problem that has been building for several years warrants action. During the development of the Amendment 80 Program, the Council was silent on the ability of Amendment 80 C/Ps to act as motherships in limited access fisheries. However, there has been substantial growth in BSAI offshore Pacific cod deliveries by CVs to Amendment 80 C/Ps utilizing excess offshore processing capacity realized through the rationalized fishery. This has resulted in shifting processing effort away from historical, predominantly shoreside processors. The ability of motherships to operate close to the fishing grounds and provide quick turnaround for CVs, the decline in Pacific cod TAC, and the increased effort and catch per unit effort in the CV trawl fishery have led to an intensified race for fish, shorter fishing seasons, greater instability for historic participants and Alaska communities, and diminished ability to promote conservation. As the race for fish intensifies, Pacific cod flood the docks and are rushed through the factory to facilitate quick turnaround, and thus the race for fish negatively impacts vessel safety and fish quality, and global markets are flooded by large volumes of lower quality cod oversaturating the market.

The commenters state that the Council weighed all relevant information before recommending this action. The commenters state that this action addresses the need to limit the offshore processing capacity (specifically C/Ps acting as motherships) in

the BSAI trawl CV Pacific cod fishery, while reducing the negative impacts on the two C/Ps with long-term participation as motherships by accommodating their continued participation. The commenters state that this action is an important step toward providing stability in the fishery and will provide conservation and management benefits to the fishery by slowing the pace of the fishery, ensuring the wise use of the resource, and improving safety-at-sea. Adoption of this rule will promote the goals and objectives of the Magnuson-Stevens Act.

*Response:* NMFS acknowledges the comment in support of Amendments 120/108. As noted in the Analysis (Section 2.8.1), this action has the potential to address impacts from C/Ps that have recently changed their fishing practices as a benefit of previously implemented rationalization programs. This action is intended to limit the offshore processing capacity in the BSAI non-CDQ Pacific cod trawl CV fishery in order to avoid further negative impacts on long-term participants in the fishery, including C/Ps operating as motherships, shoreside processors, and communities with local economies dependent on shoreside processing of Pacific cod. This action is also intended to allow more flexibility in fishing operations by ensuring predictable levels of competition. That flexibility may help reduce prohibited species catch in the fishery and improve vessel safety, by allowing vessels to implement fishing practices known to reduce PSC and improve vessel safety.

*Comment 2:* One commenter stated that many fishing communities across the state depend on tax revenue from raw fish delivered across the dock to shoreside plants. The recent escalation of C/Ps acting as motherships has resulted in a dramatic increase in the amount of deliveries to motherships offshore in recent BSAI Pacific cod seasons, at

the expense of shore-based processing plants and communities who have historically processed a majority of the Pacific cod. This loss of shore-based processed cod is exacerbated by the recent lower Pacific cod TACs. The commenters state that this action will help our Pacific cod-dependent communities, and will have meaningful impacts for shoreside processors and coastal communities, that have relied heavily on volume fisheries like pollock and cod for decades. Though Alaska's shoreside processors rely on a diverse portfolio of species, high volume fisheries like pollock and Pacific cod are the foundation of the sector's economic success. Larger volumes of Pacific cod delivered shoreside allows for longer fishing seasons, a near year-round processing workforce, and increased economic activity. Significant investments have been made to expand markets, increase value, and increase capacity to serve the fishing fleets. Closing this regulatory loophole, which currently allows C/Ps to use the excess processing capacity realized through the benefits of their rationalization programs in order to act as motherships in the unrationalized trawl CV fishery, is critically important to Bering Sea shoreside processors historically dependent on Pacific cod and to the communities in which the shoreside processors operate. The increase in this mothership activity, starting in 2016 and increasing each year since, severely erodes shoreside Pacific cod landings, which have historically comprised almost the entire fishery, and erodes tax and other support service benefits from this fishery on which coastal Alaska communities depend.

*Response:* NMFS acknowledges this comment, and as noted in the response to Comment 1, the Analysis (Section 2.8.1) concluded that this action has the potential to prevent increased participation by C/Ps operating as motherships from reducing the benefits that the fishery provides to long-term, consistent participants in the BSAI non-

CDQ Pacific cod trawl CV fishery, including shoreside processors and communities with local economies dependent on shoreside processing of Pacific cod.

*Comment 3:* This action is consistent with the Council's purpose and need statement and final action to reduce the excess processing capacity resulting from rationalization under Amendment 80 and corresponding Amendment 80 vessel replacement. The proposed rule for this action noted that the final rule implementing Amendment 80 had anticipated that a future regulatory amendment may be needed, depending on whether the use of C/Ps as motherships would increase due to the Amendment 80 Program and result in adverse impacts on existing shoreside processors. This action addresses those issues directly by including a prohibition on using replaced Amendment 80 vessels as motherships to receive and process Pacific cod harvested by vessels directed fishing for Pacific cod in the BSAI or GOA. (Current regulations already prevent this for AFA CPs.)

*Response:* This action prohibits replaced Amendment 80 C/Ps from acting as a mothership in the BSAI or GOA fisheries. Section 2.8.1 of the Analysis notes that there is no indication to date that this has occurred, but implementing a prohibition in this action eliminates the opportunity for this to occur in the future. The intent of the vessel replacement provision in Amendment 80 was to allow older, less efficient vessels to be replaced by more efficient vessels. The intent of the regulations was not to provide new opportunities for the replaced vessel in fisheries that are already fully utilized.

*Comment 4:* This action is consistent with the Council's intent for how the qualification for a BSAI Pacific cod trawl mothership endorsement should be calculated and applied. This calculation includes using targeted Pacific cod landings because the

action is intended to only regulate C/Ps that receive and process Pacific cod harvested by CVs engaged in directed fishing, and not regulate the receiving and processing of incidental catch of Pacific cod. In addition, this action uses weekly production reports to determine which C/Ps received deliveries of targeted Pacific cod during the qualifying period, similar to the Council's approach in other actions, and was a range of qualifying years that honors the control date previously set by the Council and that encompasses years directly before and after significant new entry. This action does not prevent any Amendment 80 C/Ps acting as motherships from retaining incidental catch of Pacific cod delivered by CVs in their target flatfish fisheries, as is currently the practice. This action will not place any additional limit on incidental catch, beyond the maximum retainable amounts already in place, which are applied at the trip level. In addition, Amendment 80 C/Ps have full access to their exclusive, rationalized C/P allocations of BSAI Pacific cod, yellowfin sole, flathead sole, rock sole, Atka mackerel, and Aleutian Islands Pacific ocean perch fisheries. Similarly, AFA C/Ps that target pollock fisheries remain unaffected. This action only limits the ability of Amendment 80 and AFA C/Ps to act as motherships that receive and process Pacific cod delivered by CVs directed fishing in the BSAI non-CDQ Pacific cod trawl CV fishery, unless they have documented mothership processing history in this fishery as required by the Council's preferred alternative.

*Response:* NMFS concurs that this action, as noted in the preamble to the proposed rule, limits Amendment 80 and AFA C/Ps' ability to operate as a mothership in the BSAI non-CDQ Pacific cod trawl CV fishery based on qualification for an endorsement to participate. This action also prohibits Amendment 80 vessels not

designated on an Amendment 80 QS permit and an Amendment 80 LLP license or an Amendment 80 LLP/QS license from operating as a mothership by receiving and processing Pacific cod harvested by vessels directed fishing in the GOA and BSAI. It does not impose additional limits on incidental catch of Pacific cod in other fisheries beyond existing regulatory requirements. This action does not change Amendment 80 C/Ps' access to their allocations of BSAI Pacific cod, yellowfin sole, flathead sole, rock sole, Atka mackerel, and Aleutian Islands POP fisheries. This action does not affect AFA C/P pollock fisheries.

*Comment 5:* If the two C/Ps that have history prior to Amendment 80 and are allowed to continue offshore processing under this action choose to expand their capacity in the future, the Council could consider a sideboard in the future.

*Response:* As noted in Section 2.8.1 of the Analysis, the Council and NMFS considered setting harvesting limits (commonly known as sideboards) on the C/Ps eligible for a BSAI Pacific cod trawl mothership endorsement. The Council and NMFS did not include a sideboard limitation due to the consistent trends in delivery patterns to these two C/Ps, the relatively limited amount of catch processed by these vessels, and the challenges in effectively monitoring and managing a sideboard. (See Sections 2.7.3.2 and 2.10 of the Analysis for additional detail.) The Council and NMFS may consider sideboard limitations under a future action, if appropriate.

*Comment 6:* Three commenters requested that NMFS review its proposed regulatory language in both the permit section (50 CFR 679.4) and the prohibitions section (50 CFR 679.7) to ensure that it does not exclude processing operations, such as operations of true motherships, floating processors, or shoreside processors which

were not intended to be restricted under this action. The commenters expressed concern that the regulatory language could be interpreted as unintentionally precluding true motherships, floating processors, or shoreside processors from receiving and processing Pacific cod harvested by CVs directed fishing in the BSAI non-CDQ Pacific cod trawl CV fishery.

*Response:* NMFS concurs that the proposed regulatory text might be interpreted to be overly broad and exclude some processors, such as floating processors and true motherships, which were never intended to be precluded from receiving and processing Pacific cod harvested by CVs directed fishing in the BSAI non-CDQ trawl CV fishery. The preamble to the proposed rule, and Section 2.4.2 of the Analysis clearly state that floating processors and true motherships are not intended to be precluded from receiving and processing Pacific cod in the BSAI under this rule. Therefore, the regulatory text has been revised in this final rule to clarify that floating processors and true motherships are not precluded from receiving and processing Pacific cod in the BSAI under this rule. This revision is discussed further in the **Changes from the Proposed Rule** section of this final rule.

*Comment 7:* We understand the rationale for NMFS and the Council curtailing the recent increase in offshore deliveries to entering Amendment 80 and AFA C/Ps. We also appreciate their decision to allow the fishing vessel (F/V) *Seafreeze Alaska* to continue to operate as a mothership in the fishery in recognition of its long-term participation and dependence on this fishery. We note that the preamble to the proposed rule identified a single Amendment 80 C/P, the F/V *Seafreeze Alaska*, as taking mothership deliveries prior to the final rule for Amendment 80 in 2008. The preamble

suggests that the history of the F/V *Seafreeze Alaska* was one reason for the final rule allowing Amendment 80 C/Ps to operate as motherships. The proposed rule recognizes that history and dependence by allowing the F/V *Seafreeze Alaska* to continue to participate in the fishery. Our business depends on the ability of our CVs to continue to deliver Pacific cod offshore. The proposed rule limits the continued participation of some of our C/Ps in the Pacific cod fishery. We understand the rationale for those limitations. We are thankful that the rule also recognizes the unique long-term dependence of the F/V *Seafreeze Alaska* on the offshore fishery, and we support implementation of a rule allowing that activity to continue.

*Response:* NMFS acknowledges this comment. However, NMFS also clarifies that the data analyzed for this action include data from 2003 forward. While there may have been other Amendment 80 C/Ps that received and processed Pacific cod delivered by CVs prior to 2003, NMFS determined the eligibility of the LLP license on which the F/V *Seafreeze Alaska* is designated based on criteria established by the Council, consistent with its intent to recognize sustained participation in the fishery.

*Comment 8:* Three commenters who support this proposed rule urged swift implementation prior to the upcoming 2020 BSAI Pacific cod trawl CV fishery A season in January. The commenters state that the purpose and need statement and the analysis identified that further delays to this action will undoubtedly lead to increased growth in offshore deliveries of Pacific cod. The commenters urged no further delays in action, since additional delays will result in a continued exponential shift away from historic Pacific cod processing efforts.

*Response:* NMFS appreciates the desire for timely implementation of this

rulemaking.

*Comment 9:* We do not support the proposed rule for this action. Our company operates two Amendment 80 trawl C/Ps that took deliveries of BSAI non-CDQ trawl CV Pacific cod in two of the three years in the Council's selected qualifying period of 2015 through 2017. These C/Ps will not be eligible to mothership under these proposed regulations because they did not take qualifying deliveries in all three of the years in the qualifying period. The proposed rule states that the Council's rationale for not choosing the suboptions for one- or two-year participation requirements was that either option would have allowed participation in a manner that is not reflective of the historical harvest patterns in the fishery prior to the recent increase in Amendment 80 C/Ps acting as motherships. We disagree. Qualifying our vessels would be reflective of the historical harvest patterns in the fishery. Our history clearly shows participation of these two C/Ps as cod motherships prior to any privileges being received in the multi-species groundfish fishery through the Amendment 80 rationalization program. Our C/Ps have history operating as motherships for CVs delivering BSAI non-CDQ Pacific cod during the Amendment 80 qualifying years in addition to our recent participation in the fishery. However, these previous years of participation were not included in the Council's analysis, because that analysis included only data beginning with 2003. The Amendment 80 qualifying years of 1998 through 2004 are critical to understanding the historical modes of operation and harvest patterns of our fleet, including the dynamics of mothership activity pre- and post-rationalization. Without the inclusion of these years in the Analysis, the Council does not have a comprehensive understanding of the historical harvest patterns in the fishery and cannot justify the exclusion of these two vessels.

*Response:* NMFS disagrees. The Council expressed its intent, and Section 2.6.10 of the Analysis specifies, that qualification for a C/P to operate as a mothership should be based on the history of that vessel receiving deliveries of targeted non-CDQ BSAI Pacific cod harvested by CVs using trawl gear during each year in the three-year qualifying period (2015 through 2017). The qualifying period used in this final rule places emphasis on the years directly before, including, and after 2016, which was the year that five additional Amendment 80 C/Ps entered the fishery as motherships, more than doubling the number of participating C/Ps operating as motherships in the fishery. The increase in Amendment 80 C/Ps operating as motherships resulted in the Council expressing concern about the increased amount of BSAI non-CDQ Pacific cod delivered offshore in the fishery, and the corresponding decrease in the amount delivered to shoreside processors.

The Council considered including participation in the fishery prior to 2015, but determined that participation for the years prior to 2015 was stable and represented sustained effort. Further, the Council and NMFS considered the proposed action's consistency with the relatively stable conditions of the fishery under the Amendment 80 Program. The establishment of the Amendment 80 Program fundamentally changed the dynamics of the BSAI non-pollock trawl fisheries by establishing a framework under which exclusive rights to non-pollock target species allocations, including Pacific cod, were granted in part to improve stability in those fisheries. The post-Amendment 80 stability in the BSAI Pacific cod trawl fishery was maintained until 2016, when additional Amendment 80 C/Ps began receiving and processing Pacific cod. The Council's intent in recommending this action is to regain

the stability in the fishery seen during the post-Amendment 80 and pre-2016 period, particularly in light of the dramatic decline in Pacific cod TACs. The preamble to the proposed rule provides additional details on the rationale for selecting the qualifying years.

Further, for reasons explained in Section 2.5.1 of the Analysis, NMFS is not able to reliably compare historical data prior to 2003 to the current catch accounting system that includes data from 2003 forward. NMFS believes that consideration of fishing patterns up to twelve years prior to the first year of the qualifying period (2015) is sufficient to establish sustained participation in the fishery. Catch history prior to 2003 is not likely to be representative of current fishing patterns or demonstrative of sustained participation in a fishery.

#### **Changes from the Proposed Rule**

In response to public comment, NMFS has modified the regulatory text at §§ 679.4(k)(15)(i), (k)(15)(ii)(B), and (k)(15)(iii)(B) and 679.7(i)(12) to clarify that true motherhips and floating processors are not excluded from receiving and processing Pacific cod in the BSAI non-CDQ Pacific cod CV trawl directed fishery. Regulatory language in the proposed rule was ambiguous and these clarifying changes are intended to ensure that the language cannot be misinterpreted to exclude those entities from processing Pacific cod in the fishery.

At the proposed § 679.4(k)(15)(i) the sentence that indicates that a vessel must be designated on a groundfish LLP license with a BSAI Pacific cod trawl mothership endorsement in order to receive and process Pacific cod delivered by CVs directed fishing using trawl in the BSAI non-CDQ Pacific cod fishery as specified in §

679.20(a)(7)(ii)(A) is revised to indicate that a C/P must be designated on a groundfish LLP license with a BSAI mothership Pacific cod trawl mothership endorsement in order to receive and process Pacific cod delivered by a CV directed fishing using trawl gear in that fishery.

At the proposed § 679.4(k)(15)(ii)(B) the sentence that indicates that a groundfish LLP license that had a vessel designated on it that received and processed at least one legal mothership trip target of Pacific cod delivered by a CV directed fishing using trawl gear in the BSAI non-CDQ Pacific cod fishery as specified in § 679.20(a)(7)(ii)(A) in each of the three years of the qualifying period of 2015 through 2017 is eligible to receive a BSAI Pacific cod trawl mothership endorsement has been revised to indicate that a groundfish LLP license that had a C/P designated on it that received and processed at least one legal mothership trip target of Pacific cod delivered by a CV directed fishing using trawl gear in the BSAI non-CDQ Pacific cod fishery as specified in § 679.20(a)(7)(ii)(A) in each of the three years of the qualifying period of 2015 through 2017 is eligible to receive a BSAI Pacific cod trawl mothership endorsement.

At the proposed § 679.4(k)(15)(iii)(B) the sentence that indicates that NMFS will credit a groundfish LLP license with a legal mothership trip target of Pacific cod if that groundfish LLP license was the only one on which the vessel that received and processed legal mothership trip targets was designated from 2015 through 2017 has been revised to replace the word “vessel” with the term “catcher/processor”.

At the proposed § 679.7(i)(12) in the Prohibitions section, the sentence that stipulates that it is prohibited to receive and process Pacific cod harvested and delivered by a CV directed fishing using trawl gear in the BSAI non-CDQ Pacific cod fishery

without a legible copy on board of a valid groundfish LLP license with the appropriate endorsements, including a BSAI Pacific cod trawl mothership endorsement, has been revised to stipulate that it is prohibited to use a C/P to receive and process Pacific cod harvested and delivered by a CV directed fishing using trawl gear in that fishery without a legible copy on board of a valid groundfish LLP license with the appropriate endorsements.

In addition, the name of the fishery has been edited for consistency at §§ 679.4(k)(15)(i), (k)(15)(ii)(B), and (k)(15)(v)(B) and 679.7(i)(12).

### **Classification**

The Administrator, Alaska Region, NMFS, determined that BSAI FMP Amendment 120 and GOA FMP Amendment 108 are necessary for the conservation and management of the BSAI and GOA Pacific cod fisheries and that they are consistent with the Magnuson-Stevens Act and other applicable laws.

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

This final rule is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

### *Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity

is required to take to comply with a rule or group of rules. The preambles to the proposed rule and this final rule include a detailed description of the actions necessary to comply with this rule, and as part of this rulemaking process NMFS included on its website a summary of compliance requirements that serves as the small entity compliance guide: <https://www.fisheries.noaa.gov/action/amendment-120-fmp-groundfish-bering-sea-and-aleutian-islands-and-amendment-108-fmp>. This action does not require any additional compliance from small entities that is not described in the preambles to the proposed rule and this final rule. Copies of the proposed rule and this final rule are available from the NMFS Web site at <http://alaskafisheries.noaa.gov>.

*Final Regulatory Flexibility Analysis (FRFA)*

This FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses completed to support this action.

Section 604 of the Regulatory Flexibility Act (RFA) requires that, when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a FRFA. Section 604 describes the required contents of a FRFA: 1) a statement of the need for and objectives of the rule; 2) a statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made to the proposed rule as a result of such comments; 3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business

Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; 4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; 5) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and 6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in this final rule, and why each of the other significant alternatives considered by the agency was rejected.

A description of this final rule and the need for and objectives of this rule are contained in the preamble to this final rule and the preamble to the proposed rule (84 FR 51092, September 27, 2019), and are not repeated here.

#### Public and Chief Counsel for Advocacy Comments on the IRFA

NMFS published the proposed rule on September 27, 2019 (84 FR 51092). An IRFA was prepared and summarized in the Classification section of the preamble to the proposed rule. The comment period for the proposed rule closed on October 28, 2019. The comment period for the notice of availability for Amendments 120/108 closed on October 21, 2019. NMFS received six letters of public comment on the proposed rule and Amendments 120/108. The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule. NMFS received no public comments specifically on the

IRFA.

#### Number and Description of Small Entities Regulated by this Final Action

This final rule directly regulates the owners and operators of certain Amendment 80 and AFA C/Ps operating as motherships when receiving Pacific cod in the BSAI non-CDQ Pacific cod trawl CV directed fishery. This final rule also directly regulates the owners of current Amendment 80 C/Ps and Amendment 80 C/Ps that have been replaced under BSAI Amendment 97 (77 FR 59852, October 1, 2012) and that are not designated on an Amendment 80 QS permit and an Amendment 80 LLP license, or are not designated on an Amendment 80 LLP/QS license, by prohibiting replaced Amendment 80 vessels from operating as a mothership in the BSAI or GOA Pacific cod fisheries. Based on the best available and most recent complete data from 2003 through 2018, 40 groundfish LLP license holders will be directly regulated by this action.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

The RFA requires consideration of affiliations between entities for the purpose of assessing whether an entity is classified as small. The AFA pollock and Amendment 80 cooperatives are types of affiliation between entities. All of the AFA and Amendment 80 cooperatives have gross annual revenues that are substantially greater than \$11 million. Therefore, NMFS considers members in these cooperatives affiliated large (i.e., they are

not small) entities for RFA purposes.

Of the 40 groundfish LLP license holders directly regulated by this action, 21 were members of an AFA cooperative and 19 were members of an Amendment 80 cooperative in 2018. All of the groundfish LLP licenses with designated C/Ps that received and processed Pacific cod delivered by a CV directed fishing in the BSAI non-CDQ Pacific cod trawl CV fishery from 2003 through 2018 were affiliated with either an AFA or an Amendment 80 cooperative in 2018. NMFS therefore considers these LLP license holders to be affiliated large (i.e., they are not small) entities for RFA purposes. Recordkeeping, Reporting, and Other Compliance Requirements. Therefore, this final rule does not directly regulate any small entities.

This final rule does not add additional reporting or recordkeeping requirements for the vessels that choose to submit an appeal. An appeal process exists for LLP license endorsement issuance. No small entity is subject to reporting requirements that are in addition to or different from the requirements that already apply to all directly regulated entities. No unique professional skills are needed for the LLP license or vessel owners or operators to comply with the reporting and recordkeeping requirements associated with this final rule. This final rule does not implement or increase any fees that NMFS collects from directly regulated entities. The Analysis identifies no operational costs of the endorsement (see **ADDRESSES**).

#### Description of Significant Alternatives Considered to the Final Action That Minimize Adverse Impacts on Small Entities

Under this final rule, C/Ps acting as motherships that receive and process Pacific cod harvested by CVs directed fishing in the BSAI non-CDQ Pacific cod trawl CV

fishery will be limited to two vessels, and all remaining AFA and Amendment 80 C/Ps will not be permitted to operate as a mothership in this fishery even if retired from and/or replaced in either the AFA or Amendment 80 Programs. All of the directly regulated entities have been determined to be large entities via ownership, cooperative, or contractual affiliations. Thus there are no adverse impacts on directly regulated small entities.

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

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

The public reporting burden for the collection-of-information requirement in this final rule is estimated to average 4 hours per response to submit an appeal, which includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments on these or any other aspects of the collection of information to NMFS Alaska Region (see **ADDRESSES**) by e-mail to *OIRA\_Submission@omb.eop.gov*, or by fax to (202) 395-5806.

Notwithstanding any other provision of 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. All currently approved NOAA

collections of information may be viewed at

<https://www.reginfo.gov/public/do/PRASearch#>.

**List of Subjects 50 CFR Part 679**

Alaska, Fisheries, Reporting and recordkeeping requirements

Dated: December 13, 2019.

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 679 as follows:

**Title 50—Wildlife and Fisheries**

**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;

Pub. L. 111-281.

2. In § 679.4, add paragraph (k)(15) to read as follows:

**§ 679.4 Permits.**

\* \* \* \* \*

(k) \* \* \*

(15) *BSAI Pacific cod trawl mothership endorsement*—(i) *General*. In addition to other requirements of this part, a catcher/processor must be designated on a groundfish LLP license that has a BSAI Pacific cod trawl mothership endorsement in order to receive and process Pacific cod harvested and delivered by a catcher vessel directed fishing in the BSAI non-CDQ Pacific cod trawl catcher vessel fishery as specified in § 679.20(a)(7)(ii)(A). A catcher/processor designated on a groundfish LLP license with Bering Sea or Aleutian Islands area, catcher/processor operation, and BSAI Pacific cod trawl mothership endorsements may operate as a mothership, as defined at § 679.2, to receive and process Pacific cod harvested by a catcher vessel directed fishing in the BSAI non-CDQ Pacific cod trawl catcher vessel fishery as specified in § 679.20(a)(7)(ii)(A).

(ii) *Eligibility requirements for a BSAI Pacific cod trawl mothership endorsement*.

A groundfish LLP license is eligible to receive a BSAI Pacific cod trawl mothership endorsement if the groundfish LLP license:

(A) Has Bering Sea or Aleutian Islands area and catcher/processor operation endorsements;

(B) Had a catcher/processor designated on it that received and processed at least one legal mothership trip target of Pacific cod delivered from a catcher vessel directed fishing in the BSAI non-CDQ Pacific cod trawl catcher vessel fishery as specified in § 679.20(a)(7)(ii)(A) in each of the three years of the qualifying period of 2015 through

2017, inclusive, where a mothership trip target is, in the aggregate, the groundfish species that is delivered by a catcher vessel to a given catcher/processor acting as a mothership in an amount greater than the retained amount of any other groundfish species delivered by the same catcher vessel to the same catcher/processor for a given week; and

(C) Is credited by NMFS with receiving a legal mothership trip target specified in paragraph (k)(15)(ii)(B) of this section.

(iii) *Explanations for BSAI Pacific cod trawl mothership endorsement.* (A)

NMFS will determine whether a groundfish LLP license is eligible to receive a BSAI Pacific cod trawl mothership endorsement under paragraph (k)(15)(ii) of this section based only on information contained in the official record described in paragraph (k)(15)(iv) of this section.

(B) NMFS will credit a groundfish LLP license with receipt of a legal mothership trip target specified in paragraph (k)(15)(ii)(B) of this section if that groundfish LLP license was the only groundfish LLP license on which the catcher/processor that received and processed legal mothership trip targets was designated from 2015 through 2017.

(C) Mothership trip targets will be determined based on round weight equivalents.

(iv) *Official record of participation in the BSAI non-CDQ Pacific cod trawl catcher vessel fishery.* (A) The official record will contain all information used by the Regional Administrator that is necessary to administer the requirements described in paragraph (k)(15) of this section.

(B) The official record is presumed to be correct. A groundfish LLP license holder has the burden to prove otherwise.

(C) Only legal landings as defined in § 679.2 and documented on NMFS production reports will be used to determine legal mothership trip targets under paragraph (k)(15)(ii)(B) of this section.

(v) *Process for issuing BSAI Pacific cod trawl mothership endorsements.* (A) NMFS will issue to the holder of each groundfish LLP license with Bering Sea or Aleutian Islands area and catcher/processor operation endorsements, and specified in Column A of Table 57 of this part, a notice of eligibility to receive a BSAI Pacific cod trawl mothership endorsement and a revised groundfish LLP license with a BSAI Pacific cod trawl mothership endorsement.

(B) NMFS will issue to the holder of a groundfish LLP license with Bering Sea or Aleutian Islands area and catcher/processor operation endorsements, and that is not listed in Table 57 of this part, a notice informing that holder that the groundfish LLP license is not eligible to be credited with at least one legal mothership trip target of Pacific cod in the BSAI non-CDQ Pacific cod trawl catcher vessel fishery for each year during the qualifying period or receive a BSAI Pacific cod trawl mothership endorsement based on the official record, using the address on record at the time the notice is sent. The notice specified in this paragraph (k)(15)(v)(B) will inform the holder of the groundfish LLP license of the timing and process through which the holder can provide additional information or evidence to amend or challenge the information in the official record of this section, as specified in paragraphs (k)(15)(v)(C) and (D) of this section.

(C) The Regional Administrator will specify by notice a 30-day evidentiary period during which an applicant may provide additional information or evidence to amend or challenge the information in the official record. A person will be limited to one

30-day evidentiary period. Additional information or evidence received after the 30-day evidentiary period specified in the letter has expired will not be considered for purposes of the initial administrative determination (IAD).

(D) The Regional Administrator will prepare and send an IAD to the applicant following the expiration of the 30-day evidentiary period, if the Regional Administrator determines that the information or evidence provided by the person fails to support the person's claims and is insufficient to rebut the presumption that the official record is correct, or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of his or her 30-day evidentiary period. The IAD will indicate the deficiencies with the information or evidence submitted. The IAD will also indicate which claims cannot be approved based on the available information or evidence. A person who receives an IAD may appeal pursuant to 15 CFR part 906. NMFS will issue a non-transferable interim license that is effective until final agency action on the IAD to an applicant who avails himself or herself of the opportunity to appeal an IAD and who has a credible claim to eligibility for a BSAI Pacific cod trawl mothership endorsement.

\* \* \* \* \*

3. In § 679.7, add paragraphs (i)(12) and (o)(3)(v) to read as follows:

**§ 679.7 Prohibitions.**

\* \* \* \* \*

(i) \* \* \*

(12) *Prohibitions specific to directed fishing in the BSAI non-CDQ Pacific cod*

*trawl catcher vessel fishery as specified at § 679.20(a)(7)(ii)(A).* Use a catcher/processor to receive and process Pacific cod harvested and delivered by a catcher vessel directed fishing in the BSAI non-CDQ Pacific cod trawl catcher vessel fishery without a legible copy on board of a valid groundfish LLP license with Bering Sea or Aleutian Islands area, catcher/processor operation, and BSAI Pacific cod trawl mothership endorsements.

\* \* \* \* \*

(o) \* \* \*

(3) \* \* \*

(v) Use an Amendment 80 catcher/processor, as defined at § 679.2, to receive and process Pacific cod harvested by vessels directed fishing for Pacific cod in the BSAI or GOA, if that catcher/processor is not designated on:

(A) An Amendment 80 QS permit and an Amendment 80 LLP license; or

(B) An Amendment 80 LLP/QS license.

\* \* \* \* \*

4. Add Table 57 to part 679 to read as follows:

**Table 57 to Part 679—Groundfish LLP Licenses with Bering Sea or Aleutian Islands Area and Catcher/Processor Operation Endorsements Eligible for a BSAI Pacific Cod Trawl Mothership Endorsement**

[X indicates that Column A applies]

Column A	Column B
The Holder of Groundfish License Number . . .	Is eligible under 50 CFR 679.4(k)(15)(ii) to be assigned a BSAI Pacific Cod Trawl Mothership Endorsement.
LLG 5009	X

LLG 4692	X
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