



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

*National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668*

March 18, 2003

MEMORANDUM FOR: THE RECORD

FROM:

For

James W. Balsiger
Administrator, Alaska Region

SUBJECT:

Proposed Rule to Amend Eligibility Criteria for Participation in the Bering Sea and Aleutian Islands Management Area (BSAI), Pacific Cod Hook-and-Line and Pot Gear Fisheries-CATEGORICAL EXCLUSION

This proposed action is an amendment to eligibility criteria for participation in the BSAI Pacific cod hook-and-line and pot gear fisheries. In October 2002, the North Pacific Fishery Management Council (Council) provided NMFS with further interpretation of Amendment 67 to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP), and recommended a regulatory amendment to the eligibility criteria for a License Limitation Program (LLP) groundfish license with a Pacific cod endorsement.

After reviewing the proposed action in relation to NOAA Administrative Order (NAO) 216-6, including the criteria used to determine significance, we have concluded that the proposed action would not have a significant effect, individually or cumulatively, on the human environment. In addition, an environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRA) (dated July 2001) was prepared for the final rule implementing Amendment 67 (67 FR 18129, April 15, 2002). The scope of the EA/RIR/IRFA includes the potential impacts of this proposed action. Based on the nature of the proposed action and the previous environmental analysis, we have concluded that the proposed action is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement, in accordance with Section 5.05b of NAO 216-6.

BACKGROUND

Amendment 67 to the BSAI FMP was recommended by the Council in April 2000, to protect fishermen who have made significant long-term investments and have long catch histories in the hook-and-line or pot gear BSAI Pacific cod fisheries from fishermen who have little or no history in those fisheries. Amendment 67 provided for establishing Pacific cod species endorsements and for eligibility criteria for those endorsements. A Pacific cod endorsement must be specified



on a person's LLP groundfish license for that person to participate in the hook-and-line or pot gear BSAI Pacific cod fisheries. Under 50 CFR 679.4(k)(9)(iii)(F), Pacific cod harvests used for meeting the endorsement eligibility criteria are limited to those harvests made by the vessel that was used as the basis of eligibility for the license holder's LLP groundfish license.

In October 2002, the Council clarified its intent of Amendment 67 and recommended amending regulations implementing the eligibility criteria for a Pacific cod endorsement for the hook-and-line or pot gear fisheries (9 votes to 0, with one abstaining). Specifically, the Council recommended that a person may use BSAI Pacific cod harvests to meet the eligibility criteria for the Pacific cod endorsement if the person owned the qualifying fishing history which gave rise to a valid LLP groundfish license at the time he or she harvested Pacific cod to meet the eligibility criteria for a Pacific cod endorsement.

This proposed action amends the regulatory language at § 679.4(k)(9)(iii)(F) to specify that a person that made sufficient qualifying harvests of Pacific cod and who also owned an LLP-qualifying fishing history at the time the qualifying Pacific cod threshold harvests were made, is eligible for the Pacific cod endorsement on his or her LLP groundfish license.

PREVIOUS NEPA ANALYSIS

In the EA/RIR/IRFA for Amendment 67, part of the analysis included vessels in the hook-and-line and pot gear fisheries that held a groundfish Federal fisheries permit (FFP) for the BSAI. Under one scenario, all of these vessels would also be LLP qualified, and therefore, representative of the maximum number of vessels potentially affected by Amendment 67.

Summary and clarification of information contained in the EA/RIR/IRFA regarding this proposed action were presented to the Council in October 2002. Allowing the transfer of eligible harvests would potentially allow six additional vessels into the BSAI Pacific cod hook-and-line and pot gear fisheries (2 hook-and-line catcher/processors, 1 pot catcher/processor, and 3 pot catcher vessels). The proposed action would increase the number of vessels eligible for the BSAI Pacific cod hook-and-line and pot gear fisheries by approximately five to six percent compared to the number of vessels that meet the current eligibility criteria. The EA/RIR/IRFA included the potential impacts of these additional vessels that would be able to enter the BSAI Pacific cod hook-and-line and pot gear fisheries with this proposed action. A finding of no significant impact was signed November 26, 2001.

CONCLUSIONS

The salient factors contributing to the conclusion that a categorical exclusion is appropriate for this proposed action are:

1. The principal effect of the action is to allow approximately six additional vessels to be eligible for participation in the BSAI Pacific cod hook-and-line and pot gear fisheries. The potential five to six percent increase in the number of vessels in the BSAI Pacific cod hook-and-line and pot gear fisheries is not anticipated to have significant impacts on the human environment due to the limited context of the action and to the lack of severity of potential impacts (NAO 216-6, Sections 6.01 and 6.02).
2. The impacts of this proposed action was previously analyzed in a NEPA analysis with a finding of no significant impacts on the human environment.

CC: RAM
GCAK
NEPA Coordinator

Draft: Mnbrown:12/12/02, 12/20/02
jginter: 12/13/02
ssalveson: 1/21/03
jgharrett: 2/11/03

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