

**Discussion Paper on BSAI Fixed Gear Parallel Waters Fishery
North Pacific Fishery Management Council
October 2008**

At its April 2008 meeting, the Council initiated a staff discussion paper on potential Council actions regarding Federal permit and licensing requirements for vessels that wish to participate in the parallel waters fisheries. Specifically, the Council requested that staff focus the discussion paper on hook-and-line and pot CPs participating in the BSAI Pacific cod parallel waters fishery. The intent of this discussion paper is to explore potential management measures that could apply specifically to fixed gear CPs that participate in the BSAI Pacific cod parallel waters fishery, but could also be applied more broadly to other parallel waters fisheries.

This paper examines the possible goals, objectives, elements, and options for revising the Federal permit and licensing requirements for vessels fishing in parallel waters. The paper begins with a brief description of the management issues and a review of the regulatory context. The background section is followed by a discussion of the possible purpose and need of this action. Finally, the paper describes the elements and options that the Council could consider, if it elects to advance this action for analysis.

I. Background

The parallel waters groundfish fisheries occur in State waters adjacent to the GOA and BSAI management areas. Each year, the ADFG commissioner opens and closes, by emergency order, parallel seasons in the GOA and BSAI that coincide with the Federal seasons in the GOA and BSAI. The same gear types that may be used in the Federal GOA and BSAI fisheries are permitted in the parallel fisheries, unless specifically prohibited under State regulations.

Currently, vessels may participate in the BSAI and GOA parallel waters groundfish fisheries without holding the Federal permits, licenses, and endorsements necessary to participate in the Federal waters fisheries. This parallel waters activity may be circumventing the intent of previous decisions made by the Council regarding license limitation and endorsements, sector allocations, and catch reporting. While this parallel waters activity could occur in numerous fisheries, it has recently occurred in the BSAI Pacific cod fishery within the pot and hook-and-line CP sectors. Specifically, the majority of this parallel waters CP activity has occurred in the Aleutian Islands, and has the potential to increase fishing pressure in the Aleutian Islands parallel Pacific cod fishery and create several management issues.

The BSAI Pacific cod TAC is currently allocated among gear and operation types under Amendment 85, but is not allocated spatially between the BS and AI management areas or between Federal and parallel waters. As a result, the proportion of catch harvested in each management area, and the proportion of catch harvested in parallel and Federal waters, varies from year to year. The BS and AI management areas are comprised of the Federal management areas shown below in Figure 1. The AI is comprised of Areas 541, 542, and 543, and the BS is comprised of the remainder of the management areas. The Council has considered options to split the BSAI Pacific cod TAC into separate BS and AI TACs, but there is not sufficient evidence at this time that the Pacific cod stocks in the BS and AI are separate. Currently, the best estimate of long-term average biomass distribution of the Pacific cod stock is 85% in the BS and 15% in the AI (Thompson, 2006).

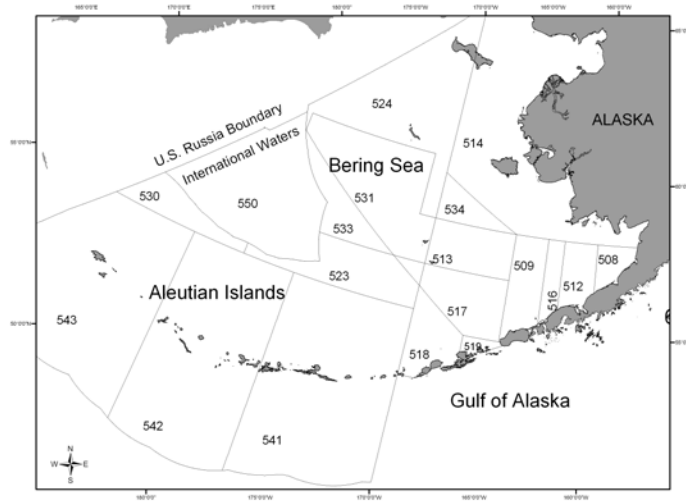


Figure 1. BS and AI Federal management areas.

Table 1. Retained catch (mt) of Pacific cod from the BSAI parallel and State waters fisheries, and total retained catch from the BSAI Pacific cod fishery during 1996-2007 (all gear types).

Year	Aleutian Islands			Bering Sea	
	State waters catch	Parallel waters catch	State, Parallel, and Federal catch	Parallel waters catch	Parallel and Federal catch
1996	--	3,662	28,294	4,500	184,499
1997	--	309*	23,048*	1,711	212,406
1998	--	3,680	34,075	1,682	154,963
1999	--	6,583	27,203	1,578	131,863
2000	--	5,503	33,786	1,304	140,021
2001	--	3,702	32,693	2,735	128,835
2002	--	5,877	29,121	1,594	150,090
2003	--	5,566	31,859	3,204	161,511
2004	--	4,634	28,287	4,034	165,429
2005	--	1,671	21,214	2,740	166,324
2006	3,955	1,290	22,828	1,805	152,970
2007	5,110	2,193	31,478	960	127,066

Source: Parallel and State waters retained catch data from ADFG Fish Tickets. Total retained catch data from NMFS Blend/Catch Accounting database. Aleutian Islands State waters Pacific cod fishery began in 2006. Excludes CDQ catch.

* On May 27, 1997, NMFS placed Pacific cod on PSC status for vessels using trawl gear in the Aleutian Islands to prevent overfishing of shortraker/rougheye rockfish.

Table 1 summarizes annual retained harvests of Pacific cod from the BS and AI management areas, including harvests from the Federal, parallel, and State waters fisheries. In addition, Table 1 separately reports retained harvests from the parallel and State waters fisheries in the BS and AI. In the BS management area, all inside waters harvests are from the parallel waters fishery. In the AI management area, inside waters catch includes harvests from the parallel and State waters fisheries. The Aleutian Islands State waters Pacific cod fishery was initiated in 2006. During

2006 through 2008, the Aleutian Islands State waters Pacific cod GHL was calculated as 3% of the BSAI Pacific cod ABC.

The retained catch data reported in Table 1 is from a combination of State and Federal sources. The NMFS Catch Accounting database does not track catch by ADFG statistical area, and harvests in parallel waters cannot be distinguished from harvests in Federal waters. As a result, retained harvest data for the parallel and State waters fisheries is from ADFG fish tickets. Total retained catch data (including parallel, State, and Federal waters harvests) is from the NMFS Catch Accounting database.

During 2006 and 2007, the majority of catch in the AI State waters fishery was by trawl CVs (see Table 2). No pot CPs participated in the AI State waters fishery in 2006, but in 2007, 6 pot CPs harvested 1,194 mt. In the AI parallel waters fishery, the majority of catch has also been by trawl CVs, although fewer trawl CVs participated in 2006 than typically participate in the parallel waters fishery.

Table 2. Retained catch (mt) from the Aleutian Islands State and parallel waters Pacific cod fisheries during 2006 and 2007.

Year	Operation	Gear	Aleutian Islands			
			State waters fishery		Parallel waters fishery	
			Vessel count	Tons	Vessel count	Tons
2006	CP	HAL	5	621	4	238
	CP	POT	0	0	1	*
	CP	TRW	*	*	2	*
	CV	HAL	4	29	4	4
	CV	JIG	0	0	1	*
	CV	POT	*	*	3	330
	CV	TRW	19	2,962	7	315
Total			3,955		1,290	

Year	Operation	Gear	Aleutian Islands			
			State waters fishery		Parallel waters fishery	
			Vessel count	Tons	Vessel count	Tons
2007	CP	HAL	0	0	4	326
	CP	POT	6	1,194	1	*
	CP	TRW	0	0	3	51
	CV	HAL	7	459	5	17
	CV	JIG	1	*	1	*
	CV	POT	5	*	1	*
	CV	TRW	20	3,069	22	1,626
Total			5,110		2,193	

Source: ADFG fish tickets.

The percentage of BS and AI Pacific cod catch that was harvested in the parallel and State waters fisheries is shown in Figure 1. Parallel and State waters catch in the Aleutian Islands has shown substantial annual variation, ranging from 1.3% to 24.2% of total catch during 1996 through 2007. During 2006 and 2007, Pacific cod catch in the parallel and State waters fisheries comprised more than 23% of total retained catch in the Aleutian Islands. In those years, the majority of this catch was from the Aleutian Islands State waters fishery (3,955 of 5,245 mt in 2006, and 5,110 of 7,303 mt in 2007). In the Bering Sea, parallel waters catch is typically a very

small percentage of overall catch in the management area. Parallel waters catch in the BS has consistently remained between 1% to 3% of total retained catch in the management area.

The proportion of AI catch from the State and parallel waters fisheries may increase if additional catcher processors participate in the parallel waters fishery. The AI State waters GHL is currently set at 3% of the BSAI Pacific cod TAC, and was 5,280 mt in 2008. The GHL limits the annual catch in the Aleutian Islands State waters fishery. However, because the Federal BSAI Pacific cod TAC is not allocated between the BS and AI management areas or between the Federal and parallel waters fisheries, catch in the AI parallel waters fishery has the potential to increase.

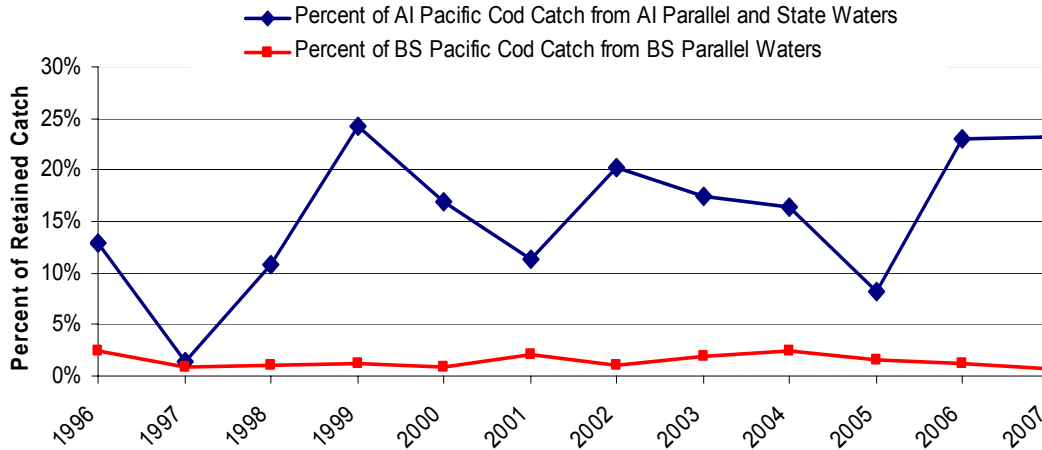


Figure 1. Percent of retained Bering Sea (BS) and Aleutian Islands (AI) Pacific cod catch from the parallel and State waters fisheries.

Table 3 reports the number of vessels that participated in the BSAI Pacific cod fishery in each of the fixed gear sectors, and each sector’s final allocation and catch. Note that vessel counts may include some vessels that only had incidental catch of Pacific cod. Also, note that the final allocations reported in Table 3 account for any rollovers to or from other sectors. During recent years, unused jig and trawl CV Pacific cod has been rolled over to several of the fixed gear sectors. Unharvested jig Pacific cod is rolled over to <60 ft hook-and-line and pot CVs. Unharvested trawl CV Pacific cod is first rolled over to jig or <60 ft LOA hook-and-line and pot CVs; second to ≥60 ft LOA hook-and-line and pot CVs; third to AFA trawl CPs and non-AFA trawl CPs; and finally to hook-and-line CPs. All of the final allocations to the pot and hook-and-line sectors have been at least 90% harvested since 2004, with the exception of the <60 ft pot and hook-and-line allocation in 2004.

Under Amendment 85, the initial allocations of the BSAI Pacific cod TAC to the sectors are:

- 48.7% hook-and-line CP
- 22.1% trawl CV
- 13.4% Amendment 80
- 8.4% pot CV ≥60 ft LOA
- 2.3% AFA trawl CP
- 2.0% pot and hook-and-line CV <60 ft LOA
- 1.5% pot CP
- 1.4% jig
- 0.2% hook-and-line CV ≥60 ft LOA

Table 3. Final allocations (including rollover amounts) and catches (mt) in the BSAI Pacific cod fishery by the fixed gear sectors.

Year		Jig CV	HAL & Pot CV <60 ft	HAL CV ≥60 ft	Pot CV	HAL CP	Pot CP
2004	Vessel count	17	25	28	64	39	4
	Final allocation*	442	2,961	303	11,735	97,795	3,432
	Catch	231	2,037	289	12,311	95,095	3,234
	Percent harvested	52%	69%	95%	105%	97%	94%
2005	Vessel count	19	42	24	51	39	2
	Final allocation*	166	2,601	230	12,828	99,519	3,352
	Catch	117	2,364	230	12,274	100,327	3,339
	Percent harvested	70%	91%	100%	96%	101%	100%
2006	Vessel count	12	46	23	49	40	4
	Final allocation*	214	3,242	267	13,880	84,709	3,033
	Catch	88	3,200	245	13,375	85,109	3,149
	Percent harvested	41%	99%	92%	96%	100%	104%
2007	Vessel count	11	50	17	45	37	3
	Final allocation*	126	2,928	240	12,129	68,105	2,668
	Catch	83	2,928	215	12,061	69,018	2,758
	Percent harvested	66%	100%	90%	99%	101%	103%
2008 A season	Vessel count	11	38	0	42	36	5
	Final allocation*	81	4,633	155	6,496	37,660	1,160
	Catch	1	4,595	0	6,530	38,405	1,207
	Percent harvested	1%	99%	0%	101%	102%	104%

Source: NMFS annual catch reports and NMFS Catch Accounting database (vessel counts).

* Note that final allocations account for any rollovers to or from other sectors.

During 2008, 5 fixed gear CPs participated in the AI parallel waters Pacific cod fishery without the Federal permits, licenses, or endorsements needed to participate in the Federal waters fishery. These vessels included 3 pot CPs that fished during the A season, out of a total of 5 pot CPs that participated in the BSAI Pacific cod fishery during the A season. Catch by the 3 pot CPs cannot be reported, because it would reveal the catch by the 2 other pot CPs that fished in the BSAI during the A season. During the 2008 B season, 3 hook-and-line CPs that do not have Federal permits, licenses, or endorsements are currently (as of August 25, 2008) fishing in the AI parallel waters fishery. One of the hook-and-line CPs is expected to switch to pot gear on September 1, and a total of 3 pot CPs are expected to fish in the AI parallel waters fishery during the B season.

Currently, the number of fixed gear CPs participating in the BSAI Pacific cod parallel waters fishery, and their total catch, is a relatively small component of the BSAI Pacific cod fishery. However, the number of CPs fishing in the parallel waters fishery has the potential to increase. During 2004-2007, 2 to 4 pot CPs participated in the BSAI Pacific cod fishery and the pot CP allocation was fully harvested. During 2008, at least 6 pot CPs are expected to participate, including vessels fishing exclusively in parallel waters. Similarly, the hook-and-line CP allocation is fully harvested. Additional participants in the pot and hook-and-line CP sectors that

do not have Amendment 67 endorsements will decrease the catch shares of vessels that have historically participated in the BSAI Pacific cod fishery.

The fixed gear CPs fishing in AI parallel waters currently include:

1. Fixed gear CPs that do not hold any LLP license and/or Federal fisheries permit
2. Fixed gear CPs that hold FFPs and one or more LLP licenses, but without the required combination of BS, AI, and Amendment 67 endorsements to participate in the BSAI Pacific cod fishery in Federal waters
3. Fixed gear CPs that use pot or hook-and-line gear, or both gear types.

II. Regulatory Context and Management Issues

Definition of a catcher processor

If the Council chooses to advance this analysis, the options could apply specifically to catcher processors only. In order to limit the scope of the options to CPs, the Council will need to identify criteria for defining a catcher processor. As a starting point, the Council could use the catcher processor definition in 679.2:

679.2 Catcher/processor:

(1) With respect to groundfish recordkeeping and reporting, a vessel that is used for catching fish and processing that fish.

This is the definition that NMFS inseason management uses to account for BSAI Pacific cod catch under the Amendment 85 allocations. Catch is deducted from the allocation corresponding to a vessel's actual mode of operation, rather than its potential mode of operation. For example, some vessels hold Amendment 67 CP endorsements on their LLPs, but operate as CVs. Catch by these vessels is counted against the appropriate CV allocation, not to a CP allocation. The options under consideration for the proposed action could specifically apply to CPs meeting the above definition.

Federal Fisheries Permit (FFP) requirements

All vessels fishing for groundfish in Federal waters of the Bering Sea, Aleutian Islands, and Gulf of Alaska are required to hold a Federal fisheries permit (FFP). Also, any vessel that fishes in Federal waters of the BSAI or GOA for any non-groundfish species (e.g., halibut, crab, salmon, scallops, herring), and that is required to retain any bycatch of groundfish must obtain an FFP. Vessels that hold a Federal fisheries permit must comply with groundfish observer program regulations (with the exception of vessels <60 ft LOA) and with NMFS recordkeeping and reporting requirements. In addition, vessels that hold Federal fisheries permits must carry a Vessel Monitoring System (VMS) if they participate in the directed Atka mackerel, Pacific cod, or pollock fisheries in Federal waters of the BSAI or GOA. Vessels that participate in these directed fisheries must also have an endorsement on their Federal fisheries permit that indicates the use of pot, trawl, or hook-and-line gear in these fisheries. Vessels using jig gear are not required to obtain this endorsement on their FFPs, and as a result, are exempt from the VMS

requirement. Starting July 28th, 2006, all vessels fishing under Federal fisheries permits in the Aleutian Islands, including State waters, must have an operational VMS.

The catch reporting, observer, and VMS requirements apply to vessels that hold FFPs regardless of whether they are fishing in Federal waters or State of Alaska waters. However, vessels that fish exclusively in the parallel and State waters fisheries do not need an FFP, and vessels that do not hold FFPs are not subject to NFMS catch reporting requirements, or Federal observer or VMS requirements.

FFP Management Issues

The primary management issue related to Federal fisheries permits that the Council may wish to address under the proposed action is placing restrictions on the ease with which vessels can surrender and reactivate their FFPs. Currently, vessels are allowed to surrender their Federal fisheries permits during a given year and have the permits reissued at a later date during the same calendar year. For example, a vessel could surrender its FFP and fish in the parallel or State waters fisheries to avoid having to comply with observer or VMS requirements, and later in the same calendar year, have the permit reissued in order to fish in Federal waters.

In the past, the Council has considered restricting vessels from surrendering and then reactivating their Federal fisheries permits during a given year. At the time, one concern that was expressed was that this restriction could potentially increase fishing pressure in the parallel and State waters fisheries by precluding vessels from re-entering the Federal waters fisheries. The potential for increased fishing pressure in parallel waters could be minimized by limiting such a restriction to vessels that hold Federal fisheries permits with catcher processor endorsements. Restricting CPs from surrendering and reactivating FFPs during a given year could potentially result in increased observer coverage of CPs if vessels choose to hold on to their FFPs throughout the year.

License Limitation Program (LLP)

The License Limitation Program (LLP) limits access to the groundfish and crab fisheries in the Bering Sea, Aleutian Islands, and Gulf of Alaska. Fishing under the program began in 2000. A vessel must have a valid LLP license with the appropriate gear designation, operation type, and area endorsement in order to participate in groundfish fisheries in Federal waters. In 2003, Amendment 67 to the BSAI FMP was implemented, and created new gear and operation specific Pacific cod endorsements on groundfish LLPs. Four endorsements were created (pot CP, hook-and-line CP, pot CV, and hook-and-line CV), and licenses qualified for endorsements by meeting specific landings criteria for each gear and operation type. Vessels using fixed gear that participate in the directed Pacific cod fishery in Federal waters of the Bering Sea and Aleutian Islands are now required to hold a license with an Amendment 67 Pacific cod endorsement.

Current regulations allow license holders to transfer groundfish or crab licenses to another vessel once per calendar year (Jan 1 – Dec 31) (679.4(k)(7)). For example, if a license is transferred on Sept 1 to a different vessel, it can be transferred back to the original vessel on Jan 1 of the following year. Also, license holders can unassign a vessel from a license without assigning the license to another vessel. However, any future vessel assignment to that license, even to the former vessel, is counted as a transfer.

LLP Management Issues

There are several vessels types exempt from the LLP requirement:

1. Vessels fishing in the parallel waters fisheries.
2. Vessels less than 26 ft LOA in the GOA and less than 32 ft LOA in the BSAI.
3. Vessels less than 60 ft LOA using jig gear in the BSAI, subject to gear restrictions.
4. Vessels fishing IFQ halibut or sablefish may retain incidentally caught groundfish up to the Maximum Retainable Allowance (MRA) without an LLP.
5. Vessels less than 60 ft LOA are not required to hold an Amendment 67 Pacific cod endorsement to participate in the fixed gear BSAI Pacific cod fishery (exemption applies to both parallel and Federal waters).

Any vessel that does not have an LLP license, or does not have an Amendment 67 Pacific cod endorsement on its LLP license, may participate in the BSAI Pacific cod parallel waters fishery. In addition, <60 ft LOA vessels (either CVs or CPs) using fixed gear do not need Amendment 67 Pacific cod endorsements to participate in the BSAI Pacific cod fishery in Federal waters.

The number of Amendment 67 endorsements on CP and CV licenses is shown in Table 4. Overall, there are only 7 pot CP licenses that may be used in the directed Pacific cod fishery in Federal waters of either the Bering Sea or Aleutian Islands. These include 3 licenses with only a Bering Sea endorsement and 4 licenses with both BS and AI endorsements. There are 37 licenses with Amendment 67 hook-and-line CP endorsements, including 35 licenses with both BS and AI endorsements and 2 licenses with only BS endorsements.

As noted earlier, during the 2008 BSAI Pacific cod A season, 3 pot CPs fished in the AI parallel waters fishery that do not have LLPs with the combination of endorsements needed to fish as pot CPs in the AI Federal waters fishery (Amendment 67 pot CP endorsement and AI area endorsement). During the 2008 B season, 3 hook-and-line CPs and up to 3 pot CPs that lack one or more LLP endorsements are expected to participate in the AI parallel waters fishery. The AI parallel waters participation by these 3 pot CPs represents a substantial increase in effort in the pot CP sector. During recent years, only 2 to 4 pot CPs have participated in the BSAI Pacific cod fishery. In 2008, at least 6 pot CPs are expected to participate in the fishery, including participation during the A and B seasons.

The Amendment 85 pot CP allocation is relatively small, and is calculated as 1.5% of the BSAI Pacific cod TAC. There are currently 7 LLP licenses with Amendment 67 pot CP endorsements (see Table 4). Two of these pot CP licenses also have hook-and-line CP endorsements, and the vessels that hold these licenses have fished using both pot and hook-and-line gear during recent years. Additional parallel waters pot CP effort by vessels that do not have Amendment 67 pot CP endorsements has the potential to decrease catch shares of vessels that contributed history to the Amendment 85 pot CP allocation and depend on the BSAI Pacific cod fishery.

Table 4. Number of Amendment 67 endorsements on licenses with BS or AI area endorsements.

	<u>Catcher Vessel</u>		<u>Catcher Processor</u>	
	Pot	Hook-and-line	Pot	Hook-and-line
Bering Sea	49	2	7	37
Aleutian Islands	2	2	4	35

* On 51 CV licenses (1 CV license has both CV pot and CV HAL)

** On 48 CP licenses (2 CP licenses have both CP pot and CP HAL, 2 have CP HAL and CV pot, and one has CP pot and CV HAL)

Currently, there are two primary LLP license issues related to management of the BSAI Pacific cod fishery:

1. Fixed gear CPs that hold LLP licenses, but do not have Amendment 67 Pacific endorsements and/or the appropriate area endorsements, are participating in the BSAI Pacific cod fishery in parallel waters.
2. Fixed gear CPs that do not hold LLP licenses are participating in the BSAI Pacific cod fishery in parallel waters.

Federal regulatory authority over vessels with Federal permits and licenses

The Council and NOAA fisheries have broad authority over vessels that hold Federal permits and licenses. This authority may extend into the parallel waters fisheries. Vessels that hold Federal fisheries permits or LLP licenses may be subject to Federal groundfish regulations, even while fishing in State waters adjacent to the GOA or BSAI. For example, vessels that hold FFPs are subject to Federal recordkeeping and reporting, observer, and VMS requirements while fishing in Federal, parallel, or State waters fisheries. In 2006, sideboards were implemented that limit harvests of GOA Pacific cod by vessels that received initial allocations of *C. opilio* crab quota. The sideboard regulations were written such that vessels cannot circumvent sideboard closures by fishing in parallel waters fisheries. Vessels that hold *either* an FFP or an LLP are subject to the sideboards while participating in any groundfish fishery in the parallel waters fisheries in the GOA (680.22).

Vessels could easily surrender their FFPs to circumvent the GOA Pacific cod sideboard restrictions, and later have the FFPs reissued to the same vessels. There is no restriction on the number of times a holder of an FFP can surrender a permit and have it reissued. However, vessels that hold crab or groundfish LLP licenses would also have to surrender these licenses or transfer them to another vessel. This is less likely to occur, because LLP licenses can only be transferred once per calendar year. Vessels that transfer their crab and groundfish LLP licenses to another vessel would lose eligibility to participate in the crab and groundfish fisheries in Federal waters for the remainder of the calendar year (until Dec 31st).

The Council could potentially extend similar restrictions on vessels that hold Federal fisheries permits or LLP licenses to other parallel waters fisheries, as long as the action has an adequate conservation or management rationale.

Processing sector allocations not recognized in State of Alaska waters

In the parallel waters fisheries, the State of Alaska adopts by emergency order Federal groundfish seasons, bycatch limits, and authorized gear types. However, the State does not legally recognize Federal allocations between catcher vessels and catcher processors using the same gear type to harvest fish in the same management area. For example, the BSAI Pacific cod fishery is allocated by gear type and processing sector. The State recognizes allocations by gear type, but does not recognize the separate hook-and-line CP and CV allocations.¹ If the directed fishery for one of the hook-and-line sectors is open in Federal waters, any vessel using that gear type and meeting any applicable vessel length restrictions is eligible to participate in the parallel waters fishery.

For example, catcher vessels using hook-and-line gear may participate in the parallel waters fishery even when the adjacent Federal waters fishery is only open to catcher processor hook-and-line vessels. In the same way, catcher processors may participate in the parallel waters fishery even if it is only open to catcher vessels in adjacent Federal waters. In practice, NMFS inseason management accounts for the parallel waters catch by gear and operation type. In the BSAI Pacific cod fishery, parallel waters catch is deducted from the appropriate Amendment 85 allocation based on the gear and operation type of the harvesting vessel. However, if one sector's season closes and vessels in that sector continue to fish in the parallel waters fishery, this would create a catch accounting problem. If NMFS continued to count that catch against the sector's allocation, this would result in an overage for that sector, and catch could potentially exceed the ABC. If NMFS counted that catch against another sector's allocation, this would effectively result in a reallocation of the TAC.

State waters Aleutian Islands Pacific cod fishery

In 2006, the State of Alaska initiated a State waters Pacific cod fishery in the Aleutian Islands west of 170° longitude. The GHL for the AI State waters fishery is calculated as 3% of the Federal BSAI Pacific cod TAC. In 2008, the GHL was 5,280 mt. Several aspects of the AI State waters fishery are relevant to the proposed action, because the fixed gear CPs that have participated in the AI parallel waters fishery are also eligible to participate in the AI State waters fishery. During 2008, all of the fixed gear CPs that fished in the AI parallel waters Pacific cod fishery also participated in the AI State waters Pacific cod fishery. The AI State waters fishery is open to most gear types, with vessel length restrictions, and provides an opportunity for vessels that do not have LLPs with Amendment 67 and/or AI area endorsements to fish for Pacific cod in the Aleutian Islands. Key aspects of the fishery are summarized below:

- The A season starts on or after March 15, and only after the Federal Pacific cod trawl CV A season is closed. All parallel waters seasons are closed during the State waters season. The State waters B season starts on June 10. If the State waters B season GHL has not been taken by September 1, the State will close the State waters B season and reopen the parallel season.
- Legal fishing gear includes pot, jig, hand troll, non-pelagic trawl, and longline gear. Non-pelagic trawl and longline gear may not be used during May 1 – September 15, unless vessels are operating in the <60 ft LOA vessel size limitation areas near Adak.

¹ State v. Grunert, 139 P.2d 1226 (Alaska 2006); Grunert v. State, 109 P.2d 924 (Alaska 2005). In the 2005 case, the Alaska Supreme Court ruled that the Board of Fisheries could not allocate within a single fishery. 109 P.2d at 931-32. In the 2006 case, the Court held that 'fisheries' could only be distinguished by differences in the gear that is actually used to harvest the fish. 139 P.2d at 1235-39.

- Vessel size limits are 100 ft LOA for non-pelagic trawl gear, 125 ft LOA for pot gear, and 58 ft LOA for longline and jig gear.
- Vessels must register with ADFG the type of gear to be used. Vessels may be concurrently registered to use both hook-and-line and jig gear, but may not be concurrently registered to harvest Pacific cod with any other gear types. A vessel's gear registration may be changed during a State waters season, but may not change while unprocessed fish are on board the vessel.
- The daily trip limit is 150,000 lbs of Pacific cod. A vessel may not have more than 150,000 lbs of unprocessed Pacific cod on board the vessel at any time. A vessel may not have more processed fish on board than the round weight equivalent of the fish reported on ADFG fish tickets during the AI State waters Pacific cod fishery. Participants must notify ADFG daily of the amount harvested and total amount on board.
- All Pacific cod harvested must be retained. Any overage must be reported immediately. All proceeds from the sale of Pacific cod in excess of the trip and on board amounts specified above shall be surrendered to the State.
- A maximum of 70% of the GHF may be harvested prior to June 10. A total of 30% of the GHF plus any unharvested GHF from the A season may be rolled over to the B season, up to a maximum of 70%.
- Observer coverage is not required in the State waters fishery unless a vessel has an FFP. Vessels that have FFPs are subject to observer coverage requirements while operating in the State waters fishery, and this observer coverage can be counted toward the Federal observer coverage requirements.

III. Purpose and Need Statement

If the Council chooses to advance this analysis, it could adopt a purpose and need statement at this meeting. Based on language included in the Council's staff tasking motion, staff prepared the following draft purpose and need statement for this action. The statement attempts to incorporate elements from the Council's motion as well as issues discussed during Council deliberations at the April 2008 meeting.

Several fixed gear CPs are participating in the parallel waters fisheries that do not hold the permits, licenses, and endorsements necessary to participate in the Federal waters fisheries, and the potential exists for participation to increase. This vessel activity may be circumventing the intent of previous decisions made by the Council regarding license limitation and endorsements, sector allocations, and catch reporting. While this vessel activity could occur in numerous fisheries, it has recently occurred in the BSAI Pacific cod fishery within the CP pot and hook-and-line sectors. An increasing number of vessels without LLPs, or without Amendment 67 Pacific cod endorsements on their LLPs, have entered the BSAI Pacific cod parallel waters fishery in recent years. Long-term participants in the fishery need protection from those who have little or no recent history and have the potential to increase their participation in the fisheries. The intent of the proposed action is to prevent fixed gear CPs which lack Federal permits and licenses from entering the BSAI parallel waters Pacific cod fishery. This action requires prompt attention to promote stability in the fixed gear sectors that participate in the BSAI Pacific cod fishery.

IV. Elements and Options

The elements and options under consideration for this action should be developed to address the Council's purpose and need statement. At its April 2008 meeting, the Council identified a potential set of options for management measures that could be adopted:

- (1) Require any CP pot or hook-and-line vessel with an LLP to have an Amendment 67 Pacific cod endorsement to participate in the BSAI Pacific cod parallel waters fishery.
- (2) Require any CP pot or hook-and-line vessel with an LLP to surrender its LLP in order to participate in the BSAI Pacific cod parallel waters fishery.
- (3) Require any CP pot or hook-and-line vessel to surrender all Federal fishing permits (LLP, FFP, IFQ) in order to participate in the BSAI Pacific cod parallel waters fishery.
- (4) Other possible solutions for the Council to maintain regulatory control over Federally permitted vessels fishing in the BSAI Pacific cod fishery with CP pot and CP hook-and-line gear.
- (5) Potential actions for vessels with no Federal permits or licenses (may require Alaska Board of Fisheries action).

For Options 2 and 3, the appropriate time period for surrendering Federal permits should be discussed.

At this meeting, the Council could request an expanded analysis of one or more of these options. It is important to note that each of the options partially addresses the problem identified in the purpose and need statement, but none of the options would preclude vessels without Federal fisheries permits or LLP licenses from participating in the BSAI Pacific cod parallel waters fishery. The current set of options applies specifically to fixed gear CPs that participate in the BSAI Pacific cod parallel waters fishery. The Council could choose to expand the scope of the action to include other sectors and fisheries. The preliminary discussion below describes the potential impact of each of these preliminary options on vessel activity in the BSAI Pacific cod parallel waters fishery.

Option 1: Require Amendment 67 endorsements in parallel waters

Option 1 would require any CP pot or hook-and-line vessel with an LLP to have an Amendment 67 Pacific cod endorsement to participate in the BSAI Pacific cod parallel waters fishery.

This option would limit entry to the BSAI parallel waters fixed gear CP sectors by extending an LLP licensing requirement that currently applies only in Federal waters to the parallel waters fishery. Currently, vessels are not required to hold groundfish LLP licenses to fish in the BSAI or GOA parallel waters groundfish fisheries. Some vessels hold LLP licenses, but do not have the required combination of gear and operation designations, area endorsements, and species endorsements to participate in specific Federal waters fisheries. For example, a fixed gear CP may hold an LLP license that does not have an Amendment 67 Pacific cod endorsement, which is required if that vessel wishes to participate as a ≥ 60 ft LOA pot or hook-and-line CP in the BSAI Pacific cod fishery in Federal waters. That vessel is eligible to participate as a fixed gear CP in the BSAI Pacific cod parallel waters fishery.

Amendment 67 Pacific cod endorsements were established by the Council in 2003 for the purpose of limiting the number of fixed gear licenses that are eligible to participate in the BSAI directed Pacific cod fishery. The intent of creating Pacific cod endorsements was to limit access to the fixed gear allocations to those participants who contributed catch history to those allocations and qualified for Amendment 67 endorsements. New fixed gear CPs entering the parallel waters fishery without Amendment 67 endorsements have the potential to reduce the amount of the Amendment 85 pot and hook-and-line CP allocations available to historic participants in the fishery. Currently, there is no barrier preventing fixed gear CPs that do not hold Amendment 67 endorsements from entering the BSAI Pacific cod parallel waters fishery and fishing off the Amendment 85 allocations.

One partial solution to limiting entry to the BSAI Pacific cod parallel waters fishery is to require vessels that hold LLPs to also have an Amendment 67 endorsement to participate in the BSAI parallel waters Pacific cod fishery. This requirement could be extended to require that such vessels also have the appropriate area endorsements and operation type designations on their LLP licenses. The requirement could apply specifically to CPs using fixed gear (pot or hook-and-line), and would prevent vessels that hold LLPs, but not Amendment 67 endorsements, from participating in the BSAI Pacific cod parallel waters fishery. As it is currently worded, Option 1 would not prevent vessels that do not hold LLPs from fishing in the BSAI Pacific cod parallel waters fishery.

Potential effects of Option 1

- Three of the 5 fixed gear CPs that fished in the AI parallel waters Pacific cod fishery during 2008 have LLP licenses, but do not have both an Amendment 67 endorsement and AI area endorsement. **Option 1 would preclude these CPs from participating in the BSAI parallel waters Pacific cod fishery if Option 1 specifies that vessels must have both an Amendment 67 endorsement and the appropriate area endorsement to fish in parallel waters adjacent to the BS or AI.**
- One of the fixed gear CPs is less than 60 ft LOA, and under current regulations, <60 ft LOA vessels are exempt from the Amendment 67 endorsement requirement in Federal waters of the BS and AI. Under Option 1, this vessel would be required to have an Amendment 67 endorsement to fish in BSAI parallel waters, but would not need an Amendment 67 endorsement to fish in BSAI Federal waters, unless the <60 ft LOA exemption in Federal waters is revised.
- **The Council may wish extend Option 1 to apply to vessels that hold either LLPs or FFPs.** This would expand the scope of this option to vessels that do not hold LLPs.

Table 5. Impact of Option 1 on fixed gear CPs that participated in the AI parallel waters fishery during 2008.

Vessel	FFP	LLP	LLP endorsements			<60 ft LOA	Gear used	Option 1 applies?
			BS	AI	Am 67			
1		x	x	x		x	HAL	Yes
2		x	x		x		Pot	Yes
3							Pot & HAL	No
4							Pot	No
5	x	x	x	x			HAL	Yes

Option 2: Require CPs to surrender LLPs to participate in the parallel waters fishery

Option 2 would require any CP pot or hook-and-line vessel with an LLP to surrender its LLP in order to participate in the BSAI Pacific cod parallel waters fishery.

This option would potentially limit entry to the BSAI Pacific cod parallel waters fishery by CPs using fixed gear by requiring those vessels to transfer or surrender groundfish and/or crab LLP licenses in order to fish in parallel waters. The Council has broad authority over vessels that hold Federal permits and licenses, and could require that CPs that elect to fish using pot or hook-and-line gear in the BSAI Pacific cod parallel waters fishery surrender their LLP, transfer the LLP to another vessel, or ‘unassign’ the vessel from the LLP (which is treated as a transfer by NMFS). This option has the potential to discourage CPs from participating in the BSAI Pacific cod parallel waters fishery. In effect, fixed gear CPs would need to revoke their privileges to fish in groundfish fisheries in Federal waters of the BSAI and GOA in order to participate in the BSAI Pacific cod parallel waters fishery.

Currently, LLP licenses may only be transferred once per calendar year (Jan 1- Dec 31). Under the current LLP transfer regulations, vessels that transferred their LLP licenses in order to fish in the BSAI parallel waters fishery would lose their privileges to fish in Federal waters for the remainder of the calendar year. However, these vessels could regain those privileges by transferring the LLP back to the original vessel on January 1st of the following year. Again, it should be noted that vessels can either transfer a groundfish or crab LLP license to another vessel or ‘unassign’ the license to a vessel. In either case, the license cannot be reassigned to the original vessel until January 1 of the following calendar year.

Potential effects of Option 2

- Three of the 5 fixed gear CPs that fished in the AI parallel waters Pacific cod fishery during 2008 have LLP licenses. Option 2 would provide a disincentive for these vessels to participate in the parallel waters fishery as fixed gear CPs, but would not prevent them from doing so. Under current LLP regulations, vessels may transfer LLPs to another vessel or unassign LLPs to a vessel during one calendar year, and transfer it back to the original vessel on January 1st of the following year.

Table 6. Impact of Option 2 on fixed gear CPs that participated in the AI parallel waters fishery during 2008.

Vessel	FFP	LLP	LLP endorsements			<60 ft LOA	Gear used	Option 2 applies?
			BS	AI	Am 67			
1		x	x	x		x	HAL	Yes
2		x	x		x		Pot	Yes
3							Pot & HAL	No
4							Pot	No
5	x	x	x	x			HAL	Yes

Option 3: Require CPs to surrender LLPs, FFPs, and IFQ to participate in the parallel waters fishery

Option 3 would require any CP pot or hook-and-line vessel to surrender all Federal fishing permits and licenses (LLP, FFP, IFQ) in order to participate in the BSAI Pacific cod parallel waters fishery.

Similar to Option 2, this option would potentially limit entry to the BSAI Pacific cod parallel waters fishery by CPs using fixed gear by requiring those vessels to surrender groundfish and/or crab LLP licenses in order to fish in parallel waters. In addition, those vessels would be required to surrender their FFPs.

Since vessels do not hold IFQ, the Council may wish to revise Option 3 to state that IFQ permit holders would not be eligible to fish their IFQ on board any CP that fishes in the BSAI Pacific cod parallel waters fishery during a given calendar year or other time period specified by the Council. Only Category A IFQ may be processed on board the harvesting vessel, but any class of IFQ may be harvested on board a catcher processor. The IFQ provision in Option 3 could apply specifically to Category A permit holders or could apply to any IFQ permit holder.

As with Option 2, this measure has the potential to discourage fixed gear CPs from participating in the BSAI Pacific cod parallel waters fishery. Vessels would be required to surrender their LLPs and FFPs and effectively relinquish their privileges to fish in groundfish fisheries in Federal waters of the BSAI and GOA in order to participate in the BSAI Pacific cod parallel waters fishery. In addition, these vessels would also effectively surrender eligibility to participate in any IFQ fishery during a specified time period.

Potential effects of Option 3

- Option 3 would apply to 4 of the 5 fixed gear CPs that fished in the AI parallel waters Pacific cod fishery during 2008 (see Table 7).
- Three of the 5 fixed gear CPs have LLP licenses, FFPs, or both. Option 3 would provide a disincentive for these vessels to participate in the parallel waters fishery as fixed gear CPs, but would not prevent them from doing so. Under current LLP regulations, vessels may transfer LLPs to another vessel during one calendar year, and transfer it back to the original vessel on January 1st of the following year. Under current FFP regulations, there are no restrictions on the number of times a vessel may surrender and then reactivate its FFP during a given calendar year.²
- Three of the 5 fixed gear CPs that fished during 2008 in AI parallel waters also participated in IFQ fisheries during 2008. One of these vessels does not have either an FFP or LLP.
- Vessels that surrender their FFPs in order to fish in parallel waters would not be subject to Federal observer coverage requirements. As a result, there would be no observer

² Under a proposed rule, 679.4(a)(9) would be revised to clarify the circumstances under which a permit may be surrendered. An FFP may be voluntarily surrendered by submitting the permit to NMFS, and may be reissued in the same fishing year in which it was surrendered to the permit holder of record.

coverage of fixed gear CPs in the BSAI Pacific cod parallel waters fishery, unless those vessels voluntarily chose to carry observers.

Table 7. Impact of Option 3 on fixed gear CPs that participated in the AI parallel waters fishery during 2008.

Vessel	FFP	LLP	LLP endorsements			<60 ft LOA	Gear used	IFQ participant in 2008	Option 3 applies?
			BS	AI	Am 67				
1		x	x	x		x	HAL	x	Yes
2		x	x		x		Pot	x	Yes
3							Pot & HAL	x	Yes
4							Pot		No
5	x	x	x	x			HAL		Yes

Option 4: Other solutions to regulate vessels with Federal permits and licenses

Under Option 4, the Council directed staff to describe any other possible solutions that would allow the Council to maintain regulatory control over Federally permitted vessels fishing in the BSAI Pacific cod fishery with CP pot and CP hook-and-line gear. One potential solution is to restrict vessels from surrendering and reactivating Federal fisheries permits within a given calendar year or other time period.

Federal Fisheries Permit Issues

Problem: Currently, vessels can freely surrender and reactivate their Federal fisheries permits at any time. Vessels that surrender their FFPs do not have to comply with observer, VMS, or catch reporting requirements while fishing in parallel or State waters fisheries. Any of the management measures the Council chooses to adopt to limit entry to the BSAI Pacific cod parallel waters fishery could apply to vessels that hold Federal fisheries permits or LLP licenses. However, if vessels can freely shed their Federal fisheries permits at any time, without any restrictions on reactivating the permits, any parallel waters management measures the Council adopts could be easily circumvented by vessels that only have FFPs and do not have LLPs.

Potential solution: Place restrictions on this ability, for example by only allowing vessels to surrender and/or reactivate the FFP once per calendar year. The restrictions could apply to a specific class of vessels, e.g. vessels with CP endorsements on their FFPs. This management measure has been considered by NMFS and the Council in the past. At the time, one concern that was expressed was that this restriction could potentially increase fishing pressure in the parallel and State waters fisheries by precluding vessels from re-entering the Federal waters fisheries. The potential for increased fishing pressure in parallel waters could be minimized by limiting such a restriction to vessels that hold CP endorsements on their Federal fisheries permits.

Option 5: Solutions for vessels with no Federal permits or licenses

State Recognition of Processing Sector Allocations

Problem: The State of Alaska recognizes sector allocations by gear type, but not by operation type. This precludes the State from specifically regulating catcher processors operating in State waters. Regulations may specify the gear type used and vessel length.

Potential solution: No Federal solutions.

V. Catch Reporting and Catch Accounting Issues

Several fixed gear CPs that participated in the 2008 A season BSAI Pacific cod parallel waters fishery did not have FFPs. Vessels that do not have FFPs are not required to comply with NMFS recordkeeping and reporting requirements. Instead of submitting electronic Production Reports, these vessels are only required to submit paper Fish Tickets to ADFG. The catch totals on paper Fish Tickets are not available on a timely basis to NMFS inseason management. During the 2008 A season, the lack of official reporting made it difficult for inseason managers to determine appropriate closure dates for the pot CP allocation.

As an interim solution, NMFS and ADFG staff are working closely together to track vessels that are fishing in parallel waters and do not have FFPs. During the 2008 A season, these CPs voluntarily reported their catch to NMFS staff, and inseason management was able to close the pot CP allocation with only a 4% overage. During the 2008 B season, NMFS staff is continuing to work with ADFG staff to track CPs fishing in parallel waters. Some vessels are using elandings and sending NMFS electronic Production Reports. In other cases, vessels provide verbal catch reports to NMFS, and when NMFS receives ADFG fish tickets for these vessels, the catch data is entered as a Production Report into the Catch Accounting system. NMFS cannot require vessels that do not hold an FFP and that only fish in State waters to submit electronic Production Reports.

VI. Summary and Conclusions

During 2008, 5 fixed gear CPs participated in the AI parallel waters Pacific cod fishery that do not have the required Federal permits and/or LLP licenses to fish in the BSAI Federal waters Pacific cod fishery. This parallel waters vessel activity may be circumventing the intent of previous Council decisions on license limitation and endorsements, sector allocations, and catch reporting requirements. As the price of Pacific cod continues to increase, the potential exists for additional fixed gear CPs to enter the BSAI Pacific cod parallel waters fishery.

There are several tools that the Council could use to preclude fixed gear CPs from participating in the BSAI Pacific cod parallel waters fishery, or to provide a disincentive for them to do so. Options 1 through 4 are summarized in Table 8, and the potential impacts of these options on the 5 fixed gear CPs that fished in the AI parallel waters fishery during 2008 are summarized in Table 9. The Council could adopt one of these options individually or could adopt a combination of options. None of the options under consideration would apply to vessels that have no Federal permits or licenses, and under all of the options, vessels could potentially surrender their Federal permits and licenses temporarily in order to fish in the BSAI parallel waters. The Council may wish to discourage vessels from surrendering Federal permits and licenses by restricting vessels from reactivating those permits and licenses within a short time frame.

Table 8. Summary of impacts of the proposed options.

Options could apply to fixed gear CPs that participate in the BSAI Pacific cod parallel waters fishery if they hold specific Federal permits or licenses:

Option	Vessels impacted by this option:	Vessels not impacted by this option:
<u>Option 1</u> Require Amendment 67 endorsements	Vessels that hold an LLP are subject to this option	Vessels that do not hold an LLP would be exempt from this option
<u>Option 2</u> Require vessels to surrender LLPs	Vessels that hold an LLP are subject to this option	Vessels that do not hold an LLP would be exempt from this option
<u>Option 3</u> Require vessels to surrender FFPs, LLPs, and IFQ	Vessels that hold an LLP or FFP, or that participate in any IFQ fishery, are subject to this option	Vessels that do not hold either an LLP or FFP, and do not participate in any IFQ fishery, would be exempt from this option
<u>Option 4</u> Restrict vessels from surrendering and reactivating FFPs within a given calendar year or other time period	Vessels that hold an FFP are subject to this option	Vessels that do not hold an FFP are not subject to this option

Table 9. Options under consideration that apply to the fixed gear CPs that participated in the AI parallel waters fishery during 2008.

Vessel	FFP ¹	LLP ²	LLP endorsements ³			<60 ft LOA ⁴	Gear used ⁵	IFQ participant ⁶	Options that apply ⁷
			BS	AI	Am 67				
1		x	x	x		x	HAL	x	1, 2, 3
2		x	x		x		Pot	x	1, 2, 3
3							Pot & HAL	x	None
4							Pot		3
5	x	x	x	x			HAL		1, 2, 3

Notes on Table 9

1 Indicates whether the vessel held an FFP in 2008

2 Indicates whether a groundfish LLP license was assigned to the vessel in 2008

3 Indicates whether the LLP license has BS and AI area endorsements and an Amendment 67 endorsement.

4 Indicates whether the vessel is <60 ft LOA and therefore exempt from the Amendment 67 endorsement requirement in Federal waters of the BSAI

5 Indicates the gear type used during the 2008 A season in the BSAI Pacific cod fishery

6 Indicates whether the vessel participated in an IFQ fishery during 2008

7 Several of the vessels had FFPs at one point during 2008 but had surrendered them as of August 2008. Only vessel #5 had an FFP as of August 2008. Option 4 would restrict vessels from surrendering FFPs during a given calendar year or other time period.