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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 200911-0241]

RIN 0648 BJ59

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

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulatory amendments that would modify Federal permit conditions and impose participation requirements for certain Federally-permitted vessels when fishing for Pacific cod in state waters adjacent to the exclusive economic zone of the Bering Sea and Aleutian Islands during the State of Alaska's parallel Pacific cod fishery. This action is necessary to enhance Federal conservation, management, and catch accounting measures previously adopted by the North Pacific Fishery Management Council (Council) regarding license limitation, sector allocations, and catch reporting. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, and other applicable law.

DATES: Submit comments on or before [insert date 30 days after date of publication in the **FEDERAL REGISTER**].

ADDRESSES: You may submit comments, identified by FDMS Docket Number NOAA-NMFS-2020-0081, by any of the following methods:

- *Federal eRulemaking Portal.* Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0081, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: James Bruschi. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

Instructions: NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous).

Electronic copies of the Categorical Exclusion and the Regulatory Impact Review (RIR) prepared for this action (collectively referred to as the “Analysis”) are available from <http://www.regulations.gov> or from the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Kurt Iverson, 907-586-7210.

SUPPLEMENTARY INFORMATION:

Authority for Action

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

Background

NMFS proposes regulatory amendments that would modify Federal permit conditions and impose participation requirements for certain Federally-permitted vessels when fishing for Pacific cod in state waters adjacent to the EEZ of the Bering Sea and Aleutian Islands (BSAI) during the State of Alaska's Pacific cod fishery that runs concurrent with the Federal Pacific cod fishery, commonly known as the Pacific cod parallel fishery. Specifically, this proposed rule would prohibit (1) a hook-and-line, pot, or trawl gear vessel named on an Federal Fisheries Permit (FFP) or License Limitation Program (LLP) license from being used to catch and retain BSAI Pacific cod in State of Alaska (State) waters adjacent to the BSAI during the State's parallel Pacific cod fishery unless the vessel is named on an FFP and LLP license that have the required endorsements; (2) a hook-and-line, pot, or trawl gear vessel named on an FFP or LLP license from catching and retaining BSAI Pacific cod in state waters adjacent to the BSAI EEZ during the State's parallel fishery when NMFS has closed the EEZ to directed fishing for Pacific cod by the sector to which the vessel belongs; (3) the holder of an FFP with certain endorsements from modifying those endorsements during the effective period of the FFP; and (4) the

reissuance of a surrendered FFP with certain endorsements for the remainder of the three-year term, or cycle, of FFPs.

Each year, NMFS establishes a Total Allowable Catch (TAC) limit and allocations to specific fishery sectors for Pacific cod in the BSAI. Catch of Pacific cod in Federal waters (that is, in the EEZ), as well as in the waters of the State of Alaska (state waters) under specific regulations adopted by the State, is deducted from this TAC limit and the fishery sector allocations. Note that throughout this preamble, “state waters” refers to the maritime waters from 0 to 3 nautical miles off Alaska, and “EEZ” and “Federal waters” are used interchangeably, and refer to the maritime waters from 3 to 200 nautical miles off Alaska. In addition, “parallel fisheries” in this preamble refers to the state waters Pacific cod parallel fisheries in the State of Alaska Bering Sea-Aleutian Islands Area, presently that is in the Dutch Harbor Subdistrict of the Bering Sea and within the Aleutian Islands Subdistrict of the Aleutian Islands, respectively.

During the Federal Pacific cod TAC fisheries, the State of Alaska creates parallel Pacific cod fisheries by generally adopting NMFS management actions in state waters. The State has management authority for groundfish resources within state waters, and the Commissioner of the Alaska Department of Fish and Game (ADF&G) opens parallel fisheries through emergency order under the Parallel Groundfish Fishery Emergency Order Authority at 5 AAC 28.086. These emergency orders establish parallel fisheries that allow vessels to fish for groundfish, including Pacific cod, within state waters during the concurrent Federal seasons. In addition, the Commissioner is authorized to open or close the fisheries under emergency order to adapt to unanticipated openings or closures of the Federal fisheries. Because the State’s parallel Pacific cod fisheries closely follow the Federal Pacific cod fishery, NMFS deducts all catch of Pacific cod caught in Federal waters and in state waters during the parallel fisheries from the Federal

Pacific cod TAC and the fishery sector allocations. This allows a vessel to fish seamlessly between Federal and state waters, provided the vessel meets participation requirements. There are no limits on the proportion of the Pacific cod TAC that may be harvested in state waters.

This action would require trawl, hook-and-line, and pot gear vessels that have Federal Fishing Permits (FFPs) or License Limitation Program (LLP) licenses and that fish in the BSAI state waters Pacific cod parallel fisheries to have a properly endorsed FFP and LLP license and to adhere to BSAI Pacific cod fishery sector closures in Federal waters when fishing in the State's parallel Pacific cod fishery. The following sections describe the Federal BSAI Pacific cod fishery, the BSAI state waters Pacific cod fisheries, the need for this action, and the proposed rule and its effects.

BSAI Federal Waters Pacific Cod Fishery

Management of the Federal BSAI Pacific cod fishery

Pacific cod (*Gadus macrocephalus*) is one of the most abundant and valuable groundfish species harvested in the BSAI. Vessels harvest Pacific cod using trawl and non-trawl gear. Non-trawl gear includes hook-and-line, jig, and pot gear. Vessels harvesting BSAI Pacific cod operate as catcher vessels (CVs) that harvest and deliver the fish for processing, or as catcher processors (C/Ps) that harvest and process the catch on board.

The FMP and its implementing regulations at § 679.20(c) establish a process where NMFS, after consultation with the Council, annually specifies an overfishing level (OFL), an acceptable biological catch (ABC), and a TAC for each target species or species group of groundfish, including Pacific cod. The OFL is the level above which overfishing is occurring for a species or species group. The ABC is the level of a species' or species group's annual catch that accounts for the scientific uncertainty in the estimate of OFL, and any other scientific

uncertainty. Under the FMP, the ABC is set below the OFL. The TAC is the annual catch target for a species or species group, derived from the ABC by considering social and economic factors and management uncertainty. Under the FMP, the TAC must be set lower than or equal to the ABC.

In the case of Pacific cod, separate OFLs, ABCs, and TACs are established for the Bering Sea subarea and the Aleutian Islands subarea. The TACs for the Bering Sea and Aleutian Islands subareas are set after deducting from the ABCs any harvest allocations for guideline harvest level (GHL) fisheries managed by the State and occurring only within state waters. A detailed description of the annual harvest specification process for BSAI Pacific cod is provided in the final 2020 harvest specifications for groundfish of the BSAI (83 FR 13553, March 9, 2020) and in section 2.7.1 of the Analysis. A more detailed description of the State GHL fisheries is found in this preamble below.

Once the Bering Sea and Aleutian Islands TACs are established, regulations at § 679.20(a)(7)(i) allocate 10.7 percent of the Bering Sea Pacific cod TAC and 10.7 percent of the Aleutian Islands Pacific cod TAC to the Community Development Quota (CDQ) Program for the exclusive harvest by Western Alaska CDQ groups. Section 305(i) of the Magnuson-Stevens Act specifies the methods for allocating these harvest privileges. Once allocated, CDQ groups must ensure that they do not exceed their allocations.

The portion that remains after subtraction of the CDQ allocation from each TAC is the initial TAC, or ITAC, for the Bering Sea and Aleutian Islands. NMFS combines the Bering Sea ITAC and the Aleutian Islands ITAC into one, BSAI non-CDQ Pacific cod TAC. This combined BSAI non-CDQ Pacific cod TAC is then allocated among, and available for harvest by, nine non-CDQ fishery sectors. Regulations at § 679.20(a)(7)(ii)(A) define the nine non-CDQ

fishery sectors and specify the percentage of the BSAI non-CDQ Pacific cod TAC allocated to each. The non-CDQ fishery sectors are defined by a combination of gear type (e.g., trawl, hook-and-line), operation type (i.e., catcher vessel or catcher/processor), and vessel size categories (e.g., vessels greater than or equal to 60 feet (ft) in length overall or less than 60 ft in length overall). Through the annual harvest specifications process, NMFS allocates an amount of the BSAI non-CDQ Pacific cod TAC to each of these nine non-CDQ fishery sectors. The nine non-CDQ fishery sectors and the percentage of the BSAI non-CDQ Pacific cod TAC allocated to each sector are shown in Table 1 below.

Table 1. Allocations of the BSAI non-CDQ Pacific cod TAC to the non-CDQ Fishery Sectors.

Non-CDQ Fishery Sector	Percentage allocation of the BSAI non-CDQ TAC
Hook-and-line catcher vessels greater than or equal to 60 ft length overall (LOA)	0.2
Jig gear	1.4
Pot catcher/processors	1.5
Hook-and-line and pot catcher vessels less than 60 ft LOA	2.0
American Fisheries Act (AFA) trawl catcher/processors	2.3
Pot catcher vessels greater than or equal to 60 ft LOA	8.4
Non-AFA trawl catcher/processors (Amendment 80 C/Ps)	13.4
Trawl catcher vessels	22.1
Hook-and-line catcher processors	48.7

NMFS manages each of the fishery sectors in Table 1 to ensure harvest of Pacific cod does not exceed the sector’s annual allocation. NMFS monitors harvests that occur by vessels being used to conduct directed fishing for Pacific cod (that is, participants are specifically targeting and retaining Pacific cod above specific threshold levels) and harvests that occur by vessels being used to conduct directed fishing for other species and incidentally catching Pacific cod (e.g., the incidental catch of Pacific cod in the directed pollock fishery). Section 679.2 provides the regulatory definition of “directed fishing.” For the non-AFA trawl

catcher/processor sector, also known as the Amendment 80 sector, NMFS allocates exclusive harvest privileges to participants within that sector that cannot be exceeded. For the other non-CDQ fishery sectors, NMFS carefully tracks both directed and incidental catch of Pacific cod. An allocation to a non-CDQ fishery sector may be harvested in either the Bering Sea or the Aleutian Islands, subject to the Pacific cod ITAC specified for the Bering Sea or the Aleutian Islands. NMFS takes appropriate management measures, such as closing directed fishing for a fishery sector, to ensure that total directed fishing and incidental fishing harvests do not exceed that sector's allocation. Section 2.7 of the Analysis describes NMFS' management of the non-CDQ fishery sectors.

Allocations of Pacific cod to the CDQ Program and to the non-CDQ fishery sectors are further apportioned by season dates established at § 679.23(e)(5). In general, regulations apportion CDQ and non-CDQ fishery sector allocations among three seasons that correspond to the early (A-season), middle (B-season), and late (C-season) portions of the year. The specific season dates established for the CDQ Program and each of the non-CDQ fishery sectors are provided in the final 2020 and 2021 harvest specifications for groundfish of the BSAI (83 FR 13553, March 9, 2020). Depending on the specific CDQ Program or non-CDQ fishery sector allocation, between 40 percent and 70 percent of the Pacific cod allocations are apportioned to the A-season, historically the most lucrative fishing season due to the presence of valuable roe in the fish and the good quality of the flesh during that time of year.

The allocation of Pacific cod among the CDQ Program and the nine non-CDQ fishery sectors, as well as the seasonal apportionment of those allocations, create a large number of distinct sector and season allocations. To help ensure the efficient management of these allocations, regulations allow NMFS to reallocate (rollover) any unused portion of a seasonal

apportionment from any non-CDQ fishery sector (except the jig sector) to that sector's next season during the current fishing year, unless the Regional Administrator determines a non-CDQ fishery sector will not be able to harvest its allocation (see § 679.20(a)(7)(iv)(B)).

Permits and Licenses

To monitor compliance with harvest catch limits, prohibited species (non-retained) catch limits, and sideboard regulations that limit participation in other fisheries, NMFS requires various permits that authorize or restrict access to the groundfish fisheries in the Federal waters of the BSAI. The two most relevant permits for this proposed action are Federal Fisheries Permits (FFP) and License Limitation Program (LLP) licenses.

1. Federal Fisheries Permit

All vessels that retain BSAI Pacific cod in the EEZ are required to have an FFP on board the vessel at all times (§ 679.4(b)(1)). An FFP authorizes a vessel owner to deploy a vessel to conduct fishing operations in the EEZ of the BSAI in accordance with the endorsements on the FFP. An FFP includes many endorsements, such as type of gear (e.g. pot, hook-and-line, and trawl), vessel operation category (catcher vessel, catcher/processor, mothership, tender vessel, or support vessel), and regulatory area of operation (e.g., BSAI) in which a permitted vessel is eligible to fish. In some fisheries, a species endorsement is also required. For example, the owners and operators of harvesting vessels that participate in the directed BSAI Pacific cod fisheries, except vessels using jig gear, are required to have an FFP endorsement for Pacific cod, along with endorsements for the gear type used to fish for Pacific cod, the vessel operation type, and the regulatory area(s) in which the fishery is prosecuted. All CDQ vessels and all vessels in the non-jig sectors listed in Table 1 are required to have an FFP onboard that is endorsed for Pacific cod. A vessel may not be operated in a category other than what is specified on the FFP.

The operators of harvesting vessels that possess an FFP are required to comply with NMFS observer coverage requirements (§ 679.50(a)). In addition, FFP holders participating in a pollock, Atka mackerel, or Pacific cod fishery in the BSAI are required to have on board the vessel a transmitting vessel monitoring system (VMS), as described at § 679.28(f)(6). A VMS consists of a NMFS-approved transmitter that automatically determines a vessel's position and transmits that information to NMFS. While Pacific cod directed fisheries are open, all harvesting vessels with an FFP endorsed with a hook-and-line, pot, or trawl Pacific cod endorsement are required to have an operational VMS, regardless of where the vessel is fishing at the time or what the vessel is targeting, as described at § 679.28(f)(6). Thus, a VMS is required of all vessels with an FFP endorsed for Pacific cod hook-and-line, pot, or trawl gear while fishing in state waters (0 to 3 nm) adjacent to the BSAI. However, because these Federal requirements apply as a condition of being issued an FFP, operators of vessels that have not been issued an FFP and that fish exclusively in state waters are not required to possess an FFP or have an FFP on board the vessel, and the operator of such a vessel is not subject to Federal observer, VMS, or recordkeeping and reporting requirements unless specified by the State.

FFPs are valid for three years and, unless revoked, suspended, or surrendered, are in effect from the date of issuance through the end of the three-year cycle. The current cycle of FFPs issued for vessels that operate in Alaska waters is January 1, 2018, through December 31, 2020. A vessel operator with an FFP can surrender the permit at any time and have NMFS reissue the FFP any number of times within the three-year cycle.

While any vessel owner can apply for an FFP with any combination of vessel operation, area, gear, or species endorsements, an FFP, by itself, does not necessarily authorize the FFP holder or the vessel named on the FFP to participate in the Federal Pacific cod fisheries. Most of

the vessels that are used to participate in the Federal Pacific cod fisheries in the BSAI are also required to have a groundfish LLP license.

2. License Limitation Program (LLP) license

A groundfish LLP license authorizes a vessel to be used in a directed fishery for groundfish in the BSAI in accordance with the specific area and species endorsements, the vessel and gear designations, the maximum length overall (MLOA) specified on the license, and any exemption from the MLOA specified on the license. Most vessel operators fishing for groundfish in the BSAI must have an LLP license on board at all times when the vessel is engaged in fishing activities (§ 679.4(k)). LLP licenses are issued by NMFS to qualified persons. Exemptions to the LLP license requirement in the BSAI are listed at § 679.4(k)(2), including an exemption for any vessel that does not exceed 32 feet length overall (LOA), and an exemption for jig vessels less than or equal to 60 feet (18.3 m) LOA that use a maximum of 5 jig machines, one line per jig machine, and a maximum of 15 hooks per line.

In order to participate in the BSAI Pacific cod fisheries, several endorsements are required to be specified on an LLP license, such as vessel operation type, area, gear designation, and maximum length overall (MLOA). The endorsements for operation type on LLP licenses are either catcher vessel or catcher/processor. A catcher vessel endorsement allows a vessel to harvest but not process fish on board. A catcher/processor endorsement allows both harvesting and onboard processing, and also allows a vessel to deliver the catch to a separate processor. Area endorsements on BSAI groundfish LLP licenses authorize a vessel to fish in either the Bering Sea, the Aleutian Islands, or both areas. Gear endorsements for BSAI groundfish LLP licenses are either for trawl, non-trawl, or both gear types. For groundfish vessels with non-trawl endorsed licenses, NMFS implemented regulations in 2002 that require a Pacific cod

endorsement for hook-and-line and pot gear LLP licenses on catcher/processor vessels and catcher vessels that are 60 feet LOA or greater and that are used to participate in the BSAI Pacific cod fisheries (67 FR 18130, April 15, 2002). Catcher vessels less than 60 feet are exempt from the required Pacific cod endorsement on their LLP license.

Groundfish LLP licenses also identify whether the license is associated with the Amendment 80, American Fisheries Act, or Gulf of Alaska Rockfish license limitation programs. BSAI groundfish LLP licenses further specify whether the license is restricted by regulatory sideboards from being used in other fisheries.

Unlike the FFP, the endorsements on an LLP license are not generally severable from the license. An LLP license, with its associated endorsements, can be reassigned to a different vessel only once per year. In general, a vessel is authorized to only use gear consistent with the gear designation on the LLP license. Like FFPs, because these Federal requirements apply as a condition of holding an LLP license, operators of vessels that have not been issued an LLP license and that fish exclusively in state waters fisheries are not required to comply with Federal requirements for LLP licenses.

BSAI State Waters Pacific Cod Fisheries

The Bering Sea ABC and the Aleutian Islands ABC are apportioned between the State's GHL Pacific cod fisheries and the Federal fisheries, which includes catch of Pacific cod in the State's parallel Pacific cod fisheries. In the state waters adjacent to the BSAI EEZ, the State manages two parallel Pacific cod fisheries and three GHL fisheries under Alaska statutes and regulations developed by the Alaska Board of Fisheries. Two of the GHL fisheries are held in the Alaska Department of Fish and Game (ADF&G) Dutch Harbor Subdistrict of the Bering Sea; the third is within the Aleutian Islands Subdistrict of the Aleutian Islands.

Parallel Pacific Cod Fisheries

During the Federal BSAI Pacific cod fisheries in the EEZ, the State creates concurrent, or parallel, Pacific cod fisheries in state waters by generally adopting NMFS management actions for state waters. The initial Federal BSAI Pacific cod season (“A-Season”) opens January 1 for vessels using hook-and-line, pot, and jig gear, and January 20 for vessels using trawl gear. Unless specifically prohibited by State regulation, (e.g., nonpelagic trawl gear is prohibited in state waters by 5 AAC 39.164 (4)), the State authorizes the same gear types, seasons, and bycatch limits that apply in the adjacent Federal BSAI Pacific cod season during a parallel fishery. During a State parallel Pacific cod fishery in state waters adjacent to the BSAI, vessels using longline gear may not exceed 58 feet in overall length (OAL) (5 AAC 28.690(c)). Except for vessels using mechanical jigging machines, State regulations require all vessels that participate in a parallel Pacific cod fishery to have an activated vessel monitoring system (VMS) (5 AAC 28.087(c)).

Although the State adopts many of the management measures applicable to vessels participating in the Federal BSAI Pacific cod fisheries in the EEZ, the State does not require vessels that participate in the State’s parallel Pacific cod fisheries to possess an FFP or an LLP license. Effective as of January 1, 2012, NMFS implemented regulations at § 679.7 that prohibit Federally-permitted catcher/processor pot and catcher/processor hook-and-line vessels from being used to catch and retain Pacific cod in state waters during the State’s parallel fisheries unless the vessel is designated on an FFP and an LLP license that have the required endorsements (76 FR 73513, November 29, 2011). Additionally, regulations at § 679.7 require Federal permit holders who operate vessels in these two catcher/processor sectors to adhere to the Federal BSAI Pacific cod opening and closing periods when they participate in the State’s

parallel fisheries. At this time, vessels in other non-CDQ fishery sectors may participate in the State's Pacific cod parallel fisheries without having an FFP, an LLP license, and endorsements necessary to participate in the Federal fishery.

As mentioned above, Pacific cod harvested during the State's parallel fishery accrue toward the Federal Pacific cod TAC. The State closes its parallel Pacific cod fishery by gear sector when NMFS determines the TAC for Federal fishery sectors using that gear type has been reached or when incidental species allowances are met.

Section 2.7 of the Analysis provides specific details on the number of vessels that have participated in the State's BSAI Pacific cod parallel fisheries, by vessel sector, over the 2010-2019 period. For all sectors combined, the total number of participating vessels in the BSAI Pacific cod parallel fisheries has ranged from 13 to 39 vessels per year. The proportion of Pacific cod that these vessels have caught in state waters during the concurrent BSAI Federal waters Pacific cod fishery and State parallel fisheries over that period has ranged from 2 percent to 5 percent those sectors' BSAI Pacific cod catch.

Between 1 and 11 jig vessels have participated annually in the State's Pacific cod parallel fisheries over the 2010 – 2018 period. Among all of the nine non-CDQ fishery sectors, jig vessels appear to be the most dependent on Pacific cod harvested in state waters during the concurrent Federal fishery and Pacific cod parallel fisheries; however, to protect confidential information, all but three years of the harvest data for jig vessels cannot be published in the analysis. It was the Council's intent that all jig vessels currently and historically fishing in Federal or state waters during the parallel fishery would not be subject to the provisions of this proposed rule. As mentioned previously, jig vessels less than 60 feet (18.3) LOA are exempt from LLP license requirements in the BSAI.

The hook-and-line and pot catcher vessels less than 60 ft (HAL/pot < 60) sector was the next most dependent on the State's Pacific cod parallel fisheries. On an annual basis from 2010 through 2018, between 9 and 18 vessels from this sector recorded landings in the parallel fisheries, with harvests that ranged from 18 percent to 43 percent of the sector's total annual Pacific cod catch from the Federal and State parallel fisheries. Trawl catcher vessels were the next most numerous participants in the State's parallel fisheries, with annual vessel participation that ranged from 3 to 15 vessels. The proportion of the Pacific cod trawl catcher vessel harvest taken from the parallel fisheries appears to be small, however, ranging from less than 1 percent to 4 percent of this sector's overall targeted Federal and State parallel Pacific cod harvest. The other fishery sectors potentially affected by this proposed rule include pot catcher vessels greater than or equal to 60 feet LOA, hook-and-line catcher vessels greater than 60 feet LOA, and Amendment 80 vessels. Each of these sectors has very limited participation in the State's parallel fisheries during the period analyzed. Additional details on participation and harvests can be found in Tables 2-6 and 2-7 of the analysis.

GHL Fisheries

State GHL fisheries for Pacific cod are also prosecuted in state waters, but occur when fishing by specific Pacific cod sectors in the Federal and parallel fisheries is closed. The State currently manages GHL fisheries in state waters adjacent to both the Bering Sea and Aleutian Islands subareas.

1. Dutch Harbor Subdistrict

The Alaska Board of Fisheries (BOF) established the Dutch Harbor Subdistrict state waters Pacific cod GHL fishery in 2013 (5 AAC 28.648). Vessels in the state waters Dutch

Harbor Subdistrict GHL fishery may not exceed 58 feet LOA unless modified by ADF&G after October 1. Pot and jig gear are the only legal gear types.

Current State regulations set the pot gear harvest at 8 to 15 percent of the Bering Sea Pacific cod ABC, with annual step-up increments of an additional 1 percent of the Bering Sea ABC if the GHL is harvested in the previous year. At present, the 2020 GHL allocation is 9 percent of the Bering Sea Pacific cod ABC. In 2018, the BOF also adopted regulations for a separate and additional allocation of 100,000 pounds of Pacific cod for the jig fishery in the Dutch Harbor Subdistrict. This allocation went into effect in 2019.

By State regulations, the GHL fishery for pot gear in the Dutch Harbor Subdistrict opens seven days after NMFS closes the initial BSAI Federal season to directed fishing for Pacific cod by hook-and-line and pot vessels less than 60 feet long. For vessels fishing jig gear, the State GHL fishery opens May 1. The GHL fisheries may re-open and close as needed to coordinate with Federal fishery openings.

2. Aleutian Islands Subdistrict

The State manages the Aleutian Islands Subdistrict GHL fishery (5 AAC 28.647) similar to the DHS fishery. Under current State regulations, the Aleutian Islands Subdistrict GHL is 31 percent of the Aleutian Islands ABC, with annual step-up provisions in 4 percent increments if the Aleutian Islands Subdistrict GHL is fully harvested the previous year, up to a maximum of 15 million pounds or 39 percent of the Aleutian Islands ABC, whichever is less. The annual percentage remains in place so long as the GHL is fully harvested (i.e., harvest is 90 percent or more of the GHL). If the GHL is not fully harvested during two consecutive years, the regulations include a 4 percent step-down provision. The minimum GHL in the AIS is set to be no less than 15 percent of the Aleutian Islands ABC.

Regulations limit the length overall of vessels that can participate in the GHL fisheries in the AIS. Pot vessels are restricted to a maximum of 125 feet; trawl vessels to a maximum of 100 feet; and longline and jig vessels to a maximum of 58 feet.

More information on Pacific cod harvests and participation in the GHL fisheries in the Dutch Harbor and Aleutian Islands Subdistricts can be found in Section 2.6 of the Analysis.

Need for this Action

This proposed rule would prohibit some Federally-permitted vessels from fishing for Pacific cod in the State of Alaska's parallel fishery. Under current regulations, Federal FFPs and LLP licenses are only required for fishing activity in the EEZ. As a result, some vessels without an FFP or LLP license, or other vessels that have an FFP and LLP license but the LLP license is not endorsed for Pacific cod fishing in the adjacent BSAI Federal waters, have participated in the State's parallel fisheries. Additionally, the State is legally constrained from allocating resources within a single fishery, and as a result does not recognize sector allocations based on operation types, such as catcher vessel versus catcher/processor designations. This circumstance has inadvertently allowed fishing in the State parallel fisheries by catcher vessels even when the Federal fishery sector for those vessels has fully achieved its Federal Pacific cod allocation. This has been most common among hook-and-line vessels. The Council determined, and NMFS agrees, that this fishing activity has negative effects on the Federal management regime for BSAI Pacific cod and must be curtailed to maintain the conservation and management benefits intended by the Council and implemented by NMFS.

For example, the Federal Pacific cod seasons for the hook-and-line catcher/processor sector typically remain open to directed fishing for much of the year, whereas the seasons for hook-and-line catcher vessel sectors, which fish under much smaller allocations, normally close

earlier in the year. Because the State does not recognize sector allocations based on operation types, the State parallel Pacific cod fishery remains open for much of the year, so long as the catcher/processor hook-and-line season is open. Therefore, when the catcher vessel hook-and-line allocation has been achieved, and NMFS closes that sector's season in Federal waters, some of those vessels have continued to fish for Pacific cod in state waters. When this has occurred, NMFS has been obligated to reallocate Pacific cod from other sectors to prevent overharvest of the area TAC. The Council determined that this complicates Federal conservation and management measures that are intended to hold sectors to their allocations. It also undermines the intent of previous Council decisions regarding license limitation, sector allocations, and catch reporting. The proposed regulations would address these issues.

When evaluating these issues, the Council also considered the terms under which FFPs are issued. Under current regulations, an FFP is issued in a three-year cycle, but within that period, a vessel operator can surrender the FFP at any time, then reapply for a reissuance of the permit any number of times within the three-year cycle. This would provide an opportunity for vessel operators to avoid the prohibitions proposed in this rule. Lengthening the amount of time that must pass between the period when a person surrenders an FFP and later reapplies for a new FFP would create a disincentive for vessel owners to circumvent Federal regulations by temporarily surrendering the FFP. Similar concerns apply to FFP amendments.

These proposed regulations are similar to regulations implemented by NMFS in 2011 as part of Amendment 83 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (76 FR 74670, December 1, 2011), and also similar to regulations that apply to pot and hook-and-line catcher/processors in the BSAI (76 FR 73513, November 29, 2011).

Description of the Proposed Rule and Effects

FFP Requirements and LLP license

This proposed rule would prohibit a trawl, hook-and-line, or pot gear vessel that is named on an FFP or LLP license to catch and retain BSAI Pacific cod in state waters during the State's parallel Pacific cod fishery unless the vessel is named on an FFP and LLP license that have the required endorsements. In addition, the proposed rule would prohibit a Federally-permitted hook-and-line, pot, or trawl gear vessel from catching and retaining BSAI Pacific cod in state waters during the State's parallel fishery when NMFS has closed the EEZ to directed fishing for Pacific cod by the sector to which the vessel belongs. Through this permit condition, Federally-permitted vessels would be required to adhere to Federal seasonal Pacific cod closures and other management measures for their fishery sector when participating in the State's parallel fisheries.

Additionally, the proposed regulations would limit the number of times in which a vessel owner may relinquish an FFP and then reapply for a new FFP. Specifically, if an FFP is issued to a pot or hook-and-line catcher vessel with a Bering Sea or Aleutian Islands Pacific cod endorsement, or to a trawl vessel with a Bering Sea or Aleutian Islands endorsement, and if the FFP for the vessel is surrendered, then the vessel will not be eligible to receive a new FFP until after the expiration date of the surrendered FFP.

As noted above, the Council intended the regulatory amendments included in this proposed rule to expand upon rules already in place for BSAI catcher/processor vessels that fish for Pacific cod with pot or hook-and-line gear. Federal regulations currently require these two catcher/processor sectors to have an FFP and LLP license with correct Federal Pacific cod endorsements in order to fish in the parallel fisheries (76 FR 73513, November 29, 2011). These two Pacific cod catcher/processor sectors are also subject to the FFP relinquish and reapply rules mentioned above.

The Council did not intend, and NMFS does not propose, to modify regulatory requirements for vessels using jig gear in the BSAI under this proposed rule. Additionally, this proposed rule does not limit participation in the state waters GHL fisheries.

Section 2.7.6 of the Analysis provides details on the number and type of vessels that would potentially be affected by the regulations proposed in this rule. Over the 2010 to 2019 period, 138 vessels participated in the BSAI Pacific cod parallel fisheries. Among this group, 30 vessels are expected to be directly impacted by this proposed rule and might choose to adjust their permit and license holdings. Twenty-six of these vessels are hook-and-line/pot catcher vessels < 60 ft., three are pot catcher vessels \geq 60 ft., and one is a trawl catcher vessel.

The Analysis indicates that 5 of the 30 vessels are potentially affected because they have participated in the State's parallel fisheries and they each have an LLP license that is valid for their sector in BSAI Federal waters, but they do not have an FFP. If they do not acquire an FFP they could continue to participate only in the parallel fishery as a state vessel, and not in Federal waters. However, if these vessels obtain an FFP they would be permitted to fish seamlessly in both Federal and state waters during the concurrent Federal waters and Pacific cod parallel fisheries. NMFS issues FFPs free of charge; however, among other things, the FFP stipulates the use of fishery observers and observer fee obligations, along with some recordkeeping requirements. To these vessels, the added flexibility and potential gains in revenue associated with an FFP are expected to outweigh the costs.

The remaining affected vessels have FFPs, but they either: 1) do not have an LLP license assigned to them; or, 2) have an LLP license but the LLP license does not have the correct endorsements; or, 3) they have an LLP license with the correct endorsements but they have a history of Pacific cod fishing in the State's parallel fishery when their sector is closed to Pacific

cod fishing in the adjacent Federal waters. The Analysis indicates there are 8 vessels in the first group (assigned to an FFP but no LLP license). Each of these vessels has a history of participation in the halibut IFQ fishery, as well as participation in the BSAI Pacific cod parallel fishery during the 2010-2019 period. The Analysis indicates that for these vessels, Pacific cod is retained as an incidental species during the targeted halibut and/or sablefish fisheries. Under this proposed rule, these 8 vessels would need to acquire a properly endorsed LLP license in order to continue to retain Pacific cod in the parallel fisheries. The remaining vessels in the groups described above are assigned to FFPs and LLPs, and have fished for Pacific cod in state waters during the parallel fisheries at times when they were prohibited from Pacific cod fishing in Federal waters. Fifteen of these vessels are hook-and-line catcher vessels < 60 ft., and have a history of fishing in the parallel fisheries in the scenario described previously: when their catcher vessel sector was closed in Federal waters, they continued to fish in the parallel fishery because the catcher/processor hook-and-line sector remained open. Under this proposed rule, these catcher vessels could continue to fish for Pacific cod in the parallel fishery, but they would be required to adhere to the seasonal closures and other management measures that apply to their LLP sector in Federal waters.

Amending, Surrendering, and Reissuing an FFP

The regulations proposed in this rule would also prohibit amendment of an FFP during its effective period and would create a disincentive for a vessel operator to surrender, or relinquish, the FFP during its effective period. Under current regulations, an FFP holder could avoid Federal FFP and LLP license, vessel observer, and catch reporting requirements by amending or surrendering the FFP to fish in the Pacific cod parallel fishery, and then requesting that NMFS amend or reissue the FFP so that the vessel can be used to resume fishing in the EEZ. Amending

or surrendering an FFP may degrade the quality of information available to NMFS to manage the Pacific cod fishery and provide an opportunity to undermine the intent of this proposed rule. As noted above, FFPs are currently issued on a three-year cycle; however, a vessel operator with an FFP can amend or surrender the permit at any time and have the FFP reissued any number of times within the three-year cycle. Prohibiting amendment of an issued FFP during the three-year cycle and lengthening the amount of time that must pass before a person can reapply for a surrendered FFP would make it more difficult for FFP holders to circumvent the proposed regulations by temporarily amending or surrendering the FFP. These proposed provisions for FFPs would address situations where a vessel owner could choose to amend or surrender the FFP before fishing in the State parallel or GHF fisheries to avoid NMFS observer or recordkeeping and reporting requirements, and then seek to amend or reissue the FFP for the opening of the Federal waters fishery.

Proposed Regulations

This proposed rule would amend paragraphs (b)(3)(ii)(B) and (b)(3)(iii)(B) in 50 CFR 679.4 by expanding the scope of the applicable FFP vessel operation types to include both catcher/processors and catcher vessels. The proposed revisions would also specify that the applicable FFP gear types include trawl, pot, and hook-and-line gears. Note this proposed rule explicitly excludes vessels using jig gear from the suggested regulatory actions.

This proposed rule would also amend paragraphs (c)(3) and (4) in 50 CFR 679.7 to expand the scope vessels that would be prohibited from participating in the BSAI parallel fisheries without properly endorsed LLP licenses. The current regulations that restrict fishing in the Pacific cod parallel fisheries apply only to catcher/processor vessels fishing pot or hook-and-line gear in the parallel waters of the BSAI. The proposed action would change these regulations

to identify both catcher/processor and catcher vessel operation types, and to include vessels using trawl, pot, and hook-and-line gear types in the regulations.

Modifying the regulations currently at § 679.7(c)(4)(i) to include trawl, pot, and hook-and-line gear types would provide an opportunity to simplify the regulations by deleting paragraph (c)(4)(ii) in § 679.7.

Finally, this proposed rule would amend paragraph (b)(3)(i) in 50 CFR 679.4 to specifically reference the three-year cycle NMFS uses for issuance of FFPs. Regulations at § 679.4(b) govern issuance of FFPs, and for many years specifically referenced the three-year cycle followed by NMFS for issuing FFPs. NMFS proposed to maintain the three-year cycle when it published a proposed rule to modify recordkeeping and reporting regulations in 2007 (72 FR 35747; June 29, 2007). However, the specific reference to the three-year cycle was inadvertently omitted in the supplemental proposed rule (73 FR 55368; September 24, 2008) and not included in the final rule (73 FR 76136; December 15, 2008). NMFS has continued to use a three-year cycle for issuing FFPs and this proposed rule would reinsert the specific reference to this cycle.

Classification

Pursuant to Section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the BSAI FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration of comments received during the public comment period.

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

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

Regulatory Impact Review (RIR)

An RIR was prepared to assess the costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see ADDRESSES). NMFS is recommending the action alternative over the status quo, and is recommending the regulatory revisions in this proposed rule based on those measures that maximized net benefits to the Nation. Specific aspects of the economic analysis are discussed below in the Initial Regulatory Flexibility Analysis section.

Initial Regulatory Flexibility Analysis (IRFA)

This Initial Regulatory Flexibility Analysis (IRFA) was prepared for this action, as required by Section 603 of the Regulatory Flexibility Act (RFA) to describe the economic impact this proposed rule, if adopted, would have on small entities. This IRFA describes the action; the reasons why this action is proposed; the objectives and legal basis for this proposed rule; the number and description of directly regulated small entities to which this proposed rule would apply; the recordkeeping, reporting, and other compliance requirements of this proposed rule; and the relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule. This IRFA also describes significant alternatives to this proposed rule that would accomplish the stated objectives of the Magnuson-Stevens Act, and any other applicable statutes, and that would minimize any significant economic impact of this proposed rule on small entities. The description of the proposed action, its purpose, and the legal basis are explained in the preamble and in the Analysis and are not repeated here.

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.

This proposed rule would directly regulate individuals and entities that participate, or would seek to participate, in the BSAI Pacific cod parallel fisheries with vessels using trawl, hook-and-line, and pot gear. As noted above, 192 vessels have a history of participation in the Pacific cod parallel fisheries over the 2010 through 2019 period. Based upon the estimated ex-vessel earnings of these vessels, the Analysis indicates 71 vessels are considered small entities. Of the 30 vessels that would be directly impacted by the proposed regulations in this rule, 29 are considered small entities, based on SBA criteria.

The proposed rule, which would prohibit certain Federally-permitted vessels from catching and retaining Pacific cod in the parallel fishery unless the vessel has the required permits, licenses, and endorsements, is intended to reflect the intent of previous recommendations by the Council regarding license limitation, vessel sector allocations of Pacific cod, and catch reporting. Additionally, the proposed rule is expected to enhance the conservation and management of the fisheries by holding vessel sectors to their allocations and to promote the goals and objectives of the BSAI FMP for the Federal Pacific cod fishery. In 2011, NMFS implemented provisions similar to this proposed rule as part of Amendment 83 to the Fishery Management Plan for Groundfish of the Gulf of Alaska. Similarly, these proposed regulations for the BSAI would add hook-and-line catcher vessels, pot catcher vessels, and trawl

gear vessels to existing BSAI Pacific cod fishing regulations, which currently regulate catcher processor hook-and-line and pot gear vessels in a similar fashion as the suggested regulations in this proposed rule.

The majority of the 30 vessel owners who would be directly impacted by this proposed rule currently have LLP licenses that would allow them to participate in the parallel fisheries under this proposed rule. Five of the 30 vessels currently do not have FFPs, which prevents them from fishing in Federal waters. Under the proposed rule, these vessels could continue to fish as they do now, solely in state waters. However, if the vessel owners choose to obtain an FFP, their vessels would have the flexibility to fish in both state and Federal waters during the directed Federal Pacific cod fishery for their sector. Also among the 30 directly impacted vessels, 15 other vessels are currently associated with FFPs and are linked to LLP licenses that would allow them to continue to fish for Pacific cod in both Federal and state waters during the concurrent Federal and parallel fisheries; however, in previous years, an incremental portion of their participation has occurred in the parallel fishery when their sector was closed to fishing in Federal waters. Under this proposed rule, these vessels would no longer be able to circumvent seasonal closures for their sector by participating in the parallel fishery after their Federal sector has been closed. This would ensure that their Pacific cod harvests would be attributed to the appropriate sector, as designated on their LLP license.

Vessel owners most likely to be impacted by this proposed rule are those whose vessels have an FFP and participate in the parallel fishery, but who do not have the appropriate LLP license to fish for Pacific cod in the BSAI Federal waters. These vessels could either exit the parallel fishery and therefore the BSAI Pacific cod fishery entirely, or they could forfeit their FFP (and therefore fish solely in state waters, but also forfeit Federal fishing opportunities

associated with their FFP), or they could obtain a valid LLP license that would allow them the flexibility to participate in both the Federal and parallel Pacific cod fisheries. Because LLP licenses are a transferable and marketable asset, the owners' decisions would likely be influenced by the cost and availability of an LLP license.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: September 14, 2020.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 679 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; Pub. L. 111-281.

2. In § 679.4, revise paragraphs (b)(3)(i), (b)(3)(ii)(B), and (b)(3)(iii)(B) to read as follows:

§ 679.4 Permits.

* * * * *

(b) * * *

(3) * * *

(i) *Length of permit effectiveness.* NMFS issues FFPs on a three-year cycle and an FFP is in effect from the effective date through the expiration date, as indicated on the FFP, unless the FFP is revoked, suspended, surrendered in accordance with paragraph (a)(9) of this section, or modified under § 600.735 or § 600.740 of this chapter.

(ii) * * *

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

* * * * *

(iii) * * *

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

* * * * *

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

§ 679.7 Prohibitions.

* * * * *

(c) * * *

(3) *Parallel Pacific cod fisheries – participation requirements.* Use a vessel named or required to be named on an FFP to catch and retain Pacific cod from State of Alaska waters adjacent to the BSAI, when Pacific cod caught by that vessel is deducted from the Federal TAC specified under § 679.20(a)(7)(ii)(A)(2) through (9), unless:

(i) That non-trawl vessel is designated on both:

(A) An LLP license issued under § 679.4(k), unless that vessel is using jig gear and exempt from the LLP license requirement under § 679.4(k)(2)(iii). Each vessel required to have an LLP license must be designated with the following endorsements:

(1) The BSAI area endorsement for the BSAI area adjacent to the parallel fishery where the harvest occurred; and

(2) A BSAI catcher/processor Pacific cod hook-and-line endorsement, a BSAI catcher/processor Pacific cod pot endorsement, or a BSAI Pacific cod catcher vessel endorsement if that catcher vessel is 60 feet or greater length overall; and

(B) An FFP issued under § 679.4(b) with the following endorsements:

(1) A catcher/processor or catcher vessel operation type endorsement;

(2) A BSAI area endorsement; and

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

(ii) Or, that trawl vessel is designated on both:

(A) An LLP license issued under § 679.4(k) endorsed for trawl gear with the BSAI area endorsement for the BSAI area adjacent to the parallel fishery where the harvest occurred; and

(B) An FFP issued under § 679.4(b) with the following endorsements:

(1) The BSAI area endorsement;

(2) An operational type endorsement;

(3) A trawl gear type endorsement; and

(4) A Pacific cod gear type endorsement.

(4) *Parallel Pacific cod fisheries - closures.* Use a vessel named or required to be named on an FFP to catch and retain Pacific cod with trawl, pot, or hook-and-line gear from State of Alaska waters adjacent to the BSAI when Pacific cod caught by that vessel is deducted from the Federal TAC specified under § 679.20(a)(7)(ii)(A) for trawl, pot, or hook-and-line gear, if directed fishing for Pacific cod is not open for the sector to which the vessel belongs in Federal waters.

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