

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

[Docket No. 970703166-8209-04; I.D. 060997A3]

RIN 0648-AH65

## Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program

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

ACTION: Final rule.

**SUMMARY:** NMFS issues a final rule implementing part of Amendment 39 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area (BSAI), Amendment 41 to the FMP for Groundfish of the Gulf of Alaska (GOA), and Amendment 5 to the FMP for the Commercial King and Tanner Crab Fisheries in the BSAI. These amendments, submitted by the North Pacific Fishery Management Council (Council), establish the License Limitation Program (LLP). The LLP limits the number, size, and specific operation of vessels that may be deployed in the groundfish fisheries in the exclusive economic zone (EEZ) off Alaska, except for demersal shelf rockfish east of 140° W. long. and sablefish managed under the Individual Fishing Quota (IFQ) Program. The LLP also limits the number, size, and specific operation of vessels that may be deployed in the crab fisheries managed pursuant to the FMP for the Commercial King and Tanner Crab Fisheries in the BSAI.

**DATES:** Effective January 1, 2000, except for definitions added to § 679.2 and paragraphs (i)(3), (i)(4), (i)(5), (i)(6), (i)(8)(iii), and (i)(8)(iv) added to § 679.4, which are effective January 1, 1999.

**ADDRESSES:** Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) for this action may be obtained from the Division of Sustainable Fisheries, Alaska Region, NMFS, 709 West 9th Street, Room 453, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel.

**FOR FURTHER INFORMATION CONTACT:** John Lepore, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the U.S. groundfish fisheries of the GOA and the BSAI in the EEZ pursuant to the FMPs for groundfish in

the respective management areas. With Federal oversight, the State of Alaska manages the commercial king crab and Tanner crab fisheries in the BSAI pursuant to the FMPs for those fisheries, which the Council developed pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.* Regulations implementing the FMPs appear at 50 CFR part 679. General regulations at 50 CFR part 600 also apply.

#### License Limitation Program—Background Information

The LLP is the first stage in fulfilling the Council's commitment to develop a comprehensive and rational management program for the fisheries in and off Alaska. The Council first considered the comprehensive rationalization plan (CRP) at its meeting in November 1992. Experts on limited-entry programs were invited to testify at that meeting, and the Council reviewed initial CRP proposals from the fishing industry. In December 1992, the Council approved a problem statement describing the need for and purpose of the CRP.

The problem statement articulated the Council's concern that the domestic harvesting fleet had expanded beyond the size necessary to harvest efficiently the optimum yield (OY) of the fisheries within the EEZ off Alaska. Further, it confirmed the Council's commitment to the long-term health and productivity of the fisheries and other living marine resources in the North Pacific and Bering Sea ecosystems. To fulfill that commitment, the Council intended to design a program that would efficiently manage the resources under its authority, reduce bycatch, minimize waste, and improve utilization so that the maximum benefit of these resources would be provided to present and future generations of fishermen, associated fishing industry sectors, fishing communities, consumers, and the Nation as a whole. The Council also committed itself to support the stability, economic well-being, and diversity of the seafood industry and to provide for the economic and social needs of communities dependent on that industry.

At its meeting in January 1993, the Council began evaluating the effectiveness of different alternatives to determine which ones would best meet the objectives of the CRP. The Council evaluated 11 different alternatives, each of which had qualities that would have helped achieve some of the objectives of the CRP. After comparing the strengths and weaknesses of all the alternatives,

the Council identified license limitation and transferable IFQ as the most viable alternatives.

Although transferable IFQ was identified as the alternative with the greatest potential for solving the most issues in the problem statement for the CRP, several problems prevented the Council from choosing this alternative as the first step in the CRP process. Also, the IFQ program for halibut and sablefish had not yet been implemented; therefore, any information or experience that would have been gained from the operation of that program was not then available. For these reasons, the Council, at its September 1993 meeting, raised LLP to a level of equal consideration with transferable IFQ as a management regime designed to meet the objectives of the CRP.

In January 1994, the Council adopted its Advisory Panel's recommendations to expedite the LLP alternative. This decision was based in part on the facts that the industry lacked a consensus on what specific form of a transferable IFQ alternative would be most appropriate, and because of concerns regarding the amount of time that would be necessary to produce an analysis and implement a transferable IFQ program. The transferable IFQ alternative was not dropped completely; rather, the Council considered it to be a potential second step in the overall CRP process. Advocates for the LLP argued that the LLP was a necessary first step in the CRP process because it could be implemented more expeditiously and because it would provide stability in the fishing industry while a transferable IFQ system was analyzed and implemented.

At its meeting in April 1994, the Council received an LLP/IFQ proposal from its State of Alaska representative. This proposal contained an integrated, step-wise approach consisting of an LLP followed by an IFQ program. This proposal became the basis for subsequent Council actions that culminated in June 1995 with the Council's adoption of the LLP. The Council transmitted Amendments 39, 41, and 5, which are the basis of the LLP, to NMFS on June 9, 1997. NMFS published a notice of availability (NOA) for Amendments 39, 41, and 5 on June 16, 1997 (62 FR 32579) and a proposed rule to implement Amendments 39, 41, and 5 on August 15, 1997 (62 FR 43865). Public comments on the amendments were accepted through August 15, 1997, and on the proposed rule through September 29, 1997. NMFS received 263 comments on the amendments and 67 comments on the proposed rule. The public comments concerning the LLP portion of the amendments and

proposed rule were consolidated into 21 specific issues to which NMFS provided responses (see Response to Comments on the LLP Portion of Amendments 39, 41, and 5). Amendments 39, 41, and 5 were approved by NMFS on September 12, 1997.

By providing stability in the fishing industry and by identifying the field of participants in the groundfish and crab fisheries, the LLP will act as an interim step toward a more comprehensive solution to the conservation and management problems of an open access fishery. Although the LLP is an interim step, it addresses some of the important issues in the problem statement developed for the CRP. By limiting the number of vessels that are eligible to participate in the affected fisheries, the LLP places an upper limit on the amount of capitalization that may occur in those fisheries. This upper limit will prevent future overcapitalization in those fisheries at levels that could occur if such a constraint was not present. The LLP will replace the current Vessel Moratorium, a program approved by NMFS in 1995 and implemented in 1996 (60 FR 40763, August 10, 1995).

#### License Limitation Program— Operational Aspects

##### 1. General

The LLP limits access to the commercial groundfish fisheries in the EEZ off Alaska, except for demersal shelf rockfish east of 140° W. long. and sablefish managed under the IFQ program (license limitation groundfish). The demersal shelf rockfish fishery east of 140° W. long. is excluded from the LLP because general management of this fishery is deferred to the State of Alaska. The State of Alaska is currently considering an alternative management program for this fishery. The fixed gear fishery for sablefish is excluded because that fishery is managed under the IFQ Program. The LLP also limits access to the commercial crab fisheries in the BSAI, managed pursuant to the FMP for the Commercial King and Tanner Crab Fisheries in the BSAI.

##### 2. Nature of Licenses and Qualification Periods

A license for license limitation groundfish will be issued to an eligible applicant based on fishing that occurred from an eligible applicant's qualifying vessel in management areas (i.e., BSAI, GOA, or BSAI/GOA, or state waters shoreward of those management areas) during the general qualification period (GQP), and in endorsement areas defined by these regulations (i.e., Aleutian Islands, Bering Sea, Western

Gulf, Central Gulf, and Southeast Outside, or state waters shoreward of those endorsement areas) during the endorsement qualification period (EQP). A license will authorize a license holder to deploy a vessel from which directed fishing for license limitation groundfish species can be conducted in the endorsement areas designated on that license. This license also will be transferable. The GQP for license limitation groundfish is January 1, 1988, through June 27, 1992, except for a vessel under 60 ft (18.3 m) from which a documented harvest of license limitation groundfish was made with pot or jig gear prior to January 1, 1995. For those vessels, the GQP is extended through December 31, 1994. The Council recommended this extension so that a vessel could be used for qualification, although that vessel was deployed in the groundfish fisheries after June 27, 1992, because the gear that was used from that vessel minimized bycatch loss and waste due to discard mortality. Qualification under this extension will be limited to one endorsement area to limit the extent to which capacity might be increased. Minimizing bycatch loss and waste due to discard mortality is an important objective of the CRP. Additionally, an eligible applicant, whose qualifying vessel "crossed-over" to groundfish from crab under the provisions of the current Vessel Moratorium by June 17, 1995, also will qualify under the GQP for license limitation groundfish.

The EQP for license limitation groundfish is January 1, 1992, through June 17, 1995. The area endorsement(s) designated on a groundfish license will authorize a license holder to deploy a vessel from which directed fishing can be conducted in the following areas: (1) Bering Sea Subarea; (2) Aleutian Islands Subarea; (3) Western Area of the Gulf of Alaska; (4) Central Area of the Gulf of Alaska and the West Yakutat District; and (5) Southeast Outside District.

The dual qualification periods (i.e., the GQP and the EQP) are designed to account for past and recent participation in the affected fisheries. The GQP, which includes the qualification period for the current Vessel Moratorium, accounts for past fishing participation, and the EQP accounts for the recent fishing participation that occurred up to the Council's final action on the LLP (June 17, 1995). NMFS concurs with the Council's recommendation that a vessel must have a fishing history in both periods in order for the vessel owner to qualify for a license. The requirement that vessels have fishing histories during both periods is intended to ensure that only those vessel owners

with both past dependence and recent participation in the fishery qualify. The dual qualification periods for crab species licenses serve the same purpose.

Licenses for crab species will be issued to eligible applicants based on fishing that occurred from the qualifying vessel in the BSAI during the GQP, and for a specific species in an endorsement area (i.e., Aleutian Islands brown king, Aleutian Islands red king, Bristol Bay red king, Norton Sound red king and Norton Sound blue king, Pribilof red king and Pribilof blue king, St. Matthew blue king, and *Chionoecetes opilio* and *C. bairdi* (Tanner crab)) during the EQP. A license will authorize the license holder to deploy a vessel from which directed fishing for specific crab species can be conducted in Federal waters of the specific areas designated on each license. This license also will be transferable. The GQP for crab species is January 1, 1988, through June 27, 1992. Vessels that participated in the Norton Sound king crab fisheries and the Pribilof king crab fisheries are exempt from the harvesting requirements of the GQP because (1) the Norton Sound king crab fisheries began to be managed by the State of Alaska under a system of super-exclusive registration in 1993 and (2) the Pribilof king crab fisheries were closed from 1988 through 1992. Eligibility for those fisheries will be based exclusively on participation during a separate EQP as discussed below. Additionally, an eligible applicant, whose qualifying vessel "crossed-over" to crab from groundfish under the provisions of the current Vessel Moratorium by December 31, 1994, will also qualify under the GQP for crab species.

The EQP for crab species varies among seven area/species endorsements. The EQP for (1) Pribilof red and Pribilof blue king and (2) Norton Sound red and Norton Sound blue king is January 1, 1993, through December 31, 1994. The EQP for (3) *C. opilio* and *C. bairdi* (Tanner crab), (4) St. Matthew blue king, (5) Aleutian Islands brown king, and (6) Aleutian Islands red king is January 1, 1992, through December 31, 1994. The EQP for (7) Bristol Bay red king is January 1, 1991, through December 31, 1994. The Council designed these varying endorsement periods to accommodate the different patterns of season openings and closures for specific crab species. For example, the Bristol Bay red king crab fishery was not open in 1994; therefore, a 3-year participation window is provided by using a January 1, 1991, start date. The variations in the EQP for the Norton Sound king crab fisheries and the Pribilof king crab fisheries are

explained in the preceding GQP discussion.

### 3. License Designations and Vessel Length Categories

All licenses for license limitation groundfish and crab species will have a designation prescribing the activities the license holder is authorized to conduct on a deployed vessel. A catcher vessel designation on a groundfish license will authorize a license holder to deploy a vessel from which directed fishing for license limitation groundfish species can be conducted. A catcher vessel designation on a crab species license will authorize a license holder to deploy a vessel from which directed fishing for crab species can be conducted. The catcher vessel designation on a groundfish license will not authorize the processing of license limitation groundfish or crab species on board the vessel. A catcher/processor vessel designation on a groundfish license will authorize a license holder to deploy a vessel from which directed fishing for license limitation groundfish can be conducted and on which license limitation groundfish may be processed. Similarly, a catcher/processor designation on a crab species license will authorize a license holder to deploy a vessel from which directed fishing for crab species can be conducted and on which crab species may be processed. A license with a catcher/processor designation will also authorize a license holder to deploy a vessel for the purpose of directed fishing only for license limitation groundfish or crab species (i.e., processing that catch is not required).

Also, a license holder can change the vessel designation on a license from a catcher/processor vessel designation to a catcher vessel designation. This change in designation would be permanent. Once a vessel designation on a license is changed from a catcher/processor vessel designation to a catcher vessel designation, the license holder would no longer be able to process license limitation groundfish or crab species on that vessel.

The length overall (LOA) of a vessel is defined at 50 CFR § 679.2 as the horizontal distance between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments, measured in linear feet and rounded to the nearest foot. The size categories were selected to be consistent with the size categories in other programs; in addition, some observer requirements vary with vessel size, and these categories are consistent with

those observer requirements. The following convention will be 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 is 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 is 124 ft (37.8 m).

(2) When the amount exceeding a whole foot measurement is greater than 6 inches (15.2 cm), the LOA is 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 is 125 ft (38.1 m).

(3) When the amount exceeding a whole foot measurement is exactly 6 inches (15.2 cm), the LOA is equal to that whole foot measurement if the number is even; however, if the number is odd, the LOA is 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 is 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 is 60 ft (18.3 m).

Eligibility for a license will be based on a determination that the minimum number of documented harvests of license limitation groundfish and crab species for a specific vessel length category were made from a qualifying vessel. These categories are as follows: (1) Category "A", which comprises vessels with an LOA of 125 ft (37.8 m) or greater; (2) category "B", which comprises vessels with an LOA from 60 ft (18.3 m) to 124 ft (37.5 m); and (3) category "C", which are vessels with an LOA of 59 ft (18 m) or less. A vessel's length category will be determined based on the vessel's LOA on June 17, 1995, or, if the vessel was under reconstruction on that date, on the vessel's LOA on the date that reconstruction was completed.

A vessel that is participating under the current Vessel Moratorium may be lengthened to the maximum length overall (MLOA) specified on the vessel's Moratorium Qualification. The MLOA is determined by the following: For a vessel that was less than 125 ft (37.8 m) on June 24, 1992, its MLOA is 1.2 times the LOA of the vessel on June 24, 1992, or 125 ft (37.8 m), whichever is less. For a vessel that was 125 ft (37.8 m) or greater on June 24, 1992, its MLOA is the LOA of the vessel on June 24, 1992. Finally, for a vessel that was being reconstructed on June 24, 1992, its MLOA is determined as above but using the vessel's LOA on the date that reconstruction was completed, rather than its LOA on June 24, 1992.

The vessel lengthening provisions of the current Vessel Moratorium explained here provide some flexibility to lengthen a vessel under the LLP. Under the LLP, a vessel may be lengthened to its MLOA as determined by the rules under the current Vessel Moratorium, provided the vessel was lengthened before June 17, 1995, or, if not, provided the lengthening does not cause the vessel to exceed the maximum length allowed by the vessel's length category determined under the LLP. For example, a vessel that was 58 ft (17.7 m) on June 24, 1992, could be lengthened to 70 ft (21.4 m) under the provisions of the current Vessel Moratorium. If the reconstruction that resulted in the lengthening of the vessel to 70 ft (21.4 m) began before June 17, 1995, then the vessel will be classified in the "B" vessel length category, which applies to a vessel with an LOA equal to or greater than 60 ft (18.3 m) but less than 125 ft (38.1 m). However, if the reconstruction that resulted in the lengthening of the vessel began after June 17, 1995, the vessel will be classified in the "C" vessel length category (based on its LOA on June 17, 1995), which applies to a vessel with an LOA of 59 ft (18 m) or less. Therefore, although a vessel may be lengthened under the provisions of the current Vessel Moratorium, a vessel that is reconstructed after June 17, 1995, may not be lengthened beyond the maximum length of its vessel length category based on that vessel's LOA on June 17, 1995 (or the vessel's LOA on the date reconstruction was completed if the vessel was under reconstruction on June 17, 1995), and still be eligible to be deployed for LLP fishing by the license holder based on a license resulting from the documented harvests that occurred from that vessel. For a vessel that was lengthened before June 17, 1995, or that was under reconstruction on June 17, 1995, NMFS will require evidence of the date the vessel was lengthened, and the LOA of the vessel before and after that date. In addition, NMFS will require evidence of the vessel's LOA on June 17, 1995. In such circumstances, evidence bearing upon the vessel's LOA on the relevant dates could consist of a past marine survey, an original builder's certificate, any admeasurement documents submitted to the U.S. Coast Guard National Vessel Documentation Center, a certificate of registration that states the vessel's length, or other credible evidence. For the convenience of initial issues and future transferees, an LLP license will be designated with an MLOA, which will limit the maximum

length of a vessel that can be deployed by the license holder.

#### 4. Harvest Requirements—Groundfish

The number of documented harvests that must have been made by a vessel for an eligible applicant to qualify for a particular area endorsement for a groundfish license vary according to vessel length category, the area, and vessel designation. These different requirements are designed to account for differences in the operational characteristics of the fisheries, differences in the geographical areas in which the fisheries are prosecuted, and differences in the social and economic conditions that affect participants in the fisheries from various coastal areas. For instance, the dependence of fishing communities around the GOA on small vessel fleets is accounted for by requiring only a single harvest during the appropriate time periods for a vessel less than 60 ft (18.3 m) LOA to qualify for an endorsement. The single harvest requirement is extended to the Western Gulf for a vessel that qualifies for a catcher vessel designation and is less than 125 ft (37.8 m) LOA because public testimony during Council consideration of the LLP indicated that local fleets did not participate in that area during the earlier portion of the EQP.

Consequently, excluding those fleets from adjacent fishing grounds through more stringent harvesting requirements would have significantly harmed local communities currently dependent on those fisheries. A vessel in the Western Gulf that qualifies for a catcher/processor vessel designation and that is from 60 ft (18.3 m) to less than 125 ft (37.8 m) LOA has the same documented harvesting requirements as do all vessels of similar length in the Central Gulf area and Southeast Outside district because of its fishing capacity. Also, NMFS determined that requiring a single documented harvest would best reflect the operational characteristics of the fisheries in those areas. This determination was based on information in the EA/RIR indicating that requiring more than one documented harvest in the Bering Sea subarea and Aleutian Islands subarea would unduly burden small vessels but would not affect larger vessels. The larger vessels contributed to the largest portion of capacity for the fishing fleet in those areas. Finally, public testimony during consideration of the LLP indicated that some vessels that qualified under the current Vessel Moratorium entered into the fishery during the latter portion of the EQP. Also, based on the Council's recommendation, NMFS added a provision to the EQP requirements that,

in certain areas, four documented harvests made from a vessel between January 1, 1995, and June 17, 1995, are sufficient for an area endorsement. NMFS believes that four documented harvests will be sufficient to show that a person intended to remain in the fishery and that his or her participation was not merely speculative and opportunistic. Based on these considerations, NMFS establishes the following harvesting requirements:

For a vessel classified in any of the three vessel length categories ("A," "B," or "C"), at least one documented harvest of a license limitation groundfish species made from that vessel in the appropriate area during the EQP is necessary to qualify an eligible applicant for an Aleutian Islands area endorsement or for a Bering Sea area endorsement.

For a vessel classified in vessel length category "C," at least one documented harvest of license limitation groundfish species made from that vessel in the appropriate area during the EQP is necessary to qualify an eligible applicant for a Western Gulf area endorsement, a Central Gulf area endorsement, and a Southeast Outside area endorsement.

For a vessel classified in vessel length category "B" and eligible for a catcher vessel designation, at least one documented harvest of license limitation groundfish species made by that vessel in the appropriate area during the EQP is necessary to qualify an eligible applicant for a Western Gulf area endorsement.

For a vessel classified in vessel length category "B," at least one documented harvest of license limitation groundfish species made by that vessel in the appropriate area in each of any 2 calendar years from January 1, 1992, through June 17, 1995, or four documented harvests of license limitation groundfish species made from that vessel in the appropriate area between January 1, 1995, through June 17, 1995, is necessary to qualify an eligible applicant for a Central Gulf area endorsement or a Southeast Outside area endorsement. This documented harvest requirement also will apply to a Western Gulf area endorsement for a vessel eligible for a catcher/processor vessel designation and classified in vessel length category "B."

For a vessel classified in vessel length category "A," at least one documented harvest of license limitation groundfish species made from that vessel in the appropriate area in each of any 2 calendar years from January 1, 1992, through June 17, 1995, is necessary to qualify an eligible applicant for a

Central Gulf area endorsement, a Southeast Outside area endorsement, or a Western Gulf area endorsement.

#### 5. Harvest Requirements—Crab Species

The number of documented harvests made from a vessel that an eligible applicant must demonstrate to qualify for a particular area/species endorsement for a crab species license varies according to the crab species. The Council recommended different requirements so that incidental catches would not qualify a person for a license (e.g., incidentally caught Tanner crab with red or blue king), but, in fisheries where a single harvest may have indicated that a person intended to remain in a fishery (e.g., the Pribilof red and blue king crab fishery that was closed from 1988 through 1992), minimal participation would be recognized. The following requirements were recommended by the Council and approved by NMFS: (1) For a red and blue king crab license, at least one documented harvest of the appropriate crab species made from a vessel in the appropriate fishery during the EQP; and (2) for a brown king and Tanner crab license, at least three documented harvests of the appropriate crab species made from a vessel in the appropriate fishery during the EQP.

The appropriate fishery is the area, as defined in the regulations, that corresponds to the area/species endorsement for which the eligible applicant is seeking qualification. Only documented harvests will qualify the applicant. As defined in the regulations, a documented harvest means a lawful harvest that was recorded in compliance with Federal and state commercial fishing regulations in effect at the time of harvest.

#### 6. License Recipients

A license will be issued only to an eligible applicant. An eligible applicant must have been eligible on June 17, 1995 (the date of final Council action on the LLP), to document a fishing vessel under Chapter 121 of Title 46, U.S.C. As defined by these regulations, an eligible applicant is (1) the owner, on June 17, 1995, of a qualified vessel or (2) the person to whom the qualified vessel's fishing history was transferred or retained by written contract provided that the express terms of that contract clearly and unambiguously indicate that the qualified vessel's fishing history was transferred or retained. NMFS will recognize written contracts to the extent practicable; however, in the event of a dispute concerning the disposition of the fishing history by written contract, NMFS will not issue a license until the

dispute is resolved by the parties involved. The following presumptions will be used to determine the qualification for a license in the absence of a written contract provision addressing the vessel's fishing history: First, if a vessel was sold on or before June 17, 1995, it will be presumed that the vessel's fishing history and license qualification were transferred with the vessel. Second, if a vessel was sold after June 17, 1995, it will be presumed that the vessel's fishing history and license qualification remained with the seller. Furthermore, only one license will be issued based on the fishing history of any qualified vessel. For instance, a vessel's fishing history cannot be divided so that multiple licenses would be issued. Also, if there were multiple owners of a qualified vessel on June 17, 1995, then one license will be issued in the names of the multiple owners or of the appropriate successors in interest. A qualified vessel is one from which documented harvests were made during the appropriate qualifying periods listed in 50 CFR § 679.4(i)(4) and (5) of this rule.

Also, an otherwise qualified individual who can demonstrate eligibility pursuant to the provisions of the Rehabilitation Act of 1973 would be considered an eligible applicant.

#### 7. Application and Transfer Processes for the LLP

NMFS is currently developing a notice of proposed rule making to explain and formalize the process for applying for a license and transferring a license under the LLP. Consequently, issues related to the application and transfer processes will be addressed in that notice of proposed rulemaking.

#### 8. License Severability and Ownership Caps

A vessel designation, an MLOA, and area endorsements (groundfish) or area/species endorsements (crab species) are constituent parts of, and not severable from, a license. For example, a license holder who has a groundfish license with two endorsements (e.g., a Southeast Outside area endorsement and a Central Gulf area endorsement) cannot request that the single license with two endorsements be split into two licenses with one endorsement each thus making it possible to retain one license (with one endorsement) and transfer the other (with the other endorsement). All endorsements must be transferred with the license because endorsements are not severable from the license.

Also, for at least 3 years after the effective date of the LLP, a groundfish

license and crab species license initially issued to a person are not severable if those licenses resulted from documented harvests made from the same qualifying vessel. The Council intends to review the issue of severability 3 years after implementation of the LLP. The Council may remove the prohibition on severing initially issued groundfish and crab species licenses if, after its review, the Council decides that the reason for non-severability (i.e., excess effort in the fisheries) has been ameliorated.

A person is limited to a maximum of 10 groundfish licenses and a maximum of five crab species licenses, unless that person is initially issued more than those numbers of licenses, in which case the person can hold more licenses than the specified maximum. However, a person who has more groundfish licenses than the specified maximum for groundfish licenses cannot receive a groundfish license by transfer until that person's number of groundfish licenses which that person has is less than the specified maximum. The same is true for crab species licenses. After obtaining transfer eligibility by dropping below the specified maximum, a person cannot exceed that specified maximum, notwithstanding the earlier status of being allowed to exceed the specified maximum on initial issuance. These limits prevent any person from obtaining an excessive share of harvest privileges in the affected fisheries as required by national standard 4 of the Magnuson-Stevens Act.

#### 9. Other Provisions

Several other provisions are included in the LLP. First, persons who target species not included in the groundfish portion of the LLP and who were allowed to land incidentally taken license limitation groundfish species prior to the implementation of the LLP are authorized, under the LLP, to continue landing bycatch amounts of license limitation groundfish species without a groundfish license. This provision will reduce the waste that occurs when bycatch is required to be discarded and is consistent with the objectives of national standard 9 of the Magnuson-Stevens Act. This is especially true for programs like the IFQ program for sablefish and halibut, where the targeted species and license limitation groundfish species may be found in the same habitat area.

Second, an eligible applicant who qualifies for a license based on the documented harvests of a vessel that was lost or destroyed before the application process will be eligible for the license and accompanying

endorsements. This license could not be used for harvesting applicable species unless the vessel on which the license is used conforms with all the requirements of the license, including MLOA and vessel designation.

Third, an "unavoidable circumstances" provision is included in the LLP. Through this provision, an applicant may be found eligible to receive a license, even though the vessel fishing history on which that eligibility is based does not meet the standard eligibility criteria for a license. To be issued a license under the unavoidable circumstances provision, an applicant's eligibility must be based on a vessel which can document a harvest of license limitation groundfish species or of crab species, if applicable, between January 1, 1988, and February 9, 1992. The applicant must also provide evidence that the vessel was subsequently lost, damaged, or unable to qualify the applicant for a license under the criteria in 50 CFR § 679.4(i)(4) or (5) due to factors beyond the control of the owner (or owners, if applicable) of the vessel at time the vessel was lost, damaged, or otherwise unable to meet the qualifying criteria. Furthermore, the applicant must demonstrate that:

(1) The owner(s) of the vessel at time the vessel was lost, damaged, or otherwise unable to meet the qualifying criteria held a specific intent to conduct directed fishing for license limitation groundfish (or for crab species, if applicable) with that vessel during a specific time period in a specific area.

(2) The specific intent to conduct directed fishing for license limitation groundfish (crab species) with that vessel was thwarted by a circumstance that was—

- (a) Unavoidable;
- (b) Unique to the owner(s) of that vessel or unique to that vessel; or
- (c) Unforeseen and reasonably unforeseeable to the owner(s) of the vessel.

(3) The circumstance that prevented the owner(s) from conducting directed fishing for license limitation groundfish (crab species) actually occurred.

(4) Under the circumstances, the owner(s) of the vessel took all reasonable steps to overcome the circumstance that prevented the owner from conducting directed fishing for license limitation groundfish (crab species).

(5) A documented harvest of license limitation groundfish (crab species) was made from the vessel, or its replacement, in the specific area that corresponds to the area endorsement (or area/species endorsement, if applicable) for which the claimant is applying after

the vessel was prevented from participating by the unavoidable circumstance but before June 17, 1995.

If all these criteria are met to the satisfaction of NMFS, a license may be issued for the relevant fishery and endorsement area. This provision is not designed to be a "loop hole" through which an eligible applicant that does not meet the qualification requirements can be issued a license. If an eligible applicant fails to demonstrate that an unavoidable circumstance prevented the vessel from meeting the qualifications in § 679.4(i)(4) or (5), NMFS will not issue a license.

Fourth, a license will be issued to an eligible applicant whose eligibility for a license is based on a vessel which can document a harvest of license limitation groundfish during the GQP in one management area and the required minimum number of documented harvests of license limitation groundfish were made during the EQP in an endorsement area in the other management area. For example, suppose an eligible applicant is basing his or her eligibility on a vessel in length category "C" from which only two documented harvests of license limitation groundfish species were made. The first documented harvest was of license limitation groundfish species that occurred in the BSAI on December 31, 1991, and the second documented harvest was of license limitation groundfish species that occurred in the Central Gulf endorsement area on June 16, 1995. Although the eligible applicant would not qualify for a license under the standard eligibility criteria (i.e., by basing eligibility on documented harvests of license limitation groundfish species made from a vessel during the GQP and the EQP in the same management area), this eligible applicant would qualify for a license under this alternative method of eligibility. Section 679.4(i)(4)(iv) and (v) provides that if a documented harvest of license limitation groundfish is made from a vessel during the GQP (and not the EQP) in one management area and a documented harvest of license limitation groundfish is made from that same vessel during the EQP (and not the GQP) in the other management area, then the eligible applicant who is basing his or her eligibility on that vessel would qualify for a license for the management area in which the documented harvests were made during the EQP. The eligible applicant in the example above would receive a license for the Gulf of Alaska with a Central Gulf area endorsement.

#### **Consistency With Section 303(b)(6) of the Magnuson-Stevens Act**

Any FMP or FMP amendment that establishes a system of limited access to achieve OY must meet the guidelines established in Section 303(b)(6) of the Magnuson-Stevens Act. These guidelines state that the preparers must take into account (1) present participation in the fishery; (2) historical fishing practices in, and dependence on, the fishery; (3) the economics of the fishery; (4) the capability of fishing vessels in the fishery to engage in other fisheries; (5) the cultural and social framework relevant to the fishery; and (6) any other relevant considerations.

The administrative record for the LLP is replete with examples of the Council considering the issues enumerated in the Section 303(b)(6) guidelines of the Magnuson-Stevens Act. The two-part qualification period (i.e., the GQP and the EQP) is an example of the Council balancing present participation in the fishery (EQP) and historical practices in, and dependence on, the fishery (GQP). The economics of the fishery was a primary consideration in the development of the LLP. Some of the factors considered included overcapitalization in the industry, too many vessels chasing too few fish (overcapacity), and the gradual shifting from an artisanal fleet to an industrial fleet. This final factor was a major concern because it had the potential of adversely affecting small coastal communities dependent on an artisanal fleet.

The current state of overcapitalization in most U.S. fisheries makes the fourth guideline seem like an anomaly. The concern for the capability of a vessel displaced from one fishery to enter another fishery, however, is for the individual owner of that displaced vessel and not for the fishery as a whole. Most vessels in the affected fisheries are not so unique as to make these modifications prohibitive. In fact, certain provisions of the LLP are specifically included because of the flexibility of fishing vessels used in waters off Alaska (e.g., 32-foot or 9.7 meter vessel exemption in the BSAI).

The Council carefully evaluated the cultural and social framework relevant to the fishery. For instance, the Council commissioned the development of community profiles for over 130 communities in Alaska and in the Pacific Northwest, a sector description and preliminary social impact assessment, and a final social impact assessment for its evaluation. Several aspects of the LLP are a direct result of

the cultural and social framework of the fisheries. For example, the Multispecies Community Development Quota (CDQ) Program was developed by the Council and approved by NMFS concurrent with the LLP. Also, the no-trawl zone east of 140° W. long, which was designed to preserve artisanal fishermen and the small coastal communities in SE. Alaska that depend on them, is a prime example of the Council considering the cultural and social framework of the affected fisheries.

#### *Fisheries Impact Statement*

Section 303(a)(9) of the Magnuson-Stevens Act requires that Councils in every FMP or FMP amendment they submit to the NMFS for approval include a fishery impact statement (FIS) that assesses, specifies, and describes the likely effects of the proposed conservation and management measures on participants in the affected fisheries and participants in fisheries in adjacent areas. The following is a summary of the FIS found in the EA/RIR for this action:

The LLP will place limitations on current participants in the affected fisheries. First, current participants will be limited to deploying a vessel in areas for which they hold a license and an area endorsement. Second, vessel replacements and upgrades will be limited by length and designation specified on the license. Third, current participants will have to meet the specific eligibility criteria of the LLP to receive a license authorizing participation in the affected fisheries.

Although the LLP will exclude some current participants who did not fish during the GQP, these excluded persons can gain access to the affected fisheries by obtaining a license through transfer. Also, the total allowable catches (TAC) for the affected fisheries are not expected to change based on implementation of the LLP. Nor will the implementation of the LLP affect fishery product flow, total revenues derived from the affected fisheries, or regional distribution of vessel ownership. The LLP will ameliorate, but not totally eliminate, overcapacity, overcapitalization, and vessel safety concerns perpetuated under status quo management.

Due to the geographical location of the affected fisheries, there are no adjacent areas under the authority of other Regional Fishery Management Councils. However, participants in fisheries in other areas could face increased pressures from new entrants excluded from the affected fisheries. This increased pressure is expected to be nominal, in any case, because of the increasingly small number of open

access fisheries available in the EEZ off the west coast of the United States. In fact, the LLP is intended to prevent just the opposite effect (i.e., a surge of new entrants to the fisheries in the EEZ off Alaska from among those persons that have been excluded from newly limited fisheries in the EEZ off the west coast of the contiguous United States).

#### Changes to the Final Rule

The following addresses all substantive changes to the final rule. Editorial changes are not discussed.

A definition for the term "documented harvest" is added to the final rule. The term "documented harvest" replaces "legal landing" throughout the final rule. The new term more accurately describes the activity necessary for eligibility. Included in the proposed definition of legal landing was the activity of off-loading. Off-loading is not necessary for eligibility. Further, the area endorsement(s) a person is issued should reflect the area in which fishing occurred, not the area in which the fish was delivered.

Any references to designating a specific vessel on a license is eliminated in the final rule. A license can be used on any vessel that complies with the MLOA designated on the license and that meets other regulatory requirements. Designating a specific vessel on a license would mean that a license holder would need to request a transfer before that license could be used on a vessel different from the one designated on the license. Making a transfer necessary for such behavior would constrain the flexibility of the license holder and increase the administrative costs to NMFS. Therefore, this requirement is eliminated.

The definition of "eligible applicant" is revised to add a paragraph to accommodate individuals that can demonstrate eligibility for the LLP pursuant to the provisions of the Rehabilitation Act of 1973 at 29 U.S.C. 794(a). This addition clarifies that otherwise qualified individuals may avail themselves of the appropriate provisions of the Rehabilitation Act of 1973 when applying for licenses under the LLP.

The rule is revised to require that the "maximum length overall (MLOA)" be designated on the license. NMFS determined that the MLOA, and not the vessel length category, is the constraining factor on what size vessel can be used based on the license; therefore, designating the vessel length category is unnecessary and can be confusing because general vessel lengths, under the vessel length

categories, can exceed a specific vessel's MLOA. Despite these changes, vessel length categories are still in the final rule because they are used to determine the minimum documented harvest requirements for area endorsements.

The crab species designations of Adak red king, Adak brown king, and Dutch Harbor brown king crab are eliminated from the final rule. These designations are eliminated because the Alaska Department of Fish and Game has combined the crab management areas of Adak and Dutch Harbor into a new Aleutian Islands Area (State of Alaska Registration Area O). Those persons who would have qualified for an Adak red king area/species endorsement, under the provisions of the proposed rule, will be issued an Aleutian Islands red king area/species endorsement, and those persons who would have qualified for an Adak brown king area/species endorsement or a Dutch Harbor brown king area/species endorsement, under the provisions of the proposed rule, will be issued an Aleutian Islands brown king area/species endorsement. Also, the area/species endorsement definitions for Adak red king crab, Adak brown king crab, and Dutch Harbor brown king have been eliminated from the final rule, and new area/species endorsement definitions for Aleutian Islands red king and Aleutian Islands brown king have been added to the final rule to reflect this combination.

In § 679.4(i)(2)(iv), the term "CDQ" is removed and replaced with the term "CDP." This correction is consistent with the original intent of the proposed rule. The publication in the proposed rule of CDQ, rather than CDP, was a typographical error.

In § 679.4(i)(3)(ii), paragraph (i)(3) is added to describe the forms of evidence that can be used to verify the processing activity of a vessel for purposes of establishing eligibility for a catcher/processor designation.

In § 679.4(i)(4), text is added to describe the forms of evidence that can be used to verify a documented harvest for purposes of establishing eligibility for a groundfish license.

In § 679.4, paragraphs (i)(4)(iv) and (v) are changed to increase the reader's understanding of the criteria necessary for receiving a license based on participating in different fishery management areas during the GQP and the EQP. The changes are stylistic and not substantive; therefore, none of the criteria has changed from the proposed rule.

The regulatory text in § 679.4(i)(6) *Application for a groundfish license or a crab species license* and in § 679.4(i)(7) *Transfers* is removed, and

these paragraphs are reserved. NMFS is currently developing a notice of proposed rulemaking regarding the application and transfer processes. When the rulemaking for the application and transfer processes is completed, regulatory text will be added to these reserved paragraphs.

In § 679.7(j)(2), (3), (4), and (5), the terms "original" and "valid" are added in front of the terms "groundfish license" and "crab species license," respectively. This change was made to clarify that nothing other than an original valid license will be accepted as proof of authority to deploy a vessel in the affected fisheries.

#### Response to Comments on the LLP Portion of Amendments 39, 41, and 5

*Comment 1:* The LLP fails to address the overcapitalization problem in the Federal fisheries off Alaska.

*Response:* The LLP is intended to be part of a step-wise approach toward eliminating excess capital investment in the Federal fisheries off Alaska. Although the LLP does not totally solve the overcapitalization problem, as was clearly indicated in the analysis for the LLP, the LLP does define and limit the field of participants in these Federal fisheries. This step is critical to the further development of management programs that will more fully address the overcapitalization issues. Also, the LLP will limit license holders to discrete management areas for which the license is authorized based on past participation, unlike the current Vessel Moratorium, which allowed permit holders unrestricted movement throughout the EEZ off Alaska.

The LLP is designed to be a framework program to which other programs (e.g., vessel and license buyback, individual bycatch accountability, and individual fishing quotas) could be added to reduce capitalization in the future. The LLP will be available as a future basis for further addressing overcapitalization. Substantial interest in establishing an industry-sponsored buyback for the crab portion of the LLP has already been expressed by industry participants and the Council. As stated earlier, by identifying the field of participants in the groundfish and crab fisheries and, thereby, providing stability in the fishing industry, the LLP is an interim step toward a more comprehensive solution to the conservation and management problems inherent in an overcapitalized fishery. Although the LLP is an interim step, it addresses some of the important issues in the problem statement developed for the CRP. The LLP, through the limits it

places on the number of vessels that can be deployed in the affected fisheries, places an upper limit on the amount of capitalization that could occur in those fisheries. This upper limit will prevent overcapitalization in those fisheries at levels that could occur in the future if such a constraint was not present.

*Comment 2:* The Council did not consider all reasonable alternatives when choosing the LLP option.

*Response:* At its meeting in January 1993, the Council began evaluating the effectiveness of different alternatives to determine which ones would best meet the objectives of the an CRP developed for the Federal groundfish and crab fisheries off Alaska. These alternatives included (1) exclusive area registration, (2) seasonal allocations, (3) license limitation, (4) gear allocations, (5) inshore/offshore allocations, (6) CDQ allocations, (7) trip limits, (8) IFQ for prohibited species catch, (9) non-transferable IFQ, (10) transferable IFQ, and (11) harvest privilege auctions. All the alternatives had qualities that would have helped achieve some of the objectives of the CRP; however, after comparing the strengths and weaknesses of the alternatives, the Council identified license limitation and transferable IFQ as the most viable alternatives.

Although transferable IFQ was identified as the alternative with the greatest potential for solving the most issues in the problem statement for the CRP, several problems prevented the Council from choosing this alternative as the first step in the CRP process. For example, determinations about who should be found eligible to receive an initial allocation of quota or how much initial quota should be issued to each eligible applicant would have been exceedingly difficult. Also, since the IFQ program for halibut and sablefish had not yet been implemented, any information or experience that would have been gained from the operation of that program was not then available. For these reasons, the Council, at its meeting in September 1993, raised LLP to a level of equal consideration with transferable IFQ as a management regime designed to meet the objectives of the CRP.

In January 1994, the Council adopted its Advisory Panel's recommendations to expedite the LLP alternative. This decision was made because the industry lacked a consensus on the specific form of a transferable IFQ alternative and a concern about the amount of time that would be necessary to produce an analysis and implement a transferable IFQ program. The transferable IFQ alternative was not dropped completely;

rather, it was considered by the Council as a potential future step in the overall CRP process. Advocates for the LLP argued that the LLP was a necessary first step in the CRP process because it could be implemented more quickly than a transferable IFQ system, and because it would provide stability in the fishing industry while a transferable IFQ system was analyzed and implemented. The above discussion demonstrates that the Council did review and consider reasonable alternatives before deciding that the LLP was the best choice for the next step in the CRP process.

*Comment 3:* Amendments 39, 41, and 5 are not fair and equitable by providing different criteria for license qualification by management area and vessel class.

*Response:* National standard 4 of the Magnuson-Stevens Act in pertinent part requires that, if it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be fair and equitable to all such fishermen and reasonably calculated to promote conservation.

The different criteria for license qualification accounts for differences in the operational characteristics of the fisheries, differences in the geographical areas in which the fisheries are prosecuted, and differences in the social and economic conditions that affect participants in the fisheries from various coastal areas. For instance, the dependence of many fishing communities around the Gulf of Alaska on small vessel fleets is accounted for by requiring that only one documented harvest be made from a vessel less than 60 ft (18.3 m) LOA during the appropriate time periods to qualify for an endorsement. The single documented harvest requirement is extended to catcher vessels less than 125 ft (37.8 m) LOA in the Western Gulf because public testimony during Council consideration of the LLP indicated that local fleets did not participate in that area during the earlier portion of the EQP.

Consequently, the Council concluded that excluding those fleets from adjacent fishing grounds through more stringent harvesting requirements would cause significant harm to local communities dependent on those fisheries. Catcher/processor vessels in the Western Gulf area that are from 60 ft (18.3 m) to less than 125 ft (37.8 m) LOA also have the same documented harvest requirements like vessels of similar length in the Central Gulf area and Southeast Outside district because of their fishing capacity. Further, based on information in the LLP analysis indicating that multiple harvest requirements in the Bering Sea subarea and Aleutian Islands subarea would unduly burden small vessels but

would not affect larger vessels, which contributed to the largest portion of capacity in the fishing fleet in those areas, NMFS has concluded that a single documented harvest requirement best reflects the operational characteristics of the fisheries in those areas. Finally, the Council received public testimony during consideration of the LLP that some vessels that qualified under the current Vessel Moratorium entered into the fishery during the latter portion of the EQP. Based on that testimony, the Council recommended, and NMFS approved, a four documented harvest provision to the EQP harvest requirements in certain areas to account for participation from these vessels. NMFS believes that requiring four-documented harvests is sufficient to show that a person intended to remain in the fishery and that his or her participation was not merely speculative and opportunistic. The LLP complies with national standard 4.

*Comment 4:* The license caps are arbitrary and capricious and will not prevent any particular individual, corporation, or other entity from acquiring an excessive share of privileges under the LLP.

*Response:* National standard 4 of the Magnuson-Stevens Act in pertinent part requires that, if it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges. NMFS analyzed the number of participants that would be licensed in each endorsement area if maximum consolidation occurred (i.e., if all participants in a specific area held the maximum number of licenses allowed under the proposed license cap—10 licenses for groundfish and 5 licenses for crab), and concluded that those numbers did not result in any particular individual, corporation, or other entity acquiring an excessive share of privileges under the LLP.

*Comment 5:* Although it was purported to be an interim step, no sunset date was included in the LLP.

*Response:* The Council did not have an established timetable for the next step in the CRP process. The Magnuson-Stevens Act mandated a studies of quota-based systems, which are being conducted by the National Research Council. Until those studies are concluded, the Council would be unable to properly analyze the next step toward CRP, especially if that step ends up being a quota-based management program. A sunset date for a portion of a step-wise comprehensive program is



potentially dangerous if the succeeding step for that program is not under development and may lead to the premature rescission of a necessary management measure. Furthermore, the absence of a sunset date does not preclude the Council from recommending a substitute for the LLP at any time in the future.

*Comment 6:* The LLP allows the qualification of groundfish vessels that participated only in state waters.

*Response:* Most FMP groundfish species in and off Alaska are considered a single stock with total allowable catches that are based on data from fisheries in the federally managed EEZ (3–200 miles or 2.6–261 nautical miles) and in the territorial waters of the State of Alaska (0–3 miles or 0–2.6 nautical miles). Therefore, any catch made by fishermen exclusively in territorial waters was already included in the annual specifications for FMP groundfish fisheries. Furthermore, vessels qualified under the Vessel Moratorium, the current limited access program, with harvests exclusively in state waters. Allowing state water harvests to qualify a vessel under the LLP takes into account current and past participation and is consistent with the Vessel Moratorium.

*Comment 7:* Amendments 39, 41, and 5 are not fair and equitable by allowing a quota system for certain Western Alaska communities and not allowing a quota system for groundfish fishermen.

*Response:* The use of a quota-based system for Western Alaska communities was already in existence for certain species (i.e., pollock, sablefish, and halibut) when the Council proposed a 7.5-percent allocation of other species to the CDQ program as part of the LLP. An allocation was specifically required by the Magnuson-Stevens Act, whereas using individual quota-based management for other fisheries was specifically banned by the Magnuson-Stevens Act until further study. Approving the LLP does not preclude the use of quota-based management in the future if Congress decides that its current ban on using quota-based management systems for fisheries should be removed.

*Comment 8:* NMFS should ban the use of all factory trawlers in Federal waters off Alaska.

*Response:* Banning all factory trawlers in Federal waters off Alaska was not an alternative analyzed during the development of the LLP. Any vessel for which sufficient participation in, and dependence, on the basis for the affected fisheries can be demonstrated can be eligible for a license under the LLP.

*Comment 9:* NMFS should reduce bycatch and waste resulting from bycatch.

*Response:* National standard 9 of the Magnuson-Stevens Act requires conservation and management measures, to the extent practicable, to minimize bycatch and, to the extent bycatch cannot be avoided, to minimize the mortality of such bycatch. In compliance with this requirement, the LLP includes a provision that specifically provides that a person who does not hold an LLP license may keep up to the maximum retainable bycatch amount of a license limitation groundfish species caught while participating in another fishery not covered by the LLP. This provision was included in the LLP to minimize discard mortality of these species through utilization.

Also, through a separate rulemaking, NMFS has implemented an Improved Retention/Improved Utilization Program for certain groundfish species in the GOA and the BSAI (62 FR 65379, December 12, 1997). The IR/IU Program is designed to reduce discard mortality by requiring fishermen to retain and utilize a specified percentage of fish product that was previously discarded. NMFS anticipates that combined efforts of the LLP and the IR/IU program will assist in reducing bycatch.

*Comment 10:* NMFS should protect critical habitat.

*Response:* Protection and preservation of critical habitat is a top priority for NMFS. However, none of the alternatives analyzed for the LLP pertained to critical habitat, nor does the LLP.

*Comment 11:* The LLP does not contain a provision to allow for a small amount of processing on a vessel that is deployed based on a license with a catcher vessel designation.

*Response:* One of the motions considered by the Council when it adopted the LLP was to allow a vessel deployed based on a license with a catcher vessel designation to process limited amounts of LLP groundfish. This motion included daily processing limits of up to 18 mt per vessel. After Council discussion, the motion was disapproved primarily because of enforcement concerns about monitoring the processing limits. Also, the Council concluded that a person who desires to process fish at sea but who has a license with a catcher vessel designation could obtain through transfer a license with a catcher/processor designation.

*Comment 12:* Licenses issued under the LLP program are not gear specific (i.e., a vessel deployed based on a license can use any legal gear, despite

the type of gear used to qualify for the license). This lack of gear specificity may contribute to overcapacity in the affected fisheries.

*Response:* During the development of the LLP, the Council considered a motion to make licenses gear specific. The motion was withdrawn after Council staff informed the Council that gear specificity was not an alternative that had been thoroughly analyzed. The concept of gear specificity raises issues about making gear specificity apply by area, as opposed to the overall license, criteria for determining what gear to assign, and the number of potential gear changes. These issues should be analyzed and evaluated before a specific gear provision is added to the LLP.

The LLP is designed to ameliorate, but not totally eliminate, overcapacity and overcapitalization, as perpetuated under status quo management. While developing the LLP, the Council contemplated that further steps would need to be taken in the future to meet the goals of the CRP. At its February 1998 meeting, the Council directed staff to consider adding a specific gear provision to the LLP. If adopted, a specific gear provision may be one of the steps used to further rationalize the groundfish fisheries in the EEZ off Alaska.

*Comment 13:* The LLP contains an exemption for vessels that, after November 18, 1992, were specifically constructed for and used exclusively in accordance with a Community Development Plan (CDP) approved by NMFS. Accordingly, these vessels do not exceed 125 ft (38.1 m), and are designed and equipped to meet specific needs that are described in the approved CDP. This exemption may contribute to overcapacity in the affected fisheries.

*Response:* This exemption, which was also included in the current Vessel Moratorium, is intended to assist Community Development Quota (CDQ) groups in recovering the costs for vessels built specifically for prosecuting CDQ fisheries. NMFS does not anticipate that a significant number of vessels will be built to use this exemption. In fact, no vessel used the similar exemption provided in the current Vessel Moratorium. Also, vessels no longer connected with a CDQ group (i.e., no longer used in accordance with a CDP) would not be exempt from the requirements of the LLP.

*Comment 14:* The suggestion by NMFS of using documented length, rather than actual length, for LOA is not feasible. Documented length has no consistency among vessels of the same actual length. Also, vessel owners who availed themselves of the “20 percent

rule" under the current Vessel Moratorium could be disqualified from participation under the LLP if LOA is based on documented length.

*Response:* NMFS concurs. In the notice of proposed rule-making, NMFS requested comments about the possibility of using documented length rather than actual length because of difficulties that had been reported with at-sea monitoring for compliance with existing vessel length categories, thereby, impairing at-sea enforcement of fishery regulations. However, all the comments received on this issue supported the current method of determining LOA by actual length.

Based on these comments, NMFS has decided to not change the current definition of LOA at § 679.2 and to enforce LOA rules on shore or in port.

*Comment 15:* A license issued on the basis of past participation to an eligible applicant who is not currently participating in a fishery is a "latent license." Latent licenses will be issued under the LLP because the time periods used to determine eligibility for a license and the time period between the development and the implementation of the LLP will mean that a person can receive a license even if that person has not deployed a vessel in 1996 and 1997. The issuance of latent licenses will contribute to overcapacity in the affected fisheries.

*Response:* The time periods established to determine eligibility (i.e., the GQP and the EQP, as well as the June 17, 1995, eligibility date) are fixed in the FMP language approved by NMFS and, therefore, cannot be changed through the regulatory process. When the time periods and the eligibility date were selected, they were contemporaneous with the date of final action by the Council. A provision to require participation in 1996 or 1997 as a prerequisite for a license would require FMP amendments to change the current language in the relevant FMPs. At its February 1998 meeting, the Council directed staff to analyze adding more recent participation (e.g., documented harvests in 1995, 1996, and/or 1997) as a prerequisite to eligibility for a crab species license. If adopted, a more recent participation requirement may ameliorate the impacts of latent licenses on the affected fisheries.

*Comment 16:* Overcapacity and overcapitalization can be reduced by instituting a license buyback program for the LLP.

*Response:* The Council discussed the merits of a license buyback program during the development of the LLP; however, a buyback program was not

included in the LLP because the funding method analyzed was determined to be beyond the authority of the Council (i.e., requiring all license recipients to pay a fee) without a referendum by the recipients authorizing such action.

Since that determination, the Magnuson-Stevens Act has been amended to include a Fishing Capacity Reduction Program, that specifically authorizes the development of a license buyback program. A buyback program for crab licenses currently is being developed by a crab industry organization for consideration by the Council.

*Comment 17:* Limiting the use of the unavoidable circumstances provision to a person whose eligibility is based on a vessel, or its replacement, whose documented harvest before June 15, 1995, was unavailable after that vessel was lost, damaged, or otherwise unable to participate in a qualifying fishery, is unfair to a person who could have used the provision except that he or she did not have a documented harvest before prior to June 17, 1995.

*Response:* Based on the approved recommendation of the Council, NMFS narrowly crafted the unavoidable-circumstances provision to grant eligibility only when the minimum requirements for eligibility under the EQP would have been met except that circumstances beyond the control of the owner of the vessel at that time prevented that vessel from meeting those requirements. However, the unavoidable-circumstances provision was never intended to extend the EQP. Unless a person can demonstrate his or her intent to remain an active participant in the groundfish fisheries through a documented harvest made from a vessel, or its replacement, and submitted after that vessel was lost, damaged, or unable to participate but before June 17, 1995, that person cannot use the unavoidable-circumstances provision. A harvest before June 17, 1995, indicated a participant's good faith effort to remain in the groundfish fisheries. This requirement is not unfair because any participation after June 17, 1995, the date of final Council action, is not considered a qualifying harvest under the LLP.

*Comment 18:* The Council indicated that a person who would not qualify because he or she deployed a vessel from which documented harvests were made during the GQP and the EQP in different management areas would receive a license with an area endorsement for the area in which that person had met the minimum requirements during the EQP. However, a provision to allow this method of

eligibility was not in the FMP language. How will this issue be addressed?

*Response:* The record shows that the Council did indicate that this method of eligibility would be allowed. Section 679.4(i)(4)(iv) and (v) provides for this method of eligibility. These provisions implement the Council's FMP amendments on this issue.

*Comment 19:* NMFS should consider reducing the amount of pollock available for harvest in the North Pacific.

*Response:* Harvest reduction is beyond the scope of the LLP analysis; however, this comment would be appropriate for the specifications process, a process during which the allowable biological catch and the TAC for each species is determined.

*Comment 20:* The LLP does not solve the race for fish. The race for fish contributes to safety hazards of fishing; therefore, the LLP does not meet the requirements of national standard 10.

*Response:* National standard 10 requires conservation and management measures, to the extent practicable, to promote the safety of human life at sea. The U.S. Coast Guard reviewed the LLP and determined that all safety concerns had been adequately addressed. No management program can totally eliminate the inherent risks of fishing. Fishing vessel operators, as they have been throughout history, will be faced with the many inherent risks of earning a living at sea. The LLP will not increase that peril.

*Comment 21:* Is a person that owns a vessel that was "grandfathered" under the provisions of Chapter 121, Title 46, U.S.C., included in the definition of "qualified person?"

*Response:* Research of the record, Council transcripts, and the EA/RIR, indicate that the Council intended to include a person that owned a vessel that was "grandfathered" under the provisions of Chapter 121, Title 46, U.S.C., in the definition of "qualified person." Such a person would need to demonstrate that his or her vessel was eligible to be documented as a fishing vessel under the "grandfather" provision of Chapter 121, Title 46, U.S.C., to be found eligible for a license under the LLP.

#### Classification

The Administrator, Alaska Region, NMFS, (Regional Administrator) determined that the FMP Amendments 39, 41, and 5 are necessary for the conservation and management of the groundfish fisheries of the EEZ off Alaska and the crab fisheries of the BSAI. The Regional Administrator also determined that these amendments are

consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. NMFS received four comments concerning that certification; however, these comments were directed at the CDQ portion of the proposed rule and are summarized and responded to in the separate final rule action (63 FR 8356, February 19,

1998). These comments did not cause NMFS to change its determination regarding the certification. As a result, a regulatory flexibility analysis was not prepared.

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.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB control number 0648-0334. The public reporting burden for these requirements is estimated to be two hours for a permit application and one hour for a permit transfer application. These estimates include 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 these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503, Attention: NOAA Desk Officer.

#### List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: September 24, 1998.

**Andrew A. Rosenberg,**

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is 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.*, and 3631 *et seq.*

2. In § 679.1, paragraph (j) is added to read as follows:

##### § 679.1 Purpose and scope.

\* \* \* \* \*

(j) *License Limitation Program.* (1) Regulations in this part implement the license limitation program for the commercial groundfish fisheries in the EEZ off Alaska and for the commercial crab fisheries in the Bering Sea and Aleutian Islands Area.

(2) Regulations in this part govern the commercial fishing for license limitation groundfish by vessels of the United States using authorized gear within the GOA and the BSAI and the commercial fishing for crab species by vessels of the United States using authorized gear within the Bering Sea and Aleutian Islands Area.

3. In § 679.2, the definitions for "Legal Landing", "Maximum LOA", "Processing or to process", and "Qualified Person", are revised; and definitions for "Area Endorsement", "Area/Species Endorsement", "Catcher/Processor Vessel Designation", "Catcher Vessel Designation", "Crab Species", "Crab Species License", paragraph (3) for "Directed Fishing", "Documented Harvest", "Eligible Applicant", "Groundfish License", "License Holder", "License Limitation Groundfish", "State", and "Vessel Length Category" are added in alphabetical order to read as follows:

##### § 679.2 Definitions.

\* \* \* \* \*

*Area endorsement* means a designation on a license that authorizes a license holder to deploy a vessel to conduct directed fishing for license limitation groundfish in the designated area, subarea, or district. Area endorsements, which are inclusive of, but not necessarily the same as, management areas, subareas, or districts defined in this part, are as follows:

(1) Aleutian Islands area endorsement. Authorizes the license holder to deploy a vessel to conduct directed fishing for license limitation groundfish in the Aleutian Islands Subarea;

(2) Bering Sea area endorsement. Authorizes the license holder to deploy a vessel to conduct directed fishing for license limitation groundfish in the Bering Sea Subarea;

(3) Central Gulf area endorsement. Authorizes the license holder to deploy a vessel to conduct directed fishing for license limitation groundfish in the Central Area of the Gulf of Alaska and the West Yakutat District;

(4) Southeast Outside area endorsement. Authorizes the license holder to deploy a vessel to conduct directed fishing for license limitation groundfish in the Southeast Outside District; and

(5) Western Gulf area endorsement. Authorizes the license holder to deploy a vessel to conduct directed fishing for license limitation groundfish in the Western Area of the Gulf of Alaska.

*Area/species endorsement* means a designation on a license that authorizes a license holder to deploy a vessel to conduct directed fishing for the designated crab species in Federal waters in the designated area. Area/species endorsements for crab species licenses are as follows:

(1) Aleutian Islands brown king in waters with an eastern boundary the longitude of Scotch Cap Light (164° 44' W. long.), a western boundary of the U.S.-Russian Convention Line of 1867, and a northern boundary of a line from the latitude of Cape Sarichef (54° 36' N. lat.) westward to 171° W. long., then north to 55° 30' N. lat., then west to the U.S.-Russian Convention line of 1867.

(2) Aleutian Islands red king in waters with an eastern boundary the longitude of Scotch Cap Light (164° 44' W. long.), a western boundary of the U.S.-Russian Convention Line of 1867, and a northern boundary of a line from the latitude of Cape Sarichef (54° 36' N. lat.) westward to 171° W. long., then north to 55° 30' N. lat., and then west to the U.S.-Russian Convention line of 1867.

(3) Bristol Bay red king in waters with a northern boundary of 58° 39' N. lat., a southern boundary of 54° 36' N. lat., and a western boundary of 168° W. long. and including all waters of Bristol Bay.

(4) Bering Sea and Aleutian Islands Area *C. opilio* and *C. bairdi* in Pacific Ocean and Bering Sea waters east of the U.S.-Russian Convention Line of 1867, excluding all Pacific Ocean waters east of a boundary line extending south (180°) from Scotch Cap Light.

(5) Norton Sound red king and Norton Sound blue king in waters with a western boundary of 168° W. long., a southern boundary of 61° 49' N. lat., and a northern boundary of 65° 36' N. lat.

(6) Pribilof red king and Pribilof blue king in waters with a northern boundary of 58° 39' N. lat., an eastern boundary of 168° W. long., a southern boundary line from 54° 36' N. lat., 168° W. long., to 54° 36' N. lat., 171° W. long., to 55° 30' N. lat., 171° W. long., to 55° 30' N.

lat., 173° 30' E. lat., and then westward to the U.S.-Russian Convention line of 1867.

(7) St. Matthew blue king in waters with a northern boundary of 61° 49' N. lat., a southern boundary of 58° 39' N. lat., and a western boundary of the U.S.-Russian Convention line of 1867.

*Catcher/processor vessel designation* means, for purposes of the license limitation program, a license designation that authorizes the license holder:

(1) Designated on a groundfish license to deploy a vessel to conduct directed fishing for license limitation groundfish and process license limitation groundfish on that vessel or to conduct only directed fishing for license limitation groundfish; or

(2) Designated on a crab species license to deploy a vessel to conduct directed fishing for crab species and process crab species on that vessel or to conduct only directed fishing for crab species.

*Catcher vessel designation* means, for purposes of the license limitation program, a license designation that authorizes the license holder:

(1) Designated on a groundfish license to deploy a vessel to conduct directed fishing for, but not process, license limitation groundfish on that vessel; or

(2) Designated on a crab species license to deploy a vessel to conduct directed fishing for, but not process, crab species on that vessel.

*Crab species* means all crab species covered by the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands, including, but not limited to, red king crab (*Paralithodes camtschatica*), blue king crab (*Paralithodes platypus*), brown or golden king crab (*Lithodes aequispina*), scarlet or deep sea king crab (*Lithodes couesi*), Tanner or bairdi crab (*Chionoecetes bairdi*), opilio or snow crab (*Chionoecetes opilio*), grooved Tanner crab (*Chionoecetes tanneri*), and triangle Tanner crab (*Chionoecetes angulatus*).

*Crab species license* means a license issued by NMFS that authorizes the license holder designated on the license to deploy a vessel to conduct directed fishing for crab species.

*Directed fishing* means:

(3) With respect to license limitation groundfish species, directed fishing as defined in paragraph (1) of this definition, or, with respect to license limitation crab species, the catching and

retaining of any license limitation crab species.

*Documented harvest* means a lawful harvest that was recorded in compliance with Federal and state commercial fishing regulations in effect at the time of harvesting.

*Eligible applicant* means a qualified person who submitted an application during the application period announced by NMFS and:

(1) Who owned a vessel on June 17, 1995, from which the minimum number of documented harvests of license limitation groundfish or crab species were made in the relevant areas during the qualifying periods specified in § 679.4(i)(4) and (i)(5), unless the fishing history of that vessel was transferred in conformance with the provisions in paragraph (2) of this definition; or

(2) To whom the fishing history of a vessel from which the minimum number of documented harvests of license limitation groundfish or crab species were made in the relevant areas during the qualifying periods specified in § 679.4(i)(4) and (i)(5) has been transferred or retained by the express terms of a written contract that clearly and unambiguously provides that the qualifications for a license under the LLP have been transferred or retained; or

(3) Who was an individual who held a State of Alaska permit for the Norton Sound king crab summer fishery in 1993 and 1994, and who made at least one harvest of red or blue king crab in the relevant area during the period specified in § 679.4(i)(5)(ii)(G), or a corporation that owned or leased a vessel on June 17, 1995, that made at least one harvest of red or blue king crab in the relevant area during the period in § 679.4(i)(5)(ii)(G), and that was operated by an individual who was an employee or a temporary contractor; or

(4) Who is an individual that can demonstrate eligibility pursuant to the provisions of the Rehabilitation Act of 1973 at 29 U.S.C. 794(a).

*Groundfish license* means a license issued by NMFS that authorizes the license holder designated on the license to deploy a vessel to conduct directed fishing for license limitation groundfish.

*Legal landing* means a landing in compliance with Federal and state commercial fishing regulations in effect at the time of landing.

*License holder* means the person who is named on a currently valid

groundfish license or crab species license.

*License limitation groundfish* means target species and the "other species" category, specified annually pursuant to § 679.20(a)(2), except that demersal shelf rockfish east of 140° W. longitude and sablefish managed under the IFQ program are not considered license limitation groundfish.

*Maximum LOA (MLOA)* means:

(1) Applicable through December 31, 1998, with respect to a vessel's eligibility for a moratorium permit:

(i) Except for a vessel under reconstruction on June 24, 1992, if the original qualifying LOA is less than 125 ft (38.1 m) LOA, 1.2 times the original qualifying LOA or 125 ft (38.1 m), whichever is less.

(ii) Except for a vessel under reconstruction on June 24, 1992, if the original qualifying LOA is equal to or greater than 125 ft (38.1 m), the original qualifying LOA.

(iii) For an original qualifying vessel under reconstruction on June 24, 1992, the LOA on the date reconstruction was completed, provided that maximum LOA is certified under § 679.4(c)(9).

(2) With respect to the license limitation program, the LOA of the vessel on June 24, 1992, unless the vessel was less than 125 ft (38.1 m) on June 24, 1992, then 1.2 times the LOA of the vessel on June 24, 1992, or 125 ft (38.1 m), whichever is less. However, if the vessel was under reconstruction on June 24, 1992, then the basis for the MLOA will be the LOA of the vessel on the date that reconstruction was completed and not June 24, 1992. The following exceptions apply regardless of how the MLOA was determined.

(i) If the vessel's LOA on June 17, 1995, was less than 60 ft (18.3 m), or if the vessel was under reconstruction on June 17, 1995, and the vessel's LOA on the date that reconstruction was completed was less than 60 ft (18.3 m), then the vessel's MLOA cannot exceed 59 ft (18 m).

(ii) If the vessel's LOA on June 17, 1995, was greater than or equal to 60 ft (18.3 m) but less than 125 ft (38.1 m), or if the vessel was under reconstruction on June 17, 1995, and the vessel's LOA on the date that reconstruction was completed was greater than or equal to 60 ft (18.3 m) but less than 125 ft (38.1 m), then the vessel's MLOA cannot exceed 124 ft (37.8 m).

(iii) If the vessel's LOA on June 17, 1995, was 125 ft (38.1 m) or greater, then the vessel's MLOA is the vessel's LOA on June 17, 1995, or if the vessel was under reconstruction on June 17,

1995, and the vessel's LOA on the date that reconstruction was completed was 125 ft (38.1 m) or greater, then the vessel's MLOA is the vessel's LOA on the date reconstruction was completed.

\* \* \* \* \*

*Processing, or to process*, means the preparation of, or to prepare, fish or crab to render it suitable for human consumption, industrial uses, or long-term storage, including but not limited to cooking, canning, smoking, salting, drying, freezing, or rendering into meal or oil, but does not mean icing, bleeding, heading, or gutting.

\* \* \* \* \*

*Qualified Person* means:

(1) With respect to the IFQ program, see IFQ Management Measures at § 679.40(a)(2).

(2) With respect to the license limitation program, a person who was eligible on June 17, 1995, to document a fishing vessel under Chapter 121, Title 46, U.S.C.

\* \* \* \* \*

*State* means the State of Alaska.

\* \* \* \* \*

*Vessel length category* means the length category of a vessel, based on the assigned MLOA, used to determine eligibility.

\* \* \* \* \*

4. In § 679.4, paragraphs (a)(6) and (k) are added to read as follows:

#### § 679.4 Permits.

(a) \* \* \*

(6) *Harvesting privilege*. Quota shares, permits, or licenses issued pursuant to this part are neither a right to the resource nor any interest that is subject to the "takings" provision of the Fifth Amendment to the U.S. Constitution. Rather, such quota shares, permits, or licenses represent only a harvesting privilege that may be revoked or amended subject to the requirements of the Magnuson-Stevens Act and other applicable law.

\* \* \* \* \*

(i) *Licenses for license limitation groundfish or crab species*—(1) *General requirements*. (i) In addition to the permit and licensing requirements prescribed in this part, and except as provided in paragraph (i)(2) of this section, each vessel within the GOA or the BSAI must have a 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 the specific area(s) designated on the

license and may only be used on a vessel that complies with the vessel designation and MLOA specified on the license.

(ii) In addition to the permit and licensing requirements prescribed in this part, and except as provided in paragraph (i)(2) of this section, each vessel within the Bering Sea and Aleutian Islands Area must have a crab species license on board at all times it is engaged in fishing activities defined in § 679.2 as directed fishing for crab species. This crab species license, issued by NMFS to a qualified person, authorizes a license holder to deploy a vessel to conduct directed fishing for crab species only for the specific species and in the specific area(s) designated on the license, and may be used only on a vessel that complies with the vessel designation and MLOA specified on the license.

(2) *Exempt vessels*. Notwithstanding the requirements of paragraph (i)(1) of this section,

(i) A catcher vessel or catcher/processor vessel that does not exceed 26 ft (7.9 m) LOA may conduct directed fishing for license limitation groundfish in the GOA without a groundfish license;

(ii) A catcher vessel or catcher/processor vessel that does not exceed 32 ft (9.8 m) LOA may conduct directed fishing for license limitation groundfish in the BSAI without a groundfish license and may conduct directed fishing for crab species in the Bering Sea and Aleutian Islands Area without a crab species license;

(iii) A catcher vessel or catcher/processor vessel that does not exceed 60 ft (18.3 m) LOA may use a maximum of 5 jig machines, one line per jig machine, and a maximum of 15 hooks per line, to conduct directed fishing for license limitation groundfish in the BSAI without a groundfish license; or

(iv) A catcher vessel or catcher/processor vessel that does not exceed 125 ft (38.1 m) LOA, and that was, after November 18, 1992, specifically constructed for and used exclusively in accordance with a CDP approved by NMFS under Subpart C of this part, and is designed and equipped to meet specific needs that are described in the CDP may conduct directed fishing for license limitation groundfish in the GOA and in the BSAI area without a groundfish license and for crab species in the Bering Sea and Aleutian Islands Area without a crab species license.

(3) *Vessel designations and vessel length categories*—(i) *General*. A license can be used only on a vessel that complies with the vessel designation specified on the license and that has an

LOA less than or equal to the MLOA specified on the license.

(ii) *Vessel designations*—(A) *Catcher/processor vessel*. A license will be assigned a catcher/processor vessel designation if:

(1) For license limitation groundfish, license limitation groundfish were processed on the vessel that qualified for the groundfish license under paragraph (i)(4) of this section during the period January 1, 1994, through June 17, 1995, or in the most recent calendar year of participation during the area endorsement qualifying period specified in paragraph (i)(4)(ii) of this section; or

(2) For crab species, crab species were processed on the vessel that qualified for the crab species license under paragraph (i)(5) of this section during the period January 1, 1994, through December 31, 1994, or in the most recent calendar year of participation during the area endorsement qualifying period specified in paragraph (i)(5)(ii) of this section.

(3) For purposes of paragraphs (i)(3)(ii)(A)(1) and (i)(3)(ii)(A)(2) of this section, evidence of processing must be demonstrated by Weekly Production Reports or other valid documentation demonstrating that processing occurred on the vessel during the relevant period.

(B) *Catcher vessel*. A license will be assigned a catcher vessel designation if it does not meet the criteria in paragraph (i)(3)(ii)(A)(1) or (i)(3)(ii)(A)(2) of this section to be assigned a catcher/processor vessel designation.

(C) *Changing a vessel designation*. A person who holds a groundfish license or a crab species license with a catcher/processor vessel designation may, upon request to the Regional Administrator, have the license reissued with a catcher vessel designation. The vessel designation change to a catcher vessel will be permanent, and that license will be valid for only those activities specified in the definition of catcher vessel designation at § 679.2.

(iii) *Vessel length categories*. A vessel's eligibility will be determined using the following three vessel length categories, which are based on the vessel's LOA on June 17, 1995, or, if the vessel was under reconstruction on June 17, 1995, the vessel's length on the date that reconstruction was completed.

(A) Vessel length category "A" if the LOA of the qualifying vessel on the relevant date was equal to or greater than 125 ft (38.1 m) LOA.

(B) Vessel length category "B" if the LOA of the qualifying vessel on the relevant date was equal to or greater than 60 ft (18.3 m) but less than 125 ft (38.1 m) LOA.

(C) Vessel length category "C" if the LOA of the qualifying vessel on the relevant date was less than 60 ft (18.3 m) LOA.

(4) *Qualifications for a groundfish license.* A groundfish license will be issued to an eligible applicant that meets the criteria in paragraphs (i)(4)(i) and (i)(4)(ii) of this section. For purposes of the license limitation program, evidence of a documented harvest must be demonstrated by a state catch report, a Federal catch report, or other valid documentation that indicates the amount of license limitation groundfish harvested, the groundfish reporting area in which the license limitation groundfish was harvested, the vessel and gear type used to harvest the license limitation groundfish, and the date of harvesting, landing, or reporting. State catch reports are Alaska, California, Oregon, or Washington fish tickets. Federal catch reports are Weekly Production Reports required under § 679.5.

(i) *General qualification periods (GQP).* (A) At least one documented harvest of any amount of license limitation groundfish species must have been made from a vessel to qualify for one or more of the area endorsements in paragraphs (i)(4)(ii)(A) and (i)(4)(ii)(B) of this section. This documented harvest must have been of license limitation groundfish species caught and retained in the BSAI or in the State waters shoreward of the BSAI and must have occurred during the following periods:

(1) January 1, 1988, through June 27, 1992;

(2) January 1, 1988, through December 31, 1994, provided that the harvest was of license limitation groundfish using pot or jig gear from a vessel that was less than 60 ft (18.3 m) LOA; or

(3) January 1, 1988, through June 17, 1995, provided that the vessel qualified for a gear endorsement under the Vessel Moratorium based on criteria specified at § 679.4(c)(5)(ii)(B) or § 679.4(c)(5)(iv)(B).

(B) At least one documented harvest of any amount of license limitation groundfish species must have been made from a vessel to qualify for one or more of the area endorsements in paragraphs (i)(4)(ii)(C) through (i)(4)(ii)(E) of this section. This documented harvest must have been of fish caught and retained in the GOA or in the State waters shoreward of the GOA and must have occurred during the following periods:

(1) January 1, 1988, through June 27, 1992;

(2) January 1, 1988, through December 31, 1994, provided that the harvest was of license limitation groundfish using

pot or jig gear from a vessel that was less than 60 ft (18.3 m) LOA; or

(3) January 1, 1988, through June 17, 1995, provided that the vessel qualified for a gear endorsement under the Vessel Moratorium based on criteria specified at § 679.4(c)(5)(ii)(B) or § 679.4(c)(5)(iv)(B).

(ii) *Endorsement qualification periods (EQP).* A groundfish license will be assigned one or more area endorsements based on the criteria in paragraphs (i)(4)(ii)(A) through (i)(4)(ii)(E) of this section.

(A) *Aleutian Islands area endorsement.* For a license to be assigned an Aleutian Islands endorsement, at least one documented harvest of any amount of license limitation groundfish must have been made from a vessel in any vessel length category (vessel categories "A" through "C") between January 1, 1992, and June 17, 1995, and in the Aleutian Islands Subarea or in State waters shoreward of that subarea.

(B) *Bering Sea area endorsement.* For a license to be assigned a Bering Sea area endorsement, at least one documented harvest of any amount of license limitation groundfish must have been made from a vessel in any vessel length category (vessel categories "A" through "C") between January 1, 1992, and June 17, 1995, and in the Bering Sea Subarea or in State waters shoreward of that subarea.

(C) *Western Gulf area endorsement—*  
(1) *Vessel length category "A".* For a license to be assigned a Western Gulf area endorsement based on the participation from a vessel in vessel length category "A", at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel from January 1, 1992, through June 17, 1995, in the Western Area of the Gulf of Alaska or in State waters shoreward of that area.

(2) *Vessel length category "B" and catcher vessel designation.* For a license to be assigned a Western Gulf area endorsement based on the participation from a vessel in vessel length category "B" and that would qualify for a catcher vessel designation under this section, at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel from January 1, 1992, through June 17, 1995, in the Western Area of the Gulf of Alaska or in State waters shoreward of that area.

(3) *Vessel length category "B" and catcher/processor vessel designation.* For a license to be assigned a Western Gulf area endorsement based on the participation from a vessel in vessel

length category "B" and that would qualify for a catcher/processor vessel designation under this section, at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel in each of any 2 calendar years from January 1, 1992, through June 17, 1995, in the Western Area of the Gulf of Alaska or in State waters shoreward of that area, or at least four documented harvests of any amount of license limitation groundfish harvested from January 1, 1995, through June 17, 1995, in the Western Area of the Gulf of Alaska or in State waters shoreward of that area.

(4) *Vessel length category "C".* For a license to be assigned a Western Gulf area endorsement based on the participation from a vessel in vessel length category "C", at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel from January 1, 1992, through June 17, 1995. This documented harvest must have recorded a harvest occurring in the Western Area of the Gulf of Alaska or in State waters shoreward of that area for a Western Gulf area endorsement.

(D) *Central Gulf area endorsement—*  
(1) *Vessel length category "A".* For a license to be assigned a Central Gulf area endorsement based on the participation of a vessel in vessel length category "A", at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel in each of any 2 calendar years from January 1, 1992, through June 17, 1995. These documented harvests must have recorded harvests occurring in the Central Area of the Gulf of Alaska or in State waters shoreward of that area, or in the West Yakutat District or in state waters shoreward of that district.

(2) *Vessel length category "B".* For a license to be assigned a Central Gulf area endorsement based on the participation from a vessel in vessel length category "B", at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel in each of any 2 calendar years from January 1, 1992, through June 17, 1995, or at least four documented harvests from January 1, 1995, through June 17, 1995. These documented harvests must have recorded harvests occurring in the Central Area of the Gulf of Alaska or in State waters shoreward of that area, or in the West Yakutat District or in state waters shoreward of that district.

(3) *Vessel length category "C".* For a license to be assigned a Central Gulf area endorsement based on the participation from a vessel in vessel

length category "C", at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel from January 1, 1992, through June 17, 1995. This documented harvest must have recorded a harvest occurring in the Central Area of the Gulf of Alaska or in State waters shoreward of that area, or in the West Yakutat District or in state waters shoreward of that district.

(E) *Southeast Outside area endorsement*—(1) *Vessel length category "A"*. For a license to be assigned a Southeast Outside area endorsement based on the participation from a vessel in vessel length category "A", at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel in each of any 2 calendar years from January 1, 1992, through June 17, 1995. These documented harvests must have recorded harvests occurring in the Southeast Outside District or in State waters shoreward of that district.

(2) *Vessel length category "B"*. For a license to be assigned a Southeast Outside area endorsement based on the participation from a vessel in vessel length category "B", at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel in each of any 2 calendar years from January 1, 1992, through June 17, 1995, or at least four documented harvests from January 1, 1995, through June 17, 1995. These documented harvests must have recorded harvests occurring in the Southeast Outside District or in State waters shoreward of that district.

(3) *Vessel length category "C"*. For a license to be assigned a Southeast outside area endorsement based on the participation from a vessel in vessel length category "C", at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel from January 1, 1992, through June 17, 1995. This documented harvest must have recorded a harvest occurring in the Southeast Outside District or in State waters shoreward of that district.

(iii) An eligible applicant that is issued a groundfish license based on a vessel's qualifications under paragraph (i)(4)(i)(A)(2) or (i)(4)(i)(B)(2) of this section must choose only one area endorsement for that groundfish license even if the vessel qualifies for more than one area endorsement.

(iv) Notwithstanding the provisions in paragraph (i)(4) of this section, a license with the appropriate area endorsements will be issued to an eligible applicant whose vessel meets the requirements of paragraph (i)(4)(i)(A), and the

requirements of paragraph (i)(4)(ii)(C), (i)(4)(ii)(D), or (i)(4)(ii)(E) of this section, but

(A) From whose vessel no documented harvests were made in the GOA or state waters shoreward of the GOA between January 1, 1988, and June 27, 1992, and

(B) From whose vessel no documented harvests were made in the BSAI or state waters shoreward of the BSAI between January 1, 1992, and June 17, 1995.

(v) Notwithstanding the provisions of paragraph (i)(4) of this section, a license with the appropriate area endorsements will be issued to an eligible applicant whose vessel meets the requirements of paragraph (i)(4)(i)(B) of this section, and the requirements of paragraph (i)(4)(ii)(A) or (i)(4)(ii)(B) of this section, but

(A) From whose vessel no documented harvests were made in the BSAI or state waters shoreward of the BSAI between January 1, 1988, and June 27, 1992, and

(B) From whose vessel no documented harvests were made in the GOA or state waters shoreward of the GOA between January 1, 1992, and June 17, 1995.

(5) *Qualifications for a crab species license*. A crab species license will be issued to an eligible applicant who owned a vessel that meets the criteria in paragraphs (i)(5)(i) and (i)(5)(ii) of this section, except that vessels are exempt from the requirements in paragraph (i)(5)(i) of this section for the area/species endorsements in paragraph (i)(5)(ii)(A) and (i)(5)(ii)(G) of this section.

(i) *General qualification period (GQP)*. To qualify for one or more of the area/species endorsements in paragraph (i)(5)(ii) of this section:

(A) At least one documented harvest of any amount of crab species must have been made from a vessel between January 1, 1988, and June 27, 1992; or

(B) At least one documented harvest of any amount of crab species must have been made from a vessel between January 1, 1988, and December 31, 1994, providing that the vessel from which the documented harvest was made qualified for a gear endorsement under the Vessel Moratorium based on criteria specified at § 679.4(c)(5)(i)(B).

(ii) *Area/Species Endorsements*. A crab species license will be assigned one or more area/species endorsements specified at § 679.2 based on the criteria in paragraphs (i)(5)(ii)(A) through (G) of this section.

(A) *Pribilof red king and Pribilof blue king*. At least one documented harvest of any amount of red king or blue king

crab harvested in the area described in the definition for the Pribilof red king and Pribilof blue king area/species endorsement in § 679.2 must have been made from a vessel between January 1, 1993, and December 31, 1994, to qualify for a Pribilof red king and Pribilof blue king area/species endorsement.

(B) *Bering Sea and Aleutian Islands Area C. opilio and C. bairdi*. At least three documented harvests of any amount of *C. opilio* or *C. bairdi* crab harvested in the area described in the definition for the Bering Sea and Aleutian Islands Area *C. opilio* or *C. bairdi* area/species endorsement in § 679.2 must have been made from a vessel between January 1, 1992, and December 31, 1994, to qualify for a *C. opilio* and *C. bairdi* area/species endorsement.

(C) *St. Matthew blue king*. At least one documented harvest of any amount of blue king crab harvested in the area described in the definition for the St. Matthews blue king area/species endorsement in § 679.2 must have been made from a vessel between January 1, 1992, and December 31, 1994, to qualify for a St. Matthew blue king area/species endorsement.

(D) *Aleutian Islands brown king*. At least three documented harvests of any amount of brown king crab harvested in the area described in the definition for the Aleutian Islands brown king area/species endorsement in § 679.2 must have been made from a vessel between January 1, 1992, and December 31, 1994, to qualify for a Aleutian Islands brown king area/species endorsement.

(E) *Aleutian Islands red king*. At least one documented harvest of any amount of red king crab harvested in the area described in the definition for the Aleutian Islands red king area/species endorsement in § 679.2 must have been made from a vessel between January 1, 1992, and December 31, 1994, to qualify for a Aleutian Islands red king area/species endorsement.

(F) *Bristol Bay red king*. At least one documented harvest of any amount of red king crab harvested in the area described in the definition for the Bristol Bay red king area/species endorsement in § 679.2 must have been made from a vessel between January 1, 1991, and December 31, 1994, to qualify for a Bristol Bay red king area/species endorsement.

(G) *Norton Sound red king and Norton Sound blue king*. At least one documented harvest of any amount of red king or blue king crab harvested in the area described in the definition for the Norton Sound red king and Norton Sound blue king area/species endorsement in § 679.2 must have been

made from a vessel between January 1, 1993, and December 31, 1994, to qualify for a Norton Sound red king and Norton Sound blue king area/species endorsement.

(6) *Application for a groundfish license or a crab species license.*

[Reserved].

(7) *Transfers.* [Reserved].

(8) *Other provisions.* (i) Any person committing, or a fishing vessel used in the commission of, a violation of the Magnuson-Stevens Fishery Conservation and Management Act or any regulations issued pursuant thereto, is subject to the civil and criminal penalty provisions and the civil forfeiture provisions of the Magnuson-Stevens Fishery Conservation and Management Act, part 621 of this chapter, 15 CFR part 904 (Civil Procedure), and other applicable law. Penalties include, but are not limited to, permanent or temporary sanctions to licenses.

(ii) Notwithstanding the provisions of the license limitation program in this part, vessels fishing for species other than license limitation groundfish as defined in § 679.2 that were authorized under Federal regulations to incidentally catch license limitation groundfish without a Federal fisheries permit described at § 679.4(b) will continue to be authorized to catch the maximum retainable bycatch amounts of license limitation groundfish as provided in this part without a groundfish license.

(iii) An eligible applicant, who qualifies for a groundfish license or crab species license but whose vessel on which the eligible applicant's qualification was based was lost or destroyed, will be issued a license. This license:

(A) Will have the vessel designation of the lost or destroyed vessel.

(B) Cannot be used to conduct directed fishing for license limitation groundfish or to conduct directed fishing for crab species on a vessel that has an LOA greater than the MLOA designated on the license.

(iv) A qualified person who owned a vessel on June 17, 1995, that made a documented harvest of license limitation groundfish, or crab species if applicable, between January 1, 1988, and February 9, 1992, but whose vessel was unable to meet all the criteria in paragraph (i)(4) of this section for a groundfish license or paragraph (i)(5) of this section for a crab species license because of an unavoidable circumstance (i.e., the vessel was lost, damaged, or otherwise unable to participate in the

license limitation groundfish or crab fisheries) may receive a license if the qualified person is able to demonstrate that:

(A) The owner of the vessel at the time of the unavoidable circumstance held a specific intent to conduct directed fishing for license limitation groundfish or crab species with that vessel during a specific time period in a specific area.

(B) The specific intent to conduct directed fishing for license limitation groundfish or crab species with that vessel was thwarted by a circumstance that was:

(1) Unavoidable.

(2) Unique to the owner of that vessel, or unique to that vessel.

(3) Unforeseen and reasonably unforeseeable to the owner of the vessel.

(C) The circumstance that prevented the owner from conducting directed fishing for license limitation groundfish or crab species actually occurred.

(D) Under the circumstances, the owner of the vessel took all reasonable steps to overcome the circumstance that prevented the owner from conducting directed fishing for license limitation groundfish or crab species.

(E) Any amount of license limitation groundfish or appropriate crab species was harvested on the vessel in the specific area that corresponds to the area endorsement or area/species endorsement for which the qualified person who owned a vessel on June 17, 1995, is applying and that the license limitation groundfish or crab species was harvested after the vessel was prevented from participating by the unavoidable circumstance but before June 17, 1995.

(v) A groundfish license or a crab species license may be used on a vessel that complies with the vessel designation on the license and that does not exceed the MLOA on the license.

5. In § 679.7, paragraph (i) is added to read as follows:

**§ 679.7 Prohibitions.**

\* \* \* \* \*

(j) *License Limitation Program—(1) Number of licenses.* (i) Hold more than 10 groundfish licenses in the name of that person at any time, except as provided in paragraph (j)(1)(iii) of this section;

(ii) Hold more than five crab species licenses in the name of that person at any time, except as provided in paragraph (j)(1)(iii) of this section; or

(iii) Hold more licenses than allowed in paragraphs (j)(1)(i) and (j)(1)(ii) of this section unless those licenses were

issued to that person in the initial distribution of licenses. Any person who receives in the initial distribution more licenses than allowed in paragraphs (j)(1)(i) and (j)(1)(ii) of this section shall have no transfer applications for receipt of additional licenses approved until the number of licenses in the name of that person is less than the numbers specified in paragraphs (j)(1)(i) and (j)(1)(ii) of this section; furthermore, when a person becomes eligible to receive licenses by transfer through the provisions of this paragraph, that person is subject to the provisions in paragraphs (j)(1)(i) and (j)(1)(ii) of this section;

(2) Conduct directed fishing for license limitation groundfish without an original valid groundfish license, except as provided in § 679.4(i)(2);

(3) Conduct directed fishing for crab species without an original valid crab species license, except as provided in § 679.4(i)(2);

(4) Process license limitation groundfish on board a vessel without an original valid groundfish license with a Catcher/processor designation;

(5) Process crab species on board a vessel without an original valid crab species license with a Catcher/processor designation;

(6) Use a license on a vessel that has an LOA that exceeds the MLOA specified on the license;

(7) Lease a groundfish or crab species license.

6. In § 679.43, a new paragraph (p) is added to read as follows:

**§ 679.43 Determinations and appeals.**

\* \* \* \* \*

(p) *Issuance of a non-transferable license.* A non-transferable license will be issued to a person upon acceptance of his or her appeal of an initial administrative determination denying an application for a license for license limitation groundfish or crab species under § 679.4(i). This non-transferable license authorizes a person to conduct directed fishing for groundfish or directed fishing for crab species and will have specific endorsements and designations based on the person's claims in his or her application for a license. This non-transferable license expires upon the resolution of the appeal.

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