

process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves in part a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*F. Executive Order 13175, Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

*G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective

and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

*H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: April 11, 2003.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 030416087-3087-01; I.D. 032603C]

RIN 0648-AQ75

**Fisheries of the Exclusive Economic Zone Off Alaska; Amendment of Eligibility Criteria for the Bering Sea and Aleutian Islands Management Area Pacific Cod Hook-and-line and Pot Gear Fisheries**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues a proposed rule to amend eligibility criteria for Pacific cod endorsements to groundfish licenses issued under the License Limitation Program (LLP). These endorsements are necessary to participate in the Bering Sea and Aleutian Islands Management Area (BSAI) Pacific cod hook-and-line or pot gear fisheries with vessels greater than or equal to 60 feet (18.3 m) length overall (LOA). This action is necessary to allow additional participation in the BSAI Pacific cod hook-and-line or pot gear fisheries, as intended by the North Pacific Fishery Management Council (Council). The intended effect of this action is to prevent unnecessary restriction on participation in the BSAI Pacific cod hook-and-line or pot gear fisheries and to conserve and manage the Pacific cod resources in the BSAI in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Comments must be received by May 27, 2003.

**ADDRESSES:** Comments may be sent to Sue Salvesson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK, 99802, Attn: Lori Durall, or delivered to room 401 of the Federal Building, 709 West 9th Street, Juneau, AK. Comments will not be accepted if submitted via e-mail or Internet. Copies of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this proposed action are available at the above NMFS address; telephone 907-586-7247. Copies of the Environmental Assessment (EA)/RIR/IRFA prepared for Amendment 67 are available from the

North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK, 99501; telephone 907-271-2809.

**FOR FURTHER INFORMATION CONTACT:** Melanie Brown, 907-586-7228, or [melanie.brown@noaa.gov](mailto:melanie.brown@noaa.gov).

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

### Background of Amendment 67

The Council recommended, and NMFS approved, the LLP to address concerns about excess fishing capacity in the groundfish and crab fisheries off Alaska. More information on the specifics of the LLP and the problems it was designed to resolve can be found in the final rule implementing the LLP (63 FR 52642, October 1, 1998). To address excess fishing capacity and to protect long-term participants with extensive catch histories in the BSAI Pacific cod hook-and-line or pot gear fisheries, the Council recommended Amendment 67 to the FMP. Amendment 67 authorized regulatory criteria for a Pacific cod endorsement to the LLP groundfish license. The endorsement is required for any vessel owner or operator to participate in the directed fishery for Pacific cod using hook-and-line or pot gear on a vessel greater than or equal to 60 feet (18.3 m) LOA in the BSAI. The details of Amendment 67 are provided in the proposed rule (66 FR 49908, October 1, 2001) and in the EA/RIR/IRFA for Amendment 67 (see **ADDRESSES**). This proposed action concerns the criteria applicable to harvests used by participants to establish their eligibility for an LLP groundfish license with a Pacific cod endorsement.

The final rule implementing Amendment 67 (67 FR 18129, April 15, 2002) specified eligibility criteria for a BSAI Pacific cod endorsement on an LLP groundfish license. In the final rule, § 679.4(k)(9)(iii)(F) specifies that harvests used to determine a person's eligibility to participate in the BSAI Pacific cod hook-and-line or pot gear fisheries must be made from the vessel that was used for the basis of eligibility for the person's LLP groundfish license.

In October 2002, the Council clarified the intended effect of Amendment 67 and recommended amending the

regulations that implement the eligibility criteria for a Pacific cod endorsement for the hook-and-line or pot gear fisheries. Specifically, the Council recommended that a person be able to use BSAI Pacific cod harvests to meet these eligibility criteria under certain circumstances, even if the harvests were not made from the vessel used as the basis for the license holder's LLP groundfish licenses, as is currently required.

Hence, this proposed action would amend the regulatory language at § 679.4(k)(9)(iii)(F) to specify that a person who owns the qualifying harvests of Pacific cod from a different vessel, but who also owned an LLP-qualifying groundfish fishing history at the time the qualifying Pacific cod threshold harvests were made, is also eligible for the Pacific cod endorsement on the person's LLP groundfish license. To prevent an increase in the number of LLP groundfish licenses, the regulations would also be amended to restrict the LLP qualifying history and the Pacific cod qualifying history of any one vessel to no more than one LLP groundfish license endorsed for Pacific cod hook-and-line or pot gear fisheries. This amendment would limit the number of vessels allowed to participate in the Pacific cod hook-and-line or pot gear fisheries as intended by the LLP.

### Classification

NOAA Fisheries prepared an IRFA to evaluate the impact of this action on small entities, in accordance with the provisions of the Regulatory Flexibility Act of 1980, as modified by the Small Business Regulatory Fairness Act of 1996 (5 U.S.C. 603(b)). The purposes of this action were described earlier in the preamble to this proposed rule. The entities regulated by this action are those that did not qualify for a Pacific cod endorsement under the final rule published in April 2002 and that will qualify under the recommendations by the Council in October 2002. The six entities that may be affected by this proposed rule are: two hook-and-line catcher processors, one pot catcher-processor, and three pot catcher vessels. Because of the small numbers of vessels, confidentiality rules make it impossible to provide detailed information on these entities. All BSAI pot vessels are believed to be small entities, and 31 of 45 hook-and-line catcher processors are believed to be small entities. For the purposes of this analysis, these six entities have been treated as small entities. This action is not expected to have adverse impacts on these entities; each will be allowed to claim additional

annual harvests to qualify for the BSAI Pacific cod endorsement.

This regulation does not impose new recordkeeping or reporting requirements on the regulated small entities.

This analysis did not reveal any Federal rules that duplicate, overlap or conflict with the proposed action.

The status quo was evaluated as an alternative to the proposed action. This alternative would have had adverse impacts on the regulated small entities, in contrast to the preferred alternative, because it would have prevented them from claiming the additional harvests required to qualify for the Pacific cod endorsement. Failure to qualify for the endorsement would preclude the operations from participating in the fishery as initial issuees.

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

### List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: April 21, 2003.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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

### PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

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

2. In § 679.4, paragraph (k)(9)(iii)(F) is revised to read as follows:

#### § 679.4 Permits.

\* \* \* \* \*

(k) \* \* \*  
(9) \* \* \*  
(iii) \* \* \*

(F) Harvests within the BSAI will count toward eligibility amounts in the table at paragraph (k)(9)(ii) of this section if:

(1) Those harvests were made from the vessel that was used as the basis of eligibility for the license holder's LLP groundfish license, or

(2) Those harvests were made from a vessel that was not the vessel used as the basis of eligibility for the license holder's LLP groundfish license, provided that, at the time the endorsement-qualifying Pacific cod

harvests were made by that vessel, the person who owned such endorsement-qualifying fishing history also owned the fishing history of a vessel that satisfied the requirements for the LLP groundfish license.

(3) Notwithstanding the provisions of paragraph (k)(9)(iii)(F)(2) of this section, the LLP groundfish license qualifying history or the Pacific cod qualifying history of any one vessel may not be used to satisfy the requirements for issuance of more than one LLP

groundfish license endorsed for the BSAI Pacific cod hook-and-line or pot gear fisheries.

\* \* \* \* \*

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