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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 121029593-3851-01]

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: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule that would implement Amendment 99 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP). 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

BSAI FMP, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and other applicable laws.

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-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](http://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](http://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](mailto: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:

Regulatory Authority

NMFS proposes regulations to implement Amendment 99 to the BSAI FMP. 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. Regulations implementing the GOA FMP and BSAI 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

The proposed action would amend the BSAI FMP and revise Federal regulations

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 both 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 following sections provide background on the need for, the objectives of, and the effects of the proposed action.

#### 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 that allow vessels to catch and process at-sea are assigned a catcher/processor (C/P) endorsement, and those that restrict vessels from at-sea processing are assigned a catcher vessel endorsement.

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 (see § 679.7(i)(6)). Until 2003, an LLP license included gear and operational type (C/P or catcher vessel) endorsements, but did not include endorsements to directed fish for specific groundfish species. In 2003, NMFS modified the LLP to include a species endorsement for Pacific cod in the BSAI. In 2011, NMFS implemented modifications to the LLP to include a species endorsement for Pacific cod in the GOA. A vessel 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, with limited exemptions for smaller vessels and vessels using a limited amount of jig gear as specified at § 679.4(k)(9)(iv) and § 679.4(k)(10)(iv). NMFS included Pacific cod endorsements on existing LLP licenses based on eligibility criteria, primarily whether the license or the vessel had been used to harvest Pacific cod. Additional detail on the development and rationale for the LLP and Pacific cod endorsements in the BSAI and GOA can be found in the final rule implementing these Pacific cod endorsement requirements and is not repeated here (see 67 FR 18129, April 15, 2002 for the BSAI; see 76 FR 15826, March 22, 2011, for the GOA).

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 to 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).

#### Vessels Operating in the BSAI Longline C/P Subsector and the Pacific Cod Fishery

Most vessels currently operating in the BSAI longline C/P subsector were not designed as fishing vessels for the BSAI but were converted to longline C/Ps from some other use. The vessels in the BSAI longline C/P subsector range in length from 107 feet (32.6 m) to 180 feet (54.8 m) LOA. The average age of the vessels in this fleet is approximately 40 years, and 30 percent were built before 1946. In general, the newer vessels participating in this subsector have longer LOAs and were designed to specifically target groundfish with longline gear. Production capacity is directly related to vessel length and overall vessel design. For example, the larger vessels in the fleet can accommodate larger freezer holds that allow vessels to stay at sea for longer periods. Larger vessels can provide a larger processing platform that can be converted to accommodate more processing equipment, which can be optimally located in vessels specifically designed for fishing to increase overall daily throughput. Moreover, longer vessels are able to operate in most weather conditions, including conditions that may be considered adverse by longline C/Ps with relatively shorter length. Vessels participating in the BSAI longline C/P subsector are described in more detail in section 1.5 of the RIR for this action (See ADDRESSES).

Vessels used in the BSAI longline C/P subsector target groundfish with longline gear that consists of a stationary, buoyed, and anchored line with hooks attached for the taking of fish. Once landed, groundfish are sorted by size and weight, and then packed

and frozen onboard. 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.

Recent participation information for vessels eligible to participate in the BSAI longline C/P sector indicates that the number of these vessels harvesting Pacific cod in the BSAI fishery has been relatively stable and the number of vessels harvesting Pacific cod in the GOA fishery has declined. From 2011 through 2013, approximately 33 vessels eligible to participate in the BSAI longline C/P sector harvested Pacific cod in the BSAI. Of the 36 LLP licenses in the BSAI longline C/P subsector, 27 LLP licenses are also endorsed to fish in the GOA Pacific cod fisheries. The number of vessels named on the 36 LLP licenses in the BSAI longline C/P subsector that harvested Pacific cod in the GOA declined from a peak of 18 vessels in 2007 to 14 vessels in 2011, and to 6 vessels in 2012. Three of the 36 LLP licenses that are eligible for the BSAI longline C/P subsector are also authorized to participate 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 fisheries 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. The TAC amounts are allocated among user groups as part of the annual

harvest specifications process, as authorized at § 679.20. In the BSAI, Pacific cod is apportioned between the Western Alaska Community Development Quota (CDQ) Program and non-CDQ fishery participants. Allocations to the CDQ Program are assigned to CDQ groups as defined by section 305(i) of the Magnuson-Stevens Act. The CDQ groups harvest almost all their Pacific cod allocations with vessels that are members of the BSAI longline C/P subsector.

In 2007, NMFS modified the Pacific cod allocations to specific sectors in the BSAI under regulations implementing Amendment 85 to the BSAI FMP (72 FR 50788, September 4, 2007). Amendment 85 modified the allocations of the annual BSAI Pacific cod TAC among various harvest sectors as seasonal apportionments. Amendment 85 increased the percentage of the BSAI Pacific cod TAC apportioned to the CDQ Program from 7.5 percent to 10.7 percent. The remaining TAC, known as non-CDQ TAC, is further apportioned between seasons for jig, pot, hook-and-line, and trawl gear types and operating types. The BSAI longline C/P subsector receives 48.7 percent of the annual non-CDQ allocation of the Pacific cod TAC as two separate seasonal allowances. The regulations implementing Amendment 85 require a sector to stop conducting directed fishing for Pacific cod when its allocation is exhausted, even if TAC allocated to other sectors remains unharvested. This ensures that fishery participants in one sector do not compete for BSAI Pacific cod with participants in other sectors.

The BSAI longline C/P subsector is also allocated a limited amount of halibut to be used as prohibited species catch (PSC) in the Pacific cod fishery under regulations implementing Amendment 85 because 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, then NMFS closes directed fishing for groundfish that results in the take of halibut. This halibut PSC limit constrains the BSAI longline C/P subsector in the Pacific cod and other groundfish fisheries. Prior to the implementation of Amendment 85, halibut PSC was apportioned to the hook-and-line sector, but was not further apportioned between C/Ps and catcher vessels. Amendment 85 sub-apportioned the available hook-and-line halibut PSC between the catcher vessel and C/P sectors, which gave the BSAI longline C/P subsector a separate apportionment of halibut PSC. Regulations at § 679.21(e)(2) and (4) specify that a portion of total halibut mortality be made available to the BSAI longline C/P subsector. Typically, this halibut PSC is further allocated seasonally through the annual harvest specifications process.

NMFS has also established specific allocations of Pacific cod in the GOA similar to those in the BSAI. In December 2009, the Council recommended that NMFS implement Amendment 83 to the GOA FMP to supersede the inshore/offshore processing allocations of Pacific cod and establish sector allocations of the TACs. Upon implementation of Amendment 83 in 2012 (76 FR 74670, December 1, 2011), NMFS divided the GOA Pacific cod TACs and halibut PSC among gear and operation type, based primarily on historical dependency and catch history by each sector. The hook-and-line C/P sector is allocated 19.8 percent of the annual Western GOA TAC and 5.1 percent of the annual Central GOA TAC. Halibut PSC is also apportioned between the hook-and-line C/P and catcher vessel sectors proportional to the allocation of Pacific cod to those sectors. Consistent with halibut PSC management in the BSAI, this halibut PSC

allocation ensures that total incidental mortality of halibut does not exceed a specified limit while at the same time allowing participants to conduct their target fisheries.

Additional detail on Pacific cod and halibut PSC apportionment is provided in the final rule implementing Amendment 83 and is not repeated here (76 FR 74670, December 1, 2011).

#### Freezer Longline Conservation Cooperative

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 voluntarily 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. Since the fishing season opened on June 20, 2010, all holders of eligible BSAI longline C/P subsector LLP licenses have joined a single cooperative, the Freezer Longline Conservation Cooperative (FLCC). Cooperative management enables the license holders to efficiently harvest sector allocations through the coordination of fishing effort among participants. Cooperation among vessel owners has resulted in improved bycatch avoidance and has increased the value and variety of seafood products in the subsector. In addition, the FLCC has established private

contractual arrangements that divide the sector's Pacific cod and halibut PSC allocations among the member vessels; thus, participants are able to maximize the harvest and value of the Pacific cod allocation for a given halibut PSC limit.

In 2010, Congress passed the Longline Catcher Processor Subsector Single Fishery Cooperative Act (Pub. L. No. 111-335) to modify the process to form a cooperative in the subsector. Under this Act, NMFS must implement a single, mandatory cooperative with exclusive catch privileges for each BSAI longline C/P subsector LLP license holder if requested to do so by persons holding at least 80 percent of the LLP licenses eligible to participate in the BSAI longline C/P subsector (i.e., at least 29 of the 36 LLP licenses). To date, NMFS has not received any such request; however, the fact that such a mandatory cooperative is explicitly authorized by Congress helps to ensure that if the voluntary cooperative established by the FLCC is unable to continue, regulations to establish a mandatory cooperative with exclusive catch privileges could be implemented by NMFS upon request of a sufficient number of the members of the subsector.

#### Objectives of, and Rationale for, Amendment 99 and This Proposed Rule

Although participants in the BSAI longline C/P subsector are currently authorized to replace their vessels, the LLP limits the ability of vessels to exceed a specific length. In addition, provisions of the AFA limit a vessel owner's ability to receive a fishery endorsement for a replacement vessel that exceeds specified length, power, and displacement restrictions unless specifically recommended by the Council and approved by the Secretary of Commerce. These statutory vessel capacity restrictions are described in more detail in the "American Fisheries Act and United States Maritime

Administration” section of this preamble.

The Council and NMFS recognize that these regulatory and statutory vessel capacity restrictions provide a disincentive for owners to rebuild or replace their vessels with larger, more efficient and safer vessels. In October 2012, the Council recommended Amendment 99, which would allow owners of vessels used in the BSAI longline C/P subsector to rebuild or replace their vessels with larger vessels. The principal objective of the proposed action is 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 vessels that can accommodate improved safety features and minimize the risks faced by crew members.

The Council and NMFS recognize that raising the vessel length limits could provide vessel owners with the additional hold capacity necessary to increase the rate of processing throughput and storage capacity. As discussed in section 1.6.2 of the RIR prepared for this action, larger vessels can incorporate larger freezer holds that allow a vessel to stay at sea for longer periods, while smaller vessels generally require more trips to travel to and from fishing grounds to offload product. Fewer trips would increase vessel efficiency by reducing fuel consumption and minimizing transit time, which would allow vessel owners to minimize the time required to harvest their quota. The Council recognized the need to lengthen the vessel size restrictions to encourage vessel owners to

accelerate the replacement of vessels in the BSAI longline C/P subsector fleet. The Council noted that in many cases the cost of a new vessel may not be affordable without the increased production efficiency that could result from constructing a larger, more efficient vessel that meets modern safety requirements.

Under Amendment 99, the MLOA specified on LLP licenses in the BSAI longline C/P subsector that are not also endorsed for pot gear would be increased to 200 feet (67 m). The Council determined that a 220-foot (67 m) MLOA for these 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. Prior to selecting a preferred alternative, 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 likely would allow vessel owners to replace vessels with new vessels that could accommodate improved efficiency and safety design. Specifically, vessel owners potentially affected by this proposed action stated that anticipated vessel designs likely would not result in vessels greater than 220 feet (67 m) due to the costs of construction and operation of these larger vessels relative to anticipated revenues. These assertions are supported by section 1.6.2.2 of 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.

Currently, each of the 36 LLP licenses eligible for the BSAI longline C/P subsector have an MLOA equal to or less than 220 feet (67 m). The average MLOA

specified on an LLP license currently eligible for the BSAI longline C/P subsector is 152.6 feet (46.5 m). Seventeen of the 36 eligible LLP licenses have an MLOA of less than 150 feet (45.7 m). Increasing the MLOA specified on the LLP licenses in the BSAI longline C/P subsector to 220 feet (67 m) would not constrain any existing LLP licenses in terms of vessel length. Additional detail on the LLP licenses currently eligible for the BSAI longline C/P subsector can be found in section 1.5.1 of the RIR for this action (see ADDRESSES).

The Council also recommended management measures designed to protect historical participants in the Pacific cod pot fisheries that could be adversely affected by the use of larger, more efficient vessels in the BSAI longline C/P subsector. As noted earlier in this preamble, the Council and NMFS recognized that three of the 36 LLP licenses endorsed for participation in the the BSAI longline C/P subsector also authorize the designated vessel to target Pacific cod with C/Ps using pot gear in the BSAI: two of those LLP licenses authorize participation in the BSAI Pacific cod fisheries with C/Ps using pot gear; one of the LLP licenses authorizes participation in the BSAI and Western GOA Pacific cod fisheries with C/Ps using pot gear. The proposed regulations to implement Amendment 99 would allow a person holding a LLP license endorsed 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 LLP holder elects to surrender any Pacific cod pot gear endorsements within a specific time frame. The Council and the Secretary recognize the potentially adverse competitive effects of increased fishing capacity by the longline C/P subsector relative to the C/Ps using pot gear. Under this proposed rule, holders of the two BSAI longline C/P subsector LLP licenses with BSAI

Pacific cod pot gear C/P endorsements could either surrender the BSAI Pacific cod pot gear C/P endorsements and receive an LLP license with a 220 feet (67 m) MLOA or retain their current MLOA and continue to participate in both fisheries. Similarly, the holder of the BSAI longline C/P subsector LLP license with BSAI and Western GOA Pacific cod pot gear C/P endorsements could either surrender the BSAI and GOA Pacific cod pot gear C/P endorsements and receive an LLP license with a 220 feet (67 m) MLOA or retain the BSAI Pacific cod pot gear C/P endorsements and the current LLP license MLOA would continue to apply.

The Council recognized that allowing holders of LLP licenses with Pacific cod pot gear C/P endorsements to name larger vessels on those LLP licenses could increase vessel capacity in the pot gear C/P fisheries and could disadvantage historical participants in the sector who would continue to be constrained by the MLOAs specified on their LLP licenses. As a result, the Council determined that allowing some participants in the pot gear C/P fisheries with hook-and-line endorsements to have longer MLOAs specified on their LLP licenses could allow these participants to harvest a greater proportion of the GOA Pacific cod sector allocation relative to their historical catch. This could negatively impact historical participants in the Pacific cod pot fisheries and would not promote a fair and equitable standard for all participants in the pot gear C/P fisheries. The Council recommended that NMFS promulgate regulations to ensure that holders of LLP licenses eligible for the BSAI longline C/P subsector that choose to retain Pacific cod pot gear C/P endorsements would continue to be restricted by the current MLOAs on the LLP licenses. The Council recommended, and NMFS proposes, a time limit on the one-time permanent election for these LLP license holders that would close 36 months from the

date of implementation of this action, if it is approved. The deadline for making the one-time election is intended to promote the conservation and management of the BSAI and GOA Pacific cod fisheries by clearly identifying pot gear C/P sector participants within a reasonable time frame and by establishing an upper limit on vessel capacity in the BSAI longline C/P subsector.

To implement Amendment 99, NMFS would increase the MLOA on LLP licenses eligible to participate in the BSAI longline C/P subsector. Vessels are prohibited, at 679.7(h)(6), from fishing for LLP groundfish with a vessel that has a length overall that exceeds the MLOA specified on the license that authorizes fishing for the LLP groundfish. Therefore, under this action, the MLOA on an eligible LLP license would be increased. This proposed action would not prevent subsector participants from naming an existing vessel on their LLP license; however, the Council and NMFS anticipate that most replacement vessels would be newly constructed. As noted earlier in this preamble, newly constructed vessels would be better designed for fishing than are many of the existing vessels in the fleet. Most existing vessels lack the capacity to incorporate innovations and facilities that are available in newly constructed vessels. A vessel built to contemporary safety standards would likely incorporate advancements in marine design that improve efficiency.

As discussed in section 1.6.2 of the RIR, NMFS expects that this proposed action will not increase the fishing operations of C/Ps using hook-and-line gear in the BSAI or GOA. As described in this preamble, 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 assigned these LLP licenses to expand their overall fishing operations in groundfish fisheries.

Specifically, 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 C/P vessels endorsed for hook-and-line gear to compete with other subsectors for Pacific cod TAC. While it is possible that larger BSAI longline C/P vessels entering the GOA Pacific cod fishery could increase competition in that fishery, the Council recognized that the harvest patterns of individual FLCC member vessels are unlikely to change under the proposed action. Since the formation of the cooperative, FLCC member vessels eligible to catch and process Pacific cod in the GOA have not increased effort in the GOA Pacific cod fisheries despite the efficiencies gained by cooperative management and their significantly longer length compared to the hook-and-line C/Ps active in the GOA that are not FLCC members. The Council noted that although the BSAI longline C/P fleet could increase effort under the status quo, they have not and so it is unlikely that the replacement of existing vessels with longer vessels would increase competition in the GOA.

As noted earlier in this preamble, NMFS anticipates that the BSAI longline C/P subsector will continue to operate in the FLCC to coordinate Pacific cod harvests. This continued coordination promotes consistent harvesting practices by member vessels, including the newer and more efficient vessels entering the fishery. Moreover, NMFS does not anticipate rapid changes in the composition, quantity of vessels, or capacity of the BSAI longline C/P fleet in response to this proposed action, due to the costs and time required for construction of new vessels. Collectively, these factors indicate that the

proposed action would not result in a modification of fishing behavior among FLCC members as they target Pacific cod or other groundfish species. While it is possible that FLCC members could expand participation in the Pacific cod pot fishery, this expansion is constrained by the proposed limitations on LLP licenses with Pacific cod hook-and-line and pot C/P endorsements as described above.

#### Proposed Regulatory Amendments

To implement Amendment 99, NMFS proposes to list the groundfish LLP licenses that would be modified by this action at Table 9 to part 679. As proposed, Table 9 to part 679 would list in Column A the 36 LLP licenses endorsed to participate in the BSAI longline C/P subsector. Table 9 would also differentiate between the LLP licenses that qualify for an increase in MLOA length to 220 feet (67 m), as designated in Column B, and the LLP license holders eligible for a one-time election to permanently surrender and extinguish certain LLP license endorsements in exchange for an increase in the MLOA to 220 feet (67 m), as listed in Column C.

NMFS proposes to revise the regulatory definition of Maximum LOA (MLOA) at § 679.2 and to establish regulatory provisions at § 679.4(k)(3)(i)(D) for a new MLOA category. Under this proposed provision, NMFS would revise MLOAs on the LLP licenses designated in Column B of Table 9 to part 679. If Amendment 99 and its implementing regulations are approved, 30 days following the publication of the final rule, the NMFS Restricted Access Management Division would issue new LLP licenses with an MLOA of 220 feet (67 m) to the holders of the eligible licenses designated in Column B of Table 9 to part 679. NMFS would revise only the MLOA of the LLP licenses designated in Column B of Table 9 to part 679, and not the area, gear, and

operational type endorsements. The new LLP licenses would be mailed to the address provided to NMFS by the holder of the qualifying LLP license. NMFS would establish this revised definition of “Maximum LOA (MLOA)” at § 679.2 to ensure that all LLP licenses designated in Column B of Table 9 to part 679 would be revised on the effective date of the final rule, if approved. NMFS would not need to modify the definition of “Maximum LOA (MLOA)” at § 679.2 to apply to LLP licenses listed in Column C of Table 9 to part 679 because the MLOAs of those LLP licenses would only be modified after the submission of a written request from the holders of LLP licenses specified in Column C of Table 9 to part 679 under specific provisions described in the following paragraphs of this preamble.

NMFS proposes regulations at § 679.4(k)(3)(i)(D)(2) to implement the Council’s recommendation that the MLOA on an LLP license endorsed for participation in the BSAI longline C/P subsector would not be modified as long as the LLP license holder retains an endorsement to participate in Pacific cod pot fisheries in the BSAI or GOA. NMFS proposes to establish procedures for surrendering a Pacific cod pot gear endorsement on LLP licenses also endorsed to participate in the BSAI longline C/P subsector. NMFS would establish a process for eligible participants in the BSAI longline C/P subsector to surrender their Pacific cod pot gear endorsements for the BSAI and GOA in exchange for receiving an LLP with an MLOA of 220 feet (67 m) authorizing participation in the BSAI Pacific cod longline C/P fisheries. As proposed, NMFS would assign an MLOA of 220 feet (67 m) to any of the three LLP licenses listed in Column C of proposed Table 9 whose holders surrender the Pacific cod pot gear endorsements on their LLP license. This one-time election to surrender the Pacific cod pot gear

endorsements on an LLP license would be permanent, and NMFS would extinguish the surrendered Pacific cod pot gear endorsements. Current LLP regulations at § 679.4(k)(7)(viii) specify that LLP endorsements are non-severable from the license, with one exception for an Aleutian Island area endorsement under the provisions of § 679.4(k)(4)(ix)(A). Specifying that LLP endorsements are non-severable from the license limits the ability of a person to assign an LLP license that was derived from the historical landing activity of a vessel in one area, using a specific fishing gear, or operational type to be used in other areas, with other gears, or for other operational types in a manner that could expand fishing capacity. The Council's recommendation to allow the holders of three LLP licenses to surrender Pacific cod pot gear endorsements associated with the license is consistent with this objective because the surrendered endorsements would be extinguished. NMFS would not transfer the endorsements to another person, and the endorsements could not be used in other areas, with other gears, or for other operational types.

NMFS proposes regulations at § 679.4(k)(6)(xi) to describe the requirements for holders of LLP licenses eligible to participate in the BSAI longline C/P subsector to surrender their Pacific cod pot gear C/P endorsements. If the Secretary approves Amendment 99 and its implementing regulations, NMFS would notify in writing the three LLP license holders listed in Column C of the proposed Table 9 to part 679 of their option to elect to surrender their Pacific cod pot gear C/P endorsements on their LLP license and receive a 220-foot (67 m) MLOA. Owners of eligible licenses, or their agents, would need to notify NMFS in writing at the address specified at § 679.4(k)(6)(xi) that they elect to surrender the endorsements. The request would need to

include a signed statement notifying NMFS that the holder of the LLP license acknowledges that the election is permanent and irreversible and that all pot gear Pacific cod endorsements on that LLP would be extinguished. Each LLP license holder would have 36 months from the date of implementation of this proposed action to notify NMFS in writing of the one-time permanent election. If the written notification is received by NMFS within the 36 months prior to the deadline, NMFS would issue a revised LLP license to the holder of that license. License holders who choose not to make the one-time election or who do not submit a written notification within the 36-month deadline would retain their current MLOA and continue to participate in both the Pacific cod pot fisheries and longline fisheries in the BSAI and GOA.

#### American Fisheries Act and United States Maritime Administration

In order for a vessel to participate in a U.S. fishery, a vessel must obtain a certificate of documentation with a fishery endorsement from either the U.S. Coast Guard or the Maritime Administration (MARAD), as set forth in regulations at 46 U.S.C. 12102(a) and 12151(b). The American Fisheries Act of 1998, as amended (AFA), Title II, Division C, Pub. L. No. 105-277, was enacted to increase U.S. citizen participation in U.S. fisheries. The AFA required the Maritime Administration to ensure compliance with the U.S. citizenship ownership and control requirements for U.S.-flag fishing industry vessels of 100 feet or greater in registered length. Therefore, a vessel 100 feet or greater in registered length must receive this documentation from MARAD.

The AFA and MARAD implementing regulations prohibit larger vessels from obtaining a fishery endorsement unless specific conditions are met. Unless an exemption applies, a vessel is not eligible for a fishery endorsement if it is greater than 165 feet in

length, or more than 750 gross registered tons, or has engines capable of producing more than 3,000 shaft horsepower.

These regulations were intended to limit but not reduce fishing capacity in the BSAI; however, the regulations effectively limit the ability of vessel owners to replace vessels currently participating in the BSAI longline C/P subsector with newer vessels of an equivalent size. There are currently nine vessels named on LLP licenses eligible to participate within the BSAI longline C/P subsector that exceed at least one of the thresholds described at 46 CFR 356.47(a) and (c). These vessels are able to participate in the fishery because they received a fishery endorsement prior to September 25, 1997; however, the license holders could not replace vessels named on their LLP licenses with vessels of comparable or additional capacity and continue to participate in the BSAI longline C/P subsector because such vessels would not be eligible for a fishery endorsement.

An exemption from these regulations is possible if the owner of such a vessel demonstrates to MARAD that the regional fishery management council of jurisdiction, established under section 302(a)(1) of the Magnuson-Stevens Act, has recommended after October 21, 1998, and the Secretary has approved, conservation and management measures in accordance with regulations implementing the AFA at 46 CFR 356.47, to allow vessels that may exceed the length, horsepower, and tonnage requirements to be used in fisheries under such council's authority. NMFS and MARAD General Counsel consulted to determine what action on the part of the Council and NMFS would satisfy this exemption. NMFS and MARAD General Counsel determined, based on the regulatory requirements established at 46 CFR 356.47(c), that the Council would need to

recommend, and the Secretary would need to approve, conservation and management measures that would allow such a vessel to be used in the BSAI longline C/P subsector fisheries. The statutory vessel capacity restrictions are described in more detail in section 1.2.2 of the RIR for this action (See ADDRESSES).

If the Secretary approves Amendment 99 and issues a final rule to implement Amendment 99, the Secretary will have approved conservation and management measures that would permit a vessel to exceed the limits specified at 46 U.S.C. 12113(d) in order to participate in the BSAI longline C/P subsector. Secretarial approval of Amendment 99 and the publication of implementing regulations are intended to provide MARAD with documentation that eligible vessels qualify to receive a fishery endorsement. 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.

#### Recordkeeping, Reporting, Monitoring and Enforcement

The proposed action would not change the monitoring and enforcement requirements for participants in the BSAI C/P longline subsector. As mentioned elsewhere in the this preamble, this proposed action would add a reporting requirement for the LLP licenses identified in the proposed Column C to Table 9 to part 679. The

holders of these three LLP licenses would need to notify NMFS of their election to permanently surrender all pot Pacific cod endorsements in exchange for a 220-foot (67 m) MLOA.

Beginning in 2013, all vessels participating in the BSAI C/P longline subsector are required to follow a selected monitoring option, either carry two observers or carry one observer and use a NMFS-approved motion compensated flow scale, while directed fishing for Pacific cod is open in the BSAI or while CDQ groundfish fishing (77 FR 59053, September 26, 2012). A description of monitoring and enforcement regulations applicable to the BSAI C/P longline subsector is described in more detail in the preamble to the proposed rule for these requirements (77 FR 35925, June 15, 2012) and is not repeated here.

#### Classification

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the BSAI and GOA FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. On June 20, 2013, SBA issued a final rule revising the small



business size standards for several industries effective July 22, 2013 (78 FR 37398). The rule increased the size standard for Finfish Fishing from \$ 4.0 to 19.0 million, Shellfish Fishing from \$ 4.0 to 5.0 million, and Other Marine Fishing from \$4.0 to 7.0 million. *Id.* at 37400 (Table 1). Pursuant to the Regulatory Flexibility Act (RFA), codified at 5 U.S.C. 600–611,, and prior to SBA’s June 20 final rule, a certification was developed for this action using SBA's former size standards. NMFS has reviewed the analyses prepared for this action in light of the new size standards and has determined that the new size standards do not affect the analyses prepared for this action. NMFS solicits public comment on the analyses in light of the new size standards.

This rule would not have a significant economic impact on a substantial number of small entities. NMFS has reviewed the 2012 gross fishing revenues from all sources for the vessels affiliated through this cooperative, and finds that they substantially exceed the \$19 million threshold for determining whether a finfish fishing entity is large or small, for RFA purposes, that became effective on July 22, 2013 (78 FR 37898). Moreover, NMFS has concluded that the 36 LLP license holders impacted through this proposed action are all affiliated with each other through membership in the FLCC. Consequently, all impacted entities are considered “large entities” for the purpose of the RFA. This conclusion is consistent with previous actions impacting the same fleet, composed of the same operations, prosecuting the same resources (77 FR 59053, September 26, 2012; 77 FR 58775, September 24, 2012). In both cases, NMFS determined that the impacted entities are not considered small entities for the purpose of the RFA based upon their affiliations with larger fishing-entities or gross revenue. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

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

#### Duplicate, Overlapping, or Conflicting Federal Rules

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

#### Description of Significant Alternatives that Minimize Adverse Impacts on Small Entities

Since there are no directly regulated small entities under this action within the definition of small entities used in the RFA, there are no economic impacts from this action on small entities.

#### Collection-of-Information Requirements

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval under OMB Control No. 0648-0334. Public reporting burden per response is estimated to be 2 hours for One-time Election to Permanently Surrender Pacific Cod Pot Gear Endorsement for the BSAI and GOA in Exchange for Receiving an LLP with an MLOA of 220 feet Authorizing Participation in the BSAI Pacific cod Longline C/P fisheries.

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

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to (enter office name) at the ADDRESSES above, and e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: October 21, 2013

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Alan D. Risenhoover,

Director, Office of Sustainable Fisheries,

performing the functions and duties of the

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 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 et seq.; 1801 et seq.; 3631 et seq.; Pub. L. 108-447

2. In § 679.2, add paragraph (2)(v) to the definition of “Maximum LOA (MLOA)” to read as follows:

§ 679.2 Definitions.

\* \* \* \* \*

Maximum LOA (MLOA) means:

(2) \* \* \*

(v) The MLOA of a groundfish LLP license endorsed to catch and process Pacific cod with hook-and-line gear in the BS or AI, or both, and is designated in Column B of Table 9 to this part is 220 feet (67 m).

\* \* \* \* \*

3. In § 679.4, add paragraphs (k)(3)(i)(D) and (k)(6)(xi) to read as follows:

§ 679.4 Permits.

\* \* \* \* \*

(k) \* \* \*

(3) \* \* \*

(i) \* \* \*

(D) Modification of the MLOA on a groundfish LLP license listed in column A of Table 9 to this part. (1) Each groundfish LLP license endorsed to catch and process

Pacific cod with hook-and-line gear in the BS or AI, or both, and designated in column B of Table 9 to this part will receive a 220-foot (67 m) MLOA following [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

(2) Each groundfish LLP license endorsed to catch and process Pacific cod with hook-and-line gear in the BS or AI, or both, and designated in column C of Table 9 to this part is eligible to be assigned a 220-foot (67 m) MLOA if the LLP holder submits a timely written request to remove all pot gear Pacific cod endorsements on that LLP following the process established under § 679.4(k)(6)(xi) of this part.

\* \* \* \* \*

(6) \* \* \*

(xi) Surrender and extinguishment of a groundfish LLP endorsement.

Endorsements specified on a groundfish LLP license are not severable from a license and cannot be surrendered except that pot gear Pacific cod endorsements specified on groundfish LLP licenses listed in Column C of Table 9 to this part, can be permanently surrendered, removed and extinguished if:

(A) The holder of the groundfish LLP license listed in Column C of Table 9 to this part requests, in writing, that NMFS permanently remove and extinguish all pot gear Pacific cod endorsements specified on that LLP license and acknowledges in that written request that the surrender and removal are permanent and irreversible and that all pot gear Pacific cod endorsements on that LLP license are extinguished;

(B) The holder of the groundfish LLP license listed in Column C of Table 9 to this part requests, in writing, that NMFS assign a 220-foot (67 m) MLOA on that LLP license;

(C) The holder of the eligible LLP license, or the authorized agent, signs the request;

(D) NMFS receives the written request to permanently remove and extinguish all pot gear Pacific cod endorsements specified on the LLP groundfish license by [DATE 36 MONTHS AFTER IMPLEMENTATION DATE]; and

(E) The written request is submitted to NMFS using one of the following methods:

(1) Mail: Regional Administrator, c/o Restricted Access Management Program, NMFS, P.O. Box 21668, Juneau, AK 99802–1668;

(2) Fax: 907–586–7354; or

(3) Hand delivery or carrier: NMFS, Room 713, 709 West 9th Street, Juneau, AK 99801.

\* \* \* \* \*

4. Table 9 to part 679 is added to read as follows:

Table 9 to Part 679 --

Groundfish LLP Licenses Eligible For Use In The BSAI Longline Catcher/Processor Subsector, Column A. X indicates whether Column B or Column C applies.

Column A	Column B	Column C
The Holder of Groundfish License Number . . .	Is eligible under 50 CFR 679.4(k)(3)(i)(D)(1) to be assigned a 220-foot (67 m) MLOA on that LLP license	Is eligible to request that NMFS permanently assign a 220-foot (67 m) MLOA on that LLP License under 50 CFR 679.4(k)(3)(i)(D)(2)
LLG 4508	X	
LLG 1785	X	
LLG 3681	X	
LLG 3676	X	
LLG 3609	X	
LLG 1400	X	
LLG 1401	X	
LLG 3617	X	
LLG 1916	X	
LLG 1917	X	
LLG 1989	X	
LLG 1127	X	
LLG 1128	X	
LLG 1125	X	
LLG 4823	X	
LLG 2783	X	
LLG 1988	X	
LLG 2238	X	
LLG 2958	X	
LLG 3973	X	
LLG 3637	X	
LLG 2421	X	
LLG 1713	X	
LLG 3616	X	
LLG 2892	X	
LLG 2112	X	
LLG 5222	X	
LLG 1578	X	
LLG 2026	X	
LLG 3847	X	
LLG 3602	X	
LLG 2081	X	
LLG 4008	X	
LLG 3090		X
LLG 1576		X
LLG 2959		X

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