

**DRAFT**

**REGULATORY IMPACT REVIEW**

**FOR**

**REGULATORY CHANGE TO THE**

**DEFINITION OF VESSEL LENGTH OVERALL**

**FOR FISHING VESSELS OPERATING**

**IN THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

PREPARED BY

NATIONAL MARINE FISHERIES SERVICE

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## EXECUTIVE SUMMARY

The management action reviewed in this document addresses the need for a clear, unambiguous definition of vessel length overall (LOA) for commercial fishing vessels operating in the exclusive economic zone (EEZ) off Alaska. The present definition, found at 50 CFR 679.2, reads as follows:

Length overall (LOA) of a vessel means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments. . . .

The term “foremost part of the stem” constitutes a starting point and the term “aftermost part of the stem” constitutes an end point for measuring LOA. These terms, however, are not clearly defined in regard to bulwarks extending above the main deck. Nor are universally recognized standards in use among all maritime industries, shipwrights, and Federal regulators. Federal maritime regulations developed by other agencies, such as the USCG, define the terminus points for measuring LOA differently for specific purposes. Hence, without clearer definition of these terms for purposes of managing the fisheries in the EEZ off Alaska, the potential exists for uncertainty and equivocation. In Federal fisheries off Alaska, situations have arisen where vessel owners have taken advantage of this potential for equivocation to modify a vessel’s LOA to avoid requirements imposed due to the vessel’s original LOA. The purpose of the proposed alternative to the status quo analyzed in this document is to revise the definition of LOA to provide clear and unequivocal regulatory guidance on measuring LOA for purposes of participating in Federal fisheries of the EEZ off Alaska.

### Management Action Alternatives

Alternative 1: Status quo. The present definition of LOA at 50 CFR 679.2 would remain unchanged.

Alternative 2: Revise definition of LOA in 50 CFR 679.2 to read as follows:

Length overall (LOA) of a vessel means the centerline longitudinal distance, rounded to the nearest foot, measured between:

- (a) the outside foremost part of the vessel visible above the waterline, including bulwarks, but excluding bowsprits and similar fittings or attachments, and
- (b) the outside aftermost part of the vessel visible above the waterline, including bulwarks, but excluding rudders, outboard motor brackets, and similar fittings or attachments. (see Figure 6 to this part; see also maximum LOA, original qualifying LOA, and reconstruction).

Also, add the following definition of bulwark:

Bulwark means a section of a vessel's side, continued above the main deck as a protection against heavy weather.

Option 1: Require all vessels currently registered with NMFS to be measured to ensure compliance with the revised definition.

Option 2. Assume that, unless discover to be otherwise, the LOAs of all vessels currently registered with NMFS have been determined according to the definition implicit in the existing regulations and as illustrated in figure 6 of 50 CFR 679 and, thus, comply with the revised definition.

## 1.0 INTRODUCTION

This document is the draft Regulatory Impact Review (RIR) for a proposed rule to revise the definition of LOA applicable to commercial fishing vessels operating in the EEZ off Alaska. This regulatory amendment would clarify the regulatory definition of LOA and provide vessel owners with certain regulatory guidance on measuring LOA. The proposed change would be implemented through a regulatory amendment to 50 CFR part 679, Fisheries of the Exclusive Economic Zone off Alaska and authorized under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), P. L. 94-265, 16 U.S.C. 1801.

### 1.0.1 Defining LOA

The present definition of LOA, found at 50 CFR 679.2, reads as follows:

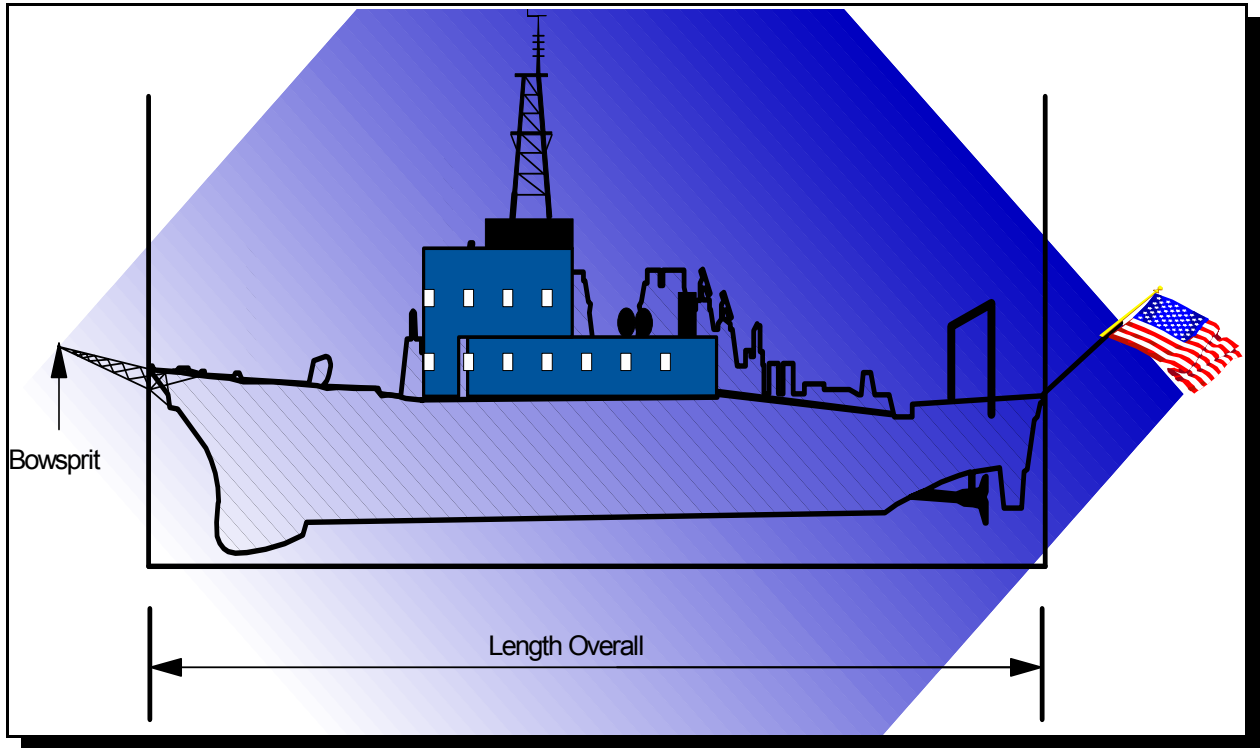
Length overall (LOA) of a vessel means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments (see Figure 6 of this part; see also maximum LOA, original qualifying LOA, and reconstruction).

The regulations further define the terms “stem” and “stern” as follows:

Stem means the forward part of a vessel—that portion of the vessel where the sides are united at the fore end with the lower end attached to the keel and the bowsprit, if one is present, resting on the upper end.

Stern means the aft part of the vessel.

Figure 1 below, incorporated into the regulations at 50 CFR 679 as Figure 6, illustrates how LOA is to be measured. The diagram intends to show bulwarks as included in LOA measurement.



**Figure 1.** Figure 6 from 50 CFR 679.

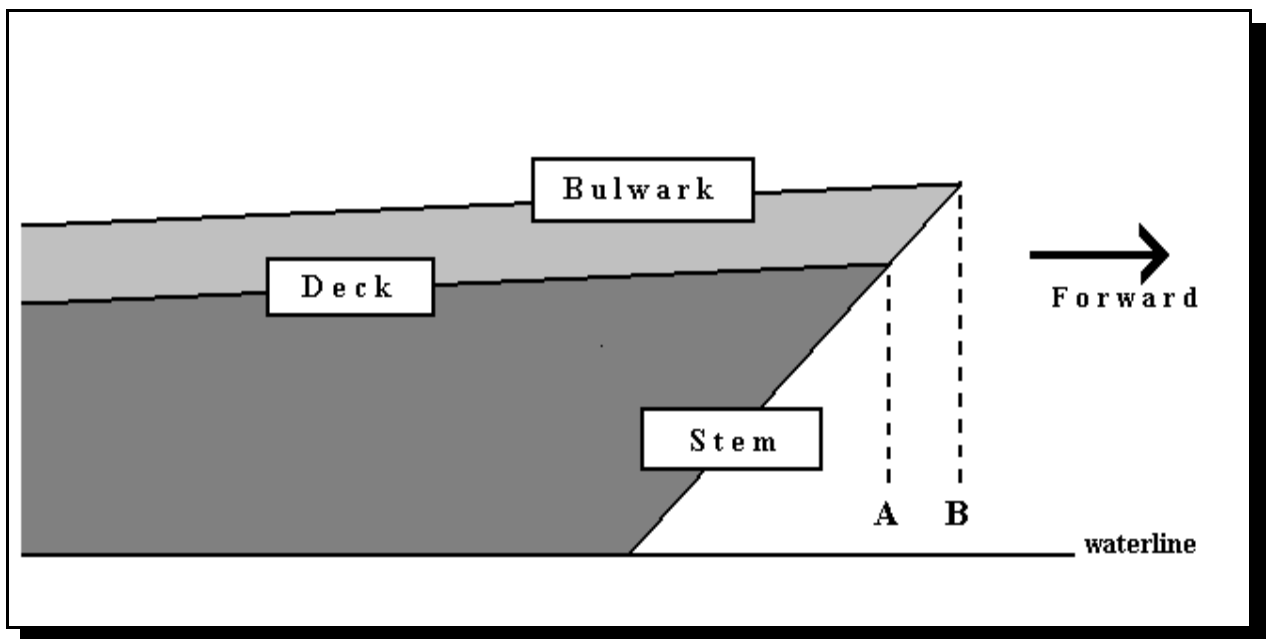
The following conventions are used when rounding the LOA to the nearest foot.

- (1) When the amount exceeding a whole foot measurement is less than 6 inches (15.2 cm), the LOA would be equal to that whole foot measurement. For example, if the horizontal distance of a vessel is 124 ft, 5 3/4 inches (37.9 m), the LOA of the vessel would be 124 ft (37.8 m).
- (2) When the amount exceeding a whole foot measurement is greater than 6 inches (15.2 cm), the LOA would be equal to the next whole foot measurement. For example, if the horizontal distance of a vessel is 124 ft, 6 1/8 inches (38.0 m), the LOA of the vessel would be 125 ft (38.1 m).
- (3) When the amount exceeding a whole foot measurement is exactly 6 inches (15.2 cm), the LOA would be equal to that whole foot measurement if the number is even; however, if the number is odd, the LOA would be equal to the next whole foot measurement. For example, if the horizontal distance of a vessel is 124 ft, 6 inches (37.9 m), the LOA of the vessel would be 124 ft (37.8 m), but, if the horizontal distance of the vessel is 59 ft, 6 inches (18.1 m), the LOA of the vessel would be 60 ft (18.3 m).

The terms “foremost part of the stem” and “aftermost part of the stern” constitute the *terminus a quo* (a starting point) and *terminus ad quem* (an end point), respectively, for measuring LOA. Presently, however, these terminus points are not clearly defined in regard to bulwarks that extend above the main deck. Nor are universally recognized standards in use among all maritime industries, shipwrights, and Federal regulators. Federal maritime regulations developed by other agencies, such as the USCG, define such terms differently for different purposes (see Figure 2 below). A good indicator of the problem, however, is that the regulatory language used by the USCG and by NMFS is virtually identical, even though NMFS and the USCG construe the practical meaning of the terminology differently. NMFS’s regulations cited above use the terms “foremost part of the stem” and “aftermost part of the stern” for the terminus points of LOA measurement, as do the USCG’s regulations at 46 CFR 69.203, which define LOA as “the horizontal distance between the outboard side of the foremost part of the stem and the outboard side of the aftermost part of the stern, excluding rudders, outboard motor brackets, and other similar fittings and attachments.” Although these separate regulations use the same terms for defining the terminus points for LOA measurement, NMFS’s regulations are intended to include bulwarks, while the USCG’s regulations are intended to exclude them.

At issue here, chiefly, is the *terminus a quo*. At the stern of a vessel, the hull rises at a more perpendicular angle from the waterline; thus the difference between the two different uses of the term “aftermost part of the stern” may be minimal. At the bow of a vessel, however, the stem rises at a more oblique angle from the waterline. The bulwark of a vessel tends to continue the line of that angle, thus producing a greater and typically substantial difference between an LOA measurement that includes the bulwark and one that does not. In Figure 2, above, **Point A**

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**Figure 2 Diagram of the Bow of a Vessel**  
**deck** and the **stem**, and **Point B** the intersection of the foremost part of the **bulwark** and the **stem**.

The USCG regulations at 46 CFR 69.203, which are intended to provide a parameter for

measuring hull volume, define overall length as measurement to **Point A**. Measuring hull volume requires a *terminus a quo* of Point A because a vessel's buoyant hull envelope cannot include structures such as bulwarks that are open to the weather and have no buoyant volume. In contrast, NMFS's regulatory definition of LOA is intended to require measurement aft from **Point B**. This definition of LOA intends to provide terminus points based most simply on the visible length of a vessel, without complicating reference to less readily apparent structural complexities of a vessel. This method of measuring LOA by visible terminus points simplifies NMFS Enforcement's efforts in monitoring vessel compliance with observer and other regulatory requirements.

For the purpose of managing Federal fisheries off Alaska, proposed Alternative 2 would define the *terminus a quo* as **Point B** by expressly including the extent of bulwarks aft and forward for all LOA measurements of vessels participating in Federal fisheries off Alaska.

### 1.0.2 Function of LOA in Fisheries Management

Neither NMFS's definition in 50 CFR 679 nor the USCG's definition is intended to provide a universally accepted definition throughout maritime industries. Rather, each regulatory definition serves a purpose specific to the activity being regulated. Vessel LOA provides NMFS with one criterion by which to categorize and manage the diverse characters and capacities of fishing vessels operating in Federal waters off Alaska. Also, categorizing vessels by size provides NMFS with a parameter for assessing the relative impacts of regulatory burdens on fishing businesses.

As a management tool in limited access systems, LOA provides a parameter for managing the growth of harvest capacity in a fishery; for assigning harvesting privileges in ways that ensure that fishing fleets remain relatively diversified between larger and smaller vessels; for assessing required levels of observer coverage; and for protecting the historical character of a fishery and its dependent communities.

### Individual Fishing Quota Program

The IFQ Program for fixed gear Pacific halibut and sablefish fisheries off Alaska establishes categories of quota shares (QS) based partly on vessel size, partly on whether harvests are processed on a vessel, and partly on species: Category "A" is used to distinguish QS which allow a fisherman to harvest and process IFQ species aboard a vessel. The remaining QS categories, which do not authorize processing aboard a vessel, distinguish harvesting privileges by vessel LOA and by species:

- Category B QS and associated IFQ, which, in most cases, authorizes an IFQ cardholder to harvest IFQ species on a vessel of any length;
- Category C QS and associated IFQ, which authorizes an IFQ cardholder to harvest IFQ species on a vessel less than or equal to 60 ft (18.3 m) LOA; and
- Category D QS and associated IFQ, which authorizes an IFQ cardholder to harvest IFQ halibut on a vessel less than or equal to 35 ft (10.7 m) in length overall.



Such categories prevent the accumulation of QS by owners of larger vessels and protect the historical investment of small vessel owners and dependent communities in the harvest of IFQ species.

### License Limitation Program

In the License Limitation Program (LLP), all licenses for license limitation groundfish and crab species are issued with a specific maximum vessel LOA (MLOA), based on the qualifying vessel's LOA on June 24, 1992 and June 17, 1995. The MLOA restricts the extent of such vessel improvements that would increase a vessel's LOA. Vessels could be lengthened to their maximum length overall (MLOA). A vessel's MLOA would be 1.2 times its LOA on June 24, 1992, except: (1) For a vessel that was under reconstruction on June 24, 1992, its MLOA would be 1.2 times its LOA on the date reconstruction was completed; or (2) for a vessel that was 125 ft (37.8 m) or greater and that was under reconstruction on June 24, 1992, its MLOA would be its LOA on June 24, 1992, or its LOA on the date reconstruction was completed.

### Observer Program

Vessel LOA also determines whether (and how much) observer coverage is required on a fishing vessel. Beginning in 1990, all vessels in the Federal groundfish fisheries off Alaska were required to comply with observer coverage under the Observer Program implemented by NMFS. In developing the observer program, NMFS considered the numbers of vessels that participate in the fisheries and the value of information that an observer on any one vessel may provide. The program requires that all domestic fishing and processing vessels equal to or longer than 125 ft LOA carry an observer at all times. Vessels of this size category harvest most of the groundfish off Alaska. The proposed rule implementing the Observer Program indicates that, in 1988, 63 vessels in this LOA category harvested 59 percent of all the domestic annual processing (DAP) groundfish landings off Alaska. And through September 1989, 61 vessels of this size class harvested 68 percent of all the DAP groundfish landings off Alaska. In both years, the numbers of vessels equal to or longer than 125 ft LOA represented 4 percent of all the DAP vessels making groundfish landings. At present (as of January, 2000), 202 of the 1,613 vessels registered to participate in Federal fisheries off Alaska vessels have registered LOAs of 125 feet or greater and are therefore required to carry observers at all times. Because these large vessels harvest more than 50 percent of all the groundfish harvests, requiring them to have higher observer coverage relative to smaller vessels and shoreside facilities assures that a majority of groundfish harvests off Alaska will be fully monitored by observers.

Vessels with LOAs greater than or equal to 60 ft but less than or 125 ft are required to carry an observer for at least 30 percent of the days they fish for each January-March, April-June, July-September, and October-December period of the fishing year. Presently, 633 of the 1,613 registered vessels fall within this LOA category. Vessels less than 60 ft LOA, of which 778 are presently registered to participate in Federal fisheries off Alaska, are not required to carry observers. The additional rationale for using vessel LOA categories to determine the amount of observer coverage assumes that, in most situations, the information received from smaller vessels would not justify the costs of carrying an observer and that the owners of smaller vessel would be less able to bear those costs.

## 1.1 MANAGEMENT BACKGROUND

The groundfish fisheries in the Exclusive Economic Zone (EEZ) (3 to 200 miles offshore) of the Gulf of Alaska, Bering Sea, and Aleutian Islands are managed under the Fishery Management Plan (FMP) for the Gulf of Alaska Groundfish Fishery and the FMP for the Bering Sea/Aleutian Islands Groundfish. Both FMPs were developed by the Council under the Magnuson-Stevens Act. The GOA FMP was approved by the Secretary of Commerce and became effective in 1978; the BSAI FMP became effective in 1982.

Executive Order (EO) 12866 and the Regulatory Flexibility Act (RFA) require a description of the purpose and need for the proposed action as well as a description of possible alternatives which may address the problem.

This draft document addresses the requirements of E.O. 12866 and the RFA that socio-economic impacts of the alternatives be considered.

## 1.2 PURPOSE AND NEED FOR ACTION

The terms “foremost part of the stem” and “aftermost part of the stern” constitute the *terminus a quo* (a starting point) and *terminus ad quem* (an end point), respectively, for measuring LOA. Presently, however, these terminus points are not clearly defined in regard to bulwarks that extend above the main deck. Nor are universally recognized standards in use among all maritime industries, shipwrights, and Federal regulators. Federal maritime regulations developed by other agencies, such as the USCG, define such terms differently for different purposes (see Figure 2 below). A good indicator of the problem, however, is that the regulatory language used by the USCG and by NMFS is virtually identical, even though NMFS and the USCG construe the practical meaning of the terminology differently. NMFS’s regulations cited above use the terms “foremost part of the stem” and “aftermost part of the stern” for the terminus points of LOA measurement, as do the USCG’s regulations at 46 CFR 69.203, which define LOA as “the horizontal distance between the outboard side of the foremost part of the stem and the outboard side of the aftermost part of the stern, excluding rudders, outboard motor brackets, and other similar fittings and attachments.” Despite the use of the same terms for defining the terminus points for LOA measurement, NMFS’s regulations are intended to include bulwarks, while the USCG’s regulations are intended to exclude them.

NMFS’s regulatory definition of LOA is intended to require measurement aft from the foremost part of the stem to the aftermost part of the stern, including bulwarks. This definition of LOA intends to provide terminus points based most simply on the visible length of a vessel, without complicating reference to less readily apparent structural complexities of a vessel. This method of measuring LOA by visible terminus points simplifies NMFS Enforcement’s efforts in monitoring vessel compliance with observer and other regulatory requirements.

For the purpose of managing Federal fisheries off Alaska, proposed Alternative 2 would expressly include the extent of bulwarks aft and forward for all LOA measurements of vessels participating in Federal fisheries off Alaska.

## **2.0 REGULATORY IMPACT REVIEW**

An RIR is required by NMFS for all regulatory actions or for significant Department of Commerce or NOAA policy changes that are of significant public interest. The RIR (1) provides a comprehensive review of the level and incidence of impacts associated with a proposed or final regulatory action; (2) provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major alternatives that could be used to solve the problems; and (3) ensures that the regulatory agency systematically and comprehensively considers all available alternatives so that the public welfare can be enhanced in the most efficient and cost effective way.

Executive Order 12866, "Regulatory Planning and Review," was signed on September 30, 1993 and established guidelines for promulgating new regulations and reviewing existing regulations. While the order covers a variety of regulatory policy considerations, the benefits and costs of regulatory actions are a prominent concern. Section 1 of the order describes the regulatory philosophy and principles that are to guide agency development of regulations. The regulatory philosophy stresses that, in deciding whether and how to regulate, agencies should assess all costs and benefits of all regulatory alternatives. In choosing among regulatory approaches, the philosophy is to choose those approaches (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity) that maximize net benefit to the nation.

The regulatory principles in E.O. 12866 emphasize careful identification of the problem to be addressed. The agency is to identify and assess alternatives to direct regulation, including economic incentives, such as user fees or marketable permits, to encourage the desired behavior. When an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective. Each agency shall assess both the costs and benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and the consequences of, the intended regulation.

An RIR is required for all regulatory actions that either implement a new FMP or significantly amend an existing FMP. The RIR is part of the process of preparing and reviewing FMPs and provides a comprehensive review of the changes in net economic benefits to society associated with proposed regulatory actions. The analysis also provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major alternatives that could be used to solve the problem. The purpose of the analysis is to ensure that the regulatory agency systematically and comprehensively considers all available alternatives so that the public welfare can be enhanced in the most efficient and cost-effective way. The RIR addresses many of the items in the regulatory philosophy and principles in E.O. 12866.

Executive Order 12866 requires that the Office of Management and Budget preview proposed regulatory programs that are considered to be "significant." A "significant regulatory action" is

one that is likely to:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

A regulatory program is "economically significant" if it is likely to result in the effects described in item (1) above. The RIR is designed to provide information to determine whether the proposed regulation is likely to be "economically significant."

National Oceanic and Atmospheric Administration Administrative Order (NAO) 216-6 provides the policies and procedures to be followed by NMFS when assessing environmental issues. Under NAO 216-6, certain Federal actions that individually or cumulatively do not have the potential to pose significant threats to the human environment are exempt from further analysis and the requirement to prepare an environmental impact study or an environmental analysis (EA). This exemption, known as a categorical exclusion, applies to specific actions and general categories.

Section 6.02b.3(b)(ii) of NAO 216-6 categorically excludes "actions which do not result in a significant change in the original environmental action." Included in this general category are "minor technical additions, corrections, or changes to a management plan or regulation."

This regulatory action, as indicated below, would comprise such a minor technical correction—a clarification of the existing definition of LOA—and is thus categorically excluded from the need for an EA.

## **2.1 IDENTIFICATION OF THE ISSUES TO BE RESOLVED BY THE PROPOSED ACTION**

This regulatory action is intended to resolve issues arising from a regulatory definition that may be interpreted in such a way as to allow modification of a vessel to change its LOA for the express purpose of changing a vessel's qualifications, restrictions, or obligations under any of the fishery management regulations predicated on LOA under 50 CFR Part 679. The problem arises from ambiguity and equivocation in the term "foremost part of the stem." This ambiguity would allow a vessel owner to claim an LOA measured according to a definition of "foremost part of the stem" different from the one that is all but explicit in the regulations, and consequently, escape observer coverage requirements for a vessel's correctly measured LOA originally registered with

NMFS.

In the past, certain vessel owners registered vessel LOAs compliant with NMFS' interpretation and then, discovering equivocation in the defining terminology, modified their vessels to reduce the observer coverage required. This action would not change the registered LOAs of any vessels that were registered consistent with Figure 5 of 50 CFR 679. Rather, this action would prevent future misinterpretation of the existing regulatory definition for determining LOA.

## **2.2 IDENTIFICATION OF THE INDIVIDUALS OR GROUPS THAT MAY BE AFFECTED BY THIS ACTION**

As of January 2000, 1,613 vessels were registered to participate in Federal groundfish fisheries off Alaska. Table 1 shows these vessels by LOA. Insofar as all of these vessels have registered LOAs with NMFS for the purpose of obtaining Federal Fisheries permits, all 1,613 would potentially be impacted by this action. NMFS assumes that most, if not all, of the registered vessels have correctly measured LOAs, and the clarified definition would not change a vessel's LOA as registered currently with NMFS, because the actual point-to-point determination of LOA would remain the same; the proposed action, however, would prevent vessel owners from taking advantage of the current regulatory ambiguity to change a vessel's registered LOA.

NMFS has no means of determining whether any of these vessels have registered LOA measurements that are not consistent with Figure 5 of 50 CFR 679. In the event that a vessel's LOA was measured incorrectly, the burden would be on the vessel owner to remeasure his or her vessel in accordance with the clarified definition and, if that measurement differs from the vessel's registered LOA, inform NMFS of the revised LOA. However, the only such vessels that would be impacted by such a change in their registered LOAs would be those whose current LOAs fall near the 60 and 125 ft cutoff points for observer coverage required by 50 CFR 679.50. If someone owns a vessel with a registered LOA of 124 ft, but must revise his vessel's LOA to greater than 125 ft in accordance with the clarified definition proposed by this action, that vessel owner would become responsible for greater observer coverage than previously, and likewise, an owner of a vessel with a registered LOA of 58 ft who must revise his LOA to greater than 60 ft. Assuming that a revised measurement based on the clarified definition would only increase a vessel's LOA by several feet, the vessels potentially impacted in this manner would be any of the 38 vessels with presently incorrect LOAs of 124, 123, and 122 feet, and any of the 156 vessels with presently incorrect LOAs of 57, 58, and 59 feet.

**Table 1.**  
**Number of Vessels Participating in Federal Groundfish Fisheries off Alaska by LOA**

LOA	# of vessels	LOA	# of vessels	LOA	# of vessels	LOA	# of vessels	LOA	# of vessels	LOA	# of vessels	LOA	# of vessels
11	1	45	23	76	8	107	8	141	1	183	1	257	2
13	1	46	49	77	6	109	3	142	1	184	1	258	1
16	1	47	39	78	5	110	12	144	1	185	3	270	2
17	1	48	41	79	3	111	7	145	1	186	1	272	1
18	3	49	8	80	5	112	3	148	3	188	1	275	2
19	1	50	28	81	3	113	2	149	3	190	1	276	1
20	1	51	9	82	9	114	5	150	5	192	2	285	1
21	3	52	25	83	5	115	4	151	2	193	2	295	1
22	4	53	15	84	2	116	2	152	4	195	2	296	1
23	1	54	17	85	6	117	4	154	2	196	1	304	1
24	4	55	13	86	17	118	2	155	6	200	2	305	1
25	3	56	28	87	6	120	5	156	4	201	1	310	1
26	7	57	11	88	4	121	1	158	1	203	3	311	1
27	7	58	141	89	2	122	5	160	2	208	1	323	1
28	7	59	4	90	15	123	13	161	1	209	2	327	1
29	3	60	7	91	1	124	20	162	2	210	1	334	1
30	7	61	1	92	4	125	4	164	1	215	1	336	1
31	7	62	3	93	2	126	13	165	3	219	1	338	2
32	70	63	1	94	3	127	4	166	11	220	1	341	2
33	5	64	2	95	2	128	2	167	3	221	1	351	1
34	17	65	11	96	3	130	6	168	1	224	1	367	1
35	21	66	9	97	4	131	2	169	1	227	1	376	1
36	41	67	2	98	11	132	2	170	1	228	1	379	1
37	18	68	7	99	7	133	5	172	5	230	1	635	1
38	33	69	3	100	9	134	2	174	6	233	1		
39	8	70	6	101	4	135	6	175	1	238	1		
40	48	71	3	102	3	136	2	176	1	240	1		
41	35	72	10	103	5	137	2	177	1	247	1		
42	68	73	8	104	6	138	2	179	1	254	1		
43	32	74	3	105	10	139	1	180	6	256	1		

## **2.3 MANAGEMENT OBJECTIVE OF THIS ACTION**

The management action reviewed in this document addresses the need for a clear and unambiguous definition of vessel length overall (LOA) for commercial fishing vessels operating in the exclusive economic zone (EEZ) off Alaska. Vessel LOA provides NMFS with a criterion by which to categorize the diverse characters and capacities of fishing vessels operating in Federal waters off Alaska. The present definition found at 50 CFR 679.2 reads as follows:

### **679.2 Definitions**

...

Length overall (LOA) of a vessel means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments (see Figure 6 of this part; see also maximum LOA, original qualifying LOA, and reconstruction).

“Foremost part of the stem” and “aftermost part of the stern” are not clearly defined in terms of structures that extend above the main deck such as bulwarks. Situations have arisen where vessels have been modified for the express purpose of changing their LOAs to qualify for fishing privileges to which the vessels’ original LOAs would not have entitled the vessel owners. The purpose of the proposed alternative to the status quo analyzed in this document is to define LOA unambiguously and provide clear and certain regulatory guidance on measuring LOA for fishing vessels operating in the EEZ off Alaska.

## **2.4 QUALITATIVE ANALYSIS OF THE EXPECTED BENEFITS AND COSTS OF THE PROPOSED ACTION**

Neither of the alternatives materially alters the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or raises novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. The suite of proposed actions does not, therefore, constitute a “significant economic” action, as this term is defined in the Executive Order.

While it is not possible to measure quantitatively the “net benefit to the Nation” attributable to the alternatives, the nature of the action suggests strongly that adoption of the alternative to the status quo would enhance the National welfare (i.e., the benefits would exceed the costs). The regulated public will benefit by being provided clearer regulatory guidance, and the costs to government of enforcement and monitoring of the fisheries can be expected to decrease.

## **2.5 ADMINISTRATIVE, ENFORCEMENT, AND INFORMATION COSTS**

The alternative to the status quo would neither increase nor decrease the administrative, or information costs of managing the Federal fisheries off Alaska. Enforcement costs may be decreased by preventing the need for investigations into abuses of any regulatory indeterminacy in the definition of LOA.

## **2.6 DESCRIPTION OF THE PROJECTED REPORTING, RECORDKEEPING, AND OTHER COMPLIANCE REQUIREMENTS OF THE PROPOSED ACTION**

The preferred alternative (Alternative 2, Option 2) to the status quo contains no new collection-of-information requirements subject to the Paperwork Reduction Act (PRA). Alternative 2, Option 1 would require vessel owners to measure and certify their vessels LOAs, and this would certainly constitute an additional collection-of-information requirement and additional cost to vessel owners. Review of this option considers that it would impose an unjustifiable burden on vessel owners. This action is not changing the definition of LOA, but simply clarifying the existing definition, which the majority of vessel owners may be assumed to have interpreted correctly. The purpose of this action is to provide unambiguous regulatory support for enforcement actions concerning a few vessel owners who have taken advantage of the possibility for misinterpretation of the regulations to escape their responsibilities under the observer coverage regulations.

## **2.7 REGULATORY FLEXIBILITY ACT**

The Regulatory Flexibility Act (RFA), first enacted in 1980, was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a federal regulation. Major goals of the RFA are: (1) to increase agencies' awareness and understanding of the impact of their regulations on small business, (2) to require that agencies communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities. The RFA emphasizes predicting impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts while still achieving the stated objective of the action.

On March 29, 1996, President Clinton signed the Small Business Regulatory Enforcement Fairness Act. Among other things, the new law amended the RFA to allow judicial review of an agency's compliance with the RFA. The 1996 amendments also updated the requirements for a final regulatory flexibility analysis, including a description of the steps an agency must take to minimize the significant economic impact on small entities. Finally, the 1996 amendments expanded the authority of the Chief Counsel for Advocacy of the Small Business Administration (SBA) to file *amicus* briefs in court proceedings involving an agency's violation of the RFA.

The impact of implementing the preferred alternative to the status quo would have no practical or substantive effect. It would not require vessel owners with previously registered LOAs to re-measure or certify their vessels' LOAs or to change their behavior in any way. Rather, its impact would be to prevent misunderstanding of the regulatory definition of LOA. This action,



therefore, would have no economic impact on a substantial number of small entities.

### **3.0 SUMMARY**

The purpose of the proposed alternative to the status quo analyzed in this document is to define LOA unambiguously and provide clear and certain regulatory guidance on measuring LOA for fishing vessels operating in the EEZ off Alaska. The alternative would impact all 1,613 vessels currently registered (as of January 2000) to participate in Federal groundfish fisheries off Alaska. But that impact would have no practical or substantive effect, as the new definition would not change a vessel's LOA as registered currently with NMFS. The actual point-to-point determination of LOA would remain the same; the proposed action, however, would prevent vessel owners from taking advantage of any regulatory ambiguity to change a vessel's registered LOA.

The alternative to the status quo constitutes a technical clarification of the regulations and, as such, is categorically excluded from the requirement to prepare an environmental assessment. No new collections of information would be required under the alternative, nor would that alternative have any economic impact on a substantial number of small entities.

### **4.0 LIST OF PREPARERS**

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