

(iii) All buoy lines must be comprised entirely of sinking and/or neutrally buoyant line.

* * * * *

(f) *Restrictions applicable to the Southeast U.S. Restricted Area and the Southeast U.S. Observer Area.* * * *

(3) * * *

(iv) Straight sets of gillnets may not be made at night in the Southeast U.S. restricted area during the closed period described in paragraph (f)(3)(ii) of this section, except for shark gillnets exempted under paragraph (f)(3)(iii) of this section. A straight set is defined as a set in which the gillnet is placed in a straight line in the water column, as opposed to a circular set in which the gillnet is used to encircle a school or group of fish.

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Note to § 229.32: Additional regulations that affect fishing with lobster trap gear have also been issued under authority of the Atlantic Coastal Fisheries Cooperative Management Act in part 697 of this title.

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BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010914227-1227-01; I.D. 080201E]

RIN 0468-AM40

Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program for Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to implement Amendment 67 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. This action is necessary to stabilize fully utilized Pacific cod resources harvested with non-trawl gear in the Bering Sea and Aleutian Islands Area (BSAI). This would be accomplished by issuing endorsements for exclusive participation in the Pacific cod non-trawl fishery in the BSAI by long-time participants. The intended effect of this action is to conserve and manage the

Pacific cod resources in the BSAI in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be received by November 15, 2001.

ADDRESSES: Comments may be sent to Sue Salvesson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to room 401 of the Federal Building, 709 West 9th Street, Juneau, AK. Comments will not be accepted if submitted via e-mail or Internet. Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (analysis) prepared for Amendment 67 are available from the North Pacific Fishery Management Council, 605 West Avenue, Suite 306, Anchorage, AK 99501; telephone 907-271-2809. Specifically, NMFS requests comments on the findings of the analysis, such as more information about the number of small entities adversely affected by this proposed rule and the magnitude of any such adverse effects.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907-586-7228 or email at john.lepore@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone off Alaska under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. The North Pacific Fishery Management Council (Council) prepared this fishery management plan (FMP) under the authority of the Magnuson-Stevens Act. Regulations governing U.S. fisheries and implementing this FMP appear at 50 CFR parts 600 and 679.

Background of Amendment 67

The Council recommended, and NMFS approved, the License Limitation Program (LLP) to address concerns of excess fishing capacity in the groundfish and crab fisheries off Alaska. The LLP replaced the Vessel Moratorium Program, a program implemented by NMFS to impose a temporary moratorium on the entry of new capacity in the groundfish fisheries off Alaska and crab fisheries in the BSAI and to define the class of entities that would be eligible for licenses under the LLP. The Vessel Moratorium Program expired on December 31, 1999, and fishing under the LLP began on January 1, 2000. More information on the specifics of the LLP and the problems it was designed to resolve can be found in the final rule implementing the LLP (63 FR 52642, October 1, 1998).

The LLP, as implemented on January 1, 2000, was always considered by the Council and NMFS as an initial stage in a multi-staged process designed to reduce fishing capacity in the affected fisheries. The LLP is a limited access system authorized under the Magnuson-Stevens Act that requires a person to hold a license in order to participate in the groundfish fishery. Under the original provisions of the LLP, an LLP groundfish license was specific as to the area in which a person could participate, but not as to gear or species. The Council fully anticipated that specific fisheries within the LLP complex of fisheries would need further management controls to fully respond to the effects of excess fishing capacity. One such fishery is BSAI Pacific cod harvested with non-trawl gear.

In 1996, the Council recommended Amendment 46 to the BSAI FMP. Amendment 46 allocated the total allowable catch (TAC) for BSAI Pacific cod among participants who used jig gear (2 percent), trawl gear (47 percent), and fixed gear (or hook-and-line gear and pot gear)(51 percent). Amendment 46 further split the trawl gear allocation equally between catcher vessels and catcher/processor vessels. Amendment 46 was approved by NMFS, and implemented in January 1997 (61 FR 59029, November 20, 1996).

Although Amendment 46 initiated a process to address issues surrounding the allocation of BSAI Pacific cod fisheries among various participants, it did not address all of the issues, including increased prices for Pacific cod; reduced crab guideline harvest levels; and shortened or cancelled crab seasons due to low resource abundance, which intensified the use of Pacific cod resources by participants using pot gear. This intensified use prompted the concern of long-time Pacific cod fishermen who use non-trawl gear about the potential erosion of historical harvest trends in the BSAI Pacific cod fishery in favor of more recent participants. Also, the entrance of new participants in the fisheries has raised concerns regarding the increase of competition for a fully utilized resource.

In response to this concern, the Council recommended Amendment 64. This amendment, approved by NMFS and implemented by final rule in September 2000 (65 FR 51553, August 24, 2000), further divided the 51 percent of the TAC for BSAI Pacific cod allocated to hook-and-line gear and pot gear as follows: hook-and-line catcher/processor vessels, 80 percent; hook-and-line catcher vessels, 0.3 percent; pot gear vessels, 18.3 percent; and hook-and-line or pot catcher vessels less than

60 ft (18.3 m) length overall (LOA), 1.4 percent. Amendment 64 also contained specific provisions for the accounting of directed fishing allowances and the transfer of unharvested amounts of these allowances. Further information regarding these specific provisions can be found in the final rule that implemented Amendment 64.

Amendments 46 and 64 established TAC allocations for different gear sectors of the BSAI Pacific cod fisheries. However, neither amendment prevented movement among those sectors or the entrance of new participants who hold an LLP groundfish license with a Bering Sea or Aleutian Islands area endorsement into BSAI Pacific cod fisheries, because these amendments did not require specific endorsements.

In April 1999, the Council initiated an analysis of alternatives to add Pacific cod endorsements to LLP groundfish licenses. Pacific cod endorsements are designed to address the concern about new participants entering the Pacific cod fisheries and movement of Pacific cod fishermen among the various sectors that use non-trawl gear. This analysis contained the following Problem Statement:

The hook-and-line and pot fisheries for Pacific cod in the Bering Sea/Aleutian Islands are fully utilized. Competition for this resource has increased for a variety of reasons, including increased market value of cod products and a declining allowable biological catch/TAC.

Longline and pot fishermen who have made significant long-term investments, have long catch histories, and are significantly dependent on the BSAI cod fisheries need protection from others who have little or limited history and wish to increase their participation in the fishery.

This requires prompt action to promote stability in the BSAI fixed gear [non-trawl] cod fishery until comprehensive rationalization is completed.

The analysis reviewed the status of Pacific cod stocks and catch, the history of Pacific cod allocations, and the economic, social, and environmental impacts of various limited access alternatives. A copy of this analysis can be obtained for review from the Council (see **ADDRESSES**).

In April 2000, the Council recommended its preferred alternative for the BSAI Pacific cod non-trawl fisheries (Amendment 67). This recommendation is currently being reviewed by NMFS. The details of Amendment 67 are provided in the following section.

Details of Amendment 67

As explained earlier, the BSAI Pacific cod fisheries are fully utilized. Therefore, any new participant increases the competition for an already

fully utilized resource. Although new participants are often discouraged from entering such a fishery due to the costs of increased competition, the relatively high value of the Pacific cod and the depressed abundance of crab resources have provided incentives for new participants to enter the BSAI Pacific cod fisheries.

The Council considered various alternatives to limit entry into the BSAI Pacific cod fishery by fishermen using non-trawl gear. These alternatives were designed to prevent a person who holds an LLP groundfish license, but who has not participated in the Pacific cod fisheries in the BSAI with non-trawl gear in the past, or who has not participated at a level that could constitute significant dependence on those fisheries, from participating in those fisheries in the future.

After receiving public testimony concerning this action, the Council recommended the following eligibility requirements for Pacific cod endorsements:

Eligibility Requirements—General Information

As used throughout this document, a license holder means the person to whom an LLP groundfish license was issued or the person authorized to use that license.

Qualifying amounts are in round weight. Round weight is calculated by dividing the weight of the primary product made from the Pacific cod by the product recovery rate for that primary product as listed in Table 3 to 50 CFR part 679. Primary product can be processed or unprocessed.

Pacific cod that was harvested for the commercial bait fishery and properly documented would be applied toward the qualifying amount. Properly documented means that the Pacific cod was landed in compliance with Federal and state commercial fishing regulations in effect at the time of landing. Pacific cod that was harvested for personal use bait would not be applied toward the qualifying amount. The Council reviewed the Pacific cod bait issue and determined that giving credit for commercial bait, but not personal bait, was consistent with a Pacific cod fishery that is commercial in nature.

Pacific cod harvested in the Bering Sea Subarea or the Aleutian Islands Subarea would be applied toward the qualifying amount. However, a license holder would only be authorized to harvest Pacific cod in an area in which he or she had an area endorsement. This would be consistent with the overall goals and objectives of the LLP (i.e., a person had to participate in a

management area during a specific period to qualify for an area endorsement). For example, a person who had an LLP groundfish license with only a Bering Sea area endorsement would not be authorized to harvest Pacific cod in the Aleutian Islands subarea, even though his or her Pacific cod endorsement was issued based on harvests in both the Bering Sea Subarea and the Aleutian Islands Subarea.

Also, discarded Pacific cod would not be applied toward the qualifying amount. Discarded fish are often not reported and do not enter the stream of commerce; therefore, they are not considered commercial in nature.

Eligibility Requirements—Specific Information

To receive a Pacific cod endorsement that authorizes an LLP groundfish license holder to harvest Pacific cod with hook-and-line gear in the BSAI but not process that Pacific cod, a person would need to have:

1. An LLP groundfish license with a catcher vessel designation;
2. Harvested at least 7.5 metric tons (mt) round weight of Pacific cod with hook-and-line gear or jig gear in the directed commercial BSAI Pacific cod fishery in any 1 of the years 1995, 1996, 1997, 1998, or 1999; and
3. Harvested the qualifying amount with the vessel that was used as the basis of eligibility for the license holder's LLP groundfish license.

To receive a Pacific cod endorsement that authorizes an LLP groundfish license holder to harvest Pacific cod with hook-and-line gear in the BSAI and process that Pacific cod, a person would need to have:

1. An LLP groundfish license with a catcher/processor vessel designation;
2. Harvested at least 270 mt round weight of Pacific cod with hook-and-line gear in the directed commercial BSAI Pacific cod fishery in any 1 of the years 1996, 1997, 1998, or 1999; and
3. Harvested the qualifying amount with the vessel that was used as the basis of eligibility for the license holder's LLP groundfish license.

To receive a Pacific cod endorsement that authorizes an LLP groundfish license holder to harvest Pacific cod with pot gear in the BSAI but not process that Pacific cod, a person would need to have:

1. An LLP groundfish license with a catcher vessel designation;
2. Harvested at least 100,000 lb (45 mt) round weight of Pacific cod with pot gear or jig gear in the directed commercial BSAI Pacific cod fishery in each of any 2 of the years 1995, 1996, 1997, 1998, or 1999; and

3. Harvested the qualifying amount with the vessel that was used as the basis of eligibility for the license holder's LLP groundfish license.

To receive a Pacific cod endorsement that authorizes an LLP groundfish license holder to harvest Pacific cod with pot gear in the BSAI and process that Pacific cod, a person would need to have:

1. An LLP groundfish license with a catcher/processor vessel designation;
2. Harvested at least 300,000 lb (136 mt) round weight of Pacific cod with pot gear in the directed commercial BSAI Pacific cod fishery in each of any 2 of the years 1995, 1996, 1997, or 1998; and
3. Harvested the qualifying amount with the vessel that was used as the basis of eligibility for the license holder's LLP groundfish license.

Except as explained here, a license holder would need to have a Pacific cod endorsement on his or her LLP groundfish license to conduct directed fishing for Pacific cod in the BSAI with hook-and-line or pot gear(s) including Pacific cod harvested for the commercial bait fishery. The license holder would have to use the specific non-trawl gear designated with the Pacific cod endorsement.

Exemptions

A license holder would not need a Pacific cod endorsement on his or her LLP groundfish license to use a catcher vessel less than 60 ft (18.3 mt) LOA to conduct directed fishing for Pacific cod in the BSAI with non-trawl gear. The Council decided to exempt this class of vessels because of concern over the ability of these relatively small vessels to compete under the current fishery management regime. Amendment 64 allocates 1.4 percent of the BSAI Pacific cod non-trawl allocation to vessels less than 60 ft (18.3 m) LOA. In providing this exemption, the Council intended to ensure that the number of vessels in this vessel class would be sufficient to take advantage of the entire allocation.

Exemptions to the LLP would apply to the Pacific cod endorsement. That means that a vessel that is exempt from the LLP would not need to comply with Pacific cod endorsement requirements proposed by this rule to conduct directed fishing for Pacific cod in the BSAI with non-trawl gear. These exemptions include (1) vessels less than 32 ft (7.5 m) LOA and (2) vessels less than 60 ft (18.3 m) LOA using a limited amount of jig gear. Specific information concerning these exemptions can be found at 50 CFR 679.4(k)(2).

A Pacific cod endorsement would not be required to harvest Pacific cod for personal use bait.

Other Provisions

The Council considered several provisions that would have allowed a person to combine the catch histories of more than one vessel to qualify for a Pacific cod endorsement. The Council recommended that a person be allowed to combine catch histories only when the vessel that was used as the basis of eligibility for the original LLP groundfish license sank and was replaced with another vessel by that person within a specified time period. The Council decided not to allow any other combining of landings (or catch histories) of multiple vessels because of the potential of increasing participation in a fishery in which excess capacity already is a recognized problem. The Council determined that allowing for the combining of landings in the limited circumstances of sunken vessels would not greatly increase the number of participants (the analysis identified approximately seven vessels that may qualify for this provision). However, it would provide equitable consideration to those persons who would have participated but for their vessel sinking.

Specifically, a person could combine the landings of a sunken vessel with the landings of a replacement vessel to meet the eligibility criteria for a Pacific cod endorsement if:

- (1) The vessel that sank was used as the basis of eligibility for the original LLP groundfish license;
- (2) The vessel sank after January 1, 1995; and
- (3) The sunken vessel was replaced with a vessel by December 31 of the year 2 years after the vessel sank. This time period was chosen by the Council because it corresponds with the time period used by the Internal Revenue Service for tax purposes. For example, if a vessel sank any time during 1996, replacement of that vessel had to occur before December 31, 1998.

Another provision recommended by the Council concerns unavoidable circumstances. This hardship provision is similar to one provided for general LLP eligibility and would enable a person to receive a Pacific cod endorsement even though that person would not qualify for an endorsement based on landings. The requirements for eligibility under the hardship provision would be very specific. First, a person would have to be an LLP groundfish license holder and owner of the vessel that, but for the unavoidable circumstances, would have had sufficient landings to meet the requirements for a Pacific cod endorsement. Second, that person would have to demonstrate a specific

intent to use that vessel to conduct directed fishing for Pacific cod in the BSAI during the relevant time period and the capability to have made harvests sufficient to meet the eligibility criteria. Third, the specific intent would have to have been thwarted by a circumstance that was unavoidable, unique to the person or unique to the vessel, and unforeseen and reasonably unforeseeable to the person. Fourth, under the circumstances, the person would have to have taken all reasonable steps to overcome the circumstances. Fifth, any amount of Pacific cod would have to have been harvested on the vessel in the BSAI with non-trawl gear during the period of eligibility for the specific Pacific cod endorsement desired but after the vessel was prevented from participating by the unavoidable circumstance.

Species Endorsements in the Community Development Quota (CDQ) Fisheries

The Council recommended that the provisions of Amendment 67 apply to the CDQ fisheries. This means that vessels not authorized to harvest Pacific cod under the LLP would be prohibited from directed fishing for Pacific cod CDQ. However, NMFS regulations do not currently define directed fishing for Pacific cod in the CDQ fisheries.

Through the CDQ program, NMFS allocates 10 percent of pollock and 7.5 percent of the BSAI groundfish, prohibited species, halibut, and crab TAC to 65 eligible Western Alaska communities. The CDQ groups to which the TAC is allocated are expected to manage their allocations of CDQ and Prohibited Species Quota to account for bycatch as well as target catch. The CDQ groups are prohibited from exceeding any of their CDQ allocations, which prevents continued fishing for one groundfish species once the quota of another groundfish or halibut bycatch species is reached.

In the non-CDQ fisheries, NMFS defines directed fisheries based on the amount of retained catch of a given species relative to the amount of other groundfish species on board the vessel. When a TAC amount for a species is approached, NMFS will close directed fishing for the species but allow fishing to continue in other fisheries in which the species is taken incidentally.

Thus, in contrast to the non-CDQ fisheries, NMFS has traditionally not needed to define directed fishing within the CDQ program and current regulations prohibit the use of CDQ catch as the basis for calculating the maximum retainable bycatch. These regulations were implemented because

directed fishing closures did not apply to the CDQ fisheries. Further, because there are no provisions for regulatory discard, vessels engaged in CDQ fisheries are often required to retain all catch.

Implementing Amendment 67 would require that the existing regulations be amended as follows: First, the definition of directed fishing in § 679.2 would be revised, in order to remove specific reference to the CDQ fisheries. This reference was appropriate when the only directed fishery defined under the CDQ program was pollock. However, under this rule, directed fishing for Pacific cod in the CDQ fisheries would be defined following the same procedure as the non-CDQ fisheries. Second, the use of CDQ species as basis species for calculating retainable amounts of other CDQ species would be allowed. This revision would be necessary to determine whether a vessel is directed fishing for Pacific cod in the CDQ fisheries and would be required to have species endorsements. Third, regulatory discards of Pacific cod by vessels that do not have a Pacific cod species endorsement would be allowed. This revision would be necessary so that vessel operators who do not have a Pacific cod species endorsement could comply with the maximum retainable bycatch amounts of Pacific cod.

This action would also clarify the existing CDQ regulations by specifically allowing the regulatory discard of sablefish when their retention is prohibited by other regulations.

Classification

At this time, NMFS has not determined that Amendment 67 to the FMP for the Groundfish Fishery of the BSAI is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. In making that determination, NMFS will take into account the data, views, and comments received during the comment period on the amendment.

The Council prepared an environmental assessment for FMP Amendment 67 that analyzes the impacts on the environment as a result of this action. The assessment indicates that the individual and cumulative impacts of this action would not significantly affect the quality of the human environment. This action would reduce the number of eligible participants in the BSAI non-trawl Pacific cod fishery, as compared to the status quo. This reduction is not expected to adversely impact the targeted fishery stock, non-targeted fishery stocks, or the physical environment.

The Council also prepared an initial regulatory flexibility analysis (IRFA). The IRFA was prepared by the Council because it was unable to make a definitive finding of non-significance under the Regulatory Flexibility Act. The IRFA indicates that the Council took this action under the Magnuson-Stevens Act, which authorizes the Council to recommend to the Secretary of Commerce limited access measures that are consistent with sound fishery management and conservation policies. The Council recommended Amendment 67 to further rationalize the Pacific cod fisheries in the BSAI in a manner consistent with the overall principles of LLP and to protect investment-backed expectations of long-term participants in the Pacific cod fisheries. Besides the proposed qualifying criteria, the Council considered other combinations of qualifying harvest amounts and qualifying years that could have allowed more small entities to participate; however, these alternative combinations failed to meet conservation and management goals for this fully utilized fishery.

Approximately 365 catcher vessels, 67 catcher/processor vessels, and 5 shore-based processors were considered small entities for purposes of the IRFA. However, because little is known about the ownership structures of certain vessels (i.e., some vessels may be tied to corporations with revenues greater than \$3 million), the IRFA may have overestimated the number of small entities. This action does not increase existing reporting, recordkeeping, or compliance requirements. Harvesting information necessary to determine eligibility for an endorsement is already available to NMFS. However, if a person feels that the information is in error, he or she would need to provide alternative information for review and verification. As this action creates a new endorsement under the LLP, it does not duplicate, overlap or conflict with any other relevant Federal regulations.

To reduce the impacts of this recommendation on small entities the Council exempted catcher vessels less than 60 ft (18.3 m) from the endorsement requirement and allowed persons operating vessels greater than or equal to 60 ft (18.3 m) to use harvests of Pacific cod with jig gear to qualify for endorsements. The Council also included a general hardship exemption provision (details of which were already mentioned above) to further mitigate possible adverse effects to small entities that would not have otherwise qualified. NMFS requests comments on the IRFA from small entities and others who would be affected by this proposed rule.

Specifically, NMFS requests more information about the number of small entities adversely affected by this proposed rule and the magnitude of any such adverse effects.

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

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: September 25, 2001.

William T. Hogarth,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

For reasons set out in the preamble, 50 CFR part 679 is proposed to be amended to read as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Title II of Division C, Pub. L. 105-277; sec. 3027, Pub. L. 106-31; 113 Stat. 57; 16 U.S.C. 1540(f); and sec. 209, Pub. L. 106-554.

§ 679.2 [Amended]

2. In § 679.2, the definition of “Directed fishing” is amended by removing paragraph (5).

3. In § 679.4, paragraph (k)(1)(i) is revised and paragraph (k)(9) is added to read as follows:

§ 679.4 Permits.

* * * * *

(k) * * *

(1) * * *

(i) In addition to the permit and licensing requirements of this part, and except as provided in paragraph (k)(2) of this section, each vessel within the GOA or the BSAI must have an LLP groundfish license on board at all times it is engaged in fishing activities defined in § 679.2 as directed fishing for license limitation groundfish. This groundfish license, issued by NMFS to a qualified person, authorizes a license holder to deploy a vessel to conduct directed fishing for license limitation groundfish only in accordance with the specific area and species endorsements, the vessel and gear designations, and the MLOA specified on the license.

* * * * *

(9) *Pacific cod endorsements*—(i) *General.* In addition to other requirements of this part, and unless specifically exempted in paragraph (k)(9)(iv) of this section, a license holder must have a Pacific cod endorsement on his or her groundfish license to conduct

directed fishing for Pacific cod with hook-and-line or pot gear in the BSAI. A license holder can only use the specific non-trawl gear(s) indicated on

his or her license to conduct directed fishing for Pacific cod in the BSAI. (ii) *Eligibility requirements for a Pacific cod endorsement.* This table

provides eligibility requirements for Pacific cod endorsements on an LLP groundfish license:

IF A LICENSE HOLDER'S LICENSE HAS A...	AND THE LICENSE HOLDER HARVESTED PACIFIC COD IN THE BSAI WITH...	THEN THE LICENSE HOLDER MUST DEMONSTRATE THAT HE OR SHE HARVESTED AT LEAST...	IN...	TO RECEIVE A PACIFIC COD ENDORSEMENT THAT AUTHORIZES HARVEST WITH...
(A) Catcher vessel designation	hook-and-line gear or jig gear	7.5 mt of Pacific cod in the BSAI	in any 1 of the years 1995, 1996, 1997, 1998, or 1999	hook-and-line gear.
(B) Catcher vessel designation	pot gear or jig gear	100,000 lb of Pacific cod in the BSAI	in each of any 2 of the years 1995, 1996, 1997, 1998, or 1999	pot gear.
(C) Catcher/processor vessel designation	hook-and-line gear	270 mt of Pacific cod in the BSAI	in any 1 of the years 1996, 1997, 1998, or 1999	hook-and-line gear.
(D) Catcher/processor vessel designation	pot gear	300,000 lb of Pacific cod in the BSAI	in each of any 2 of the years 1995, 1996, 1997, or 1998	pot gear.

(iii) *Explanations for Pacific cod endorsements.* (A) All eligibility amounts in the table at paragraph (k)(9)(ii) of this section will be determined based on round weight equivalents.

(B) Discards will not count toward eligibility amounts in the table at paragraph (k)(9)(ii) of this section.

(C) Pacific cod harvested for personal bait use will not count toward eligibility amounts in the table at paragraph (k)(9)(ii) of this section.

(D) A legal landing of Pacific cod in the BSAI for commercial bait will count toward eligibility amounts in the table at paragraph (k)(9)(ii) of this section.

(E) Landings within the BSAI will count toward eligibility amounts in the table at paragraph (k)(9)(ii) of this section; however, a license holder will only be able to harvest Pacific cod in the specific areas in the BSAI for which he or she has an area endorsement.

(iv) *Exemptions to Pacific cod endorsements.* (A) Any vessel exempted

from the License Limitation Program at paragraph (k)(2) of this section.

(B) Any catcher vessel less than 60 ft (18.3 mt) LOA.

(C) Any catch of Pacific cod for personal use bait.

(v) *Combination of landings and hardship provision.* Notwithstanding the eligibility requirements in paragraph (k)(9)(ii) of this section, a license holder may be eligible for a Pacific cod endorsement by meeting the following criteria.

(A) *Combination of landings.* A license holder may combine the landings of a sunken vessel and the landings of a vessel obtained to replace a sunken vessel to satisfy the eligibility amounts in the table at paragraph (k)(9)(ii) of this section only if he or she meets the requirements in paragraphs (k)(9)(v)(A)(1)—(4) of this section. No other combination of landings will satisfy the eligibility amounts in the table at paragraph (k)(9)(ii) of this section.

(1) The sunken vessel was used as the basis of eligibility for the license holder's groundfish license;

(2) The sunken vessel sank after January 1, 1995;

(3) The vessel obtained to replace the sunken vessel was obtained by December 31 of the year 2 years after the sunken vessel sank; and

(4) The length of the vessel obtained to replace the sunken vessel does not exceed the MLOA specified on the license holder's groundfish license.

(B) *Hardship provision.* A license holder may be eligible for a Pacific cod endorsement because of unavoidable circumstances if he or she meets the requirements in paragraphs (k)(9)(v)(B)(1)—(4) of this section. For purposes of this hardship provision, the term license holder includes the person whose landings were used to meet the eligibility requirements for the license holder's groundfish license, if not the same person.

(1) The license holder at the time of the unavoidable circumstance held a specific intent to conduct directed fishing for BSAI Pacific cod in a manner sufficient to meet the landing requirements in the table at paragraph (k)(9)(ii) of this section but this intent was thwarted by a circumstance that was:

(i) Unavoidable;

(ii) Unique to the license holder, or unique to the vessel that was used as the basis of eligibility for the license holder's groundfish license; and

(iii) Unforeseen and reasonably unforeseeable to the license holder.

(2) The circumstance that prevented the license holder from conducting directed fishing for BSAI Pacific cod in a manner sufficient to meet the landing requirements in paragraph (k)(9)(ii) actually occurred;

(3) The license holder took all reasonable steps to overcome the circumstance that prevented the license holder from conducting directed fishing for BSAI Pacific cod in a manner sufficient to meet the landing requirements in paragraph (k)(9)(ii) of this section; and

(4) Any amount of Pacific cod was harvested in the BSAI aboard the vessel that was used as the basis of eligibility for the license holder's groundfish license during the time period required for the Pacific cod endorsement but after the vessel was prevented from participating by the unavoidable circumstance.

* * * * *

4. In § 679.7, paragraph (d)(11), (d)(16) and (d)(23) are revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(d) * * *

(11) For the operator of a catcher vessel using trawl gear or any vessel less than 60 ft (18.3 m) LOA that is groundfish CDQ fishing as defined at § 679.2, discard any groundfish CDQ species or salmon PSQ before it is delivered to an eligible processor listed on an approved CDP unless discard of the groundfish CDQ is required under other provisions or, in waters within the State of Alaska, discard is required by laws of the State of Alaska.

* * * * *

(16) Use any groundfish CDQ species as a basis species for calculating retainable amounts of non-CDQ species under § 679.20.

* * * * *

(23) For any person on a vessel using fixed gear that is fishing for a CDQ group with an allocation of fixed gear sablefish CDQ, discard sablefish harvested with fixed gear unless discard of sablefish is required under other provisions or, in waters within the State of Alaska, discard is required by laws of the State of Alaska.

5. In § 679.20, paragraph (f)(2) and (f)(3) are revised to read as follows:

§ 679.20 General limitations.

* * * * *

(f) * * *

(2) *Retainable amounts.* Except as provided in Table 10 to this part, arrowtooth flounder, or any groundfish species for which directed fishing is closed may not be used to calculate retainable amounts of other groundfish species. CDQ species may only be used to calculate retainable amounts of other CDQ species.

(3) *Directed fishing for pollock CDQ.* Directed fishing for pollock CDQ is determined based on the species composition of the total catch of groundfish while harvesting groundfish CDQ species. For catcher/processors, the species composition of each haul is assessed to determine the directed fishery. For catcher vessels, the species

composition of the catch onboard the vessel at any time is assessed to determine the directed fishery. The groundfish species used to calculate total catch of groundfish includes all species categories defined in Table 1 of the annual BSAI specifications. A vessel operator using trawl gear is directed fishing for pollock CDQ if pollock represents 60 percent or more of the total catch of groundfish species by weight in a haul by a catcher/processor or 60 percent or more of the total catch of groundfish species by weight onboard the catcher vessel at any time.

* * * * *

6. In § 679.32, paragraphs (c)(1)(i), (c)(2)(i)(A), (c)(2)(ii)(A) and (f)(4) are revised to read as follows:

§ 679.32 Groundfish and halibut CDQ catch monitoring.

* * * * *

(c) * * *

(1) * * *

(i) Operators of catcher vessels less than 60 ft (18.3 m) LOA must retain all groundfish CDQ, halibut CDQ, and salmon PSQ until it is delivered to a processor that meets the requirements of paragraph (c)(3) or (c)(4) of this section unless discard of the groundfish CDQ species is required under other provisions or, in waters within the State of Alaska, discard is required by laws of the State of Alaska. Operators of catcher vessels using trawl gear must report the at-sea discards of halibut PSQ or crab PSQ on the CDQ delivery sheet (see § 679.5(n)(1)). Operators of catcher vessels using nontrawl gear must report the at-sea discards of halibut PSQ on the CDQ delivery report, unless exempted from the accounting for halibut PSQ under paragraph (b) of this section.

* * * * *

(2) * * *

(i) * * *

(A) Retain all CDQ species and salmon PSQ until they are delivered to a processor that meets the requirements of paragraph (c)(3) or (c)(4) of this section unless discard of the groundfish CDQ species is required under other provisions or, in waters within the State of Alaska, discard is required by laws of the State of Alaska.

* * * * *

(ii) * * *

(A) *Option 1:* Retain all CDQ species. Retain all CDQ species until they are delivered to a processor that meets the requirements of paragraph (c)(3) or (c)(4) of this section unless discard of the groundfish CDQ or PSQ species is required under other provisions or, in waters within the State of Alaska, discard is required by laws of the State

of Alaska. Have all of the halibut PSQ counted by the CDQ observer and sampled for length or average weight; or

* * * * *

(f) * * *

(4) *Groundfish CDQ retention requirements.* Operators of vessels less than 60 ft (18.3 m) LOA are not required to retain and deliver groundfish CDQ

species while halibut CDQ fishing, unless required to do so elsewhere in this part. Operators of vessels equal to or greater than 60 ft (18.3 m) LOA are required to comply with all groundfish CDQ and PSQ catch accounting requirements in paragraphs (b) through (d) of this section, including the retention of all groundfish CDQ, if

option 1 under § 679.32(c)(2)(ii) is selected in the CDP. CDQ species may be discarded when required by other provisions or, in waters within the State of Alaska, when discard is required by laws of the State of Alaska.

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