

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**15 CFR Part 902**

**50 CFR Part 679**

**[Docket No. 151113999-6999-02]**

**RIN 0648-BF54**

**Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area; American Fisheries Act; Amendment 113**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement Amendment 113 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). This final rule modifies the management of Bering Sea and Aleutian Islands (BSAI) Pacific cod fishery to set aside a portion of the Aleutian Islands Pacific cod total allowable catch for harvest by vessels directed fishing for Aleutian Islands Pacific cod and delivering their catch for processing to a shoreside processor located on land west of 170° W. longitude in the Aleutian Islands (“Aleutian Islands shoreplant”). The harvest set-aside applies only if specific notification and performance requirements are met, and only during the first few months of the fishing year. This harvest set-aside provides the opportunity for vessels, Aleutian Islands shoreplants, and the communities where Aleutian Islands shoreplants are located to receive benefits from a portion of the

Aleutian Islands Pacific cod fishery. The notification and performance requirements preserve an opportunity for the complete harvest of the BSAI Pacific cod resource if the set-aside is not fully harvested. This final rule is intended to promote the goals and objectives of Amendment 113, the FMP, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws.

**DATES:** Effective on [*INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

**ADDRESSES:** Electronic copies of Amendment 113 to the FMP, the Environmental Assessment (EA), Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and Finding of No Significant Impact (FONSI) prepared for this action, collectively “the Analysis,” and the proposed rule may be obtained from <http://www.regulations.gov> or from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; by e-mail to *OIRA\_Submission@omb.eop.gov*; or by fax to (202) 395-5806.

**FOR FURTHER INFORMATION CONTACT:** Julie Scheurer, 907-586-7228.

**SUPPLEMENTARY INFORMATION:**

**Background**

NMFS manages the groundfish and Pacific cod fisheries in the Exclusive Economic Zone of the BSAI under the FMP. The North Pacific Fishery Management

Council (Council) prepared, and the Secretary of Commerce approved, the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable laws. Regulations implementing the FMP appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at 50 CFR part 600.

NMFS published the Notice of Availability of Amendment 113 on July 19, 2016 (81 FR 46883), with comments invited through September 19, 2016. NMFS published the proposed rule to implement Amendment 113 on August 1, 2016 (81 FR 50444), with comments invited through August 31, 2016. The Secretary approved Amendment 113 on October 17, 2016. NMFS received 35 unique comments on Amendment 113 and the proposed rule from 16 different commenters. A summary of these comments and the responses by NMFS are provided under the heading “Responses to Comments” below. These comments resulted in two minor changes from the proposed rule. One additional change to this final rule is not in response to comments, but is an administrative change that NMFS deemed necessary for timely implementation of this final rule.

A detailed review of the BSAI Pacific cod fishery, provisions of Amendment 113, the proposed regulations to implement Amendment 113, and the rationale for these regulations is provided in the preamble to the proposed rule (81 FR 50444, August 1, 2016) and is not repeated here. The preamble to this final rule briefly reviews the regulatory changes made by this final rule.

This final rule modifies the BSAI Pacific cod fishery to set aside a portion of the Aleutian Islands Pacific cod total allowable catch (TAC) for harvest by vessels directed fishing for Aleutian Islands Pacific cod and delivering their catch to Aleutian Islands

shoreplants for processing. The harvest set-aside applies only if specific notification and performance requirements are met, and only during the first few months of the fishing year.

Table 3 in the proposed rule preamble (81 FR 50444, August 1, 2016) describes the Overfishing Levels (OFLs), the Acceptable Biological Catches (ABCs), TACs, the Western Alaska Community Development Quota (CDQ) and non-CDQ fishery sector allocations, and seasonal apportionments of BSAI Pacific cod in 2017, the first year of implementation of this final rule. Each of these terms is described in the preamble to the proposed rule. Table 3 of the proposed rule preamble includes data from Tables 2 and 9 in the 2016 and 2017 final harvest specifications for the BSAI groundfish fisheries (81 FR 14773, March 18, 2016).

#### *Harvesting and Processing of Pacific cod in the Aleutian Islands*

A variety of vessels using a variety of gear types harvest the Aleutian Islands Pacific cod TAC each year. Trawl catcher vessels (CVs) and trawl catcher processors (CPs) have been among the most active participants in the Aleutian Islands Pacific cod fishery. Hook-and-line CPs have consistently participated in the Aleutian Islands Pacific cod fishery. Non-trawl CVs have harvested only a very small portion of the Pacific cod from the Aleutian Islands. The proposed rule and Section 2.6.6 of the Analysis provide additional detail on the types of vessels harvesting Pacific cod in the Aleutian Islands.

Trawl CVs deliver their catch of Aleutian Islands Pacific cod to several types of processors in the Aleutian Islands: CPs acting as motherships (vessels that process Pacific cod delivered by trawl CVs); stationary floating processors anchored in specific locations that receive and process catch on board but do not harvest and process their own catch;

and shoreside processing facilities that are physically located on land west of 170° W. longitude in the Aleutian Islands (defined as “Aleutian Islands shoreplant” in this final rule).

Currently, Aleutian Islands shoreplants that may be capable of receiving Aleutian Islands Pacific cod from CVs are located in the communities of Adak and Atka. Although the Atka shoreplant has not received and processed Aleutian Islands Pacific cod, the shoreplant in Adak has received and processed relatively large amounts of Pacific cod. The proposed rule and Section 2.7.1 of the Analysis have additional detail on the delivery and processing of Aleutian Islands Pacific cod.

Since 2008, trawl CVs have primarily delivered their catch of Aleutian Islands Pacific cod to a small group of CPs that operate as motherships. As deliveries of Aleutian Islands Pacific cod harvest from trawl CVs to CPs operating as motherships have increased in recent years, the amount of trawl CV harvest delivered to Aleutian Islands shoreplants has decreased. Additionally, CPs operating as motherships have demonstrated the capacity to process the entire TAC of Pacific cod in the Aleutian Islands in years when no Aleutian Islands shoreplant is in operation. This final rule is intended in part to mitigate the risk that CVs, Aleutian Islands shoreplants, and the communities in which they are located will be preempted from participating in the Aleutian Islands Pacific cod fishery by CPs.

The proposed rule and Section 2.6 of the Analysis provide additional description of the factors that have affected the harvesting and processing of Pacific cod in the Aleutian Islands.

## **Need for this Final Rule**

A thorough description of the history and need for this action is provided in the proposed rule and the Analysis prepared for this action and is not repeated here. The Council adopted its preferred alternative for Amendment 113 at its October 2015 meeting.

Since 2008, Aleutian Islands fishing communities, and specifically the community of Adak and its shoreplant, have seen a decrease in the amount of Pacific cod being harvested and delivered. The amount of Pacific cod delivered to Aleutian Islands shoreplants has been highly variable, which is not conducive to stable shoreside operations. Several factors have contributed to this instability, and therefore the need for this action, including decreased Pacific cod biomass in the Aleutian Islands subarea; the establishment of separate OFLs, ABCs, and TACs for Pacific cod in the Bering Sea and the Aleutian Islands; changing Steller sea lion protection measures; and changing fishing practices in part resulting from rationalization programs that allocate catch to specific fishery participants.

This rule establishes a harvest set-aside in which a portion of the Aleutian Islands Pacific cod TAC will be available for harvest by vessels directed fishing for Aleutian Islands Pacific cod and delivering their catch to Aleutian Islands shoreplants for processing. This harvest set-aside applies only if specific notification and performance requirements are met, and only during the first few months of the fishing year.

The Council determined and NMFS agrees that a harvest set-aside is needed for several reasons: the TAC for Aleutian Islands Pacific cod has been significantly lower than predicted so that less Pacific cod is available for harvest; the rationalization programs, and particularly the Amendment 80 Program, have allowed an influx of

processing capacity into the Aleutian Islands Pacific cod fishery; and the Aleutian Islands communities and shoreplants (Adak) have received almost all of their total first wholesale gross revenue from Aleutian Islands Pacific cod.

This final rule strikes a balance between providing protections for fishing communities and ensuring that the fishery sectors have a meaningful opportunity to fully harvest their BSAI Pacific cod allocations by including several thresholds to prevent a portion of the Aleutian Islands Pacific cod TAC from being unharvested. This final rule will provide social and economic benefits to, and promote stability in, fishery-dependent fishing communities in the Aleutian Islands and is responsive to changes in management of the Aleutian Islands Pacific cod fishery such as rationalization programs, decreasing biomass of Pacific cod, and Steller sea lion protection measures that necessitate putting protections in place to protect other non-rationalized fisheries.

This final rule does not modify existing harvest allocations of BSAI Pacific cod to participants in the CDQ Program. This final rule does not modify existing harvest allocations of BSAI Pacific cod made to the nine non-CDQ fishery sectors defined in § 679.20(a)(7)(ii)(A). Although the nine non-CDQ sectors will continue to receive their existing harvest allocations of BSAI Pacific cod, each sector's ability to harvest a portion of its BSAI Pacific cod allocation in the Aleutian Islands may be affected by this rule.

The Aleutian Islands shoreplants in Adak and Atka currently are not processing Aleutian Islands Pacific cod. However, the protection measures and harvest set-aside in this final rule will minimize the risk of exclusion from, and maintain opportunities for participation in, the Aleutian Islands Pacific cod fishery by Aleutian Islands harvesters,

shoreplants, and communities when those Aleutian Islands communities are able to accept deliveries of and process Aleutian Islands Pacific cod.

This final rule revises regulations to provide additional opportunities for harvesters to deliver Aleutian Islands Pacific cod to Aleutian Islands shoreplants. Recent Aleutian Islands Pacific cod TACs have not been sufficient to allow all sectors to prosecute the Aleutian Islands Pacific cod fishery at their historical levels. Without protections, Aleutian Islands harvesters, shoreplants, and fishing communities may be preempted from the fishery by harvests by CPs, or by harvests from CVs delivering their catch to CPs.

Because of their remote location and limited economic alternatives, Aleutian Islands communities rely on harvesting and processing of the nearby fishery resources to support and sustain the social and economic welfare of their communities. This final rule is intended to be directly responsive to National Standard 8 of the Magnuson-Stevens Act that states conservation and management measures shall take into account the importance of fishery resources to fishing communities in order to provide for the sustained participation of such communities, and to the extent practicable, minimize adverse economic impacts on such communities (16 U.S.C. 1851(a)(8)).

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

This final rule modifies several aspects of the BSAI Pacific cod fishery. This final rule sets aside a portion of the Aleutian Islands Pacific cod non-CDQ TAC for harvest by vessels directed fishing for Aleutian Islands Pacific cod and delivering their catch to Aleutian Islands shoreplants. However, the harvest set-aside applies only if

specific notification and performance requirements are met, and only during the first few months of the fishing year.

In order to implement Amendment 113, this final rule:

- Defines the term “Aleutian Islands shoreplant” in regulation;
- Calculates and defines the amount of the Aleutian Islands Pacific cod TAC that will be available as a directed fishing allowance (DFA) and the amount that will be available as an incidental catch allowance (ICA);
- Limits the amount of early season (from January 20 until April 1), also known as A-season, Pacific cod that may be harvested by the trawl CV sector in the Bering Sea prior to March 21 (Bering Sea Trawl CV A-Season Sector Limitation);
- Sets aside some or all of the Aleutian Islands Pacific cod non-CDQ DFA for harvest by vessels directed fishing for Aleutian Islands Pacific cod and delivering their catch for processing by Aleutian Islands shoreplants from January 1 to March 15 (Aleutian Islands CV Harvest Set-Aside);
- Requires that either the City of Adak or the City of Atka annually notify NMFS of its intent to process Aleutian Islands Pacific cod during the upcoming fishing year in order for the Aleutian Islands CV Harvest Set-Aside and the Bering Sea Trawl CV A-Season Sector Limitation to be effective in the upcoming fishing year; and
- Removes the Bering Sea Trawl CV A-Season Sector Limitation and the Aleutian Islands CV Harvest Set-Aside if less than 1,000 metric tons (mt) of the harvest set-aside is delivered to (*i.e.*, landed at) Aleutian Islands shoreplants on or before February 28, or if the harvest set-aside is fully taken before March 15.

The following sections provide further explanation of the regulatory changes made by this rule. Additional detail about the rationale for and effect of the regulatory changes in this rule is provided in the preamble to the proposed rule and in the Analysis for this action.

### **Summary of Regulatory Changes**

#### *Revisions to Definitions at § 679.2*

This final rule adds a definition to § 679.2 for “Aleutian Islands shoreplant” to mean a processing facility that is physically located on land west of 170° W. longitude within the State of Alaska (State). This definition is needed because the existing term “shoreside processor” in § 679.2 can include processing vessels that are moored or otherwise fixed in a location (*i.e.*, stationary floating processors), but not necessarily located on land. This new definition provides a clear and consistent term for referencing the processors located on land within the Aleutian Islands.

#### *Revisions to General Limitations at § 679.20*

This final rule adds a new paragraph (viii) to § 679.20(a)(7). This new paragraph includes the primary regulatory provisions of this final rule. The preamble to the proposed rule provides examples to aid the reader in understanding how this final rule will apply using 2017 harvest specifications for BSAI Pacific cod (81 FR 14773, March 18, 2016). For the remainder of this preamble, unless otherwise specified, all references to allocations and apportionments of BSAI Pacific cod refer to non-CDQ allocations and apportionments of BSAI Pacific cod.

#### Calculation of the Aleutian Islands Pacific cod ICA and DFA

NMFS will annually specify an ICA and a DFA derived from the Aleutian Islands Pacific cod non-CDQ TAC. Each year, during the annual harvest specifications process described at § 679.20(c), NMFS will specify an amount of Aleutian Islands Pacific cod that NMFS estimates will be taken as incidental catch when directed fishing for non-CDQ groundfish other than Pacific cod in the Aleutian Islands. This amount will be the Aleutian Islands ICA and will be deducted from the Aleutian Islands non-CDQ TAC. The amount of the Aleutian Islands non-CDQ TAC remaining after subtraction of the Aleutian Islands ICA will be the Aleutian Islands DFA.

NMFS will specify the Aleutian Islands ICA and DFA so that NMFS can clearly establish the amount of Aleutian Islands Pacific cod that will be used to determine the amount of the Aleutian Islands CV Harvest Set-Aside described in the following sections of this preamble. The specification will also provide the public with notification of the amount of the Aleutian Islands non-CDQ TAC that is available for directed fishing prior to the start of the fishing season to aid in the planning of fishery operations. The Aleutian Islands DFA is the maximum amount of Pacific cod available for directed fishing by all non-CDQ fishery sectors in all seasons in the Aleutian Islands.

Although the amount of the Aleutian Islands ICA may vary from year to year, NMFS specifies an Aleutian Islands ICA of 2,500 mt for 2017. NMFS determined that this amount will be needed to support incidental catch of Pacific cod in other Aleutian Islands non-CDQ directed groundfish fisheries. In future years, NMFS will specify the Aleutian Islands ICA in the annual harvest specifications based on recent and anticipated incidental catch of Aleutian Islands Pacific cod in other Aleutian Islands non-CDQ directed groundfish fisheries.

## Bering Sea Trawl CV A-Season Sector Limitation

This final rule establishes the Bering Sea Trawl CV A-Season Sector Limitation to restrict the amount of the trawl CV sector's A-season allocation that can be harvested in the Bering Sea subarea prior to March 21. The Bering Sea Trawl CV A-Season Sector Limitation ensures that some of the trawl CV sector's A-season allocation remains available for harvest in the Aleutian Islands subarea by trawl catcher vessels that deliver their catch of Aleutian Islands Pacific cod to Aleutian Islands shoreplants for processing. On March 21, the restriction on Bering Sea harvest by the trawl CV sector will be lifted and the remainder, if any, of the BSAI trawl CV sector's A-season allocation can be harvested in either the Bering Sea or the Aleutian Islands (if still open to directed fishing for Pacific cod) for delivery to any eligible processor for processing.

The Bering Sea Trawl CV A-Season Sector Limitation will equal the lesser of either the Aleutian Islands DFA or 5,000 mt. The Bering Sea Trawl CV A-Season Sector Limitation will be equivalent to the Aleutian Islands CV Harvest Set-Aside, as discussed in the following section of the preamble. The amount of the trawl CV sector's A-season allocation that may be harvested in the Bering Sea prior to March 21 will be the amount of Pacific cod that remains after deducting the Bering Sea Trawl CV A-Season Sector Limitation from the BSAI trawl CV sector A-season allocation listed in the annual harvest specifications (and as determined at § 679.20(a)(7)(iv)(A)(1)(i)). NMFS will annually specify in the annual harvest specifications the Bering Sea Trawl CV A-Season Sector Limitation and the amount of the trawl CV sector's A-season allocation that may be harvested in the Bering Sea prior to March 21.

The preamble to the proposed rule provides additional background on the factors that the Council and NMFS considered when determining the amount and timing of the Bering Sea Trawl CV A-Season Sector Limitation and is not repeated here.

#### Aleutian Islands Catcher Vessel Harvest Set-Aside

This final rule requires that some or all of the Aleutian Islands DFA be set aside for harvest by vessels directed fishing for Aleutian Islands Pacific cod and delivering their catch to Aleutian Islands shoreplants for processing. This Aleutian Islands CV Harvest Set-Aside will be available for harvest by vessels using any authorized gear type and that deliver their directed catch of Aleutian Islands Pacific cod to Aleutian Islands shoreplants for processing. NMFS will account for harvest and processing of Aleutian Islands Pacific cod under the Aleutian Islands CV Harvest Set-Aside separate from, and in addition to, its accounting of Aleutian Islands Pacific cod catch by the nine non-CDQ fishery sectors established in § 679.20(a)(7)(ii). Because of this separate accounting, the Aleutian Islands CV Harvest Set-Aside will not increase or decrease the amount of BSAI Pacific cod allocated to any of the non-CDQ fishery sectors. The Aleutian Islands CV Harvest Set-Aside will apply from January 1 until March 15 of each year if certain notification and performance measures, described in the following section of the preamble, are satisfied.

The amount of the Aleutian Islands CV Harvest Set-Aside will be calculated as described above for the Bering Sea Trawl CV A-Season Sector Limitation. It will be an amount equal to the lesser of either the Aleutian Islands DFA or 5,000 mt. NMFS will notify the public of the Aleutian Islands CV Harvest Set-Aside through the annual harvest specifications process.

When the Aleutian Islands CV Harvest Set-Aside is set equal to the Aleutian Islands DFA and the set-aside is in effect, directed fishing for Pacific cod in the Aleutian Islands may only be conducted by vessels that deliver their catch of Aleutian Islands Pacific cod to Aleutian Islands shoreplants for processing. Vessels that do not want to deliver their directed catch of Aleutian Islands Pacific cod to Aleutian Islands shoreplants for processing will be prohibited from directed fishing for Pacific cod in the Aleutian Islands when the Aleutian Islands CV Harvest Set-Aside is in effect. These vessels will be permitted to conduct directed fishing for groundfish other than Pacific cod in the Aleutian Islands when the Aleutian Islands CV Harvest Set-Aside is in effect, and their incidental harvests of Pacific cod will accrue toward the Aleutian Islands ICA. CPs will be permitted to conduct directed fishing for Pacific cod in the Aleutian Islands when the Aleutian Islands CV Harvest Set-Aside side is in effect as long as they act only as CVs and deliver their directed catch of Aleutian Islands Pacific cod to Aleutian Islands shoreplants for processing. CPs also will be permitted to retain and process Aleutian Islands Pacific cod that is caught as incidental catch while directed fishing for groundfish other than Pacific cod, and those incidental harvests of Pacific cod will accrue toward the Aleutian Islands ICA.

When the Aleutian Islands DFA is greater than 5,000 mt, and therefore the Aleutian Islands CV Harvest Set-Aside is set equal to 5,000 mt, the difference between the DFA and the Aleutian Islands CV Harvest Set-Aside will be available for directed fishing by all non-CDQ fishery sectors with sufficient A-season allocations and may be processed by any eligible processor. This difference is called the “Aleutian Islands Unrestricted Fishery.” In years when there is both an Aleutian Islands CV Harvest Set-

Aside and an Aleutian Islands Unrestricted Fishery, vessels may conduct directed fishing for Pacific cod in the Aleutian Islands and deliver their catch to Aleutian Islands shoreplants or to any eligible processor for processing as long as the Aleutian Islands Unrestricted Fishery is open to directed fishing. CPs will be permitted to conduct directed fishing for Pacific cod in the Aleutian Islands and process that directed catch as long as the Aleutian Islands Unrestricted Fishery is open to directed fishing. NMFS will determine whether the Aleutian Islands Unrestricted Fishery is sufficient to support a directed fishery and will notify the public through a notice in the **Federal Register**.

While the Aleutian Islands CV Harvest Set-Aside is in effect, NMFS will account for Aleutian Islands Pacific cod caught by vessels against the appropriate fishery sector allocation, the ICA or the DFA, and the Aleutian Islands CV Harvest Set-Aside.

Examples illustrating this accounting are provided in the preamble of the proposed rule.

If certain notification and performance measures are met, the Aleutian Islands CV Harvest Set-Aside will be in effect from January 1 until March 15 of each year. If the entire set-aside is harvested and delivered prior to March 15, NMFS will lift the Bering Sea Trawl CV A-Season Sector Limitation and Aleutian Islands CV Harvest Set-Aside as soon as possible. The Aleutian Islands CV Harvest Set-Aside will end at noon on March 15 even if the entire set-aside has not been harvested and delivered to Aleutian Islands shoreplants.

When the set-aside ends, any remaining Aleutian Islands DFA may be harvested by any non-CDQ fishery sector with remaining A-season allocation, and the harvest may be delivered to any eligible processor. If a vessel has been directed fishing for Aleutian Islands Pacific cod, but has not yet delivered that Pacific cod for processing when the

harvest set-aside is lifted, that vessel may deliver its Pacific cod to any eligible processor. If a vessel has been directed fishing for Aleutian Islands Pacific cod, but has not yet delivered that Pacific cod for processing when the Aleutian Islands Unrestricted Fishery closes, but the Aleutian Islands CV Harvest Set-Aside is still in effect, it will be required to deliver that Pacific cod to an Aleutian Islands shoreplant for processing or be in violation of the directed fishing closure.

The preamble to the proposed rule provides additional background on the factors that the Council and NMFS considered when determining the amount and timing of the Aleutian Islands CV Harvest Set-Aside and is not repeated here.

#### Measures to Prevent Stranding of Aleutian Islands Non-CDQ Pacific Cod TAC

Stranding is a term sometimes used to describe TAC that remains unharvested due to regulations. This final rule includes performance measures intended to prevent the stranding of Aleutian Islands non-CDQ Pacific cod TAC if the set-aside is not requested, if limited processing occurs at Aleutian Islands shoreplants, or if the Aleutian Islands CV Harvest Set-Aside is taken before March 15.

The first performance measure requires that either the City Manager of the City of Adak or the City Administrator of the City of Atka notify NMFS of the city's intent to process Aleutian Islands Pacific cod in the upcoming fishing year. If neither city notifies NMFS in accordance with regulatory requirements described below, the Bering Sea Trawl CV A-Season Sector Limitation and the Aleutian Islands CV Harvest Set-Aside will not be in effect for the upcoming fishing year.

This final rule requires annual notification to NMFS in the form of a letter or memorandum signed by the City Manager of Adak or the City Administrator of Atka

stating the city's intent to process Aleutian Islands Pacific cod in the upcoming fishing year. This signed letter or memorandum is the official notification of intent. The official notification of intent must be postmarked no later than [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], and no later than October 31 for each year after 2016. The official notification of intent must be submitted to the NMFS Alaska Regional Administrator by certified mail through the United States Postal Service. The City Manager of Adak or City Administrator of Atka must also submit an electronic copy of the official notification of intent and the certified mail receipt with postmark via email to NMFS ([nmfs.akr.inseason@noaa.gov](mailto:nmfs.akr.inseason@noaa.gov)) no later than [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], and no later than October 31 for each year after 2016. Email submission of electronic copies of the official notification of intent and the certified mail receipt with postmark will provide NMFS with the timely information it needs to manage the upcoming fisheries. Email notification is in addition to notification via certified U.S. Mail and does not replace the requirement for notification through the U.S. Postal Service.

A city's notification of intent to process Aleutian Islands Pacific cod must contain the following information: date, name of city, a statement of intent to process Aleutian Islands Pacific cod, statement of calendar year during which the city intends to process Aleutian Islands Pacific cod, and the signature of and contact information for the City Manager or City Administrator of the city whose shoreplant is intending to process Aleutian Islands Pacific cod.

On or shortly after [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], and November 1 for each year after 2016, the Regional

Administrator will send a signed and dated letter either confirming receipt of the city's notification of their intent to process Aleutian Islands Pacific cod, or informing the city that notification was not received by the deadline.

While this final rule will make the set-aside available for processing by any shoreplant west of 170° W. longitude in the Aleutian Islands, the notification requirement is required from either Adak or Atka and not another city that might have an Aleutian Islands shoreplant in the future. The Council and NMFS's rationale for this is provided in the preamble of the proposed rule.

The second performance measure removes the Bering Sea Trawl CV A-Season Sector Limitation and the Aleutian Islands CV Harvest Set-Aside for the remainder of the A-season if less than 1,000 mt of the Aleutian Islands CV Harvest Set-Aside is delivered to Aleutian Islands shoreplants by February 28. This performance measure will lift the Aleutian Islands CV Harvest Set-Aside and make any remaining amount of the set-aside available to all participants if Aleutian Islands shoreplants are unable to process Pacific cod or if too few or no vessels decide to participate in the set-aside fishery.

The third performance measure suspends the Bering Sea Trawl CV A-Season Sector Limitation for the remainder of the year if the entire Aleutian Islands CV Harvest Set-Aside (5,000 mt in 2017) is fully harvested and delivered to Aleutian Islands shoreplants before March 15.

The preamble to the proposed rule provides additional background on the factors considered by the Council and NMFS when establishing these performance standards and is not repeated here.

*Harvest Specifications Process to Announce BSAI A-Season Pacific Cod Limits*

*Implemented by Amendment 113*

During the annual harvest specifications process described in the proposed rule, NMFS will publish in the proposed harvest specifications the amounts for the Aleutian Islands ICA, DFA, CV Harvest Set-Aside, and Unrestricted Fishery, as well as the Bering Sea Trawl CV A-Season Sector Limitation, and the amount available for harvest by trawl CVs in the Bering Sea while the set-aside is in effect. These amounts will be published in a separate table to supplement the table in the harvest specifications that describes the final gear shares and allowances of the BSAI Pacific cod TAC for the upcoming year.

NMFS also will publish a notice in the **Federal Register** shortly after [*INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*], and November 1 for each year after 2016, announcing whether the Aleutian Islands CV Harvest Set-Aside and Bering Sea Trawl CV A-Season Sector Limitation will be in effect for the upcoming fishing year, and whether the harvest limits in the supplemental table will apply. If necessary, NMFS will publish in the **Federal Register** an adjustment of the BSAI A-season Pacific cod limits for the upcoming year after the Council adopts the harvest specifications in December.

**Amendment of the 2017 Final Harvest Specifications for the Groundfish Fishery of the BSAI**

With this final rule, NMFS amends the 2017 final harvest specifications for the groundfish fishery of the BSAI by adding the following Table 8a, which specifies the Aleutian Islands ICA, DFA, CV Harvest Set-Aside, and Unrestricted Fishery, as well as the Bering Sea Trawl CV A-Season Sector Limitation. If NMFS receives timely

notification of intent to process from either Adak or Atka, the harvest limits in Table 8a will be in effect in 2017.

**Table 8a. 2017 BSAI A-season Pacific Cod Limits if Aleutian Islands Shoreplants Intend to Process Pacific Cod**

2017 Allocations under Aleutian Islands CV Harvest Set-Aside	Amount (mt)
AI non-CDQ TAC	11,465
AI ICA	2,500
AI DFA	8,965
BS non-CDQ TAC	213,141
BSAI Trawl CV A-Season Allocation	36,732
BSAI Trawl CV A-Season Allocation minus Sector Limitation <sup>1</sup>	31,732
BS Trawl CV A-Season Sector Limitation	5,000
AI CV Harvest Set-Aside	5,000
AI Unrestricted Fishery	3,965

<sup>1</sup>This is the amount of the BSAI trawl CV A-season allocation that may be harvested in the Bering Sea prior to March 21.

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

NMFS made three changes to the regulatory text from the proposed rule. Two of these changes are in response to comments received on the proposed rule, and one change is made to address administration of this final rule in 2016.

First, this final rule modifies § 679.20(a)(7)(viii)(E)(4) in response to Comment 8. The words “prior to” are changed to “on or before” to reflect the Council’s intent. See the response to Comment 8 for the complete justification for this change.

Second, this final rule modifies § 679.20(a)(7)(viii)(D) and (E) to specify that the City Manager of Adak and the City Administrator of Atka are the individuals responsible for notifying NMFS of their city’s intent to process Pacific cod in the upcoming year. See the response to Comment 5 for the complete justification for this change.

Third, this final rule modifies § 679.20(a)(7)(viii) to include a separate notification deadline for 2016 for the City Manager of Adak or the City Administrator of Atka to notify NMFS of the intent to process Aleutian Islands Pacific cod in 2017. This final rule requires that the official notification of intent to process for 2017 be postmarked and emailed no later than [*INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*]. This final rule clarifies that for all years after 2016, this annual notification must be postmarked and emailed no later than October 31.

This change is required to ensure that NMFS provides an opportunity for the City of Adak and the City of Atka to notify NMFS of their intent to process after this final rule has published. Because this final rule will publish and become effective after October 31, 2016, the City of Adak and the City of Atka could not provide timely notification to NMFS of their intent to process in 2017 without this change in the notification deadline. This change enables the cities of Adak and Atka, and vessels delivering to Aleutian Island shoreplants, to receive the benefits of this final rule in 2017 that would otherwise be foregone without this change. NMFS is providing 15 days after the publication of this rule for the City of Adak or the City of Atka to notify NMFS so that the cities have adequate time after the publication of this final rule to prepare and submit their official notification of intent.

NMFS determined that this change will not affect participants in the Aleutian Islands Pacific cod fishery in ways not previously considered and analyzed. The 2016 deadline for submitting notification of intent to process falls between the two dates considered by the Council: prior to November 1 or prior to December 15. In considering the effect these notification deadlines, the Analysis focuses on the ability of the industry

to react if there are no Aleutian Islands shoreplants operating in the upcoming fishing year, stating that selection of the earlier deadline would provide more time for the industry to make the necessary arrangements to harvest and process the non-CDQ Aleutian Islands Pacific cod DFA, and that in general, more notification concerning processing of Aleutian Islands Pacific cod in the upcoming fishing year will help to reduce the risk of unharvested non-CDQ Aleutian Islands Pacific cod TAC. Even so, the Analysis concludes that both date options would give fishery participants sufficient time to plan and prepare before the A-season begins and that ideally notice of intent to process would be provided to NMFS by a date near the end of the December Council meeting. NMFS continues to agree with the Council that October 31 is the preferred deadline of the two dates considered, and this final rule establishes October 31 as the deadline for submission of notification of intent for each fishing year after 2016. However, NMFS has determined that the notification deadline for 2016 will allow Adak and Atka an opportunity to submit notification prior to the start of the 2017 fishing year, thus providing an opportunity for the set-aside to be effective in 2017, rather than having to wait an additional year. Additionally, the 2016 notification deadline will provide fishery participants with sufficient time to plan and prepare before the A-season begins because NMFS will be able to notify fishery participants as to whether the set-aside will be in effect for 2017 prior to December 15 and prior to the end of the December Council meeting. In addition, this change is applicable only for the first year of implementation of this final rule, and will therefore have a limited and temporary effect.

## **Responses to Comments**

NMFS received 35 unique comments on Amendment 113 and the proposed rule in 18 comment letters from 16 different commenters. The 16 commenters consisted of 2 individuals; 7 companies representing CPs; the Alaska Department of Fish and Game; 1 fish processing company; 1 CDQ group; 2 community development corporations, 1 Aleutian Islands municipal government; and 1 non-profit conservation organization. Of the 16 commenters, 9 explicitly supported adoption of the proposed harvest set-aside. Opponents were companies representing CPs whose vessels could be restricted by this action.

In responding to these comments, when NMFS refers to Amendment 113, unless otherwise noted, NMFS means Amendment 113 and this final rule implementing Amendment 113.

#### *General Comments*

*Comment 1:* This action is unnecessary. When Adak has an operational plant, it received a significant portion of the Aleutian Islands Pacific cod catch without delivery requirements.

*Response 1:* In February 2015, the Council identified in a modified problem statement the purpose and need for protections for Aleutian Islands communities as a result of the implementation of rationalization programs, the BSAI Pacific cod TAC split, and relatively low Pacific cod abundance in the Aleutian Islands, among other factors (Section 2.2 of the Analysis). The Council stated that these factors have "...increased the risk that the historical share of BSAI cod of other industry participants and communities that depend on shoreplant processing in the region may be diminished." The Council's rationale for its preferred alternative stated that this action "...would provide benefits and

stability to fishery dependent communities in the Aleutian Islands and is responsive to changes in management regimes like rationalization programs that necessitate putting protections in place to protect other non-rationalized fisheries” (Section 2.4.3 of the Analysis). The Council’s purpose and need statement, the proposed rule, and the Analysis describe the range of factors that have affected delivery patterns in the Aleutian Islands that could limit opportunities for Aleutian Islands shoreplants, harvesters delivering to Aleutian Islands shoreplants, and the communities in the Aleutian Islands. Thorough descriptions of the factors necessitating this action, and the Council’s rationale are provided in the “Need for This Proposed Rule” section of the proposed rule and the Analysis and are not repeated here.

In years when the Adak shoreplant was not operational, the offshore processing sector (primarily CPs) was able to process the entire Aleutian Islands TAC (Section 2.7.1.2 of the Analysis), demonstrating that the offshore sector is capable of fully harvesting available catch and preempting the onshore sector’s access to the fishery. Table 2-32 of the Analysis shows that prior to 2008, the majority of the Aleutian Islands Pacific cod processed by the offshore sector originated from CP harvest, but after 2008, CV deliveries of Aleutian Islands Pacific cod to CPs played a more prominent role in the offshore processing of Aleutian Islands Pacific cod. Although Aleutian Islands shoreplants operating in Adak have received Pacific cod without a harvest set-aside in the past, NMFS and the Council determined that this action is necessary to minimize the risk of diminished share of Aleutian Islands Pacific cod to Aleutian Islands communities dependent on the fishery and to provide additional stability to promote and sustain

Aleutian Islands shoreplants, harvesters delivering to Aleutian Islands shoreplants, and the communities in the Aleutian Islands.

*Comment 2:* The proposed rule assumes that the increase in offshore processing since the implementation of rationalization programs was a major cause of instability in onshore processing in the Aleutian Islands, but this is not true. There have been long-standing challenges to the viability of shore-based processing in the Aleutian Islands such as ownership changes of Aleutian Islands shoreplants, Steller sea lion protection measures, plant insolvency, energy costs, employment challenges, market conditions, and product transportation difficulties.

*Response 2:* As explained in the “Need for This Proposed Rule” section of the preamble to the proposed rule and in Section 2.2 of the Analysis, the Council and NMFS recognize that several factors have contributed to instability in processing operations in the Aleutian Islands, including decreased Pacific cod biomass in the Aleutian Islands subarea; the establishment of separate OFLs, ABCs, and TACs for Pacific cod in the Bering Sea and the Aleutian Islands (referred to as the “BSAI TAC split”); changing Steller sea lion protection measures; historical volatility in the Aleutian Islands shoreplant processing sector; and changing fishing practices in part resulting from rationalization programs. The Council, NMFS and this rule do not assume that rationalization programs are the primary cause of this instability, but rather, one of many contributing factors.

*Comment 3:* This is a wipe-out plan for cod. It will wipe out cod just as this agency did in Maine. Some other system has to be set up for economic sustainability for people in the area. Stop this plan now.

*Response 3:* NMFS disagrees that Amendment 113 will wipe out Pacific cod.

This action will not change the TAC for Aleutian Islands Pacific cod, or conservation and management measures that ensure that harvests of Aleutian Islands Pacific cod do not exceed established OFL, ABC, or TAC limits. Aleutian Islands Pacific cod is managed to a TAC that is set at or below the ABC and the stock is neither overfished nor approaching an overfished condition (see Section 3.3 of the Analysis).

*Comment 4:* There is no provision in the proposed rule to remove the Aleutian Islands CV Harvest Set-Aside from the FMP and Federal regulations if no on-shore processing activity occurs for a number of years. Does the set-aside continue indefinitely? What would prompt Council re-examination?

*Response 4:* The commenter is correct; there is no provision in Amendment 113 or this rule that would end, or sunset, the Aleutian Islands CV Harvest Set-Aside if Aleutian Islands shoreplants are not operational for a specified number of years. However, under the performance measures established by this final rule, the Aleutian Islands CV Harvest Set-Aside is effective in a fishing year only if timely and complete notification of intent to process from the City of Adak or the City of Atka is received by NMFS. Presumably, if there is not likely to be an operational Aleutian Islands shoreplant in the upcoming fishing year, these cities would not submit a notification to NMFS. Also, in order for the set-aside to continue to be effective after February 28, a minimum of 1,000 mt of Aleutian Islands Pacific cod must be delivered to Aleutian Islands shoreplants on or before February 28. If, in the future, it appears that the Aleutian Islands CV Harvest Set-Aside is not being used, or Aleutian Islands shoreplants cannot meet the

demand, the Council could consider and, if warranted, initiate an action to revise or remove the provisions of Amendment 113 and its implementing regulations.

*Comment 5:* The proposed rule grants *de facto* fishery management authority to municipal officials, by requiring them to provide notice to NMFS of the Aleutian Islands shoreplants intent to process Pacific cod in the upcoming year. NMFS is surrendering the determination of whether a shore plant is prepared to process Pacific cod to a community representative who is not a regulated participant in the fishery. This is granting too much power to one individual. The city manager could use this authority to undermine certain businesses or to grant favors. Additionally, Atka does not have a city manager.

*Response 5:* The Council specified that the City of Adak or the City of Atka should be the entity to provide official notification to NMFS of the community's intent to process Pacific cod, but it did not specify who from Adak or Atka should provide such notification (Section 2.7.2.4 of the Analysis). The Analysis describes that if the notification requirement is implemented, NMFS could specify the person representing the city who should provide the notification.

The commenter notes that the City of Atka does not have a city manager. Technically, that is accurate: Atka has a city administrator. Title 29 of the Alaska Statutes explains the distinctions between a city manager and a city administrator. In the manager form of municipality, the city manager is the chief executive. In a strong-mayor form of municipality, the mayor is the chief executive and the city administrator can exercise powers or duties only as delegated by the mayor and city council. In either case, the role of the manager or administrator is to represent the interests of the city, city

council, and mayor. The language in the final rule has been changed to reflect that the city administrator is the person responsible for providing notification to NMFS for Atka.

This type of designation is not unprecedeted. For example, in an action to create Community Quota Entities (CQE) for the Halibut and Sablefish Individual Fishing Quota Program (Amendment 66 to the Gulf of Alaska FMP, 69 FR 23681, April 30, 2004), NMFS specified which governing body would be responsible for proposing a potential CQE to NMFS, depending on the governance structure of the particular community. For communities incorporated as municipalities, the governing body identified was the city council. In communities represented by tribal governments, the governing body was the non-profit entity. In similar fashion, and as described in the proposed rule for this action, NMFS determined that the city manager or administrator would be the appropriate person responsible for submitting the required notification to NMFS.

While ownership and management of fish processing facilities may change, it is likely that there will always be someone performing the role of city manager or administrator for Adak and Atka. As elected or appointed officials, these representatives are bound by oath of office to uphold the wishes of their constituents. Currently, both the City of Adak and the City of Atka execute, in good faith, waivers for the delivery requirement for Western Aleutian Islands golden king crab when sufficient processing capacity does not exist in those communities. These cities issue the waiver knowing that it is not in the communities' best interests to strand the crab resource. The notification requirement under Amendment 113 is similar, and it is not clear how the requirement to notify NMFS of the communities' intent to process Pacific cod grants too much power to the city manager or administrator. NMFS expects that the city manager or administrator

will be in communication with the shoreplant manager and local fishing fleet prior to the notification deadline to ensure that the shoreplant will be able to accept deliveries of Pacific cod once the set-aside goes into effect. If, for some reason, the shoreplant does not operate as anticipated, the 1,000 mt minimum processing performance measure would not be met by February 28 and the set-aside would be lifted.

NMFS does not consider the notification requirement to be a *de facto* grant of fishery management authority to the city manager or administrator. The Council and NMFS have established the fishery management policy with regard to Aleutian Islands Pacific cod. The intent of the Council and NMFS with Amendment 113 and this final rule is to have an Aleutian Islands CV Harvest Set-Aside in place for Aleutian Islands fishing communities, and the harvesters and shoreplants that are part of those communities, to utilize. Recognizing that there may be years when Aleutian Islands shoreplants may not be operational, the notification provision was a fishery management decision by the Council and NMFS to provide for an orderly start to the fishing year and as a way to prevent the set-aside from becoming effective if neither city intends to process in the upcoming fishing year. The city manager or administrator is the person from whom NMFS will expect to receive notification of the city's intent to process Pacific cod and to whom NMFS will confirm that notification has been received. Under this final rule, the city manager or administrator is providing information to NMFS on anticipated processing activities based on knowledge gained from Aleutian Islands shoreplants in their communities. City managers and administrators are not delegated any authority to open or close fisheries, assess catch amounts, or take other actions provided in regulation. Notification is not to be confused with an active role in

administering regulations. NMFS is ultimately responsible for taking any management actions once a notification has been received.

*Comment 6:* If this rule is implemented, NMFS will notify Adak or Atka city managers if they have not received their notifications of intent to process. This seems at odds with other programs that have notification dates, such as submission of annual cooperative notifications to NMFS. There is no regulatory language that provides for NMFS to notify the entity or person that it has not received cooperative information regarding the next year's intent to process.

*Response 6:* The commenter is referring to the regulatory language at (a)(7)(viii)(D)(3) which explains how NMFS will provide confirmation to the City Manager of the City of Adak or the City Administrator of the City of Atka if their notification of intent to process Aleutian Islands Pacific cod has been received or not. This confirmation is to let the city know that the set-aside will or will not be in effect for the upcoming year. Similarly, NMFS will publish a notice in the **Federal Register** to inform the public whether the set-aside will be in effect. NMFS will not offer these cities additional time to provide notification if it was not received by the deadline and according to the requirements stated in regulations.

*Comment 7:* NMFS received 11 comment letters from 9 different entities in support of Amendment 113 and its implementing regulations. In general, the comments emphasized that three interacting issues have affected the viability of shoreside operations in the Aleutian Islands: the BSAI Pacific cod biomass estimates and TAC split, Steller sea lion protection measures, and rationalization programs. The commenters noted that fish processing is the core economic driver for the communities of Adak and

Atka and that these communities have been negatively impacted by prior management actions. They stressed that Aleutian Islands communities, Adak and Atka in particular, need the kind of protections that the Council has provided to communities in the Gulf of Alaska (GOA) and Bering Sea for pollock, and to GOA communities for Pacific cod by limiting the amount that can be delivered either inshore or offshore. These commenters considered stable access to at least 5,000 mt of Aleutian Islands Pacific cod from the Federal fishery essential for maintaining viable communities in Adak and Atka. These commenters concluded that this final rule provides community protections for shorebased processing in the Aleutian Islands management area that are critical to the survival of Aleutian Islands communities.

*Response 7:* NMFS acknowledges the comments in support of Amendment 113. The Secretary, through her designee, the Assistant Administrator for Fisheries, approved Amendment 113 on October 17, 2016, and implements Amendment 113 with this final rule. The Secretary concluded that the Aleutian Islands CV Harvest Set-Aside in Amendment 113 is consistent with the Magnuson-Stevens Act, including the National Standards, and other applicable law.

*Comment 8:* The proposed regulatory language for the minimum Aleutian Islands shoreplant landing requirement at § 679.20(a)(7)(viii)(E)(4) states that “if less than 1,000 mt of the Aleutian Islands Catcher Vessel Harvest Set-Aside is landed at Aleutian Islands shoreplants *prior to* February 28, then paragraphs (a)(7)(viii)(E)(1) for the Bering Sea Trawl CV A-season Sector Limitation and (2) for the Aleutian Islands CV Harvest Set-Aside will not apply for the remainder of the fishing year.” However, the preamble to the proposed rule and the Council motion clearly state that this performance measure must be

met “by” February 28. This change in the proposed regulatory language from the Council’s motion would give Aleutian Islands shoreplants one less day to fulfill the minimum delivery requirements. This one-day difference is not insignificant to Aleutian Islands shoreplants. An average of 178 mt of Pacific cod was landed at Adak on February 28 from 2002 through 2009. Landings on February 28 represent a substantial portion of the proposed 1,000-mt minimum landing requirement performance measure. The commenters request that the proposed regulatory language at § 679.20(a)(7)(viii)(E)(4) be changed so that landings made “on or before” February 28 will count toward the performance measure threshold.

*Response 8:* NMFS agrees. The Council motion, the preamble to the proposed rule, the Analysis, the FMP amendment text, and the notice of availability for the FMP amendment all state that 1,000 mt must be landed “by,” not “prior to,” February 28. The proposed regulatory language was inadvertently written in a way that contradicts the Council’s intent for this performance measure. Inclusion of February 28 in the minimum landings period is important and necessary. As noted in Section 2.7.2.5 of the Analysis, Aleutian Islands Pacific cod tend to aggregate in late February to early March, and these aggregations are optimal for efficient trawl fishing. NMFS has changed § 679.20(a)(7)(viii)(E)(4) to clarify that landings made “on or before” February 28, rather than “prior to” February 28, will be used to determine whether the minimum landings requirement has been met.

*Comment 9:* As a longtime, small boat, Aleutian Islands fisherman, it is vital to my longline operation and to other small and entry level vessel owners to have a stable

shoreside processing facility in the Aleutian Islands. Amendment 113 will create numerous opportunities for small boats and the community of Adak.

*Response 9:* NMFS acknowledges the support for this action.

*Comment 10:* We support solutions that optimize and create sustainable social, economic, and conservation outcomes. Amendment 113 and this final rule will help the economic sustainability of Adak and Atka and will help the aspirations of the Aleut people to repopulate some of the islands of the western Aleutians. Amendment 113 and this final rule may also improve the conservation and ecosystem sustainability of the area. Giving the local inhabitants a larger financial stake in the sustainability of the local ecosystem is an important step in a long process leading to better conservation. We firmly believe that where local, and particularly Alaska Natives, have more control over resource extraction, the conservation outcome is likely to be better.

*Response 10:* NMFS acknowledges the comment and the support for Amendment 113 and this final rule.

*Comment 11:* Trawl vessels catch large quantities of vulnerable deep sea corals and sponges in the area. Shifting to other gear types in the Aleutian Islands Pacific cod fishery may help protect these vulnerable species.

*Response 11:* NMFS acknowledges the comment but notes that this final rule does not modify the areas or types of gear that can be used to harvest fishery resources in the Aleutian Islands.

*Comment 12:* There is an error in the fourth row of Table 4 in the preamble of the proposed rule. The fourth row in Table 4 refers to the “BSAI non-CDQ TAC.” This row should have read “BS non-CDQ TAC.”

*Response 12:* NMFS agrees that the fourth row in Table 4 of the proposed rule preamble should have read “BS non-CDQ TAC.” The amount of Pacific cod proposed for the BS non-CDQ TAC in the fourth row of Table 4 was accurate. This final rule modifies the final 2016 and 2017 harvest specifications to add a supplemental table, Table 8a, that provides the 2017 catch limits for Pacific cod under Amendment 113 and this final rule. NMFS will publish a notice in the **Federal Register** in December 2016 if there will be any changes to these amounts. NMFS will also publish a notice in the **Federal Register** to inform the public if the Aleutian Islands CV Harvest Set-Aside and Bering Sea Trawl Catcher Vessel Sector Limitation will be in effect in 2017. Table 8a displays the correct name of the allocation and the correct amount. No changes to the regulatory text are necessary in response to this comment.

*Comment 13:* The agency has not followed the requisite process under the National Environmental Policy Act (NEPA). In particular, an environmental impact statement (EIS) should have been completed. The action is clearly controversial, as it has been under consideration for over 8 years in the Council process. A more thorough review might have compelled NMFS to reject this action.

*Response 13:* According to NEPA and Council on Environmental Quality (CEQ) regulations at 40 CFR 1502.3, an EIS is required when a fishery management action may significantly affect the quality of the human environment. Determining whether an action may significantly affect the quality of the human environment requires considerations of both context and intensity, and regulations at 40 CFR 1508.27(b) list several factors that are to be considered in evaluating the intensity of an action. One of these factors is the degree to which the effects on the quality of the human environment

are likely to be highly controversial (40 CFR 1508.27(b)(4)). Before deciding whether to complete an EIS, agencies may prepare an EA to determine whether an EIS must be prepared or a finding of no significant impact (FONSI) can be made (40 CFR 1501.3 and 1508.9). If the EA results in a FONSI, an EIS is not needed.

Courts have held that an action is “highly controversial” when there is a substantial dispute about the size, nature, or effect of the action, or when substantial questions are raised as to whether a proposed action may cause significant degradation of some human environmental factor. Courts have also held that the existence of opposition to an action does not raise the level of controversy to the point that an EIS is required. Additionally, as stated in 40 CFR 1508.14 and in Section 3 of the Analysis, economic and social impacts by themselves are not sufficient to require the preparation of an EIS.

In accordance with NEPA and the CEQ regulations, the Council and NMFS appropriately prepared an EA for this action, which analyzes the potential effects of the action on individual resource components, as well as the potential cumulative effects. The EA was prepared using the best available scientific information. Using the information and analysis in the EA, the Council and NMFS reviewed the potential impacts of this action on the human environment as required under NEPA. After reviewing the impacts of this action, the Regional Administrator prepared and signed a FONSI, determining that the action will not result in significant impacts to the quality of the human environment, and further analysis in an EIS is not needed. NMFS determined that the action will make relatively minor changes to the timing and location of fishing for Pacific cod by vessels in the BSAI and that no significant changes in total harvests or when, where, and how fishing occurs are expected with the action.

The commenter implies that the length of time it took the Council to consider and take final action on Aleutian Islands community protection measures makes Amendment 113 and the regulations inherently controversial and therefore requires the preparation of an EIS. NMFS disagrees that the mere length of time this action was under consideration by the Council is indicative of a level of controversy that requires the preparation of an EIS. The implementation of several rationalization programs, Steller sea lion protection measures, the BSAI TAC split, and decreasing biomass of Aleutian Islands Pacific cod, all of which occurred while the Council was considering community protection measures for the Aleutian Islands, considerably changed the way in which the BSAI Pacific cod fishery was managed and conducted by participants. The Council reasonably wanted to examine and understand the effects these changes would have on the BSAI Pacific cod fishery before taking final action. After examining the effects of these changes on Aleutian Islands communities, the Council determined that the community protections that will be implemented by Amendment 113 and this final rule are warranted and necessary. The effects of this action on the quality of the human environment are not in dispute. To the extent that there has been controversy over, or opposition to, the action, the controversy or opposition has been largely related to potential economic and social impacts which do not require the preparation of an EIS.

*Comments Related to the Magnuson-Stevens Act and the National Standards*

*Comment 14:* National Standard 4 of the Magnuson-Stevens Act states, “Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such

fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.” Amendment 113 and this final rule violate National Standard 4. In fact, a 2009 letter from Acting Regional Administrator Mecum to North Pacific Fishery Management Council Chair Olson noted that the proposed set-aside could violate National Standard 4’s requirements that allocations be fair and equitable and do not create excessive shares. They are not fair and equitable, do not promote conservation, and would allocate an excessive share to a particular entity. The plant in Atka has never processed cod and has no historical dependency on the Federal non-CDQ Aleutian Islands Pacific cod fishery. Adak is the sole entity that will benefit from this action. Adak would receive an excessive share, i.e., the entire Aleutian Islands CV Harvest Set-Aside, which is a *de facto* processor share not authorized by the Magnuson-Stevens Act.

*Response 14:* NMFS has determined that this action is consistent with National Standard 4. Amendment 113 and this final rule do not include any measures that discriminate between residents of different states. While Amendment 113 and this final rule establish the set-aside for vessels that deliver their catch of Aleutian Islands Pacific cod to Aleutian Islands shoreplants for processing, any properly permitted and licensed vessel, operated by any resident of any community or state, can participate in the Aleutian Islands CV Harvest Set-Aside. Participation in the set-aside or in the Unrestricted Fishery is not premised on residency in a particular state. Participation in the BSAI Pacific cod fishery is governed by regulations that were determined to be consistent with National Standard 4 and neither Amendment 113 nor this final rule change the permitting and licensing requirements currently in place. This final rule does

not preclude residents of any state from participation in any fishery in the Aleutian Islands as either a harvester or operator of an Aleutian Islands shoreplant. Appropriately licensed and endorsed vessels will still have the opportunity to prosecute the fishery, and any person wishing to operate a processing facility with the appropriate license in the area may still do so.

Amendment 113 and this final rule establish a set-aside that allocates the Aleutian Islands non-CDQ Pacific cod DFA during a portion of the A-season among those harvesting vessels that conduct directed fishing for Aleutian Islands Pacific cod and deliver their catch to Aleutian Islands shoreplants for processing and those harvesting vessels that conduct directed fishing for Aleutian Islands Pacific cod and deliver their catch for processing to any eligible processor other than Aleutian Islands shoreplants. Therefore, this allocation must be fair and equitable to all such fishermen, reasonably calculated to promote conservation, and carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges, consistent with National Standard 4. For the reasons provided below, NMFS has determined that Amendment 113 and this final rule are consistent with National Standard 4's requirements for allocations.

NMFS has determined that the set-aside is fair and equitable to all participants in the BSAI Pacific cod fishery. Vessels from all non-CDQ sectors can participate in the set-aside and each sector will continue to have access to its entire BSAI Pacific cod allocation. This action also addresses an inequity that has occurred, in part, from the establishment of rationalization programs and minimizes the risk of future inequities in the prosecution of the Aleutian Islands Pacific cod fishery. The Council and NMFS

determined that the protections in Amendment 113 and this final rule are necessary to mitigate the effects of previous Council actions. Offshore processing activity has taken an increasing proportion of the Aleutian Islands Pacific cod fishery in some recent years due to a variety of factors described in the preamble to the proposed rule and in the Analysis. At the same time, the historical share of the BSAI Pacific cod fishery delivered to Aleutian Islands shoreplants has decreased.

The maximum cap of 5,000 mt for set-aside is representative of the long-term average annual amount of Pacific cod processed by Aleutian Islands shoreplants that includes years both before and after significant changes in the BSAI Pacific cod fishery occurred. Establishing a maximum amount, rather than a percentage, for the set-aside will protect Aleutian Islands fishing communities during years of relatively low Aleutian Islands Pacific cod TAC, will ensure the set-aside remains representative of past participation levels by Aleutian Islands fishing communities, and will benefit those who do not participate in the set-aside fishery during years of relatively high Aleutian Islands Pacific cod TAC by allowing the amount allocated to the Unrestricted Fishery to increase with increases in TAC.

This action is also fair and equitable because the set-aside will be in effect only when the Aleutian Islands fishing communities it is intended to benefit are prepared and actively engaged in participation. When Aleutian Islands communities are unable to accept deliveries of Pacific cod for processing, there are mechanisms built into the final rule that will lift the set-aside and allow others to have access to the remaining harvest.

NMFS also has determined that the set-aside is reasonably calculated to promote conservation. Amendment 113 and this final rule do not modify the process for

specifying OFLs, ABCs, or TACs for the Bering Sea and Aleutian Islands Pacific cod fishery, the allocation of BSAI Pacific cod to CDQ and non-CDQ fishery participants that is established in existing regulations, or the allocation of BSAI Pacific cod among non-CDQ fishery participants. NMFS will continue to manage the fishery so that harvests stay within specified and allocated amounts. Additionally, Amendment 113 and this final rule continue to promote and do not undermine the conservation measures established under the Steller sea lion protection measures, Amendment 85 allocations, and Amendment 80 rationalization.

Finally, NMFS determined that the set-aside will be carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of the Aleutian Islands Pacific cod fishery. NOAA's guidance on National Standard 4 states that "only those measures that result in direct distributions of fishing privileges will be judged against the allocation requirements of Standard 4" (§ 600.325(c)(1)). This final rule establishes a set-aside for any otherwise eligible vessel that conducts directed fishing for Aleutian Islands Pacific cod and delivers its catch to any Aleutian Islands shoreplant for processing. No particular individual, corporation, or other entity participating in either the set-aside or the Unrestricted Fishery will be able to acquire an excessive share of the Aleutian Islands Pacific cod fishery under Amendment 113 and this final rule. All vessels will continue to have catch attributed to their sector, and Amendment 113 and this final rule do not create any new allocations to particular individuals, corporations, or other entities fishing for Aleutian Islands Pacific cod. Additionally, Amendment 113 and this final rule do not limit participation in the set-aside to a discreet subset of vessels that meet certain criteria. As explained earlier, any properly permitted and licensed vessel,

operated by any resident of any community or state, within any BSAI Pacific cod non-CDQ sector can participate in the Aleutian Islands CV Harvest Set-Aside.

The commenter asserts that Adak will receive an excessive share in violation of National Standard 4 because the shoreplant in Adak is the only processor in the Aleutian Islands that has processed Pacific cod and it therefore will receive the entire Aleutian Islands CV Harvest Set-Aside. Section 2.6.8 of the Analysis describes the two shoreplants currently in the Aleutian Islands—one in Adak and one in Atka. Although Atka has not processed Pacific cod and Adak has processed Pacific cod, this final rule does not provide a specific allocation of fishing privileges to either of these Aleutian Islands shoreplants. Amendment 113 does not provide Adak or Atka with fishing privileges in the Aleutian Islands Pacific cod fishery.

The commenter also asserts that Amendment 113 and this final rule establish a processor share or exclusive processing privilege for Adak which is not authorized by the Magnuson-Stevens Act. This aspect of Comment 14 is also expressed in Comment 18. NMFS refers the reader to its detailed response to this comment in its response to Comment 18.

Finally, the commenter refers to a letter dated January 28, 2009, from Robert D. Mecum, Acting Administrator, Alaska Region, NMFS, to Eric Olsen, then Chairman of the Council. According to the commenter, NMFS noted in this letter that the proposed set-aside could violate National Standard 4's requirement that allocations be fair and equitable and not create excessive shares. While NMFS acknowledges the letter, NMFS disagrees that the letter provides support for the claim that Amendment 113 and this final rule are inconsistent with National Standard 4.

The action under consideration by the Council when NMFS sent the letter was not the set-aside action in Amendment 113 but a different action that would have established processing sideboards on processing vessels eligible under the AFA, BSAI crab rationalization program, and BSAI Amendment 80 program that received deliveries of Pacific cod harvested in the Eastern and Central Aleutian Islands (Areas 541 and 542). Under that action, CPs, floating processors, and motherships in these programs would have been limited in the amount of CV deliveries they could receive of Pacific cod harvested in Area 541 and/or 542 on an annual basis, or prohibited from taking deliveries prior to a specific date. The 2009 letter from NMFS encourages the Council to pay particular attention to National Standard 4's prohibition against allocation of excessive shares of fishing privileges and requirement that allocation actions be reasonably calculated to promote conservation. NMFS advised the Council that if it chose to proceed with the action under consideration at that time, it would need to provide a rationale that clearly demonstrated that the action was consistent with these aspects of National Standard 4. However, NMFS also stated, "Based on our discussions with NOAA GC, these issues do not appear to preclude the proposed action ...."

In developing Amendment 113, the Council considered the advice provided by NMFS and modified the action to address inordinate control concerns by conditioning the set-aside on the achievement of certain performance measures which, if not satisfied, will lift the set-aside; by capping the maximum amount of the set-aside at a level that will provide the protections and stability the Council wanted to create for Aleutian Islands fishing communities, particularly in times of relatively low Aleutian Islands Pacific cod TAC, and that will allow for the continued participation of the offshore sector; and by

allowing any vessel and any Aleutian Islands shoreplant to participate in the set-aside. The Council also designed Amendment 113 and this final rule to promote conservation and to prohibit acquisition of an excessive share of fishing privileges as explained earlier in this response.

*Comment 15:* This action was reasonably calculated to promote conservation as required under National Standard 4 because it will reduce the amount of halibut prohibited species catch (PSC).

*Response 15:* NMFS acknowledges the comment. NMFS believes that the commenter is referring to data that indicate that halibut PSC rates are much lower in the Aleutian Islands Pacific cod fishery than in the Bering Sea Pacific cod fishery (Section 2.7.2.2 of the Analysis). The commenter seems to suggest that if more fishing occurs in the Aleutian Islands relative to the Bering Sea because of this final rule, overall halibut PSC usage in the BSAI could potentially decrease. NMFS cannot predict how halibut PSC rates or overall use may change in response to this final rule, if at all. NMFS notes that this final rule will not affect the total maximum permissible amount of halibut PSC established for BSAI groundfish fisheries. As stated in the response to Comment 14, Amendment 113 and this final rule continue to promote and do not undermine the conservation measures established under existing regulations.

*Comment 16:* The proposed rule will result in TAC being “stranded” in the Aleutian Islands Pacific cod fishery and it therefore violates National Standard 1 of the Magnuson-Stevens Act because it does not promote achievement of optimal yield. The proposed rule suggests that performance measures, such as the 1,000-mt minimum landings requirement, would prevent the stranding of Aleutian Islands Pacific cod

because other sectors would have access to the fishery once the harvest restrictions and delivery requirements are lifted. However, the fleet cannot adjust in the time frames proposed. The midseason announcements intended to prevent stranding a portion of the Aleutian Islands Pacific cod TAC cannot possibly be effective, given that vessels will be fishing at that time and will likely need to interrupt that fishing to prepare gear for the Aleutian Islands Pacific cod fishery. These vessels would then need to transit to the area from the Bering Sea or Gulf of Alaska. Additionally, delays between when catch is landed and reported to NMFS, and when NMFS can reopen the fishery may further reduce the amount of time available to harvest the remaining TAC while the desirable aggregations of Pacific cod are still available.

*Response 16:* The Council and NMFS determined that Amendment 113 and this final rule are consistent with National Standard 1. Optimum yield, as defined in the Magnuson-Stevens Act, is that amount of fish which “will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems” and the amount of fish which “is prescribed as such on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor” (16 U.S.C. 1802(33)(A) and (B)). Amendment 113 and this final rule do not change the optimum yield of the BSAI groundfish fisheries, which is specified in regulations as a range from 1.4 million to 2.0 million mt (§ 679.20(a)(1)(i)(A)). NMFS notes that optimum yield refers to a broad range of harvest spanning all species within the BSAI groundfish fisheries, not the TAC for a given species and area in a year. Even if the

entire Aleutian Islands Pacific cod TAC were not harvested in a year, optimum yield could still be achieved, consistent with National Standard 1.

The Aleutian Islands Pacific cod OFL, ABC, and TAC, and the process by which NMFS manages the fishery to stay within those limits, will not change as a result of this action. Specifically, this final rule includes several provisions to prevent stranded Pacific cod TAC in the Aleutian Islands and should ensure full harvest of the Aleutian Islands Pacific cod DFA, thus promoting the achievement of optimum yield in the Bering Sea and Aleutian Islands groundfish fisheries. As noted in the response to Comment 14, this final rule does not limit or constrain the proportion of the TAC allocated to CDQ or non-CDQ fishery participants.

NMFS expects that vessel operators will adapt their fishing plans in a variety of ways to accommodate the Aleutian Islands CV Harvest Set-Aside, and expects that sufficient catch monitoring already exists, and notification requirements will be put into effect with this final rule, for vessel operators to predict when and if they should gear up and transit to the Aleutian Islands to fish for Pacific cod. For example, if NMFS has not received notification prior to November 1 of an Aleutian Islands city's intent to process Pacific cod, the A-season Pacific cod fishery will be available to all participants and those participants will have more than two months to prepare. In years with sufficient TAC for an Unrestricted Fishery to commence, vessels may already be fishing in the Aleutian Islands when the Aleutian Islands CV Harvest Set-Aside is lifted. In years when the Aleutian Islands TAC is low and an Unrestricted Fishery will not be available, vessel operators may choose to only fish in the Bering Sea. NMFS posts weekly landing

reports by fishery to help the agency and fishery participants project when fisheries will open and close.

NMFS disagrees that delays in catch accounting will further shorten the time available for the fleet to harvest the remaining Aleutian Islands TAC if the 1,000-mt performance standard is not met on or before February 28 or if the full Aleutian Islands CV Harvest Set-Aside is harvested allowing the fishery to be opened to all participants. NMFS tracks harvests and projects when catch limits will be reached so that the announcement can be prepared and the fishery can be opened or closed, as applicable, on the appropriate date. NMFS expects to open the Aleutian Islands Pacific cod fishery as soon as necessary. For example, if Aleutian Islands shoreplants have not met the 1,000-mt performance measure by February 28, NMFS would have anticipated that in advance and be prepared to open the fishery to all eligible participants promptly on March 1 (or February 29, if a leap year). Likewise, NMFS would be prepared to lift the Bering Sea Trawl CV A-Season Sector Limitation if the full set-aside were harvested prior to March 15. The Council considered NMFS' Catch Accounting and Inseason Management protocols when selecting dates for the set-aside.

*Comment 17:* This final rule promotes conservation and should be viewed as a “trailing amendment” to the actions to establish separate Aleutian Islands and Bering Sea Pacific cod OFLs, ABCs, and TACs, and to implement new Steller sea lion protection measures. Both of these actions were implemented for conservation purposes and the Council chose to wait to enact community protections until they could determine what the effects of those actions on Aleutian Islands communities would be.

*Response 17:* NMFS acknowledges the comment. As stated in the response to Comment 14, Amendment 113 and this final rule continue to promote and do not undermine the conservation measures established under existing regulations, such as the BSAI TAC split and Steller sea lion protection measures.

*Comment 18:* This action is a violation of National Standard 8. National Standard 8 does not constitute a basis for allocating resources to a specific fishing community nor for providing preferential treatment based on residence in a fishing community. National Standard 8 applies to allocation of fishing, not processing, privileges.

*Response 18:* Because of their remote location and limited economic alternatives, Aleutian Islands communities rely on harvesting and processing of the nearby fishery resources to support and sustain their communities. National Standard 8 requires that conservation and management measures take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of National Standard 2 in order to provide for the sustained participation of such communities, and to the extent practicable, minimize adverse economic impacts on such communities (16 U.S.C. 1851(a)(8)). National Standard 8 guidelines recommend that “...where two alternatives achieve similar conservation goals, the alternative that provides the greater potential for sustained participation of such communities and minimizes the adverse economic impacts on such communities would be the preferred alternative” (50 CFR 600.345(b)(1)). The guidelines further state that “fishing community” means a community that is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew, and fish processors that

are based in such communities. A fishing community is a social or economic group whose members reside in a specific location and share a common dependency on commercial, recreational, or subsistence fishing or on directly related fisheries-dependent services and industries (for example, boatyards, ice suppliers, tackle shops) (50 CFR 600.345(b)(3)). The Council and NMFS considered the importance of fishery resources to Aleutian Islands fishing communities such as Adak and Atka and determined that community protections were necessary to provide for the sustained participation of these communities in the Aleutian Islands Pacific cod fishery. The Council and NMFS determined that Amendment 113 and this final rule are therefore consistent with National Standard 8.

As discussed in the preamble to the proposed rule and in the Analysis, this final rule does not allocate processing privileges. This final rule allocates fishing privileges for Aleutian Islands Pacific cod through the establishment of a set-aside for a portion of the Aleutian Islands Pacific cod TAC available for harvest by vessels directed fishing for Aleutian Islands Pacific cod and that deliver their catch to Aleutian Islands shoreplants for a portion of the year and only if specific notification and performance requirements are met. This final rule does not change any percentage allocations of Pacific cod established under Amendment 85 to the FMP and existing regulations for the CDQ or non-CDQ fishery sectors as described in § 679.20(a)(7). This final rule does not allocate exclusive fishing privileges to a specific harvester, community, processor, or to residents of a specific community.

Under this final rule, any properly permitted and licensed vessel, operated by any resident of any community or state, can harvest the portion of the Aleutian Islands Pacific

cod TAC in the Aleutian Islands CV Harvest Set-Aside. Under this final rule, catch harvested from the set-aside can be delivered to any Aleutian Islands shoreplant in any Aleutian Islands community, and no exclusive opportunity to receive any portion of the set-aside is provided to an Aleutian Islands shoreplant or to a person based on residency in an Aleutian Islands community. As explained in the response to Comments 14 and 19, Amendment 113 and this final rule do not create a processing privilege.

As described in the Analysis, the preamble to the proposed rule, and in public testimony provided at Council meetings, Aleutian Islands Pacific cod is an important component of the socioeconomic health of the community of Adak, and may become a more critical piece of the processing in Atka. In Adak, the Aleutian Islands Pacific cod fishery provides income to harvesters, processors, and other businesses providing support services. Section 2.6.8 of the Analysis suggests that without the set-aside, it is very likely that the processing plant in Adak will not be capable of sustained participation in the future (see also Comment 1). Although Atka has not historically participated in the Aleutian Islands Pacific cod fishery, the Aleutian Pribilof Islands Community Development Association (APICDA) has been working with investors to make substantial infrastructure improvements to their harbor to enhance the local fishing fleet and to the shoreplant so it may operate year-round. Comments submitted by APICDA indicate that harvesting and processing Aleutian Islands Pacific cod are critical to the success of these developments in this remote community. Additional information about Atka is provided in Section 2.6.8 of the Analysis.

The Aleutian Islands Pacific cod fishery is a pulse fishery that operates for several weeks in late February and March. This pulse is the most profitable time of the season

for Pacific cod in the region. These few weeks of the Federal-waters Pacific cod fishery are a critical part of these remote operations.

This action is consistent with the management objectives in the FMP and the Programmatic Supplemental Environmental Impact Statement (available at <https://alaskafisheries.noaa.gov/node/33552>). Specifically, NMFS refers the reader to objectives related to potential societal benefits, such as providing socially and economically viable fisheries for the well-being of fishing communities and balancing many competing uses of marine resources and different social and economic goals for sustainable fishery management, including protection of the long-term health of the resource and the optimization of yield.

*Comment 19:* This action should have been analyzed as a limited access privilege program. The eligibility requirements to grant limited access privileges to communities under the Magnuson-Stevens Act were not followed.

*Response 19:* Amendment 113 and this final rule do not create a limited access privilege as defined in the Magnuson-Stevens Act (16 U.S.C. 1802(26)). The Magnuson-Stevens Act defines “limited access privilege” as a Federal permit, issued as part of a limited access system under section 303A to harvest a quantity of fish expressed by a unit or units representing a portion of the total allowable catch of the fishery that may be received or held for exclusive use by a person, and includes an individual fishing quota, but does not include community development quotas as described in section 305(i). As stated in responses to previous comments, this final rule does not provide any person a portion of the Aleutian Islands Pacific cod TAC that may be received or held for exclusive use. Amendment 113 and this final rule do not assign the Aleutian Islands CV

Harvest Set-Aside, in whole or in part, to any one person, Aleutian Islands shoreplant, or community for harvesting or delivery. All harvesters have access to the Aleutian Islands CV Harvest Set-Aside if they are willing to deliver their catch to an Aleutian Islands shoreplant. Any Aleutian Islands shoreplant can accept deliveries from the Aleutian Islands CV Harvest Set-Aside. While the practical effect of Amendment 113 and this final rule may be that harvesters in the Aleutian Islands CV Harvest Set-Aside may have only one Aleutian Islands shoreplant to deliver their catch (Adak), one or more Aleutian Islands shoreplants could become operational at any time and accept deliveries from harvesters in the Aleutian Islands CV Harvest Set-Aside, reducing the amount that Adak could receive. Therefore, Adak is not provided an exclusive processing privilege under Amendment 113 or this final rule (see also response to Comments 14 and 18).

Amendment 113 and this final rule set-aside a portion of the Aleutian Islands DFA during the A-season for vessels that conduct directed fishing for Aleutian Islands Pacific cod and deliver their catch to Aleutian Islands shoreplants for processing. Because Amendment 113 and this final rule do not establish a limited access privilege, Amendment 113 and this final rule do not create a limited access privilege program and the eligibility requirements for limited access privilege programs in the Magnuson-Stevens Act at section 303A (16 U.S.C. 1853a) do not apply to Amendment 113 and this final rule.

*Comment 20:* National Standard 5 states that “Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.” This action is inconsistent with National Standard 5 because it fosters inefficiency and has no purpose other than economic allocation. The Draft Analysis

acknowledged that the set-aside “could potentially lead to a lower price for catch and reduce efficient utilization,” and it is uncertain that this action would benefit Aleutian Islands communities. Adak serves as a port of embarkation and provides goods and services to the fleet. By reducing the number of port visits by CPs during a critical part of the year, this action may actually result in lost economic activity for Adak.

*Response 20:* Amendment 113 and this final rule set aside a portion of the Aleutian Islands Pacific cod fishery for harvest by certain vessels. The primary objective of this action is to provide Aleutian Islands communities with access to and sustained participation in the Aleutian Islands Pacific cod fishery, and to minimize the adverse impacts of a range of management actions on those communities. This objective is consistent with the goals of the FMP and with National Standard 8 (see response to Comment 18 for additional explanation of consistency with National Standard 8).

The Council and NMFS have determined that Amendment 113 and this final rule are also consistent with National Standard 5. According to the National Standard 5 guidelines, the term “utilization” encompasses harvesting, processing, marketing, and non-consumptive uses of the resource, since management decisions affect all sectors of the industry (§ 600.330(b)(1)). National Standard 5 does not refer exclusively to harvesting. While rationalization programs increased efficiency of harvesting the resource, they did so in part at the expense of Aleutian Islands communities. The Council and NMFS can, and must, implement conservation and management measures that are consistent with all of the National Standards.

Section 2.6.2.2 of the Analysis examines some of the potential gains and losses in efficiency that may result from Amendment 113. The Analysis acknowledges that

there may be some losses to communities resulting from fewer port visits by CPs. On the other hand, efficiencies may be gained by having a local fishing fleet that can fish closer to shore. Public comments submitted in support for Amendment 113 and this final rule suggest that the communities believe the benefits of this action to Aleutian Islands outweigh any potential losses (see Comment 7). While the efficiency of utilizing shoreplant processing in remote parts of the Aleutian Islands can be debated, the social and economic benefits the shoreplants provide to the communities in which they are located are tangible.

In this particular case, the Council and NMFS have sought to balance the objectives of efficiency under National Standard 5 with the social and economic considerations of Aleutian Island communities under National Standard 8. This type of balance is contemplated in the National Standard 5 guidelines which note, “Unless the use of inefficient techniques or the creation of redundant fishing capacity contributes to the attainment of other social or biological objectives, an FMP may not contain management measures that impede the use of cost-effective techniques of harvesting, processing, or marketing, and should avoid creating strong incentives for excessive investment in private sector fishing capital and labor” (§ 600.330(b)(2)(ii)). In this case, the Council and NMFS considered a range of social factors in addition to efficiency, including providing socially and economically viable fisheries for the well-being of Aleutian Islands fishing communities. Consistent with the National Standard 5 guidelines, the Council and NMFS have prepared an analysis and rulemaking that justify these measures “in light of the biological, ecological, and social objectives of the FMP, as well as the economic objectives” (§ 600.330(e)).

### *Comments on Economic Effects*

*Comment 21:* Reduced competition means lower prices for harvesters. By creating an exclusive processing privilege for Aleutian Islands shoreplants, this action has the potential to cause uncompetitive acts. Creating and enforcing a single market for fish is devastating for harvesters who are not protected by any sort of price arbitration structure. Having only a single plant limits competition for landings and the seller has limited negotiating leverage. This drives down the prices paid to fishermen. Additionally, having only a single processor means that some CVs could be excluded if the lone processor does not want to do business with them.

*Response 21:* As explained in the response to Comments 14, 18 and 19, Amendment 113 and this final rule do not create an exclusive processing privilege for Aleutian Islands shoreplants. As acknowledged in Section 2.7.2.3 of the Analysis, under Amendment 113, CVs may have less ability to use processor competition for Aleutian Islands Pacific cod landings to leverage higher prices. However, the Analysis also acknowledges several ways that CVs may retain leverage in negotiating fair prices from Aleutian Islands shoreplants. To remain solvent, Aleutian Islands shoreplants will need to offer harvesters competitive prices or CVs could withhold delivery of catch to that shoreplant. CVs could choose not to participate in the Aleutian Islands CV Harvest Set-Aside, wait until the set-aside has ended, or shift fishing operations to the Bering Sea. If Aleutian Islands shoreplants are not competitive, they likely will not be able to operate, and NMFS would not expect to receive notification from the City of Adak or the City of Atka by the annual deadline. If less than 1,000 mt of Aleutians Island Pacific cod have been delivered to Aleutian Islands shoreplants on or before February 28, the set-aside will

be lifted and the fishery will be opened to all eligible participants for delivery to any eligible processor. This performance measure serves as an additional incentive for Aleutian Islands shoreplants to offer competitive prices to all interested harvesters so that harvesters do not wait until after February 28 for the opportunity to deliver to offshore processors. In addition, this final rule does not provide for only one Aleutian Islands shoreplant or prevent multiple Aleutian Islands shoreplants from operating at the same time. Even when the set-aside is in place, this final rule does not preclude CPs or stationary floating processors from receiving catch from CVs harvesting from the Aleutian Islands Unrestricted Fishery in years when the Aleutian Islands TAC is large enough for the Unrestricted Fishery to occur, or from operating after March 15. CPs and stationary floating processors present in the Aleutian Islands for the Unrestricted Fishery could be ready to accept deliveries of Pacific cod if the set-aside were lifted early.

*Comment 22:* The Analysis does not consider the effects of the BSAI TAC split, and assumes the loss of Aleutian Islands Pacific cod can be made up in the Bering Sea, despite the fact that Bering Sea and Aleutian Islands cod are different fisheries with unique products.

*Response 22:* Sections 2.2 and 2.6 of the Analysis describe some of the effects the BSAI TAC split has had on the amount of Pacific cod available for harvest in the Aleutian Islands. Likewise, the “Need for This Proposed Rule” section of the proposed rule identifies the BSAI TAC split and resulting relatively low TAC in the Aleutian Islands as just one of several factors prompting the need for the community protections in this rule. NMFS acknowledges that this action may result in losses to some participants in the Aleutian Islands Pacific cod fishery. Section 2.7.2 of the Analysis and the response

to Comment 23 discuss ways that shifting effort to the Bering Sea may mitigate the effects of Amendment 113 on participants.

*Comment 23:* The Analysis supposes that the loss of Pacific cod harvest by the hook-and-line CP sector in the Aleutian Islands can be offset by shifting effort to the eastern Bering Sea; however, Aleutian Islands Pacific cod are typically larger and fetch a higher price in international markets than Bering Sea Pacific cod. Bering Sea Pacific cod cannot be substituted for Aleutian Islands Pacific cod.

*Response 23:* The Council and NMFS recognize that Pacific cod fisheries and products differ between the Bering Sea and the Aleutian Islands. The Analysis does not suggest that the same product harvested and processed in the Aleutian Islands can be substituted by one harvested and processed in the Bering Sea and notes that harvesters generally fetch higher prices for Aleutian Islands Pacific cod because of their typically larger size (Section 2.7.2.2 of the Analysis). The Analysis further notes that moving to the Bering Sea to fish for Pacific cod may not be viable for all vessels because they may participate in other Aleutian Islands fisheries, or are subject to harvest sideboards in other fisheries as a result of their eligibility in rationalization programs. Additionally, vessels that formerly fished for Aleutian Islands Pacific cod that move to the Bering Sea to fish for Pacific cod will compete with vessels that have historically fished in the Bering Sea. The Council recognized these limitations on recuperating losses that may be incurred by some participants as a result of Amendment 113, but determined that CPs are better able to adapt to changing conditions in the Aleutian Islands Pacific cod fishery given their ability to move to different locations to fish and process their catch, than Aleutian Islands

shoreplants and the vessels that deliver to them, which have less flexibility and adaptability.

The Council and NMFS recognized that CP sectors will not be able to participate in the Aleutian Islands Pacific cod fishery unless the set-aside is not in effect for that year, some of the set-aside remains available for harvest after the set-aside ends, or there is sufficient Aleutian Islands DFA for an Unrestricted Fishery during the set-aside period. The Council determined that in years of low TAC, when an Unrestricted Fishery will not occur, it was important to protect Aleutian Islands fishing communities that cannot easily participate in other fisheries or other areas to make up for lost revenue.

The Council and NMFS recognized the participation of hook-and-line CPs in the Aleutians Islands Pacific cod fishery by capping the amount of Aleutian Islands Pacific cod that goes to the Aleutian Islands CV Harvest Set-Aside and by providing mechanisms to lift the set-aside if no Aleutian Islands city will be processing in the upcoming year or if deliveries do not meet established thresholds by certain dates. This final rule limits the amount of the Aleutian Islands CV Harvest Set-Aside to 5,000 mt, which will allow the participation of all sectors in the Unrestricted Fishery except during years when the Aleutian Islands Pacific cod TAC is extremely low. The Council wanted to provide the Unrestricted Fishery so that vessels not participating in the Aleutian Islands CV Harvest Set-Aside can participate to some extent in the Aleutian Islands Pacific cod fishery and get some of the benefits from it. Additionally, because the Aleutian Islands CV Harvest Set-Aside is for a specific amount, rather than a percentage of TAC, the set-aside will not increase even if Aleutian Islands TAC increases, which will provide for an even greater amount in the Unrestricted Fishery.

*Comment 24:* The proposed Aleutian Islands CV Harvest Set-Aside period is too long and would prevent others from accessing the fishery altogether. If the Adak plant is expected to be capable of processing more than 400 mt of Pacific cod per day, and the proposed Atka plant has a planned capacity of 180 mt per day, Aleutian Islands shoreplants could process the entire proposed set-aside in just 8 to 11 days.

*Response 24:* If both of the existing Aleutian Islands shoreplants are operational, they may have the combined capacity to process 500 mt to 600 mt per day. However, if the Pacific cod have not yet arrived and aggregated on the fishing grounds, there would be no deliveries for them to process. To be effective, the Aleutian Islands CV Harvest Set-Aside and Bering Sea Trawl CV A-Season Sector Limitation need to be in place long enough for the Pacific cod to aggregate on the fishing grounds, and for the fish to be harvested and delivered to Aleutian Islands shoreplants for processing. An earlier end date might mean that the peak fishery occurs after the Aleutian Islands CV Harvest Set-Aside and Bering Sea Trawl CV A-Season Sector Limitation have been lifted. Conversely, if the Aleutian Islands CV Harvest Set-Aside and Bering Sea Trawl CV A-Season Sector Limitation did not go into place until later during the A-season, the entire trawl CV allocation could be taken in the Bering Sea before the fishery begins in the Aleutian Islands.

As discussed in the preamble of the proposed rule, the Council determined and NMFS agrees that March 15 is the preferred date for lifting the Aleutian Islands CV Harvest Set-Aside for several reasons. March 15 represents the average date of the peak of the Aleutian Islands Pacific cod fishery for CVs. During the period analyzed (2003 through 2015), a significant portion of Aleutian Islands Pacific cod was not delivered

shoreside until mid-March (see Table 2-37 of the Analysis). Establishing a date much earlier than March 15 to relieve the set-aside would not meet the Council's goals to provide access to and to sustain participation in the Aleutian Islands Pacific cod fishery by Aleutian Islands communities because the protections afforded by the set-aside would be lifted before the Pacific cod aggregated on the fishing grounds.

The Council and NMFS considered earlier dates by which to lift these restrictions, but given historical harvesting and delivery patterns for Aleutian Islands Pacific cod, the longer the Aleutian Islands CV Harvest Set-Aside remains in effect during the A-season each year, the greater the opportunity for complete harvest and delivery of the Aleutian Islands CV Harvest Set-Aside. The March 15 date provides greater social and economic stability for Aleutian Islands fishing communities than earlier dates. Limiting the duration of the Aleutian Islands CV Harvest Set-Aside to March 15 also would provide an opportunity for CPs to harvest Pacific cod, and for CVs to harvest and deliver Pacific cod to CPs or stationary floating processors, before the end of the A-season. The proposed March 15 date balances the opportunities for all participants. Additional information is provided in Section 2.7.2.4 of the Analysis.

*Comment 25:* The proposed threshold of 5,000 mt for the Aleutian Islands CV Harvest Set-Aside exceeds the recent historical average of deliveries made to Aleutian Islands shoreplants. Excluding the years of no processing by Aleutian Islands shoreplants (2010, 2011, and 2015), the 2010 through 2015 average is 3,073 mt and the average proportion of the Federal Aleutian Islands Pacific cod fishery processed at the Adak and Atka shoreplants from 2003 through 2015 is 32 percent. Applying the historic average to the projected 2017 DFA of 8,965 mt would result in a 2017 set-aside of 2,869

mt. Therefore, a threshold of 3,000 mt would more accurately reflect the “historical place” of Aleutian Islands shoreplants in the federal Aleutian Islands Pacific cod fishery.

*Response 25:* As discussed in the preamble to the proposed rule and in Section 2.7.1.2 of the Analysis, the Council examined harvest and landings data from 2003 through July 2015 and considered a range of options for the amount of the Aleutian Islands CV Harvest Set-Aside (and equivalent Bering Sea Trawl CV A-Season Sector Limitation). The average amount of non-CDQ Aleutian Islands Pacific cod processed by Aleutian Islands shoreplants during this period was 4,732 mt. The Council considered amounts for the Aleutian Islands CV Harvest Set-Aside ranging from 3,000 to 7,000 mt. The Council determined and NMFS agrees that a maximum of 5,000 mt is the appropriate amount because it represents a large percentage of the total amount of Aleutian Islands Pacific cod available to the non-CDQ fishery sectors in recent years, and is in the range necessary to provide benefits to Aleutian Islands fishing communities, including shoreplant operations, when considered in combination with the State guideline harvest level (State GHL) A-season harvest. Additionally, the Analysis shows that 5,000 mt is the approximate long-term average of the annual amount of Pacific cod processed at Aleutian Islands shoreplants between 2003 and 2015, when Aleutian Islands shoreplants were operational.

The Council considered an option that would have reserved a percentage, rather than a fixed amount, of the Aleutian Islands TAC for the Aleutian Islands CV Harvest Set-Aside (see Section 2.7.2.5 of the Analysis). The Council chose a fixed amount (5,000 mt) so that more of the DFA would be available to Aleutian Islands fishing communities in years of low TAC, and so that more of the DFA would be available to all

participants in the Unrestricted Fishery in years when the Aleutian Islands TAC is high, providing more opportunities for other participants. Further explanation for the Council's choice of years to examine in the Analysis is given in the response to Comment 27.

*Comment 26:* The Aleutian Islands Pacific cod fishery is important for all hook-and-line CPs. While Amendment 113 will have negative impacts on all CPs with historical participation in the Aleutian Islands Pacific cod fishery, the negative effects are more profound on specific hook-and-line CP companies with a higher dependence on the Aleutian Islands Pacific cod fishery.

*Response 26:* The Council and NMFS examined participation in the Aleutian Islands Pacific cod fishery by all sectors over a range of years that included years before major changes in the fishery occurred and years since those changes occurred. The Council recognized that to offer protections to Aleutian Islands communities, there could be some negative effects on other participants in the Aleutian Islands Pacific cod fishery, including the hook-and-line CP sector. In years when the TAC is low and the set-aside is in effect, it is likely that CPs will not have access to the Aleutian Islands Pacific cod fishery at all or at levels to which they are accustomed. To minimize those negative effects, the Council included several provisions that lift the restrictions if minimum performance measures are not met and prevent the stranding of Aleutian Islands Pacific cod. For 2017, the hook-and-line CP sector will have access to 3,965 mt through the Aleutian Islands Unrestricted Fishery. The annual average targeted Aleutian Islands Pacific cod catch by the hook-and-line CP sector between 2003 and 2015 was 2,399 mt (Table 2-34 of the Analysis). Excluding years that Aleutian Islands shoreplants did not operate, the annual average targeted Pacific cod catch by the hook-and-line CP sector was

2,311 mt (Table 2-34 of the Analysis). Even under current management, there is no guarantee that any sector will have access to the Aleutian Islands Pacific cod fishery because of the ability of one sector to harvest Pacific cod up to the Aleutian Islands TAC before other sectors arrive.

NMFS and the Council acknowledge that the hook-and-line CP sector may have a higher dependence on the Aleutian Islands Pacific cod fishery than some other CP sectors; however, like other offshore sectors, the hook-and-line CP sector has the ability to react to changes in the fishery. The hook-and-line CP sector has formed a voluntary cooperative, which provides many of the benefits and flexibility of a rationalized fishery. In contrast, shoreside processors cannot move their operations in response to changing conditions or a low Aleutian Islands Pacific cod TAC. As discussed in the response to Comment 14, each sector continues to receive a percentage of the combined BSAI Pacific cod allocation as established in 2008 under Amendment 85, and can fish their allocations in either the Bering Sea or Aleutian Islands (and under this action shift effort to the Bering Sea or access the Aleutian Islands after a specified date). This action does not change the allocation to the hook-and-line CP sector.

This final rule may provide a benefit to the hook-and-line CP sector in years when the Aleutian Islands DFA is large enough for the Aleutian Islands Unrestricted Fishery to occur. The A-season for hook-and-line CPs and CVs opens on January 1, whereas the A-season for trawl CPs and CVs does not open until January 20. The hook-and-line CPs and CVs will have earlier access to the Aleutian Islands Unrestricted Fishery between January 1 and January 20.

*Comment 27:* The historical participation of the hook-and-line CP sector in the Aleutian Islands Pacific cod fishery is significantly larger and longer than as stated in the proposed rule. The hook-and-line CP sector has historically harvested more than 95 percent of the non-trawl harvest of Pacific cod in the Aleutian Islands. The hook-and-line CP sector's proportion of the Aleutian Islands Pacific cod harvest was much higher before 2002, when Steller sea lion protection measures were first implemented.

*Response 27:* NMFS acknowledges that the hook-and-line CP sector has consistently participated in the Aleutian Islands Pacific cod fishery annually, harvesting 14% of the Aleutian Islands Pacific cod on an average annual basis during 2003 through 2015 (Table 2-13 of the Analysis), and that the hook-and-line CP sector participated in the fishery prior to 2003. NMFS also acknowledges that the hook-and-line CP sector harvests a large percentage of the non-trawl harvest of Aleutian Islands Pacific cod, but also notes that the overall non-trawl harvest is a small proportion of the Aleutian Islands TAC. The Council chose to use 2003 as a starting point for the Analysis for this action for several reasons. First, data from years prior to 2003 is not compatible with data from 2003 to the present. NMFS implemented its Catch Accounting System in 2003, which significantly changed the methodologies used to determine catch estimates (Section 2.5 of the Analysis). Second, data before 2003 represent harvests made prior to the implementation of Steller sea lion protection measures, which substantively changed the management of, and the participation patterns in, the Aleutian Islands Pacific cod fishery. The Council determined and NMFS agrees that catch data prior to 2003 does not reflect how the fishery has been managed and prosecuted during the last 13 years (2003 through 2015) considered by NMFS and Council in developing Amendment 113 and this final

rule. Third, the Council determined and NMFS agrees that it was important to consider data from the largest set of years both before and after the implementation of Steller Sea Lion measures, rationalization programs, and the BSAI TAC split to understand the effects of those actions on the Aleutian Islands Pacific cod fishery.

*Comment 28:* The proposed action will further concentrate the Aleutian Islands Pacific cod harvest spatially and temporally in the Aleutian Islands with more harvest by the trawl sector. In the proposed rule for the 2014 Steller sea lion protection measures (available at <https://alaskafisheries.noaa.gov/sites/default/files/79fr37486.pdf>), NMFS stated that, “Pacific cod hook-and-line and pot gear harvests occur in much smaller quantities and at slower rates for these gears than trawl gear. This makes it less likely that hook-and-line and pot gear harvests would result in localized depletion of Steller sea lion prey resources.” The proposed action, combined with the BSAI TAC split, GHL fishery, and consequences of the Steller sea lion protection measures will further limit the hook-and-line CP sector’s participation and increase trawl harvests of Aleutian Islands Pacific cod.

*Response 28:* NMFS acknowledges that the Analysis predicts some spatial concentration of harvest because vessels participating in the set-aside are expected to be trawl CVs that will likely fish closer to shore and nearer to Adak and Atka, the Aleutian Islands communities that are most likely to receive Pacific cod deliveries under the set-aside. The amount of Aleutian Islands Pacific cod harvest that might be caught closer to shore under a maximum set-aside amount of 5,000 mt that is roughly equivalent to the average annual amount of Pacific cod caught by CVs and delivered to Aleutian Islands shoreplants between 2003 and 2015, which reduces the potential for spatial concentration

(see Section 3.4 of the Analysis). Fishing closer to shore may increase efficiency in the fishery (Section 2.7.2.2 of the Analysis) by reducing transit times, allowing vessels to make more frequent offloads, and not having to coordinate fishing operations with an offshore processor (Section 2.7.2.2 of the Analysis). Allowing other participants to target the Aleutian Islands Unrestricted Fishery when the DFA is greater than 5,000 mt, and the performance measures that remove the set-aside if there is insufficient shoreplant processing will also limit spatial concentration. Finally, the Council and NMFS will continue to use the current harvest specifications process for setting the Aleutian Islands Pacific cod TAC and manage harvest within these limits. Any potential changes in harvest location as a result of the set-aside are not expected to impact Aleutian Islands Pacific cod stock status (see Section 3.3.1 of the Analysis), or have an impact on Steller sea lions in a manner not previously considered in previous consultations (see Section 3.4 of the Analysis).

NMFS disagrees that Amendment 113 and this final rule will cause additional temporal concentration of the fishery. In the years since the BSAI TAC split, the Aleutian Islands Pacific cod fishery has closed on March 16, 2014, February 27, 2015, and June 8, 2016, so as not to exceed the Aleutian Islands Pacific cod TAC. Setting aside a maximum of 5,000 mt of Aleutian Islands Pacific cod until March 21 may actually prolong the season for Aleutian Islands Pacific cod because CPs will not be able to harvest Pacific cod from the set-aside (unless they are delivering their catch to Aleutian Islands shoreplants for processing) or process any Aleutian Islands Pacific cod remaining from the set-aside until after the conclusion of the Aleutian Islands CV Harvest Set-Aside on March 15.

As examined in the FONSI (Section 3.6 of the Analysis), Amendment 113 and this final rule will not adversely affect endangered or threatened species, marine mammals, or critical habitat of these species in any manner not considered in prior consultations on the BSAI groundfish fisheries. While this action may increase the harvest of Pacific cod nearshore in the Aleutian Islands subarea, the harvest of Pacific cod will continue to occur within the limits established in the annual groundfish harvest specifications by vessels the same as or similar to those currently fishing for Pacific cod in the BSAI.

The vessels affected by this action will continue to be required to comply with all Steller sea lion protection measures including no-transit areas, closed areas, and the requirement to carry vessel monitoring systems (50 CFR part 679). Therefore, Amendment 113 and this rule will result in no substantial change to the actions analyzed in the biological opinion dated April 2, 2014, in which NMFS found that the groundfish fisheries in the BSAI are not likely to jeopardize the continued existence of the western distinct population segment of Steller sea lions or destroy or adversely modify its designated critical habitat (Section 3.4 of the Analysis).

*Comment 29:* The hook-and-line CP sector's proportion of the Aleutian Islands Pacific cod harvest has been reduced since the establishment of the State Pacific cod GHL fishery, which is designed for harvest by CVs that deliver to Aleutian Islands communities. The State GHL fishery sets aside 28 percent of the Aleutian Islands Pacific cod TAC for fishing in State waters, which is essentially an allocation to shore-based processors. The State GHL fishery cannot be harvested by CPs and is not prosecutable by the Federal offshore sector. The State GHL fishery has resulted in considerable stranded

Pacific cod. A large proportion of the State GHL fishery has remained unharvested and unavailable to the Federal fisheries because there is no rollover provision. Adak and Atka have unique access to processing the State GHL fishery, but have chosen not to participate in this fishery in recent years.

*Response 29:* The State GHL fishery for Aleutian Islands Pacific cod is managed exclusively by the State within State waters. This final rule does not modify the State GHL fishery. Management of the State GHL fishery is outside of the scope of this final rule. Absent preemption under section 306(b) of the Magnuson-Stevens Act, NMFS does not have authority to determine catch amounts or the types of gear or vessels used in the Aleutian Islands Pacific cod State GHL fishery.

The State established two GHL fisheries for Pacific cod in 2006; one in the Bering Sea and one in the Aleutian Islands. The Aleutian Islands State GHL fishery is currently set at a harvest limit equivalent to 27 percent of the Aleutian Islands Pacific cod ABC, not 28 percent of the Aleutian Islands Pacific cod TAC as stated by the commenter. The harvest limit may be increased (or decreased) in the following fishing year depending on how much of the State GHL fishery is harvested, and the harvest limit can increase to a maximum of 39 percent of the Aleutian Islands Pacific cod ABC if the harvest limit continues to be fully harvested each year. In addition, the Aleutian Islands State GHL fishery is capped at a maximum of 15 million pounds (6,804 mt). Therefore, if 27 percent of the Aleutian Islands Pacific cod ABC represents an amount that is greater than 15 million pounds in some future year, the State GHL fishery for that year would be 15 million pounds. The Aleutian Islands State GHL for 2016 is 4,752 mt.

The amount of the Aleutian Islands State GHL fishery is deducted from the Aleutian Islands Pacific cod ABC to calculate the Aleutian Islands Pacific cod TAC. While the establishment of the State GHL fishery in 2006 reduced the Aleutian Islands TAC, it did not change the hook-and-line CP sector's allocation of 48.7 percent of the combined BSAI Pacific cod TAC. The reduction in the Aleutian Islands TAC resulting from the State GHL fishery is distributed proportionately across all sectors, and is not borne by the hook-and-line CP sector alone.

NMFS assumes that the commenter is concluding that setting aside an additional amount of Aleutian Islands Pacific cod for Aleutian Islands communities is not warranted because these communities are not processing the full amount of what has already been allocated to them through the State GHL fishery. The commenter is correct that the full amount of the Aleutian Islands State GHL fishery has not been harvested every year; however, it is incorrect to state that Adak has chosen not to participate in the fishery in recent years. As noted in Table 2-31 in the Analysis, Aleutian Islands shoreplants have processed over 4,000 mt of Pacific cod from Federal and State GHL fisheries each year from 2012 through 2014. On average, Aleutian Islands shoreplants processed 2,046 mt of Pacific cod from the State GHL fishery annually since the inception of the Aleutian Islands Pacific cod State GHL fishery in 2006. The Council determined that the State GHL fishery alone was inadequate to sustain Aleutian Islands communities and shoreplants. Based on information received in public testimony, the Council determined that Aleutian Islands communities need about 9,000 mt of Pacific cod annually to support shoreplant operations. The Council selected a set-aside amount that in combination with

the State GHL fishery would give Aleutian Islands communities access to at least 9,000 mt of Pacific cod annually. See also the response to Comment 25.

*Comment 30:* The data presented in the Analysis do not reflect CP participation and dependence in the Aleutian Islands Pacific cod fishery. Processing by the offshore sector has also declined since rationalization programs were implemented. This rule will cause economic harm to CPs that are invested and have historically participated in the Aleutian Islands Pacific cod fishery. This rule also harms CVs that cannot make onshore landings and must deliver to CPs.

*Response 30:* NMFS and the Council recognize, and the Analysis shows, that CPs have a history of participation in the Aleutian Islands Pacific cod fishery (Sections 2.6.6.1 through 2.6.6.3 of the Analysis), that the average annual amount of Aleutian Islands Pacific cod processed by the offshore sector has declined since 2011 (coinciding with the BSAI TAC split, Table 2-31 of the Analysis), and that this rule may cause some economic losses to CPs. The Council also recognized that the amount of Pacific cod harvested by trawl CPs, and the number of participating trawl CPs, have declined since 2003 (Table 2-10 in the Analysis). However, Aleutian Islands Pacific cod represents only a small portion of the total landings and revenue by the trawl CP fleet (Table 2-11 in the Analysis). The declining biomass and BSAI TAC split have resulted in reduced Pacific cod catches in the Aleutian Islands for all participants in both the onshore and offshore sectors. The Council and NMFS have chosen to set aside a portion of the harvest for vessels delivering their catch to Aleutian Islands shoreplants because these Aleutian Islands fishing communities do not have the flexibility available to offshore sector participants to redeploy into other BSAI or GOA groundfish fisheries, move their

operations to the Bering Sea, or participate in rationalization programs that grant greater flexibility (Section 2.7.2.2 of the Analysis). The Council and NMFS have determined that the onshore sector had a greater dependence on the Aleutian Islands Pacific cod fishery than the offshore sector. Section 2.7.2.2 of the Analysis discusses some of the ways trawl CPs, trawl CVs, and hook-and-line CPs may respond to the restrictions imposed by this rule.

The Council and NMFS recognize that some trawl CVs that have historically participated in the Aleutian Islands Pacific cod fishery lack the ability to make onshore deliveries. These vessels will likely experience a loss of economic activity from this action (Section 2.7.2.3 of the Analysis), particularly in years of low Aleutian Islands Pacific cod TAC. The options for mitigating losses incurred by this action on trawl CVs are the same as for other sectors that may be excluded from the fishery during the set-aside: they may fish in the Bering Sea, fish the Aleutian Islands Unrestricted Fishery, or wait for the set-aside to be lifted.

*Comment 31:* The F/V *Katie Ann*, a trawl CP, is one of the earliest and most consistent participants in the Aleutian Islands Pacific cod fishery. The F/V *Katie Ann* is more dependent on the Aleutian Islands Pacific cod fishery than any other CP. Participation by the F/V *Katie Ann* predates the American Fisheries Act and the first entry of any shorebased processor in the Aleutian Islands. The intermittent entry into the fishery by the Adak shoreplant has harmed the ability of the F/V *Katie Ann* to harvest and process its long-term historical share of the Aleutian Islands Pacific cod fishery. Amendment 113, if implemented, threatens to destroy one of the only remaining viable fishing operations for the F/V *Katie Ann*.

*Response 31:* The Council and NMFS recognized the long history of participation in the Aleutian Islands Pacific cod fishery by the F/V *Katie Ann* as Amendment 113 was being developed and considered. The Council considered an option that would have allowed CPs that had processed Pacific cod in the Aleutian Islands management area in at least 12 years between 2000 and 2014, such as the F/V *Katie Ann*, to be exempt from restrictions on processing for up to 2,000 mt of Pacific cod. Ten CPs that harvested and processed both targeted and incidental catch of Pacific cod during that period would have qualified for this exemption. The F/V *Katie Ann* is the only vessel that operated as a mothership processing targeted Pacific cod during this period.

The Council did not select this option for an exemption for the F/V *Katie Ann* or other qualified CPs. The 2,000-mt exemption would have represented 40 percent of the 5,000-mt set-aside. The Council determined, and NMFS agrees, that this amount would have substantially reduced the amount available to vessels delivering to Aleutian Islands shoreplants and could have undermined the efficacy of Amendment 113. The primary objective of Amendment 113 and this final rule is to provide access to and promote sustained participation in the Aleutian Islands Pacific cod fishery by Aleutian Islands fishing communities in this remote area, especially at very low TAC levels. At TACs larger than 5,000 mt, CPs and motherships may participate in the Aleutian Islands Unrestricted Fishery. The Council considered historical participation of the offshore sector, including the F/V *Katie Ann*, but determined that the fishery cannot support historical levels of effort by all sectors (Section 2.7.2.5 of the Analysis). The Council selected a maximum level of 5,000 mt for the set-aside to provide continued access to the Aleutian Islands Pacific cod fishery by the offshore sector when the Aleutian Islands

TAC is at a level that can accommodate both the needs of the inshore fishery and Aleutian Islands fishing communities, as well as offshore fishery participants. See also the response to Comment 33.

*Comment 32:* In any fishery management plan that awards fishing privileges to one group and takes them away from another, there are certain to be winners and losers; however, the benefits to the winners must be balanced against the harm to the losers. Amendment 113 fails to achieve the required balance. There is little to no evidence that the harm that will be suffered by historical participants will be offset by any net benefits to either Adak or Atka. History has shown that it may be impossible to operate a viable shoreplant in Adak, and there is currently no one committed to future operations of the existing plant in Adak.

*Response 32:* Amendment 113 and this final rule provide access to and sustained participation in the Aleutian Islands Pacific cod fishery by Aleutian Islands fishing communities, especially during periods when the Pacific cod TAC in the Aleutian Islands is relatively low. This is an appropriate action for the Council and NMFS to take, in recognition of the dependence on the Pacific cod fishery by Aleutian Islands fishing communities, the lack of protections for Aleutian Island harvesters and communities seeking to establish viable community-based fishing operations under the status quo, and the lack of opportunity for Aleutian Islands shoreplants and CVs to expand to other areas and fisheries.

While it is accurate that the Aleutian Islands shoreplants in Adak or Atka did not process Pacific cod during the 2015 or 2016 fishing years, comments received during public testimony to the Council and the public comment period for the proposed rule state

that investors and processors are planning to process Pacific cod in one or both communities if this final rule is implemented. The commenters believe that without the Aleutian Islands CV Harvest Set-Aside, it is doubtful that any operator will have a viable opportunity to process Pacific cod in Adak or Atka, and the inshore sector will continue to be preempted from the fishery. Public comments in favor of the action also state that there will be considerable social and economic benefits to Aleutian Islands communities as a result of this action that offset the expected costs to other participants.

The Council included provisions to mitigate the costs of the set-aside on other participants by providing access to the fishery by other participants if the Aleutian Islands shoreplants do not submit a notification of their intent to process Pacific cod in the upcoming year or if those shoreplants do not meet the minimum processing requirement of 1,000 mt on or before February 28. Additionally, historical participants who cannot participate in the set-aside may participate in the Aleutian Islands Unrestricted Fishery, when available, or fish in the Aleutian Islands for Pacific cod when the set-aside is lifted (see also the response to Comment 16).

*Comment 33:* This action would significantly impact the revenue and operations of Amendment 80 CPs that also have a history of dependence on the Aleutian Islands Pacific cod fishery. These CPs take deliveries from CVs that are unable to deliver to shore.

*Response 33:* Amendment 113 and this rule do not prohibit Amendment 80 CPs and CVs delivering to Amendment 80 CPs from participating in the A-season Pacific cod fishery in the Aleutian Islands; those vessels may participate in the Aleutian Islands Unrestricted Fishery, when available, and may harvest any remaining BSAI non-CDQ

Pacific cod up to the Aleutian Islands DFA after the set-aside is lifted. In addition, if NMFS does not receive timely notification from the City of Adak or the City of Atka, there will be no Aleutian Islands CV Harvest Set-Aside, and no additional regulatory harvesting or delivery limitations imposed on these vessels.

When the Aleutian Islands DFA is greater than 5,000 mt, the difference between the DFA and the Aleutian Islands CV Harvest Set-Aside is available as the “Aleutian Islands Unrestricted Fishery” for directed fishing by all non-CDQ fishery sectors with sufficient A-season allocation and may be processed by any eligible processor, including Amendment 80 CPs and CVs making deliveries to them. The amount of the Aleutian Islands Unrestricted Fishery will be published in the BSAI Harvest Specifications. Given the current 2017 harvest specifications for Aleutian Islands Pacific cod, 3,965 mt of Pacific cod will be available for the Aleutian Islands Unrestricted Fishery.

The Aleutian Islands CV Harvest Set-Aside will only be in effect for a portion of the A-season. The set-aside will be lifted if the entire amount of the set-aside has been delivered to Aleutian Islands shoreplants, or on March 15, whichever comes first. Additionally, if Aleutian Islands shoreplants do not meet certain performance requirements, the harvest and delivery restrictions will be lifted and the Aleutian Islands Pacific cod DFA can be harvested by any eligible vessel for delivery to any eligible processor. For example, if Aleutian Islands shoreplants have not processed at least 1,000 mt of Pacific cod by February 28, the set-aside will be lifted. Any amount of the set-aside remaining after that date, plus the remainder of the Aleutian Islands DFA, will be available for harvest by any eligible vessel for delivery to any eligible processor. Likewise, if the entire set-aside is harvested prior to March 15, the harvest and delivery

restrictions will be lifted immediately. At the latest, the harvest set-aside will be lifted on March 15, and any amount of the set-aside remaining will be added to the remaining Aleutian Islands DFA for harvest by any eligible vessel for delivery to any eligible processor.

*Comment 34:* Section 2.7.2 of the Analysis states that the set-aside “would preclude the future participation of other participants that may benefit or have historically benefitted from the harvesting and processing of Aleutian Islands Pacific cod unless Aleutian Islands shoreplants are unable to process the Aleutian Islands Pacific cod received from catcher vessels.” The justification for this is presented as the Council having made inshore-offshore allocations previously. This, however, is not an inshore-offshore allocation; this is pre-emption of the offshore sector to the benefit of the onshore sector.

*Response 34:* The sentence that follows the material quoted by the commenter states, “The Council and NMFS have allocated fishery resources between inshore and offshore participants in the past, consistent with the purpose and need for the action, the National Standards and other provisions of the MSA [Magnuson-Stevens Act].” This sentence simply refers to past actions taken by the Council and NMFS that allocate fishery resources between inshore and offshore participants and does not represent the Council’s and NMFS’ justification for recommending and approving the Aleutian Islands Pacific cod harvest set-aside. The justification and rationale for establishing the set-aside is provided generally in the administrative record for Amendment 113, and specifically in Section 2.4.3 of the Analysis, in the preamble of the proposed rule, and in the preamble of this final rule.

Although the Aleutian Islands Pacific cod set-aside is not identical to other inshore-offshore allocation actions the Council and NMFS have implemented, the set-aside does allocate Aleutian Islands Pacific cod among an inshore sector (those vessels that deliver their catch to Aleutian Islands shoreplants for processing) and an offshore sector (those vessels that process their catch at sea or that deliver their catch to offshore processors for processing), making it a type of inshore-offshore allocation. Another type of inshore-offshore allocation was the Gulf of Alaska (GOA) pollock and Pacific cod inshore-offshore allocations under Amendment 23 to the Fishery Management Plan for Groundfish of the GOA (GOA FMP). Under Amendment 23, 100 percent of the GOA pollock TAC was allocated to vessels delivering their catch of pollock to onshore processors. In the preamble of the final rule implementing Amendment 23, NMFS stated, “The allocation of 100 percent of the GOA pollock TAC to the inshore sector proposed by the Council and approved by the Secretary slightly exceeds the harvest rates of the inshore sector in recent years and results in a redistribution of the pollock resource from the offshore sector to the inshore sector. The Secretary determined that this redistribution was appropriate based on the social and other benefits that would be derived from implementation of the allocation” (57 FR 23321, June 3, 1992). In contrast to the inshore-offshore allocation of GOA pollock under Amendment 23 to the GOA FMP, the Aleutian Islands Pacific cod CV Harvest Set-aside will allow the offshore sector to participate in the Aleutian Islands Pacific cod fishery in years when the Aleutian Islands Pacific cod DFA provides for the Unrestricted Fishery, and in years when no Aleutian Islands shoreplant is processing Pacific cod or participating vessels fail to deliver 1,000 mt of Aleutian Islands Pacific cod to Aleutian Islands shoreplants by February 28.

*Comment 35:* This action would create an exclusive processing privilege for Adak under the assumption that shore-based processors are entitled to an allocated share of processing privileges. The Council and NMFS have attempted to disguise an exclusive processing allocation to Adak by defining qualifying participants as “Aleutian Islands shoreplants” within a specified geographic region. However, the shoreplant in Atka has never processed Pacific cod and has no historical dependence on the fishery and it is unlikely that competing processing will be developed in the region in the foreseeable future. Therefore, this action is an exclusive allocation to Adak, whose shoreplant has a dubious track record for paying fisherman and has had numerous operational difficulties.

The Magnuson-Stevens Act does not allow a fishery management council to allocate fishery privileges to shore-based processors. The express Federal prohibition of creating such a privilege was acknowledged by NOAA General Counsel (GC) in a letter from Lisa Lindeman to the Council Chair in 2009. Section 303A of the Magnuson-Stevens Act specifies that limited access privilege programs authorized under this act pertain to fish harvesting. Had Congress intended to create an individual processor quota, it could have done so, as it did for the crab fisheries in the BSAI. No such congressional grant of authority applies to shore-based processors operating in the Aleutian Islands Pacific cod fishery.

*Response 35:* In a memorandum dated September 30, 2009, from Lisa Lindeman, Regional Counsel for the Alaska Region of NOAA General Counsel, to Eric Olsen (then Chairman) and Chris Oliver (Executive Director) of the Council, NOAA GC provided the Council with legal advice in response to four questions posed by the Council. Questions 1, 2, and 4 of the 2009 memorandum are relevant in responding to this comment. In

response to the first question, NOAA GC advised that except for the authority provided at section 313(j) for the Crab Rationalization Program (16 U.S.C. 1862(j)), the Magnuson-Stevens Act does not provide the Council or NMFS with the authority to require fixed linkages between harvesters and shore-based processors. In fixed linkages, a harvester is required to deliver his or her catch to a specific shore-based processor. NOAA GC explained that requiring fixed linkages between harvesters and shore-based processors is similar to issuing processor quota, which is not authorized by the Magnuson-Stevens Act except for the Crab Rationalization Program. Therefore, with the exception of the Crab Rationalization Program, NMFS acknowledges that the Council and NMFS do not have authority under the Magnuson-Stevens Act to require fixed linkages between harvesters and processors or to establish exclusive processing privileges or processor quota.

In response to the second question, NOAA GC advised that the Magnuson-Stevens Act does authorize allocation of harvesting privileges to shore-based processors if other requirements of the Magnuson-Stevens Act are met. Therefore, NMFS generally disagrees with the commenter's assertion that the Magnuson-Stevens Act does not allow a fishery management council to allocate fishery privileges to shore-based processors. Finally, in response to the fourth question, whether the Magnuson-Stevens Act authorizes the Council to establish an exclusive class of shore-based processors that would be the recipients of all, or a specific portion of all, landings from a fishery, NOAA GC advised that the answer is dependent on the purpose of the action and the record developed by the Council. NOAA GC stated, "The Magnuson-Stevens Act does not authorize placing a limit on the number of shore-based processing sites if the purpose is to allocate shore-based processing privileges.... However, if the Council developed an adequate record

demonstrating that an action, which had the practical effect of limiting the number of sites to which deliveries could be made, was necessary for legitimate management or conservation objectives (*e.g.*, ... protection of fishing communities that depend on the fisheries) and not a disguised limited entry program, then there could be a legal basis for such an action.”

NMFS disagrees that this action creates an exclusive processing privilege for Adak or a disguised processing allocation to Adak. No aspect of this action establishes exclusivity. This final rule does not provide a specific allocation of processing privileges to either Aleutian Islands shoreplant. Nothing in Amendment 113 or this final rule prevents the Atka shoreplant from processing Aleutian Islands Pacific cod and reducing the amount of Pacific cod that is delivered to Adak by vessels participating in the set-aside, prevents other Aleutian Islands shoreplants from processing Aleutian Islands Pacific cod in Adak or Atka, or prevents a shoreplant in any other onshore location west of 170° W. longitude from processing Aleutian Islands Pacific cod. The fact that the set-aside will be lifted if notification of intent to process is not provided, or if less than 1,000 mt of Aleutian Islands Pacific cod is processed by February 28, is directly contrary to exclusive privileges that permit the holder of the privilege exclusive access to the resource without diminishment by other participants or revocation without procedural due process. As explained throughout this final rule, the Council and NMFS have articulated legitimate management and conservation objectives for the Aleutian Islands CV Harvest Set-Aside to protect Aleutian Islands fishing communities that depend on access to and sustained participation in the fisheries for the socioeconomic benefits and stability

provided by that access and participation. Therefore, Amendment 113 and this final rule do not create an exclusive processing privilege for Adak.

### **OMB Revisions to PRA References in 15 CFR 902.1(b)**

Section 3507(c)(B)(i) of the Paperwork Reduction Act (PRA) requires that agencies inventory and display a current control number assigned by the Director of the Office of Management and Budget (OMB), for each agency's information collection. Section 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued. Because this final rule revises and adds data elements within a collection-of-information for recordkeeping and reporting requirements, 15 CFR 902.1(b) is revised to reference correctly the sections resulting from this final rule.

### **Classification**

The NMFS Assistant Administrator, Alaska Region, NMFS, determined that Amendment 113 to the FMP and this rule are necessary for the conservation and management of the groundfish fishery and that they are consistent with the Magnuson-Stevens Act and other applicable laws.

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

### *Administrative Procedure Act*

The NMFS Assistant Administrator finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for this final rule. This finding is based on the need to provide the City of Adak and the City of Atka with sufficient time to submit a notification of intent to process that complies with the regulatory requirements after the notification requirements are effective; to provide NMFS with sufficient time to notify

the general public and the affected industry as to whether the Aleutian Islands CV Harvest Set-Aside will be in effect for 2017; and to provide the affected industry with sufficient time to adequately prepare for the start of the 2017 fishing year on January 1, 2017.

NMFS has determined that it must give the City of Adak and the City of Atka 15 days after the effective date of the notification of intent to process regulations to take all necessary steps to prepare, sign, and submit a notification of intent to process that complies with the regulatory requirements at § 679.20(a)(7)(viii)(D). Because these cities are aware of this action, have been anticipating its approval, and support its implementation in time for the 2017 fishing year, NMFS has determined that 15 days will provide the cities with enough time to comply with the notification requirements in 2016. Without waiver of the 30-day delay in effectiveness, the deadline for submission of a notification of intent to process would occur 45 days after publication of the final rule in the **Federal Register**, which means the deadline would occur very late in December 2016 or in early January 2017. A deadline in late December would not provide NMFS with adequate time to notify the industry as to whether the set-aside will be in effect on January 1, 2017, or provide the affected industry with sufficient time to prepare for the fishery which begins on January 1 for some participants in the Aleutian Islands Pacific cod fishery. Because NMFS must receive a notification of intent prior to the start of the fishing year to provide for an orderly start to the fishing year and to ensure the appropriate specifications are in place before fishing occurs on January 1, any notification deadline for 2016 that would occur after December 31, 2016, renders the set-aside meaningless for the 2017 fishing year. For reasons set forth in the Analysis and the

preambles of the proposed rule and this final rule, the Council and NMFS have determined that the Aleutian Islands CV Harvest Set-Aside will provide important socioeconomic benefits and stability to Aleutian Islands fishing communities that intend to process Aleutian Islands Pacific cod in the upcoming fishing year. Waiving the 30-day delay in effectiveness will provide Aleutian Islands fishing communities with an opportunity to realize those benefits starting with the 2017 fishing year; failure to waive the delay in effectiveness will postpone that opportunity for an entire fishing year until 2018. One Aleutian Islands shoreplant has already informally notified NMFS that it intends to process Aleutian Islands Pacific cod in 2017.

Additionally, as explained earlier in this final rule, the Analysis determined that the affected fishing industry would have sufficient time to prepare for the upcoming fishing year if notification of intent to process was received from Adak or Atka prior to December 15. Waiving the delay in effectiveness for these regulations provides for a submission deadline that will occur before December 15, thus providing NMFS with sufficient time to notify the public and affected industry as to whether the set-aside will be in effect, and for the affected industry, including vessels that deliver their catch to Aleutian Islands shoreplants and those that deliver their catch to at-sea processors, to prepare for the start of the fishing year with that knowledge. As explained above, failure to waive the delay in effectiveness could result in a notification deadline that occurs in late December, which would not provide NMFS or the affected industry with sufficient time to prepare for the upcoming fishery that starts on January 1, 2017.

For these reasons, the NMFS Assistant Administrator finds good cause to waive the 30-day delay in effectiveness for this final rule.

### *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 preambles to the proposed rule and this final rule serve as the small entity compliance guide. This action does not require any additional compliance from small entities that is not described in the preambles. Copies of the proposed rule and this final rule are available from the NMFS Web site at <http://alaskafisheries.noaa.gov>.

### *Final Regulatory Flexibility Analysis*

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

#### 1) Need for and Objectives of this Final Rule

A statement of the need for and objectives of this rule is contained earlier in the preamble and is not repeated here. This FRFA incorporates the IRFA (see **ADDRESSES**) and the summary of the IRFA in the proposed rule (81 FR 50444, August 1, 2016), a summary of the significant issues raised by the public comments, NMFS' responses to those comments, and a summary of the analyses completed to support the action.

#### 2) Summary of Significant Issues Raised During Public Comment Period

No comments were received that raised significant issues in response to the IRFA specifically; therefore, no changes were made to this rule as a result of comments on the IRFA. However, several comments were received on the economic impacts of Amendment 113 on the Amendment 80 trawl CP and hook-and-line CP sectors. For a

summary of the comments received and NMFS' responses, refer to the section above titled "Responses to Comments."

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

NMFS published the proposed rule on August 1, 2016 (81 FR 50444), with comments invited through August 31, 2016. An IRFA was prepared and summarized in the "Classification" section of the preamble to the proposed rule. NMFS received 18 letters of public comment on the proposed rule and Amendment 113 to the FMP. The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule.

### 4) Description and Number of Directly Regulated Small Entities

This final rule directly regulates three groups of entities. This final rule will directly regulate trawl CVs harvesting Pacific cod in the BSAI because it limits how much Pacific cod those trawl CVs may harvest in the Bering Sea, and it may prohibit trawl CVs from participating in the Aleutian Islands Pacific cod fishery if they do not deliver their Pacific cod catch to Aleutian Islands shoreplants. It also directly regulates all non-trawl CVs who are harvesting Pacific cod in the Aleutian Islands because it will prohibit those non-trawl CVs from participating in the Aleutian Islands Pacific cod fishery if they do not deliver their Pacific cod catch to Aleutian Islands shoreplants. Finally, this final will directly regulate all CPs harvesting Pacific cod in the Aleutian Islands because it limits how much Pacific cod those CPs can harvest and process in the Aleutian Islands. This rule does not directly regulate the City of Adak or the City of Atka because it does not impose a requirement on those cities. This rule does not directly regulate entities participating in the harvesting and processing of Pacific cod managed under State GHL fisheries in State waters in the Bering Sea or Aleutian Islands.

The SBA has established size standards for all major industry sectors in the United States. 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 114111) 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.

Based on the best available and most recent complete data from 2012 through 2014, between 10 and 16 CPs, and an estimated 43 CVs (trawl and non-trawl) will be directly regulated by this action in the BSAI. Of these, no CP is estimated to be a small entity, while 6 trawl CVs and 26 non-trawl CVs are estimated to be small entities based on the best available data on the gross receipts from these entities and their known affiliates. Therefore, a total of 32 vessels considered to be small entities will be directly regulated by this action. The IRFA assumes that each vessel is a unique entity; therefore, the total number of directly regulated entities may be an overestimate because some vessels are likely affiliated through common ownership. These potential affiliations are not known with the best available data and cannot be predicted.

## 5) Recordkeeping, Reporting, and Other Compliance Requirements

This final rule adds a recordkeeping and reporting requirement to notify NMFS of an Aleutian Islands shoreplant's intent to process Aleutian Islands Pacific cod in the upcoming year; therefore, the recordkeeping, reporting, and other compliance requirements are increased slightly under this final rule. This final rule contains a new

requirement for the City of Adak or the City of Atka to notify NMFS of its intent to process Aleutian Islands Pacific cod in the upcoming fishing year in order for the Bering Sea Trawl CV A-Season Sector Limitation and the Aleutian Islands CV Harvest Set-Aside to go into effect in the upcoming fishing year. The City Manager of Adak or the City Administrator of Atka is required to provide NMFS with an official notification of intent prior to *[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*, and no later than October 31 for each year after 2016, for the harvest set-aside to go into effect in the upcoming year. The professional skills necessary to provide this notice include writing, sending email, and access to a U.S. Post Office.

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

The RFA requires identification of any significant alternatives to the final rule that accomplish the stated objectives of the final action, consistent with applicable statutes, and that would minimize any significant economic impact of the final rule on small entities. The Council considered a status quo alternative and one action alternative with several options and suboptions. The combination of options and suboptions under the action alternative effectively provided a broad range of potential alternative approaches to status quo management. Under the status quo, there would have been a continued risk that fishing communities in the Aleutian Islands would not be able to sustainably participate in the Aleutian Islands Pacific cod fishery. The action alternative does not affect any non-CDQ fishery sector's Pacific cod allocation, or the TAC of Aleutian Islands Pacific cod. The action alternative accomplishes the stated objectives of prioritizing a portion of the Aleutian Islands Pacific cod TAC for harvest by vessels that

deliver their catch to Aleutian Islands shoreplants for processing, while minimizing adverse economic impacts on small entities and the potential for stranding a portion of the Aleutian Islands Pacific cod TAC.

The Council considered a range of dates, varying amounts of Aleutian Islands Pacific cod for the harvest set-aside and Bering Sea sector limitation, and a suite of mechanisms to relieve the Bering Sea Trawl CV A-Season Sector Limitation and the Aleutian Islands CV Harvest Set-Aside under the action alternative. The Council recommended the final combination of dates, harvest set-aside amounts, harvest limitations, and provisions to relieve the Bering Sea Trawl CV A-Season Sector Limitation and the Aleutian Islands CV Harvest Set-Aside that would give fishery participants sufficient opportunity to harvest and deliver Aleutian Islands Pacific cod to the benefit of Aleutian Islands communities and shoreplants without stranding the trawl CV sector allocation or the Aleutian Islands Pacific cod TAC. The Council recommended and NMFS is implementing selected options in the action alternative such that if specific notification or minimum harvest and processing requirements are not met by a specific date, the Bering Sea Trawl CV A-Season Sector Limitation and the Aleutian Islands CV Harvest Set-Aside will either not go into effect in the upcoming year, or they will be lifted for the remainder of the year.

The Council considered and rejected two options under the action alternative. One option would have required that if less than 50 percent of the Aleutian Islands CV Harvest Set-Aside had been landed at an Aleutian Islands shoreplant by a given date, ranging from February 28 to March 15, the Bering Sea Trawl CV A-Season Sector Limitation and the Aleutian Islands CV Harvest Set-Aside would be lifted. Instead, the

Council selected an option that requires a minimum weight (1,000 mt) rather than a minimum percentage of the Aleutian Islands CV Harvest Set-Aside that must be landed at an Aleutian Islands shoreplant for processing by a given date (February 28) for the Bering Sea Trawl CV A-Season Sector Limitation and the Aleutian Islands CV Harvest Set-Aside to remain in place.

The Council also considered and rejected an option that would have exempted certain processing vessels with a history of processing Aleutian Islands Pacific cod in at least 12 out of 15 recent years from the final restrictions on processing and would have allowed them to process up to 2,000 mt of Aleutian Islands Pacific cod while the set-aside was in effect. This option could have allowed up to 10 processing vessels to continue to process Pacific cod during the A-season, limiting the effectiveness of this final rule to minimize the risk of a diminished historical share of Aleutian Islands Pacific cod being delivered to Aleutian Islands shoreplants and the communities where those shoreplants are located.

#### Federal Rules that May Duplicate, Overlap, or Conflict with the Final Action

NMFS has not identified any duplication, overlap, or conflict between this final action and existing Federal rules.

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

This final rule contains a collection-of-information requirement subject to the PRA and which has been approved by OMB under control number 0648-0743.

Public reporting burden for Notification of Intent to Process Aleutian Islands Pacific cod is estimated to average 30 minutes per individual response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the

data needed, and completing and reviewing the collection of information.

Send comments regarding this data collection, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS Alaska Region (see **ADDRESSES**), and by e-mail to *OIRA\_Submission@omb.eop.gov*, or fax to (202) 395-5806.

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. All currently approved NOAA collections of information may be viewed at:

*[http://www.cio.noaa.gov/services\\_programs/prasubs.html](http://www.cio.noaa.gov/services_programs/prasubs.html).*

### **List of Subjects**

#### *15 CFR Part 902*

Reporting and recordkeeping requirements.

#### *50 CFR Part 679*

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: November 14, 2016

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 15 CFR part 902 and 50 CFR part 679 as follows:

**Title 15—Commerce and Foreign Trade**

**PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS**

1. The authority citation for part 902 continues to read as follows:

**Authority:** 44 U.S.C. 3501 *et seq.*

2. In § 902.1, in the table in paragraph (b), under the entry “50 CFR”, add an entry for “679.20(a)(7)(viii)” to read as follows:

**§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

\* \* \* \* \*

(b) \* \* \*

<b>CFR Part or section where the information collection requirement is located</b>	<b>Current OMB control number (all numbers begin with 0648-)</b>
* * * * *	
50 CFR:	
* * * * *	
679.20(a)(7)(viii)	-0743
* * * * *	

\* \* \* \* \*

**Title 50—Wildlife and Fisheries**

**PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

3. 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; Pub. L. 111-281.

4. In § 679.2, add a definition for “Aleutian Islands shoreplant” in alphabetical order to read as follows:

**§ 679.2 Definitions.**

\* \* \* \* \*

*Aleutian Islands shoreplant* means a processing facility that is physically located on land west of 170° W. longitude within the State of Alaska.

\* \* \* \* \*

5. In § 679.20, add paragraph (a)(7)(viii) to read as follows:

**§ 679.20 General limitations.**

\* \* \* \* \*

(a) \* \* \*

(7) \* \* \*

(viii) *Aleutian Islands Pacific Cod Catcher Vessel Harvest Set-Aside Program—*

(A) *Calculation of the Aleutian Islands Pacific cod non-CDQ ICA and DFA.* Each year, during the annual harvest specifications process set forth at paragraph (c) of this section, NMFS will specify the Aleutian Islands Pacific cod non-CDQ incidental catch allowance and directed fishing allowance from the Aleutian Islands Pacific cod non-CDQ TAC as follows. Shortly after completion of the process set forth in paragraph (a)(7)(viii)(D) of this section, NMFS will announce through notice in the **Federal Register** whether the ICA and DFA will be in effect for the upcoming fishing year.

(1) *Aleutian Islands Pacific cod non-CDQ incidental catch allowance.* Each year, during the annual harvest specifications process set forth at paragraph (c) of this section, NMFS will specify an amount of Aleutian Islands Pacific cod that NMFS estimates will be taken as incidental catch in non-CDQ directed fisheries for groundfish other than Pacific cod in the Aleutian Islands. This amount will be the Aleutian Islands Pacific cod non-CDQ incidental catch allowance and will be deducted from the aggregate portion of Pacific cod TAC annually allocated to the non-CDQ sectors identified in paragraph (a)(7)(ii)(A) of this section.

(2) *Aleutian Islands Pacific cod non-CDQ directed fishing allowance.* Each year, during the annual harvest specifications process set forth at paragraph (c) of this section, NMFS will specify the Aleutian Islands Pacific cod non-CDQ directed fishing allowance. The Aleutian Islands Pacific cod non-CDQ directed fishing allowance will be the amount of the Aleutian Islands Pacific cod TAC remaining after subtraction of the Aleutian Islands Pacific cod CDQ reserve and the Aleutian Islands Pacific cod non-CDQ incidental catch allowance.

(B) *Calculation of the Aleutian Islands CV Harvest Set-Aside and Aleutian Islands Unrestricted Fishery.* Each year, during the annual harvest specifications process set forth at paragraph (c) of this section, NMFS will specify the Aleutian Islands CV Harvest Set-Aside and the Aleutian Islands Unrestricted Fishery. The Aleutian Islands CV Harvest Set-Aside will be an amount of Pacific cod equal to the lesser of either the Aleutian Islands Pacific cod non-CDQ directed fishing allowance as determined in paragraph (a)(7)(viii)(A)(2) of this section or 5,000 mt. The Aleutian Islands Unrestricted Fishery will be the amount of Pacific cod that remains after deducting the

Aleutian Islands CV Harvest Set-Aside from the Aleutian Islands Pacific cod non-CDQ directed fishing allowance as determined in paragraph (a)(7)(viii)(A)(2) of this section. Shortly after completion of the process set forth in paragraph (a)(7)(viii)(D) of this section, NMFS will announce through notice in the **Federal Register** whether the Aleutian Islands CV Harvest Set-Aside and the Aleutian Islands Unrestricted Fishery will be in effect for the upcoming fishing year.

(C) *Calculation of the Bering Sea Trawl CVA-Season Sector Limitation.* Each year, during the annual harvest specifications process set forth at paragraph (c) of this section, NMFS will specify the Bering Sea Trawl CV A-Season Sector Limitation and the amount of the trawl CV sector's A-season allocation that could be harvested in the Bering Sea subarea prior to March 21. The Bering Sea Trawl CV A-Season Sector Limitation will be an amount of Pacific cod equal to the lesser of either the Aleutian Islands Pacific cod non-CDQ directed fishing allowance as determined in paragraph (a)(7)(viii)(A)(2) of this section or 5,000 mt. The amount of the trawl CV sector's A-season allocation that could be harvested in the Bering Sea subarea prior to March 21 will be the amount of Pacific cod that remains after deducting the Bering Sea Trawl CV A-Season Sector Limitation from the amount of BSAI Pacific cod allocated to the trawl CV sector A-season as determined in paragraph (a)(7)(iv)(A)(1)(i) of this section. Shortly after completion of the process set forth in paragraph (a)(7)(viii)(D) of this section, NMFS will announce through notice in the **Federal Register** whether the Bering Sea Trawl CV A-Season Sector Limitation will be in effect for the upcoming fishing year.

(D) *Annual notification of intent to process Aleutian Islands Pacific cod—(1)*  
*Submission of notification.* The provisions of paragraph (a)(7)(viii)(E) of this section will

apply if either the City Manager of the City of Adak or the City Administrator of the City of Atka submits to NMFS a timely and complete notification of its intent to process Aleutian Islands Pacific cod during the upcoming fishing year. This notification must be submitted annually to NMFS using the methods described below.

(2) *Submittal method.* An official notification of intent to process Aleutian Islands Pacific cod during the upcoming fishing year in the form of a letter or memorandum signed by the City Manager of the City of Adak or the City Administrator of the City of Atka must be submitted by certified mail through the United States Postal Service to: NMFS Alaska Region, Attn: Regional Administrator, P. O. Box 21668, Juneau, AK 99802. The City Manager or City Administrator must also submit an electronic copy of the official notification of intent and the certified mail receipt with postmark via email to *nmfs.akr.inseason@noaa.gov*. Email submission is in addition to submission via U.S. Postal Service; email submission does not replace the requirement to submit an official notification of intent via U.S. Postal Service.

(3) *NMFS confirmation.* On or shortly after [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], or November 1 for each year after 2016, the Regional Administrator will send a signed and dated letter to the City Manager of the City of Adak or the City Administrator of the City of Atka either confirming NMFS' receipt of its official notification of intent to process Aleutian Islands Pacific cod, or informing the city that NMFS did not receive notification by the deadline.

(4) *Deadline.* The official notification of intent to process Aleutian Islands Pacific cod for the upcoming fishing year must be postmarked no later than December 8, 2016, or October 31 for each year after 2016, in order for the provisions of paragraph

(a)(7)(viii)(E) of this section to apply during the upcoming fishing year. Notifications of intent postmarked on or after December 9, 2016, or November 1 for each year after 2016, will not be accepted by the Regional Administrator. The electronic copy of the official notification of intent and certified mail receipt with postmark must be submitted to NMFS via email dated no later than December 8, 2016, or no later than October 31 for each year after 2016, in order for the provisions of paragraph (a)(7)(viii)(E) of this section to apply during the upcoming fishing year.

(5) *Contents of notification.* A notification of intent to process Aleutian Islands Pacific cod for the upcoming fishing year must contain the following information:

- (i) Date,
- (ii) Name of city,
- (iii) Statement of intent to process Aleutian Islands Pacific cod,
- (iv) Identification of the fishing year during which the city intends to process Aleutian Island Pacific cod, and
- (v) Signature of and contact information for the City Manager or City Administrator of the city intending to process Aleutian Islands Pacific cod.

(E) *Aleutian Islands community protections for Pacific cod.* If the City Manager of the City of Adak or the City Administrator of the City of Atka submits a timely and complete notification in accordance with paragraph (a)(7)(viii)(D) of this section, then the following provisions will apply for the fishing year following the submission of the timely and complete notification:

(1) *Bering Sea Trawl CVA-Season Sector Limitation.* Prior to March 21, the harvest of Pacific cod by the trawl CV sector in the Bering Sea subarea is limited to an

amount equal to the trawl CV sector A-season allocation as determined in paragraph (a)(7)(iv)(A)(1)(i) of this section minus the Bering Sea Trawl CV A-Season Sector Limitation as determined in paragraph (a)(7)(viii)(C) of this section. If, after the start of the fishing year, the provisions of paragraphs (a)(7)(viii)(E)(4) or (5) of this section are met, this paragraph (a)(7)(viii)(E)(1) will not apply for the remainder of the fishing year.

(2) *Aleutian Islands Catcher Vessel Harvest Set-Aside*. Prior to March 15, only catcher vessels that deliver their catch of Aleutian Islands Pacific cod to Aleutian Islands shoreplants for processing may directed fish for that portion of the Aleutian Islands Pacific cod non-CDQ directed fishing allowance that is specified as the Aleutian Islands Catcher Vessel Harvest Set-Aside in paragraph (a)(7)(viii)(B) of this section. If, after the start of the fishing year, the provisions of paragraph (a)(7)(viii)(E)(4) of this section are met, this paragraph (a)(7)(viii)(E)(2) will not apply for the remainder of the fishing year.

(3) *Aleutian Islands Unrestricted Fishery*. Prior to March 15, vessels otherwise authorized to directed fish for Pacific cod in the Aleutian Islands may directed fish for that portion of the Aleutian Islands Pacific cod non-CDQ directed fishing allowance that is specified as the Aleutian Islands Unrestricted Fishery as determined in paragraph (a)(7)(viii)(B) of this section and may deliver their catch to any eligible processor.

(4) *Minimum Aleutian Islands shoreplant landing requirement*. If less than 1,000 mt of the Aleutian Islands Catcher Vessel Harvest Set-Aside is landed at Aleutian Islands shoreplants on or before February 28, then paragraphs (a)(7)(viii)(E)(1) and (2) of this section will not apply for the remainder of the fishing year.

(5) *Harvest of Aleutian Islands Catcher Vessel Harvest Set-Aside*. If the Aleutian Islands Catcher Vessel Harvest Set-Aside is fully harvested prior to March 15, then

paragraph (a)(7)(viii)(E)(I) of this section will not apply for the remainder of the fishing year.

\* \* \* \* \*

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