



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 201125-0321]

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: Final rule.

SUMMARY: This final rule modifies Federal permit conditions and imposes 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: Effective [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

ADDRESSES: Electronic copies of the Categorical Exclusion and the Regulatory Impact Review (RIR) prepared for this action (referred to as the "Analysis") are available

from <http://www.regulations.gov> or from the NMFS Alaska Region website at <https://www.fisheries.noaa.gov/region/alaska>.

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.

NMFS published the proposed rule for these regulatory amendments in the **Federal Register** on September 18, 2020 (85 FR 58322). A summary of comments on the proposed rule and NMFS' responses are provided in the **Comments and Responses** section of this preamble

Summary of This Action

In this rule, NMFS modifies Federal permit conditions and imposes participation requirements for certain federally permitted vessels when fishing for Pacific cod in State of Alaska waters (state waters) adjacent to the Exclusive Economic Zone (EEZ) of the Bering Sea and Aleutian Islands (BSAI). The state waters portion of the Pacific cod fishery that runs concurrent with the Federal Pacific cod fishery is commonly known as the State's parallel fishery.

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, which presently is in the Dutch Harbor Subdistrict of the Bering Sea and within the Aleutian Islands Subdistrict of the Aleutian Islands, respectively.

This rule prohibits 1) a hook-and-line, pot, or trawl gear vessel named on a 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 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.

Summary of Management of the Fishery

This section briefly describes the Federal BSAI Pacific cod fishery, including the Pacific cod fisheries that occur in BSAI state waters. More detailed descriptions, including a review of this rule and the rationale for the regulations, are provided in the preamble to the proposed rule (85 FR 58322, September 18, 2020) and in the Analysis (see **ADDRESSES**).

Vessels that harvest Pacific cod in the BSAI use both trawl and non-trawl gear. Non-trawl gear includes hook-and-line, jig, and pot gear. Additionally, BSAI Pacific cod vessels operate as catcher vessels that harvest and deliver the fish for processing, or as catcher processors that harvest and process the catch on board. The amount of BSAI

Pacific cod available for commercial harvest is determined through an annual harvest specifications process (*e.g.*, 83 FR 13553, March 9, 2020). This process accounts for Pacific cod harvested in guideline harvest level (GHL) fisheries that occur only within state waters and are managed by the State of Alaska. After deducting for harvests in the GHL fisheries, Pacific cod Total Allowable Catches (TACs) are set for the Federal fisheries in the Bering Sea and Aleutian Islands subareas.

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 exclusive harvest by Western Alaska CDQ groups. Section 305(i) of the MSA 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 (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 the 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 catcher/processors)	13.4
Trawl catcher vessels	22.1
Hook-and-line catcher processors	48.7

NMFS manages each of the fishery sectors 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 who 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 were 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. The 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 associated with this final rule are FFPs and 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 non-jig vessels 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) (§ 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. 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 such vessels are 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 ft (9.8 m) length overall (LOA), and an exemption for jig vessels less than or

equal to 60 ft (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 ft (18.3 m) 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 ft (18.3 m) 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.

In general, a vessel is authorized to use only the gear that is designated on the LLP license. Unlike the FFP, the endorsements on an LLP license are not generally severable and an LLP license, with its associated endorsements, can be reassigned to a different vessel only once per year. Like FFPs, 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

As mentioned above, catch limits for the Federal Pacific cod fisheries include the sum of harvests that come from BSAI Federal waters and from the concurrent state parallel Pacific cod fisheries. Under the authority of Alaska statutes and regulations, the Alaska Department of Fish and Game (ADF&G) manages two parallel Pacific cod fisheries and three GHL fisheries in the state waters adjacent to the BSAI EEZ. Two of the GHL fisheries are held in the State's 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. In addition, during these State parallel Pacific cod fisheries, 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 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 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 fisheries accrue toward the Federal Pacific cod TAC. The State closes a parallel Pacific cod fishery by gear sector when NMFS determines the TAC for a Federal fishery sector using that gear type has been reached or when incidental species allowances are met.

Section 2.7 of the Analysis and the preamble to the proposed rule provide 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 those vessels have caught in state waters during the concurrent BSAI Federal waters and State parallel fisheries varies by sector, but for all sectors combined has ranged from 2 percent to 5 percent of their total BSAI Pacific cod catch over the 2010-2019 period.

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 adjacent to both the BSAI subareas. The GHL fisheries may re-open and close as needed to coordinate with Federal fishery openings.

The Alaska Board of Fisheries (BOF) established the Dutch Harbor Subdistrict (DHS) state waters Pacific cod GHL fishery in 2013 (5 AAC 28.648). Pot and jig gear are the only legal gear types. In the Aleutian Islands Subdistrict GHL fishery (5 AAC 28.647), state regulations allow trawl, longline, pot, and jig gear vessels. More information on the GHL fisheries in the Dutch Harbor and Aleutian Islands Subdistricts can be found in section 2.6 of the Analysis and in the preamble to the proposed rule.

Need for this Action

This final rule prohibits some federally permitted vessels from fishing for Pacific cod in the State of Alaska's parallel fisheries in the BSAI. 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, and other vessels that have an FFP but with an LLP license that 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 Federal 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 and it also undermines the intent of previous Council decisions regarding license limitation, sector allocations, and catch reporting.

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 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 will create a disincentive for vessel owners to circumvent Federal regulations by temporarily surrendering the FFP. Similar concerns apply to FFP amendments.

This final rule addresses these issues. The regulations in this final rule 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 are 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 Final Rule and Effects

FFP Requirements and LLP license

This rule prohibits 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 fisheries unless the vessel is named on an FFP and LLP license that have the required endorsements. In addition, this rule prohibits 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 fisheries when NMFS has closed the corresponding sector to directed Pacific cod fishing in the EEZ. Through this permit condition, federally permitted vessels will 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 regulations implemented by this final rule 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's intent for the regulatory amendments in this rule is 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). The two Pacific cod catcher/processor sectors are also subject to the FFP relinquish and reapply rules mentioned above.

The regulations in this final rule reflect the Council's intent and do not modify the regulatory requirements for vessels using jig gear in the BSAI. Additionally, this rule does not limit participation in the state waters GHJ fisheries.

Section 2.7.6 of the Analysis and the Final Regulatory Flexibility Analysis (FRFA) below provide details on the number and type of vessels that may potentially be affected by the regulations in this rule.

Amending, Surrendering, and Reissuing an FFP

The regulations established in this rule also prohibit amendment of an FFP during its effective period and create a disincentive for a vessel operator to surrender, or relinquish, their FFP during its effective period. Under current regulations, an FFP holder could avoid vessel observer coverage, catch reporting, and FFP and LLP requirements by amending or surrendering their FFP to fish in the State's 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 in this fashion 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 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 an 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 makes it more difficult for FFP holders to circumvent the regulations by temporarily amending or surrendering the FFP. The regulatory provisions in this final rule for FFPs will address situations where a vessel owner could choose to amend or surrender the FFP before fishing in the State parallel or

GHL fisheries to avoid NMFS observer coverage or recordkeeping and reporting requirements, and then seek to amend or reissue the FFP for the opening of the Federal waters fishery.

Final Regulations

This final rule amends 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 revisions also specify that the applicable FFP gear types include trawl, pot, and hook-and-line gears. Note this final rule explicitly excludes vessels using jig gear from these regulatory actions.

This final rule amends paragraphs (c)(3) and (4) in 50 CFR 679.7 to expand the scope of vessels that are prohibited from participating in the BSAI parallel fisheries without properly endorsed LLP licenses. The former regulations that restrict fishing in the Pacific cod parallel fisheries applied only to catcher/processor vessels fishing pot or hook-and-line gear in the parallel waters of the BSAI. This action changes the 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 provides an opportunity to simplify the regulations by deleting paragraph (c)(4)(ii) in § 679.7.

Lastly, this final rule amends paragraph (b)(3)(i) in 50 CFR 679.4 to specifically reference the three-year cycle NMFS uses for issuing 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 for that action (73 FR 76136; December 15, 2008). NMFS has continued to use a three-year cycle for issuing FFPs and this final rule will reinsert the specific reference to this cycle.

Changes from Proposed to Final Rule

NMFS did not make any substantive changes to the regulatory text in this final rule from the regulatory text in the proposed rule.

Comments and Responses

NMFS received and considered four unique, relevant comment letters on the proposed rule. All public comment letters submitted during the comment period may be obtained from *www.regulations.gov*. Three of the letters expressed support for the proposed regulations, and one letter did not support the proposed rule. None of the individual commenters identified themselves as direct participants in the BSAI Pacific cod fisheries. All three letters that supported the proposed rule were submitted anonymously, and NMFS cannot determine whether they were submitted by separate individuals. The letters and comments are grouped, summarized, and responded to below.

Comment 1: The three comment letters that supported the proposed regulations each expressed the importance of avoiding overfishing. The letters mentioned the conservation and management benefits of enhancing proper catch accounting in the fisheries. Two of the comment letters recognized that Pacific cod in the BSAI are not overfished.

Response: NMFS acknowledges these comments, and reiterates the benefits of this rule, which are to enhance the management of the Pacific cod fisheries and to reflect the intent of the Council regarding license limitation, vessel sector allocations of Pacific cod, and proper catch reporting. NMFS agrees that Pacific cod in the BSAI are currently not overfished.

Comment 2: Two of the three supporting letters suggested the new regulations would assist NMFS by making it easier to discipline or punish persons who exceed the Pacific cod TAC.

Response: NMFS agrees that keeping harvests within TAC limits is an essential element of effective management; however, the record that supports this final rule does not reflect concerns with the agency's current enforcement of overharvest limits or deterrence of regulatory violations.

Comment 3: One comment did not support the proposed rule, and briefly expressed it would not be beneficial to American citizens or to the fish.

Response: NMFS has determined that the final rule is consistent with the BSAI FMP, the MSA, and other applicable law and disagrees with the premise of the comment. Regulations similar to those adopted under this final rule have been in place since 2011 for the parallel Pacific cod fisheries in the Gulf of Alaska and for catcher/processor vessels that harvest Pacific cod in the BSAI. In each of these cases, the regulations have proven to be effective by enhancing the management of the fisheries. The regulations in this rule reflect the Council's and NMFS's intent to adopt similar regulations for Pacific cod catcher vessel operations in the BSAI.

Classification

Pursuant to Section 304(b)(3) of the MSA, the NMFS Assistant Administrator has determined that this final rule is consistent with the BSAI FMP, other provisions of the MSA, and other applicable law.

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

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

Regulatory Impact Review

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 has adopted the action alternative over the former status quo, and makes regulatory revisions in this final rule based on those measures that maximized net benefits to the Nation. Specific aspects of the economic analysis are discussed below in the Final Regulatory Flexibility Analysis (FRFA) section. More information is provided in the Analysis, as well as in the preamble to this rule and in the preamble to the proposed rule *Final Regulatory Flexibility Analysis (FRFA)*

A final regulatory flexibility analysis (FRFA) was prepared in this final rule. This FRFA incorporates the initial regulatory flexibility analysis (IRFA).

Section 604 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 604) 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 one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

A description of this rule, along with the need for and objectives of the rule, are contained in the preamble herein and in the preamble to the proposed rule (85 FR 58322, September 18, 2020), and are not repeated here.

Public and Chief Counsel for Advocacy Comments on the IRFA

NMFS published the proposed rule on September 18, 2020 (85 FR 58322). An IRFA was prepared and included in the Classification section of the preamble to the proposed rule. The comment period on the proposed rule ended on October 19, 2020. None of the comments from the public directly or indirectly referenced the IRFA. The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule.

Number and Description of Small Entities Regulated by This Final Rule

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 final rule directly regulates individuals and entities that participate, or would seek to participate, in the BSAI Pacific cod parallel fisheries with federally permitted vessels using trawl, hook-and-line, or pot gear. The Analysis indicates that 192 vessels have a history of participation in the BSAI targeted Pacific cod fisheries over the 2010-

2019 period. Based upon the estimated ex-vessel earnings of these vessels, the Analysis also indicates that 71 of these vessels are considered small entities. Of the 30 vessels that are expected to be directly impacted by the regulations in this rule, 29 are considered small entities, based on SBA criteria.

This rule, which prohibits certain federally permitted vessels from catching and retaining Pacific cod in the State's 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, this 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 final rule as part of Amendment 83 to the Fishery Management Plan for Groundfish of the Gulf of Alaska. Regulations established by this final rule are also very similar to current regulations that control the participation of catcher/processor hook-and-line and pot gear vessels in the BSAI; the regulations in this rule effectively add BSAI hook-and-line catcher vessels, pot catcher vessels, and trawl gear vessels to the existing body of BSAI fishing regulations.

The majority of the 30 vessel owners who are directly impacted by this rule currently have LLP licenses that allow them to participate in the parallel fisheries. Five of the 30 vessels currently do not have FFPs, which prevents them from fishing in Federal waters. Under this final 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 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 final rule, these vessels will 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 ensures that their Pacific cod harvests will be attributed to the appropriate sector, as designated on their LLP license.

Vessel owners most likely to be impacted by this final 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 will likely be influenced by the cost and availability of an LLP license.

Recordkeeping, Reporting, and other Compliance Requirements

Under this final rule, recordkeeping and reporting will not change for federally permitted catcher vessels that participate in the directed BSAI non-CDQ Pacific cod fisheries. The scope of this final rule modifies the conditions of Federal permits and imposes participation requirements for certain federally permitted vessels when fishing for Pacific cod in the parallel fisheries. This action also modifies the conditions under which existing permits may be used. Those specific requirements and the permit conditions are described in the preambles to this rule and to the proposed rule, and are not repeated here.

Duplicate, Overlapping, or Conflicting Federal Rules

No duplication, overlap, or conflict between this final rule and existing Federal rules has been identified.

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

The Council and NMFS considered two alternatives. Among the two alternatives, Alternative 2 (the preferred, action alternative) promotes conservation, management, and catch accounting measures that were previously adopted by the North Pacific Fishery Management Council (Council) regarding license limitation, sector allocations, and catch reporting. As noted in the preamble to this rule, the Council's intent for the regulatory amendments of Alternative 2 is 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 implemented by this rule.

Alternative 1 was the no action alternative. Under the status quo, the regulations inadvertently allow 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, which is contrary to the Council's intent.

The regulations in this final rule do not modify the regulatory requirements for vessels using jig gear in the BSAI. Additionally, this rule does not limit participation in the state waters GHL fisheries.

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. NMFS will publish on its website a summary of this rulemaking including compliance requirements that will serve as the small entity compliance guide. Copies of the proposed rule and this final rule are available from the NMFS Web site at <https://fisheries.noaa.gov/region/alaska>.

Collection-of-Information Requirements

This final rule does not contain a change to a collection of information requirement for purposes of the Paperwork Reduction Act of 1995. The existing collection of information requirements would continue to apply under the following OMB Control Numbers: 0648-0206, Alaska Region Permit Family of Forms (FFP), and 0648-0334, Alaska License Limitation Program for Groundfish, Crab, and Scallops.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: November 25, 2020.

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:

**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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