



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648-BC73

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area; Amendment 99

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

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: The North Pacific Fishery Management Council submitted Amendment 99 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) to NMFS for review. If approved, Amendment 99 would enable the holders of license limitation program (LLP) licenses authorizing a designated vessel to catch and process Pacific cod in the BSAI hook-and-line fisheries to use newly built or existing vessels that are not eligible under current vessel length and capacity restrictions. This action is necessary to promote safety-at-sea by encouraging the replacement of older vessels with newer and more efficient vessels that are able to meet modern vessel safety standards. This action is intended to facilitate the increased retention and utilization of groundfish by allowing sector participants to use larger vessels with increased processing and hold capabilities. This action is intended to promote the goals and objectives of the FMP, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and other applicable laws.

DATES: Comments on the amendment must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2012-0220, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0220, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments
- Mail: Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P. O. Box 21668, Juneau, AK 99802-1668.
- Fax: Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907-586-7557.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), 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). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

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

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS Alaska Region and by e-mail to OIRA_Submission@omb.eop.gov or fax to [\(202\) 395-7285](tel:(202)395-7285).

FOR FURTHER INFORMATION CONTACT: Seanbob Kelly, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce (Secretary). The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the Federal Register announcing that the amendment is available for public review and comment. This notice announces that proposed Amendment 99 to the FMP is available for public review and comment.

NMFS manages the U.S. groundfish fisheries of the Exclusive Economic Zone (EEZ) off Alaska under the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP) and the BSAI FMP. The North Pacific Fishery Management Council (Council) prepared the GOA FMP and BSAI FMP pursuant to the Magnuson-Stevens Act and other applicable laws.

Amendment 99 would make three substantive changes to the FMP to: 1) increase the maximum length overall (MLOA) to 220 feet (67 m) on LLP licenses authorizing vessels to catch and process Pacific cod with hook-and-line gear in the BSAI; 2) allow holders of LLP licenses authorized to catch and process Pacific cod with hook-and-line and pot gear in the BSAI to increase the MLOA on the LLP license to 220 feet (67 m) only if the pot gear endorsement is surrendered within a specific time frame; and 3) allow vessels that catch and process Pacific cod with hook-and-line in the BSAI to exceed length, tonnage, and power limits established under the American Fisheries Act (AFA).
The LLP and BSAI Longline Catcher Processor Subsector

Under the LLP, which was implemented by NMFS on January 1, 2000 (63 FR 52642, October 1, 1998), an LLP license is required for all vessels directed fishing for groundfish in the BSAI and GOA, with limited exemptions for smaller vessels and vessels using a limited amount of jig gear. Directed fishing is defined in regulations at § 679.2. For a vessel designated on an LLP license, the LLP license authorizes the type of fishing gear that may be used by the vessel, the maximum size of the vessel, and whether the vessel may catch and process fish at sea or if it is limited to delivering catch without at-sea processing. LLP licenses specify the MLOA of the vessel to which that LLP license may be assigned. Participants in LLP groundfish fisheries are prohibited from using a vessel to fish for LLP groundfish that has a length overall (LOA) that is greater than the MLOA specified on the LLP license.

The LLP also includes a species endorsement for Pacific cod in the BSAI (67 FR 18129, April 15, 2002) and GOA (76 FR 15826, March 22, 2011). A vessel subject to the LLP requirements can directed fish for Pacific cod in the BSAI or GOA only if the

vessel is designated on an LLP license that has this specific endorsement. The LLP Pacific cod endorsement requirement has, in effect, limited the number of vessels that are eligible to fish for Pacific cod in the BSAI and GOA. For example, under existing LLP regulations, the vessels currently used to directed fish for Pacific cod in the BSAI using hook-and-line gear and process that catch at sea must be assigned an LLP license with a BSAI Pacific cod hook-and-line C/P endorsement. Public Law 108-447, 118 Stat. 2887, Dec. 8, 2004, at section 219(a)(6), defines the term “longline catcher processor subsector” as “the holders of an LLP license that is noninterim and transferable, or that is interim and subsequently becomes noninterim and transferable, and that is endorsed for Bering Sea or Aleutian Islands catcher processor fishing activity, C/P, Pcod [Pacific cod], hook and line gear.” There are 36 LLP licenses that meet the eligibility criteria for the BSAI longline C/P subsector as defined in section 219(a)(6).

The vessels used in the BSAI longline C/P subsector fisheries range in length from 107 feet (32.6 m) to 180 feet (54.8 m) length overall (LOA). The average age of the vessels in this fleet is approximately 40 years, and 30 percent were built before 1946. Production capacity and efficiency for BSAI longline C/P subsector vessels are directly related to vessel length and overall vessel design. For example, larger vessels in the fleet can accommodate larger freezer holds that allow vessels to stay at sea for longer periods. Larger C/Ps also can facilitate increased retention and utilization of target species by enabling vessel owners to use additional processing lines for ancillary products.

Vessels eligible to participate in the BSAI longline C/P subsector primarily target Pacific cod in the BSAI, but many also participate in Greenland turbot and sablefish fisheries in the BSAI, as well as Pacific cod fisheries in the GOA. In addition, vessels

using longline gear retain incidentally caught species such as skates, rockfish, arrowtooth flounder, and pollock.

Three of the 36 LLP licenses that authorize participation in the BSAI longline C/P subsector also authorize participation in the BSAI Pacific cod fisheries with a C/P using pot gear; of these three licenses, only one is also endorsed to authorize participation in the Western GOA Pacific cod fishery with a C/P using pot gear. Vessels named on these three LLP licenses may elect to participate in either the longline or pot C/P sector in the BSAI Pacific cod fishery, or the vessel may participate in both sectors.

The Council and NMFS annually establish total allowable catch (TAC) limits for Pacific cod and other groundfish targeted by C/Ps using hook-and-line gear in the BSAI and the GOA. In 2007, Amendment 85 to the BSAI FMP modified the allocations of the annual BSAI Pacific cod TAC among various harvest sectors as seasonal apportionments (72 FR 50788, September 4, 2007). The BSAI longline C/P subsector receives an allocation of the annual Pacific cod TAC. Amendment 85 also limited the amount of halibut to be used as prohibited species catch (PSC) in the Pacific cod fishery. Halibut is incidentally caught by vessels using hook-and-line gear. The halibut PSC limit ensures that total incidental mortality of halibut does not exceed a specified limit while at the same time allowing participants to conduct their target fisheries. Once this halibut PSC limit is reached, NMFS closes directed fishing for groundfish that take halibut. This halibut PSC limit constrains the BSAI longline C/P subsector in the Pacific cod and other groundfish fisheries.

Amendment 83 to the GOA FMP established specific allocations of Pacific cod in the GOA similar to those in the BSAI (76 FR 74670, December 1, 2011). Under

Amendment 83, the hook-and-line C/P sector receives an allocation of the annual Pacific cod TAC in the Western and Central GOA. The hook-and-line C/P sector is also allocated a limited amount of halibut for use as PSC in the Western and Central GOA Pacific cod fisheries.

In addition to the constraints on Pacific cod allocations and halibut PSC limits implemented under regulations for Amendment 85 to the BSAI FMP and Amendment 83 to the GOA FMP, the BSAI longline C/P subsector has developed private contractual arrangements to limit Pacific cod and halibut PSC use in the BSAI, effectively establishing a de facto limited access program. Congress' definition of the BSAI longline C/P subsector and the allocation of BSAI Pacific cod and halibut PSC specifically to the BSAI longline C/P subsector encouraged holders of eligible LLP licenses to form a voluntary cooperative and divide the Pacific cod and halibut PSC allocations among its members. Cooperatives allow multiple quota recipients to aggregate their annual quota amounts, coordinate their collective fishing operations, and benefit from the resulting efficiencies.

Amendment 99 to the FMP

The Council and NMFS recognize that the existing regulatory and statutory vessel capacity restrictions provide a disincentive for owners to rebuild or replace their vessels with larger, more efficient and safer vessels. The Council recommended Amendment 99 in October 2012. Amendment 99 is intended to promote the sustainable harvest of groundfish, especially Pacific cod in the BSAI and GOA, by removing disincentives for owners of vessels to rebuild or replace their vessels with larger vessels. To the extent that the vessel owners exercise the vessel replacement opportunity provided in this

proposed action, it would promote efficient utilization of the Pacific cod resource in the BSAI and GOA. The proposed action would also promote safety-at-sea by allowing vessel owners to replace existing vessels with newer vessels that can accommodate improved safety features and minimize the risks faced by crew members.

Amendment 99 would increase the MLOA to 220 feet (67 m) on LLP licenses authorizing vessels to catch and process Pacific cod with hook-and-line gear in the BSAI for all LLP licenses not also endorsed for pot gear. The Council determined that establishing a uniform 220-foot (67 m) MLOA for all eligible LLP licenses would encourage LLP license holders in the BSAI longline C/P subsector to replace aging vessels with newer, safer, and more efficient vessels. The Council considered several size limits, including no size limit, and other variable rate and fixed-length increases to vessel size prior to recommending Amendment 99. The Council received public testimony that a 220-foot (67 m) MLOA would provide adequate incentives to meet the Council's objectives for this action and would likely allow vessel owners to replace vessels with new vessels that could accommodate improved efficiency and safety design. This testimony is supported by the RIR prepared for this action, which describes that processing capacity constraints likely limit the size of vessels used in the BSAI longline C/P subsector to 220 feet (67 m) or less.

Amendment 99 would allow LLP license holders holding a license authorized to catch and process Pacific cod with hook-and-line and pot gear in the BSAI to increase the MLOA on the LLP license to 220 feet (67 m) only if any Pacific cod pot gear endorsements are surrendered within a specific time frame. In recommending Amendment 99, the Council recognized that allowing holders of LLP licenses with

Pacific cod pot gear C/P endorsements to designate larger vessels on those LLP licenses could increase vessel capacity in the pot gear C/P fisheries and allow these participants to harvest a greater proportion of the GOA Pacific cod sector allocation relative to their historical catch. This increased capacity could negatively impact historical participants in the Pacific cod pot fisheries. Under proposed Amendment 99, holders of the BSAI longline C/P subsector LLP licenses with Pacific cod pot gear C/P endorsements for the BSAI, GOA, or both could either surrender the Pacific cod pot gear C/P endorsements and be assigned a 220-foot (67 m) MLOA on the LLP license or retain the Pacific cod pot gear C/P endorsements and the current MLOA on the LLP license would continue to apply. LLP license holders would have 36 months after the effective date of a final rule to implement Amendment 99, if approved, to surrender all Pacific cod pot gear endorsements by requesting that NMFS permanently remove and extinguish all Pacific cod pot gear C/P endorsements specified on the LLP license. If the LLP holder submits a timely written request to remove and extinguish all Pacific cod pot gear C/P endorsements specified on the LLP license, NMFS will assign a 220-foot (67 m) MLOA on that license. If an LLP holder does not notify NMFS of their election to surrender the Pacific cod pot gear C/P endorsement within the 36-month time frame, the current MLOA and Pacific cod hook-and-line and pot gear C/P endorsements would be retained on the LLP license.

Amendment 99, if approved, is also intended to demonstrate to the United States Maritime Administration (MARAD) that the Council recommended and NMFS approved conservation and management measures allowing vessels that exceed the limits set forth in 46 U.S.C. 12113 to participate in certain North Pacific fisheries under the Council's

jurisdiction and therefore are eligible to receive a certificate of documentation. If the Secretary approves Amendment 99 and issues a final rule to implement Amendment 99, NMFS will notify MARAD that any vessel named on an LLP license endorsed for participation in the BSAI longline C/P subsector, which is greater than 165 feet in registered length, of more than 750 gross registered tons, or that has an engine or engines capable of producing a total of more than 3,000 shaft horsepower, is authorized for use in the EEZ under the jurisdiction of the Council, and is eligible to receive a certificate of documentation consistent with 46 U.S.C. 12113(d) and MARAD regulations at 46 C.F.R. 356.47.

NMFS does not expect Amendment 99 to increase the fishing operations of C/Ps using hook-and-line gear in the BSAI or GOA. Management constraints such as Pacific cod species endorsements on LLP licenses, sector allocations for Pacific cod in the BSAI and GOA, and halibut PSC limits in the BSAI and GOA limit the ability of vessels on which these LLP licenses are used to expand their overall fishing operations in groundfish fisheries. These management measures in the BSAI and GOA provide an overall limit to the Pacific cod catch by vessels in this subsector, thereby limiting the potential for the BSAI longline C/P subsector to compete with other fishery participants.

This action would not change how groundfish stocks are assessed or modify the harvest specifications process currently used to establish harvest limits and PSC limits. Instead, Amendment 99 would promote the achievement of optimum yield by providing the BSAI longline C/P subsector with the ability to increase retention and utilization of harvested fish by replacing their aging vessels with newer vessels that are capable of incorporating additional processing lines and processing equipment, which are designed

to increase overall daily throughput and retention rates.

Public comments are solicited on proposed Amendment 99 to the FMP through the end of the comment period (see DATES). NMFS intends to publish in the Federal Register and seek public comment on a proposed rule that would implement Amendment 99, following NMFS' evaluation of the proposed rule under the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period on Amendment 99 to be considered in the approval/disapproval decision on Amendment 99. All comments received by the end of the comment period on Amendment 99, whether specifically directed to the FMP amendment or the proposed rule, will be considered in the FMP amendment approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendment. To be considered, comments must be received, not just postmarked or otherwise transmitted, by the last day of the comment period.

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

Dated: September 25, 2013.

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[FR Doc. 2013-23770 Filed 09/27/2013 at 8:45 am; Publication Date: 09/30/2013]