

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.

• *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

○ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building. The filing hours are 8 a.m. to 7 p.m.

○ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

○ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

**78. Availability of Documents.** Comments, reply comments, and ex parte submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

**79. Accessibility Information.** To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: <http://www.fcc.gov>.

**80. Additional Information.** For additional information on this proceeding, contact Diana Sokolow, [Diana.Sokolow@fcc.gov](mailto:Diana.Sokolow@fcc.gov), of the Media

Bureau, Policy Division, (202) 418-2120.

## VI. Ordering Clauses

81. Accordingly, *it is ordered* that pursuant to the authority contained in sections 4(i), 4(j), 301, 303(r), 303(v), 307, 309, 325, 335, and 614 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 301, 303(r), 303(v), 307, 309, 325, 335, and 534, this Notice of Proposed Rulemaking *is adopted*.

82. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

### List of Subjects in 47 CFR Part 76

Administrative practice and procedure, Cable television, Equal employment opportunity, Political candidates, and Reporting and recordkeeping requirements.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

### Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 76 as follows:

## PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Amend § 76.65 by revising paragraph (b)(1)(iv) and by adding paragraphs (b)(1)(viii) through (x) to read as follows:

### § 76.65 Good faith and exclusive retransmission consent complaints.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iv) Refusal by a Negotiating Entity to put forth more than a single, unilateral proposal, or to provide a bona fide proposal on an important issue;

\* \* \* \* \*

(viii) Agreement by a broadcast television station Negotiating Entity to provide a network with which it is affiliated the right to approve the

station's retransmission consent agreement with an MVPD;

(ix) Agreement by a broadcast television station Negotiating Entity to grant another station or station group the right to negotiate or the power to approve its retransmission consent agreement when the stations are not commonly owned; and

(x) Refusal by a Negotiating Entity to agree to non-binding mediation when the parties reach an impasse within 30 days of the expiration of their retransmission consent agreement.

\* \* \* \* \*

3. Revise § 76.1601 to read as follows:

### § 76.1601 Deletion or repositioning of broadcast signals.

(a) Effective April 2, 1993, a cable operator shall provide written notice to any broadcast television station at least 30 days prior to either deleting from carriage or repositioning that station. Such notification shall also be provided to subscribers of the cable system.

**Note 1 to § 76.1601(a):** No deletion or repositioning of a local commercial television station shall occur during a period in which major television ratings services measure the size of audiences of local television stations. For this purpose, such periods are the four national four-week ratings periods—generally including February, May, July and November—commonly known as audience sweeps.

(b) Broadcast television stations and multichannel video programming distributors shall notify affected subscribers of the potential deletion of a broadcaster's signal a minimum of 30 days in advance of a retransmission consent agreement's expiration, unless a renewal or extension agreement has been executed.

[FR Doc. 2011-7250 Filed 3-25-11; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 680

[Docket No. 0910301387-91390-01]

RIN 0648-AY33

### Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Program

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

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

**SUMMARY:** NMFS proposes regulations to implement Amendment 34 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs. Amendment 34 would amend the Bering Sea and Aleutian Islands Crab Rationalization Program to exempt additional recipients of crab quota share from Gulf of Alaska Pacific cod and pollock harvest limits, called sideboards, which apply to some vessels and license limitation program licenses that are used to participate in these fisheries. The North Pacific Fishery Management Council determined that these recipients demonstrated a sufficient level of historical participation in Gulf of Alaska Pacific cod or pollock fisheries and should be exempt from the Gulf of Alaska Pacific cod and pollock sideboards. This action is necessary to give these recipients an opportunity to participate in the Gulf of Alaska Pacific cod and pollock fisheries at historical levels. To implement Amendment 34, NMFS would revise regulations governing exemptions from and calculations of sideboard harvest limits in the Gulf of Alaska Pacific cod and pollock fisheries, and reissue Federal fisheries permits and license limitation program licenses to all participants that are affected by the proposed action. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs, and other applicable law.

**DATES:** Comments must be received no later than April 27, 2011.

**ADDRESSES:** Send comments to Dr. James Balsiger, Regional Administrator, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by "RIN 0648-AY33," by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal Web site at <http://www.regulations.gov>.

- *Mail:* P.O. Box 21668, Juneau, AK 99802.

- *Fax:* 907-586-7557.

- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business

information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Electronic copies of Amendment 34 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs, the Environmental Assessment (EA), the Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA) prepared for this action are available from <http://www.regulations.gov> or from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>. The Environmental Impact Statement, RIR, Final Regulatory Flexibility Analysis, and Social Impact Assessment prepared for the Crab Rationalization Program are available from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Rachel Baker, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The King and Tanner crab fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) are managed under the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP). Groundfish fisheries in the Gulf of Alaska (GOA) are managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP). The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the Crab FMP and the GOA FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Amendments 18 and 19 to the Crab FMP implemented the BSAI Crab Rationalization Program (CR Program). Regulations implementing Amendments 18 and 19 were published on March 2, 2005 (70 FR 10174), and are located at 50 CFR part 680. Regulations implementing the GOA FMP are at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

### Background

The CR Program allocates BSAI crab resources among harvesters, processors, and coastal communities. The CR Program is a limited access privilege program (LAPP) for nine BSAI crab fisheries. Participants receive exclusive harvesting and processing privileges for

a portion of the total allowable catch (TAC) established for each crab fishery in the CR Program.

Under the CR Program, persons received quota share (QS) based on their historical participation in one or more of the CR Program crab fisheries during a specific time period. Quota share represents an exclusive but revocable privilege that gives the QS holder an annual allocation to harvest a specific percentage of the TAC from a CR Program crab fishery. NMFS allocated QS to eligible harvesters in 2005, prior to the first year of crab fishing under the CR Program. After the initial allocation of QS, persons can only acquire QS if they are eligible to receive it by transfer.

A person's allocation of crab QS was based on a qualifying harvest history in a CR Program fishery. Each QS allocation is the harvester's average annual portion of the total catch of that crab species during the qualifying period as specified for each CR Program fishery in Table 7 of the CR Program regulations at 50 CFR part 680. Each year, a person who holds QS and submits a timely and complete crab permit application to NMFS receives an exclusive harvest privilege for a portion of the TAC for the CR Program fisheries. This harvest privilege, called individual fishing quota (IFQ), is the annual allocation of pounds (lbs) of crab for harvest that represent a QS holder's percentage of the TAC.

Under the CR Program, crab QS holders may form voluntary crab harvesting cooperatives to combine and cooperatively manage their aggregate QS holdings. Each cooperative that is approved by NMFS receives the amount of crab harvesting cooperative IFQ yielded by the aggregate QS holdings of all of the members of the cooperative. The regulations at § 680.21 govern the formation and operation of crab harvesting cooperatives. Most harvesters in the CR Program assign their IFQ allocations to cooperatives. In the 2008/2009 crab fishing year, more than 90 percent of the IFQ issued in each CR Program fishery was assigned to cooperatives.

### Current GOA Groundfish Sideboards

The Council and NMFS commonly establish catch limits and other fishery participation restrictions, called sideboards, when implementing LAPPs to prevent participants who benefit from receiving exclusive harvesting privileges from shifting effort into fisheries that are not managed with a LAPP. In developing the CR Program, the Council anticipated that crab harvesting cooperatives would greatly increase operating flexibility for BSAI crab vessel

operators because they could choose when and where to fish for IFQ. Crab fishermen in cooperatives also could potentially reduce costs by harvesting crab IFQs on fewer vessels during an extended season. The Council was particularly concerned that increased flexibility for recipients of Bering Sea snow crab (*Chionoecetes opilio*) QS could give them an incentive to increase effort in GOA groundfish fisheries. Most GOA groundfish fisheries are not allocated among gear types (sectors) or under a quota share program, and increased effort by new entrants in these fisheries could economically disadvantage traditional participants in these fisheries.

Historically, the Bering Sea snow crab fishery and many economically valuable GOA groundfish fisheries were conducted concurrently from January through March. Owners of most vessels annually elected to fully participate in either the Bering Sea snow crab fishery or the GOA groundfish fisheries. However, owners of some vessels participated in both fisheries over a number of years. The Council realized that increased flexibility from the CR Program could allow owners of BSAI crab vessels to increase fishing effort in GOA groundfish fisheries, especially in the Pacific cod fishery, because it is one of a limited number of groundfish species in which pots can be effectively used for harvest. Pots are the only legal gear type in BSAI crab fisheries, and most vessels that fish for crab can be configured to catch Pacific cod using groundfish pot gear. The Council determined that the CR Program should include sideboards for most GOA groundfish fisheries to prevent Bering Sea snow crab QS recipients from increasing their participation in GOA groundfish fisheries. However, because some Bering Sea snow crab QS recipients had significant historical participation in the GOA Pacific cod fishery, the Council also developed criteria that would exempt those Bering Sea snow crab QS recipients with significant participation in, or dependence on, the GOA Pacific cod fishery.

The CR Program's GOA groundfish sideboards were implemented in 2006. Under current regulations, CR Program sideboard limits apply to vessels that: (1) Harvest any species of GOA groundfish with the exception of sablefish harvested with fixed gear; (2) are not authorized to conduct directed fishing for pollock under the American Fisheries Act (AFA) of 1998 (Public Law 105-277, Title II of Division C); and (3) meet one or both of the following criteria: (a) made a legal landing of

Bering Sea snow crab between January 1, 1996, and December 31, 2000, that generated any amount of Bering Sea snow crab QS; or (b) are named on a GOA groundfish license limitation program (LLP) license that was generated by the fishing history of a vessel that also generated Bering Sea snow crab QS. Vessels that meet these criteria subsequently will be referred to as "non-AFA crab vessels." The CR Program did not establish sideboard limits for AFA vessels with historical participation in the Bering Sea snow crab fishery because these vessels are subject to GOA harvesting and processing restrictions under the AFA and in implementing regulations for the AFA (§ 679.64(b)). Similarly, non-AFA crab vessels are not restricted by sideboard limits in the GOA fixed-gear sablefish fisheries because these fisheries are managed under a LAPP. Sideboard limits are intended to protect participants in non-LAPP fisheries, who may be disadvantaged by increased fishing effort from participants who benefit from a LAPP.

A non-AFA crab vessel's GOA groundfish sideboard is specified on the Federal Fisheries Permit (FFP) issued by NMFS to the owner of the vessel. An FFP authorizes a vessel owner to deploy the vessel named on the FFP to conduct directed fishing for groundfish in Federal waters of the GOA or BSAI. An FFP is not transferable and is valid only for the vessel for which it is issued. Although the Council primarily intended for the CR Program GOA groundfish sideboard limits to restrict vessels with Bering Sea snow crab catch history, the Council determined that GOA sideboard limits should apply to FFPs and certain LLP licenses. Because LLP licenses are transferable, GOA groundfish sideboard limits apply to those groundfish LLP licenses that are endorsed for the GOA and that derived from a vessel with catch history that also generated Bering Sea snow crab QS. The LLP was implemented in 2000 to limit the number, size, and operation type (gear designation) of vessels that may be deployed in the groundfish fisheries in the exclusive economic zone of the BSAI and GOA, and in the crab fisheries in the BSAI. The LLP requires, with limited exceptions, that a vessel must be named on a legible copy of a valid LLP license that is on board the vessel in order to participate in directed fisheries for LLP species. NMFS issued LLP licenses based on the catch history of a vessel in specific fisheries. The CR Program GOA groundfish sideboards apply to groundfish LLP licenses derived from the catch history of a

vessel that also generated Bering Sea snow crab QS to prevent crab QS recipients from circumventing the GOA groundfish sideboards by transferring an LLP license for use on a vessel that is not subject to the sideboards. Thus, any vessel named on a GOA-endorsed groundfish LLP license that was generated by the groundfish catch history of a non-AFA vessel that also generated Bering Sea snow crab QS is subject to the GOA groundfish sideboards, even if the vessel named on the LLP license did not have historical landings that generated Bering Sea snow crab QS.

The CR Program's GOA groundfish sideboards apply to non-AFA crab vessels that participate in Federal fisheries and State of Alaska (State) parallel groundfish fisheries in the GOA (§ 680.22(f)). State parallel fisheries occur in State waters but are opened at the same time as Federal fisheries in Federal waters. State parallel fishery harvests are considered part of the overall TAC, and Federally-permitted vessels move between State and Federal waters during the concurrent Federal and State parallel fisheries. Applying sideboards to non-AFA crab vessels using an FFP, an LLP, or both, to participate in Federal GOA groundfish fisheries prevents these vessels from using the flexibility of the CR Program to increase participation in GOA groundfish fisheries by fishing in State waters to circumvent fishing closures in Federal waters.

Each year, NMFS calculates the non-AFA crab vessel sideboard limits for GOA groundfish sideboard fisheries. A sideboard limit is calculated as a ratio of the amount of a groundfish species retained by non-AFA crab vessels from 1996 to 2000, relative to the total retained catch of that species by all vessels during the same period. This calculation yields a fixed ratio, or percentage, that is multiplied by the annual TAC for a GOA groundfish sideboard species to determine the non-AFA crab vessel sideboard limit in metric tons (§ 680.22(d)). The sideboard limits are published in the **Federal Register** in the proposed and final harvest specifications for GOA groundfish and posted on the NMFS Alaska Region Web site (*see ADDRESSES*). The CR Program sideboard limits constrain the aggregate catch of each sideboard species by non-AFA crab vessels.

When developing the CR Program sideboard limits, the Council recognized that individual non-AFA crab vessels had varying levels of historical participation in the GOA Pacific cod fishery. To recognize these different participation patterns, the Council

added two exceptions to the GOA Pacific cod sideboard limits for vessels and LLP licenses that met certain criteria: (1) a prohibition on directed fishing for GOA Pacific cod, and (2) an exemption from the GOA Pacific cod sideboard limits. For the first exception, the Council determined that vessels and groundfish LLP licenses with a catch history of less than 50 metric tons (mt) of GOA groundfish from 1996 through 2000 had extremely limited participation in, and therefore likely were not dependent on, the GOA Pacific cod fishery. The Council recommended that these vessels—and vessels named on these LLP licenses—should be prohibited from conducting directed fishing for GOA Pacific cod to prevent their participation in a GOA Pacific cod directed fishery. In current regulations, a non-AFA crab vessel is prohibited from conducting directed fishing for GOA Pacific cod if it meets either or both of the following criteria: (1) the vessel landed less than 50 mt (110,231 lbs) of GOA groundfish from 1996 through 2000, and the vessel's catch history generated Bering Sea snow crab QS; or (2) the vessel is named on a GOA groundfish LLP license that was generated by the catch history of a vessel that landed less than 50 mt (110,231 lbs) of GOA groundfish from 1996 through 2000, and the vessel's catch history generated Bering Sea snow crab QS.

For the second exception to the sideboard limits, the Council

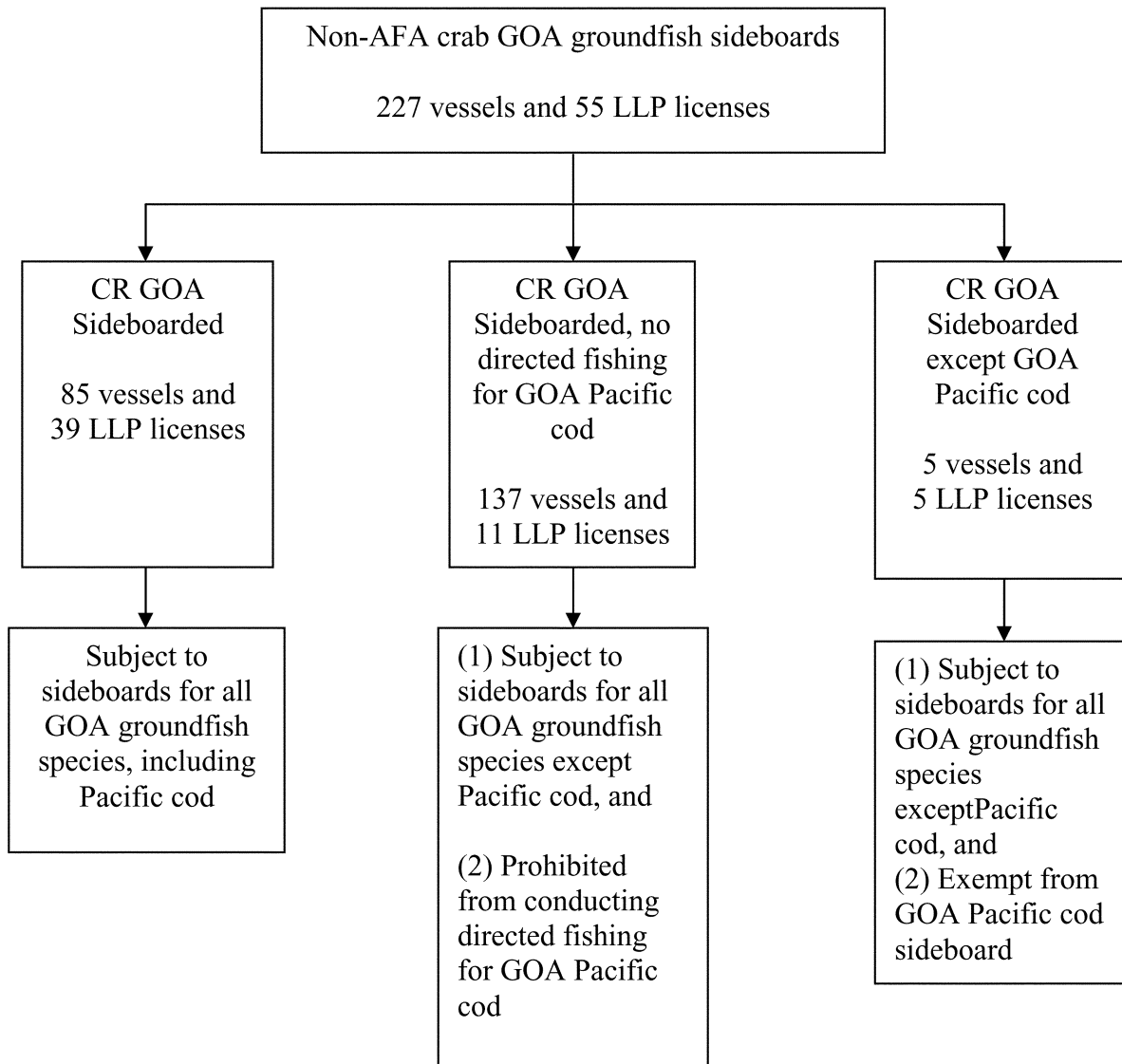
determined that vessels and groundfish LLP licenses with catch history from 1996 through 2000 that demonstrated minimal dependence on the Bering Sea snow crab fishery and sufficient dependence on the GOA Pacific cod fishery should be exempt from the GOA Pacific cod sideboard limits in order to allow these vessels to participate in the GOA Pacific cod fishery unrestricted by the sideboard. In current regulations, a non-AFA crab vessel qualifies for an exemption from the GOA Pacific cod sideboard limit if it meets either or both of the following criteria: (1) The vessel landed less than 100,000 lbs (45.4 mt) of Bering Sea snow crab and more than 500 mt (1,102,311 lbs) of GOA Pacific cod from 1996 through 2000, and the vessel's catch history generated Bering Sea snow crab QS; or (2) the vessel is named on a GOA groundfish LLP license that was generated by the catch history of a vessel that landed less than 100,000 lbs (45.4 mt) of Bering Sea snow crab and more than 500 mt (1,102,311 lbs) of GOA Pacific cod from 1996 through 2000, and the vessel's catch history generated Bering Sea snow crab QS. The exempt non-AFA crab vessels do not have to stop fishing when the GOA Pacific cod sideboard limit is reached and may continue to fish as long as directed fishing for GOA Pacific cod is open. The GOA Pacific cod catch history of the exempt vessels and groundfish LLP licenses is not included in the non-AFA crab vessel sideboard limit ratio calculations, and NMFS does

not count the GOA Pacific cod catch of exempt non-AFA crab vessels toward the sideboard limit.

Prior to the first year of fishing under the CR Program, NMFS determined which non-AFA crab vessel sideboard category applied to each vessel with catch history that generated Bering Sea snow crab QS and each GOA groundfish LLP license that was generated by the catch history of a vessel that also generated Bering Sea snow crab QS. The three sideboard categories are:

(1) Subject to sideboard limits for all GOA groundfish fisheries (CR GOA Sideboarded); (2) prohibited from directed fishing for GOA Pacific cod and subject to sideboard limits for all other GOA groundfish fisheries (CR GOA Sideboarded, no directed fishing for GOA Pacific cod); and (3) exempt from Pacific cod sideboard limits, and subject to sideboard limits for all other GOA groundfish fisheries (CR GOA Sideboarded except Pacific cod). Figure 1 shows a diagram of the current non-AFA crab GOA groundfish sideboard categories and the number of vessels and LLP licenses subject to each category. Some vessels with catch history that generated Bering Sea snow crab QS did not have groundfish catch histories that resulted in LLP licenses authorizing participation in GOA groundfish fisheries. Hence, the number of vessels is larger than the number of LLP licenses in two of the three sideboard categories.

Figure 1. Current Non-AFA Crab GOA Groundfish Sideboard Categories and the Number of Vessels and LLP Licenses Subject to Each Category



NMFS opens directed fishing for a GOA groundfish sideboard species when it determines that all catch, both directed and incidental, of that species by non-AFA crab vessels would not exceed the sideboard limit for that species. If directed fishing for a GOA groundfish sideboard species is open to non-AFA crab vessels, NMFS deducts all directed and incidental catch of that GOA groundfish sideboard species by non-AFA crab vessels subject to the sideboard from the annual sideboard limit for that species. When NMFS determines that the non-AFA crab vessel sideboard catch limit is reached or the remainder of the sideboard is needed for incidental catch in other

fisheries, NMFS closes directed fishing for that species to non-AFA crab vessels that are subject to the sideboard.

The annual non-AFA crab vessel sideboard limit for a GOA groundfish species is an amount that is smaller than the overall TAC for the groundfish fishery because the sideboard limit is calculated as a ratio of the amount of each groundfish species retained by non-AFA crab vessels from 1996 to 2000, relative to the total retained catch of that species by all vessels during the same period. This calculation yields a fixed ratio, or percentage, that is multiplied by the overall TACs for each GOA groundfish sideboard species to determine the non-AFA crab vessel

sideboard limit in metric tons. Since 2006, NMFS has determined that only the Pacific cod sideboard limits in two GOA management areas were of a sufficient amount to open directed fishing for non-AFA crab vessels. NMFS has closed all other GOA groundfish sideboard species, including pollock, to directed fishing by non-AFA crab vessels since 2006 because the sideboard limits were of insufficient amounts to provide for both directed fishing and incidental catch in other target fisheries by non-AFA crab vessels.

Most sideboard limits are apportioned by regulatory area or district because most GOA groundfish TACs are apportioned to separate fisheries in the

western GOA, central GOA, and eastern GOA. The TACs and sideboard limits for GOA Pacific cod also are allocated between sectors that process Pacific cod inshore (90 percent) and offshore (10 percent), and the western GOA and central GOA Pacific cod TACs are

further split into two seasonal apportionments. The GOA pollock TACs and sideboard limits are assigned completely to the inshore sector, and the GOA pollock TACs in three areas, Shumagin (610), Chirikof (620), and

Kodiak (630), are split into four seasonal apportionments.

Table 1 shows the GOA Pacific cod and pollock sideboard ratios and sideboard limits that applied to non-AFA crab vessels in 2010.

TABLE 1—2010 NON-AFA CRAB VESSEL GROUNDFISH HARVEST SIDEBOARD LIMITS IN METRIC TONS FOR GOA POLLOCK AND PACIFIC COD

Species	Season/gear	Area/component	Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest	2010 TAC	2010 non-AFA crab vessel sideboard limit
Pollock	A Season: January 20–March 10.	Shumagin (610)	0.0098	5,551	54
		Chirikof (620)	0.0031	8,414	26
		Kodiak (630)	0.002	4,403	1
	B Season: March 10–May 31	Shumagin (610)	0.0098	5,551	54
		Chirikof (620)	0.0031	9,925	31
		Kodiak (630)	0.002	2,891	1
	C Season: August 25–October 1.	Shumagin (610)	0.0098	7,577	74
		Chirikof (620)	0.0031	4,878	15
		Kodiak (630)	0.002	5,912	1
	D Season: October 1–November 1.	Shumagin (610)	0.0098	7,577	74
		Chirikof (620)	0.0031	4,878	15
		Kodiak (630)	0.002	5,912	1
	Annual	WYK (640)	0.0000	2,031	0
		SEO (650)	0.0000	9,245	0
Pacific cod	A Season <sup>1</sup> : January 1–June 10.	W inshore	0.0902	11,212	1,011
		W offshore	0.2046	1,246	255
		C inshore	0.0383	19,862	761
		C offshore	0.2074	2,207	458
		W inshore	0.0902	7,475	674
		W offshore	0.2046	831	170
	B Season <sup>2</sup> : September 1–December 31.	C inshore	0.0383	13,242	507
		C offshore	0.2074	1,471	305
		E inshore	0.0110	1,815	20
		E offshore	0.0000	202	0

<sup>1</sup> The Pacific cod A season for trawl gear does not open until January 20.

<sup>2</sup> The Pacific cod B season for trawl gear closes November 1.

**The Proposed Actions**

After the CR Program was implemented in 2005, some non-AFA crab vessel operators testified to the Council that the GOA Pacific cod and pollock sideboard limits were too restrictive. These operators indicated that they were unable to maintain historical groundfish catch levels in the GOA and should qualify for an exemption from the sideboard limits. Some operators testified that although their vessel’s catch history was more than 100,000 lbs of Bering Sea snow crab from 1996 through 2000, which is the maximum allowable amount to qualify for the exemption from the Pacific cod sideboard limits, they had significant history in, and dependence on, GOA Pacific cod and pollock fisheries. Based on this public testimony and a review of the effects of the sideboard limits in the first 2 years of the CR Program (2005/2006 and 2006/2007 crab fishing years), the Council

determined that the existing criteria for exemption from the sideboard limits in GOA Pacific cod and pollock fisheries should be examined to consider inclusion of additional vessels and LLP licenses with historical participation in and sufficient dependence on these fisheries. The Council initiated an analysis in December 2007 to examine alternatives that would expand the criteria for non-AFA crab vessels to qualify for an exemption from the Pacific cod sideboard limits and that would extend a similar exemption to the pollock sideboard limits. In October 2008, the Council recommended Amendment 34 to the Crab FMP to exempt additional vessels and groundfish LLP licenses from the GOA Pacific cod and pollock sideboard limits. The Council also clarified that it did not intend for Amendment 34 to disqualify any vessels or groundfish LLP licenses that are currently exempt from

non-AFA crab vessel Pacific cod sideboard limits in the GOA.

This proposed rule would implement two actions. Action 1 would revise the GOA Pacific cod sideboard limit exemption criteria for non-AFA crab vessels. Action 2 would establish new GOA pollock sideboard limit exemption criteria for non-AFA crab vessels. The rationale for, and effects of, the proposed actions follow.

*Action 1: Revise GOA Pacific Cod Sideboard Limit Exemption Criteria*

The Council considered two alternatives for this action. Alternative 1, or status quo, would continue the current exemption criteria. Under the status quo, any non-AFA crab vessel that was used to land less than 100,000 lbs (45.4 mt) of Bering Sea snow crab and more than 500 mt (1,102,311 lbs) of GOA Pacific cod between January 1, 1996, and December 31, 2000, is exempt from sideboard directed fishing closures

for Pacific cod in the GOA. Alternative 2 would modify the exemption criteria. The Council developed five different catch threshold options for Alternative 2 based on input from affected non-AFA crab vessel owners. These participants provided Bering Sea snow crab and GOA Pacific cod catch history information for their operations to the Council and suggested specific threshold amounts based on these data. Each option included a maximum amount of Bering Sea snow crab landings and a minimum amount of GOA Pacific cod landings, and a non-AFA crab vessel would have to meet both of these landing thresholds to qualify for an exemption from the Pacific cod sideboard limits. One option included an exemption qualification criterion that would have required a non-AFA crab vessel to have a minimum of 20 landings of pollock harvested from the GOA from 1996 through 2000, in addition to meeting a maximum Bering Sea snow crab catch threshold and a minimum GOA Pacific cod catch threshold.

Under the five options considered in Alternative 2, the maximum amount of Bering Sea snow crab landings were 500,000 lbs (226.8 mt), 750,000 lbs (353.8 mt), and 1,212,673 lbs (550 mt), or 0.22 percent of all Bering Sea snow crab landings from 1996 through 2000. The minimum amount of Pacific cod harvested from the GOA Federal and State parallel fisheries were the status quo alternative amount of 500 mt (1,102,311 lbs), 680 mt (1,499,143 lbs), and 2,500 mt (5,511,557 lbs). Under these minimum and maximum threshold combinations, a range of zero additional vessels and LLP licenses to six additional vessels and LLP licenses would qualify for an exemption.

To evaluate dependence on GOA Pacific cod sufficient to warrant an exemption from the GOA Pacific cod sideboard, the Council primarily focused on the level of participation in the GOA Pacific cod fishery prior to the implementation of the CR Program as well as the level of participation in the GOA Pacific cod sideboard fishery after implementation of the CR Program by vessels estimated to qualify under each option. The Council recognized that any vessel with GOA Pacific cod landings in excess of 2,500 mt prior to implementation of the CR Program clearly demonstrated dependence on and sufficient participation in the GOA Pacific cod fishery. However, the Council determined that dependence on the GOA Pacific cod fishery also was demonstrated at the next lower landings threshold being considered by the Council of 680 mt, as evidenced by the

Council's original threshold of 500 mt. NMFS agrees that vessels with catch history meeting the Council's recommended threshold of 680 mt of GOA Pacific cod harvested between 1996 and 2000 would demonstrate significant participation in, and dependence on, the GOA Pacific cod fishery because NMFS estimates that the average landings of GOA Pacific cod per non-AFA crab vessel from 1996 through 2000 totaled approximately 329 mt per vessel. The Council's recommended threshold of a minimum harvest of 680 mt is slightly more than twice this average.

The Council also emphasized that continued participation in the fishery over time was a clear demonstration of dependence. The estimated three vessels and LLP licenses that would qualify for exemption under the Council's preferred option had GOA Pacific cod landings in excess of 680 mt between 1996 and 2000, and also participated in the GOA Pacific cod fishery each year from 1998 through 2007. In considering continued participation, the Council declined to adopt the least restrictive option, which would have exempted the three vessels and LLP licenses that qualified under the preferred option as well as an additional three vessels and LLP licenses for a total of six vessels and LLP licenses. The Council concluded that the additional three vessels that would be exempt under this option failed to demonstrate sufficient dependence on the GOA Pacific cod fishery because these vessels had very limited participation in the fishery in recent years. As shown in Table 1–23 of the EA/RIR/IRFA (*see ADDRESSES*), from 1995 through 2007, all six non-AFA crab vessels that would be exempt under the least restrictive option were active in the GOA Pacific cod fishery in 1998 and 2000, but only the three non-AFA crab vessels that also would qualify under the preferred option participated in the fishery each year since 1998. Additional discussion of the options considered by the Council is provided in the EA/RIR/IRFA prepared for this action and in the Classification section of the preamble to this proposed rule.

Under the Council's preferred option, the maximum threshold for landings of Bering Sea snow crab would increase to 750,000 lbs. While the proposed 750,000 lbs maximum threshold is a significant increase relative to the original maximum threshold of 100,000 lbs, the Council decided that a higher Bering Sea snow crab threshold was justified given the demonstrated dependence on the GOA Pacific cod

fishery by the vessels that are estimated to qualify for exemption under the Council's preferred alternative. NMFS agrees that vessels with Bering Sea snow crab catch history that is less than the Council's recommended threshold of 750,000 lbs would demonstrate minimal participation in, and dependence on, the Bering Sea snow crab fishery because NMFS estimates that the average landings of Bering Sea snow crab from 1996 through 2000 for all vessels with catch history that generated Bering Sea snow crab QS totaled approximately 2,366,000 lbs per vessel. The Council's recommended threshold of a maximum harvest of 750,000 lbs is less than one third of this average.

The Council also considered the effects of additional exempt vessels on participants in the GOA Pacific cod fishery and concluded that three additional vessels and LLP licenses would not be likely to negatively impact other participants. According to Table 1–23 and section 1.4.2.2 in the EA/RIR/IRFA, 254 vessels participated in the GOA Pacific cod fishery in 2009; the estimated three vessels that would be exempt from the GOA Pacific cod sideboard under this action represent approximately one percent of the number of participating vessels with combined past harvests of Pacific cod from 1995 through 2009 of less than 2 percent of the total catch of GOA Pacific cod.

Based on the public testimony provided to the Council, the information and analysis provided in the EA/RIR/IRFA, and the reasons explained above, the Council determined and NMFS agrees that the non-AFA crab GOA Pacific cod sideboard exemption criteria should be changed to exempt any non-AFA crab vessel that was used to land less than 750,000 lbs (340.2 mt) of Bering Sea snow crab and more than 680 mt of GOA Pacific cod between January 1, 1996, and December 31, 2000, from sideboard directed fishing closures for Pacific cod in the GOA. Vessels meeting these criteria have been determined to demonstrate minimal dependence on the Bering Sea snow crab fishery and sufficient dependence on the GOA Pacific cod, and should be relieved from restrictions imposed by the current exemption criteria.

The EA/RIR/IRFA estimates that, in addition to the five vessels and five LLP licenses that are currently exempt from the sideboard limits, the Council's recommended catch criteria would result in three additional vessels and the groundfish LLP licenses that named these vessels at the time of Council final action as qualifying for an exemption from the GOA Pacific cod sideboard

limits. Table 2 shows the current criteria for exemption from the non-AFA crab vessel GOA Pacific cod sideboard and the proposed criteria for exemption

from the non-AFA crab vessel GOA Pacific cod sideboard. Table 3 shows the number of non-AFA crab vessels and LLP licenses under the current and

proposed criteria for exemption from the non-AFA crab vessel GOA Pacific cod sideboard.

TABLE 2—CURRENT AND PROPOSED CRITERIA FOR EXEMPTION FROM THE NON-AFA CRAB VESSEL GOA PACIFIC COD SIDEBOARD

Catch threshold	Current exemption criteria	Proposed exemption criteria
Catch history of Bering Sea snow crab from 1996–2000 was less than ..... AND.	100,000 lbs .....	750,000 lbs.
Catch history of GOA Pacific cod from 1996–2000 was more than .....	500 mt .....	680 mt.

TABLE 3—NUMBER OF NON-AFA CRAB VESSELS AND LLP LICENSES EXEMPT FROM THE NON-AFA CRAB VESSEL GOA PACIFIC COD SIDEBOARD UNDER CURRENT AND PROPOSED CRITERIA

	Current exemption criteria	Proposed exemption criteria
Vessels exempt from sideboard .....	5	8 (estimated).
LLP licenses exempt from sideboard .....	5	8 (estimated).

Under the proposed action, eight vessels and eight groundfish LLP licenses (five vessels and groundfish LLP licenses currently exempt and three vessels and groundfish LLP licenses estimated to be exempt under proposed Action 1) would be exempt from the GOA Pacific cod sideboard limits under the Council’s preferred alternative. The eight vessels, and any vessel named on one of the eight groundfish LLP licenses exempt from the sideboard limits, would be allowed to conduct directed fishing for GOA Pacific cod if: (1) Directed fishing for Pacific cod is open in the GOA; and (2) the vessel is not subject to a more restrictive sideboard, such as the non-AFA crab vessel sideboard prohibiting a vessel from conducting directed fishing for GOA Pacific cod. In addition, GOA Pacific cod catch by non-AFA crab vessels exempt from the sideboard limits would not count toward the Pacific cod non-AFA crab vessel sideboard limits. Finally, the eight non-AFA crab vessels and eight LLP licenses that would qualify for an exemption from the non-AFA crab GOA Pacific cod sideboard limit under the proposed action would continue to be subject to non-AFA crab GOA groundfish sideboards for other species, unless the vessel or LLP license also would qualify for an exemption from the non-AFA crab GOA pollock sideboard limit under Action 2 of this proposed rule.

As described above under “Current GOA Groundfish Sideboards,” the GOA groundfish catch history of vessels exempt from the non-AFA crab vessel Pacific cod sideboard limits is not included in the sideboard limit ratio

calculations. To implement Action 1, NMFS would reduce the non-AFA crab vessel sideboard limits in the GOA inshore component Pacific cod fishery proportional to the 1996 to 2000 catch history of the non-AFA crab vessels that would qualify for exemption from the GOA Pacific cod sideboard under proposed Amendment 34. This adjustment to the sideboard limits is discussed in more detail below under “Implementation of Amendment 34.” Management of the GOA non-AFA crab vessel Pacific cod sideboard limits likely would not change under proposed Action 1, because a maximum of three additional vessels would be exempt from the non-AFA crab vessel GOA Pacific cod sideboard limit and potentially would shift from the GOA Pacific cod sideboard fishery to the GOA Pacific cod fishery limited by the overall TAC. Three additional vessels would be approximately 1 percent of the 258 vessels that participated in the GOA Pacific cod fishery in 2009, and this limited number of additional vessels under the proposed action would not be expected to affect the timing or overall harvest of GOA Pacific cod in a manner that would change NMFS’s management of the fishery. NMFS would continue to set an overall TAC for the GOA Pacific cod fishery, deduct GOA Pacific cod catch from the overall TAC, and close the fishery when the overall TAC was reached. NMFS also would continue to calculate the non-AFA crab vessel sideboard limit for each GOA Pacific cod fishery (see Table 1). If the sideboard limit is of a sufficient amount to open directed fishing, NMFS would open directed fishing for the Pacific cod

sideboard limit to all non-AFA crab vessels subject to the sideboard limit at the beginning of each season. All targeted or incidental catch of Pacific cod made by these non-AFA crab vessels would be deducted from the Pacific cod sideboard limit. NMFS would close directed fishing for the GOA Pacific cod sideboard limit when the catch in that fishery and projected incidental Pacific cod catch by non-AFA crab vessels in other target fisheries reaches the sideboard limit. NMFS would not open directed fishing for the GOA Pacific cod sideboard limit if the sideboard limit is of an insufficient amount to support directed fishing (§ 680.22(e)).

*Action 2: Establish GOA Pollock Sideboard Limit Exemption Criteria*

The Council heard testimony that some non-AFA crab vessels with historical dependence on GOA pollock fisheries have been prevented from maintaining their historical participation levels in those fisheries under the CR Program. Under the CR Program, all non-AFA crab vessels are subject to sideboard limits in GOA pollock fisheries. Although some non-AFA crab vessels historically participated in GOA pollock fisheries, the aggregate catch history of GOA pollock by non-AFA crab vessels from 1996 to 2000 yielded sideboard limits that NMFS determined were of an insufficient amount to support directed fishing. Since 2006, NMFS has closed the GOA pollock sideboard fishery to directed fishing by non-AFA crab vessels. NMFS determined that the GOA pollock sideboard limits were



insufficient to provide for both directed fishing and incidental catch of pollock by non-AFA crab vessels in other target fisheries. With the likelihood of no directed fishing for pollock sideboard limits for the foreseeable future, a GOA pollock-dependent non-AFA crab vessel could not maintain its historical level of participation in GOA pollock fisheries and likely would be negatively impacted under the status quo.

The Council considered two alternatives for this action. Alternative 1, or status quo, would not provide for an exemption from the GOA pollock sideboard. Alternative 2 would add an exemption to GOA pollock sideboard limits, and the Council developed three different catch threshold options to qualify for an exemption based on input from affected non-AFA crab vessel owners. Each option required a non-AFA crab vessel to have been used to land less than 1,212,673 lbs (550 mt), or 0.22 percent of all Bering Sea snow crab landings from 1996 through 2000. The options differed by requiring a non-AFA crab vessel to have been used to make a minimum of five, ten or twenty landings of pollock harvested from the GOA from 1996 through 2000.

Under the options considered in Alternative 2, one to four vessels and groundfish LLP licenses would be exempt. The EA/RIR/IRFA estimates that four vessels landed less than 1,212,673 lbs (550 mt) of all Bering Sea snow crab landings from 1996 to 2000 and made at least five pollock landings during the 1996 through 2000 period. The same four vessels would qualify if 10 landings of GOA pollock were required for a sideboard limit exemption. Only one of the four vessels would qualify for the GOA pollock sideboard limit exemption if 20 pollock landings were required.

The Council had limited historical catch data available for Action 2 because the data were confidential for two of the three options being considered. Confidentiality restrictions prevent disclosure of catch data for fewer than four vessels on an aggregated basis. However, the owner of the vessel that would qualify under all of the options waived his right to confidentiality in order for the Council to have some GOA pollock catch data for its decision.

To evaluate dependence on GOA pollock sufficient to warrant an exemption from the sideboard limits, the Council considered a vessel's level of participation in the GOA pollock fisheries prior to the implementation of the CR Program, as well as the effects of exempt vessels on participants in the GOA pollock fisheries. Unlike Action 1,

the Council was unable to consider levels of participation in the GOA pollock sideboard fishery since implementation of the CR Program because the sideboard fishery has been closed to directed fishing since 2006.

After receiving public testimony and reviewing the available Bering Sea snow crab and GOA pollock catch information, the Council determined that a non-AFA crab vessel that was used to land less than 0.22 percent of all Bering Sea snow crab landings from 1996 to 2000 (1,212,673 lbs or 550 mt), and made 20 landings of pollock harvested from the GOA from 1996 to 2000, was minimally dependent on the Bering Sea snow crab fishery and sufficiently dependent on the GOA pollock fisheries to qualify for an exemption from the pollock sideboard limits. In reaching this decision, the Council determined that the 20-landings minimum threshold for an exemption from the GOA pollock sideboard limit was the minimum level of participation by non-AFA crab vessels that would demonstrate significant participation in, and dependence on, the GOA pollock fishery. Table 1–31 in the EA/RIR/IRFA shows the amount of pollock harvested from the GOA from 1995 through 2007 by the non-AFA crab vessel that would qualify under the Council's preferred alternative. Pollock comprised approximately 80 percent of the vessel's catch in the GOA in most years from 1995 through 2000. Additionally, this vessel was used to make at least twice as many landings of pollock (20) harvested from the GOA from 1996 through 2000 than the three other vessel operations that would qualify under the 5 and 10 landings options. The Council determined, and NMFS agrees, that this catch information clearly demonstrated the operator's dependence on the GOA pollock fishery. The level of dependence for participants qualifying under the 5 or 10 pollock landings options was less clear to the Council; the Council noted during its deliberations that it had received no testimony advocating a lower pollock landing threshold. NMFS also agrees with the Council that vessels meeting the proposed threshold for Bering Sea snow crab landings would demonstrate minimal participation in, and dependence on, this fishery because it represents a very low level of harvest relative to other participants in the Bering Sea snow crab fishery. NMFS estimates that the average landings of Bering Sea snow crab per vessel from 1996 through 2000 for all vessels with catch history that generated Bering Sea snow crab QS totaled approximately

2,366,000 lbs per vessel. The Council's recommended threshold of a maximum harvest of 1,212,673 lbs is approximately half of this average.

In considering the effects of exempting vessels on participants in the GOA pollock fishery, the Council determined that the exemption of one vessel and one LLP license that clearly demonstrated past dependence on the pollock fishery would not negatively affect other participants in the fishery. However, the Council determined that the exemption of four vessels, three of which had questionable past dependence on the fishery, would negatively affect other GOA pollock fishery participants.

To implement Action 2, NMFS proposes to use the poundage equivalent of the Council's recommended 0.22 percent of all Bering Sea snow crab landings from 1996 to 2000 in the proposed regulations at § 680.22(a)(4)(i). The Council recommended that a non-AFA crab vessel that landed less than 0.22 percent of all Bering Sea snow crab landings from 1996 to 2000, and made 20 landings of pollock harvested from the GOA from 1996 to 2000, should qualify for an exemption from the sideboard limits. The poundage equivalent of 0.22 percent of all Bering Sea Snow crab landings from 1996 through 2000 is 1,212,673 lbs (550 mt). This approach to use equivalent pounds instead of the percentage of all Bering Sea snow crab landings from 1996 to 2000, as recommended by the Council, is proposed to maintain consistency with other non-AFA crab vessel sideboard regulatory text at §§ 680.22(a)(2)(i) and (a)(3)(i).

Management of the GOA non-AFA pollock sideboard limits likely would not change under proposed Action 2. NMFS would continue to set a non-AFA crab vessel sideboard limit for each GOA pollock fishery (see Table 1). NMFS likely would continue to find the recalculated GOA pollock sideboard limits are insufficient amounts for directed fishing. No adjustment to the non-AFA crab vessel pollock sideboard limits is proposed under Amendment 34, as described under "Implementation of Amendment 34." As under Action 1, GOA pollock harvest by the non-AFA crab vessel that would qualify for the exemption would not be counted toward the GOA pollock sideboard limit. The vessel also would not be required to stop fishing when the sideboard limit is reached if directed fishing for GOA pollock is open. Finally, the non-AFA crab vessel and LLP license that would qualify for an exemption from the GOA pollock

sideboard under the proposed action would continue to be subject to non-AFA crab GOA groundfish sideboards for other species, unless the vessel or LLP license also would qualify for an exemption from the non-AFA crab GOA Pacific cod sideboard limit under Action 1 of this proposed rule.

#### Summary of Effects of the Proposed Actions

Action 1 and Action 2 would have the overall effect of exempting additional non-AFA crab vessels from GOA Pacific cod and pollock sideboard limits. The Council determined that these participants were unduly restricted by the GOA groundfish sideboard limits in fisheries on which they had historical dependence and should be exempt from the sideboard limits. This rationale is consistent with the Council's intent in establishing the GOA sideboard limits, as described above under "Current GOA Groundfish Sideboards."

The proposed actions could potentially increase participation in directed fishing for GOA Pacific cod and pollock. Any increase in catch over their current history by the vessel operations that would be exempt from the sideboard limits under the proposed actions would leave less GOA Pacific cod and pollock for other participants, and could result in some economic loss for those participants. As discussed earlier, the EA/RIR/IRFA (*see ADDRESSES*) estimated that the non-AFA crab vessels that would be exempt from GOA sideboard limits by Action 1 and Action 2 harvested less than 2 percent of the total amount of Pacific cod and pollock harvested from the GOA from 1995 through 2009. Based on this information, the Council determined that potential increased participation by these participants would be unlikely to have a significant impact on other participants in the GOA Pacific cod and pollock fisheries, which in 2009, numbered 254 and 184, respectively.

#### Implementation of Amendment 34

To give effect to the Council's recommendations for Action 1 and Action 2, NMFS would: (1) Modify regulatory text at § 680.22; (2) adjust the non-AFA crab vessel GOA inshore

component Pacific cod sideboard limits to remove the catch history of the vessels that would qualify for exemption from the sideboard limits under proposed Amendment 34; and (3) reissue Federal Fisheries Permits (FFPs) and LLP licenses after determining the appropriate non-AFA crab vessel GOA groundfish sideboard category for all affected vessels and groundfish LLP licenses.

#### Adjust Sideboard Limits

As discussed above under "Current GOA Groundfish Sideboards," the non-AFA crab vessel groundfish sideboard limits constrain the aggregate catch of vessels subject to the sideboard limits to the historical groundfish catch of these vessels from 1996 through 2000. To implement proposed Amendment 34, NMFS would revise non-AFA crab vessel sideboard limit ratios that are specified in the final 2011 and 2012 harvest specifications for the GOA. Each year, NMFS develops GOA groundfish harvest specifications in consultation with the Council. The Council recommended the final 2011 and 2012 GOA harvest specifications to NMFS in December 2010. After considering the Council recommendations and public comment received on the proposed 2011 and 2012 harvest specifications (75 FR 76352, December 8, 2010), NMFS will publish the final harvest specifications for 2011 and 2012 as a final rule in the **Federal Register**. If approved, Amendment 34 would revise the 2011 and 2012 non-AFA crab vessel GOA Pacific cod and pollock sideboard limits.

For Action 1, NMFS would remove from the inshore component GOA Pacific cod sideboard limits the amount of retained catch of Pacific cod harvested in the GOA from 1996 through 2000 by the non-AFA crab vessels that would qualify for a sideboard limit exemption under Amendment 34. The recalculated ratio would represent the remaining non-AFA crab vessel Pacific cod catch history from 1996 to 2000 of vessels subject to the sideboard, relative to the total retained catch of Pacific cod by all vessels during the same period. The recalculated ratio would be multiplied

by the 2011 and 2012 GOA Pacific cod TACs and apportioned by area and season to determine the recalculated sideboard limits in metric tons. For Action 2, no change is proposed under Amendment 34 to the non-AFA crab vessel pollock sideboard limits from the current ratios that are implemented in the final 2011 and 2012 GOA harvest specifications. The 2011 and 2012 non-AFA crab vessel Pacific cod and pollock sideboard limit ratio calculations will already exclude the retained catch of these species harvested from the GOA from 1996 through 2000 by non-AFA crab vessels whose owners took advantage of an agency administrative appeals process to challenge implementation of the sideboard limits on their vessels in 2006 because NMFS removed this catch history during the appeals process. Thus, the 1996 through 2000 catch history of some of the vessels that likely would qualify for an exemption from GOA sideboard limits under Amendment 34 is not currently included in the sideboard limit calculations. As a result, the sideboard limit adjustments necessary to implement Amendment 34 already will be partially reflected in the 2011 and 2012 harvest specifications.

Table 4 and Table 5 present the proposed 2011 and 2012 non-AFA crab vessel sideboard limits for GOA Pacific cod and pollock harvest under Amendment 34 based on the Council's recommended final harvest specifications for these species. If the final 2011 and 2012 harvest specifications as recommended by the Council are approved and implemented by NMFS, the GOA Pacific cod and pollock sideboard limit ratios proposed under Amendment 34 would be as shown in Table 4 and Table 5. NMFS is proposing changes to the GOA inshore component Pacific cod sideboard limits and soliciting public comment as part of the proposed rule to implement Amendment 34. If Amendment 34 is approved after considering comments received in the public comment period, NMFS would publish revised final 2011 and 2012 sideboard limits for GOA pollock and Pacific cod in the final rule to implement Amendment 34.

TABLE 4—PROPOSED 2011 GOA POLLOCK AND PACIFIC COD NON-AFA CRAB VESSEL GROUND FISH HARVEST SIDEBOARD LIMITS IN METRIC TONS UNDER AMENDMENT 34 BASED ON FINAL HARVEST SPECIFICATIONS RECOMMENDED BY THE NORTH PACIFIC FISHERY MANAGEMENT COUNCIL IN DECEMBER 2010

Species	Season/gear	Area/component	Proposed ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest	2011 TAC recommended by the Council	2011 non-AFA crab vessel sideboard limit based on Council TAC recommendation
Pollock	A Season: January 20–March 10.	Shumagin (610)	0.0098	4,787	47
		Chirikof (620)	0.0031	11,896	37
		Kodiak (630)	0.0002	4,475	1
	B Season: March 10–May 31.	Shumagin (610)	0.0098	4,787	47
		Chirikof (620)	0.0031	14,232	44
		Kodiak (630)	0.0002	2,139	0
	C Season: August 25–October 1.	Shumagin (610)	0.0098	8,729	86
		Chirikof (620)	0.0031	5,618	17
		Kodiak (630)	0.0002	6,811	1
	D Season: October 1–November 1.	Shumagin (610)	0.0098	8,729	86
		Chirikof (620)	0.0031	5,618	17
		Kodiak (630)	0.0002	6,811	1
	Annual	WYK (640)	0.0000	2,339	0
SEO (650)		0.0000	9,245	0	
Pacific cod	A Season <sup>1</sup> : January 1–June 10.	W inshore	0.0852	12,303	1,048
		W offshore	0.3376	1,367	461
		C inshore	0.0475	21,795	1,035
		C offshore	0.2076	2,422	503
	B Season <sup>2</sup> : September 1–December 31.	W inshore	0.0852	8,202	699
		W offshore	0.3376	911	308
		C inshore	0.0475	14,530	690
		C offshore	0.2076	1,614	335
	Annual	E inshore	0.0110	1,758	19
		E offshore	0.0000	195	0

<sup>1</sup> The Pacific cod A season for trawl gear does not open until January 20.

<sup>2</sup> The Pacific cod B season for trawl gear closes November 1.

TABLE 5—PROPOSED 2012 GOA POLLOCK AND PACIFIC COD NON-AFA CRAB VESSEL GROUND FISH HARVEST SIDEBOARD LIMITS IN METRIC TONS UNDER AMENDMENT 34 BASED ON FINAL HARVEST SPECIFICATIONS RECOMMENDED BY THE NORTH PACIFIC FISHERY MANAGEMENT COUNCIL IN DECEMBER 2010

Species	Season/gear	Area/component	Proposed ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest	2012 TAC recommended by the Council	2012 Non-AFA crab vessel sideboard limit based on Council TAC recommendation
Pollock	A Season: January 20–March 10.	Shumagin (610)	0.0098	7,342	72
		Chirikof (620)	0.0031	11,129	34
		Kodiak (630)	0.0002	5,823	1
	B Season: March 10–May 31.	Shumagin (610)	0.0098	7,342	72
		Chirikof (620)	0.0031	13,128	41
		Kodiak (630)	0.0002	3,824	1
	C Season: August 25–October 1.	Shumagin (610)	0.0098	10,022	98
		Chirikof (620)	0.0031	6,451	20
		Kodiak (630)	0.0002	7,820	2
	D Season: October 1–November 1.	Shumagin (610)	0.0098	10,022	98
		Chirikof (620)	0.0031	6,451	20
		Kodiak (630)	0.0002	7,820	2
	Annual	WYK (640)	0.0000	2,686	0
SEO (650)		0.0000	9,245	0	
Pacific cod	A Season <sup>1</sup> : January 1–June 10.	W inshore	0.0852	13,877	1,182
		W offshore	0.3376	1,542	521
		C inshore	0.0475	24,583	1,168
		C offshore	0.2076	2,731	567
	B Season <sup>2</sup> : September 1–December 31.	W inshore	0.0852	9,252	788
		W offshore	0.3376	1,028	347
		C inshore	0.0475	16,389	778
		C offshore	0.2076	1,821	378
	Annual	E inshore	0.0110	2,246	25
		E offshore	0.0000	250	0

<sup>1</sup> The Pacific cod A season for trawl gear does not open until January 20.

<sup>2</sup> The Pacific cod B season for trawl gear closes November 1.

### *Reissue Federal Fisheries Permits and LLP Licenses*

The proposed actions would affect owners of non-AFA vessels with catch history that generated Bering Sea snow crab QS and also would qualify for a sideboard exemption under proposed Action 1 or Action 2, or both. These vessel owners hold unique FFPs. Federal Fisheries Permits are required on all vessels participating in groundfish fisheries in Federal waters in Alaska. NMFS designates vessel sideboard limitations, or exemptions, on a vessel's FFP. The proposed actions would also affect holders of a groundfish LLP license derived from catch history that was generated by a vessel that would qualify for a sideboard exemption under proposed Action 1 or Action 2, or both.

In June 2008, the Council clarified the process that NMFS should follow when determining which vessels and LLP licenses qualify for an exemption from the non-AFA crab vessel GOA Pacific cod and pollock sideboard limits (EA/RIR/IRFA, Section 1.4.1) (*see ADDRESSES*). First, a vessel must meet the catch threshold criteria currently proposed at § 680.22(a) to qualify for an exemption from non-AFA crab vessel Pacific cod or pollock sideboard limits. Once a vessel is determined to qualify for an exemption from sideboard limits, the Council recommended that NMFS determine whether the GOA groundfish LLP license that was generated by that exempt vessel's catch history would also qualify for the exemption. An LLP license would be deemed to qualify for a GOA Pacific cod or pollock sideboard limit exemption if the vessel with catch history that generated the groundfish LLP license: (1) Would qualify for an exemption under proposed § 680.22(a); and (2) is the only vessel that contributed GOA Pacific cod or pollock catch history to generate the LLP license. This approach would prevent a groundfish LLP license that drew its catch history from multiple vessels from qualifying for the sideboard exemption under Amendment 34. NMFS would follow this process when determining the non-AFA crab vessel GOA Pacific cod and pollock sideboard limit exemptions that apply to FFPs and groundfish LLP licenses affected by the proposed actions.

NMFS would create an official record with all relevant information necessary to assign landings to specific vessels and LLP licenses. The official record created by NMFS would contain vessel landings data and the LLP licenses to which those landings would be attributed. Evidence of the number and

amount of landings would be based only on legally submitted NMFS weekly production reports for catcher/processors and State of Alaska fish tickets for catcher vessels. Historically, NMFS has used only these two data sources to determine the specific amount and location of landings, and NMFS proposes to continue to do this under the proposed actions. The official record also would include the records of the specific LLP licenses assigned to vessels and other relevant information necessary to attribute landings to specific LLP licenses.

NMFS would presume the official record is correct and would notify each affected FFP and LLP license holder of the effect of Amendment 34 on their FFP or LLP license. NMFS would mail a notification to the address on record for each FFP and LLP license holder at the time the notification is sent. The notification would indicate which non-AFA crab vessel sideboard category would be applicable to the FFP or LLP license based on the official record: (1) CR GOA Sideboarded for all groundfish species; (2) CR GOA Sideboarded for all groundfish species and no GOA Pacific cod fishing; (3) CR GOA Sideboarded for all groundfish species except Pacific cod; (4) CR GOA Sideboarded for all groundfish species except pollock; or (5) CR GOA Sideboarded for all groundfish species except Pacific cod and pollock. NMFS would include information concerning any changes to the non-AFA crab vessel sideboard restrictions applicable to the FFP or LLP license in the GOA and offer a single 30-day evidentiary period from the date that notification is sent for an FFP or LLP license holder to submit any supporting information, or evidence, to verify that the information contained in the official record is inconsistent with his or her records.

An FFP or LLP license holder who submits claims that are inconsistent with information in the official record would have the burden of proving that the submitted claims are correct. NMFS would not accept inconsistent claims unless verified by clear written documentation. NMFS would evaluate additional information or evidence to support an FFP or LLP license holder's inconsistent claims submitted prior to or within the 30-day evidentiary period. If NMFS determines that the additional information or evidence proves that the FFP or LLP license holder's inconsistent claims were indeed correct, NMFS would act in accordance with that information or evidence. However, if after the 30-day evidentiary period, NMFS were to determine that the additional information or evidence did

not show that the FFP or LLP license holder's inconsistent claims were correct, NMFS would deny the claim. NMFS would notify the applicant through an initial administrative determination (IAD) that the additional information or evidence did not meet the burden of proof to overcome the official record.

NMFS's IAD would indicate the deficiencies and discrepancies in the information or the evidence submitted in support of the claim. NMFS's IAD would indicate which claims could not be approved based on the available information or evidence, and include information on how an applicant could appeal the IAD. The appeals process is described under § 679.43. A person who appeals an IAD would be eligible to use the disputed FFP or LLP license until final agency action by NMFS on the appeal. The non-AFA crab vessel sideboard limitation, or exemption, designated on an FFP or LLP license would continue to be effective unless modified by a successful appeal. NMFS would reissue any FFP or LLP licenses pending final action by NMFS as interim FFP or LLP licenses. Once final action has been taken, NMFS would reissue the FFP or LLP license as a non-interim license. Interim LLP licenses would be non-transferable to ensure that a person would not receive an LLP license by transfer and have the non-AFA crab vessel sideboard category changed through an appeals process that was initiated and conducted by the previous LLP license holder, a process that a transferee could not control, and which could substantially affect the value and utility of an LLP license. (FFPs are not transferable.)

If a person does not dispute the notification of changes to their FFP or LLP license, or upon the resolution of any inconsistent claims, a revised non-interim FFP or LLP license with the appropriate non-AFA crab vessel sideboard category would be reissued to the FFP or LLP license holder, unless the FFP or LLP license is interim for another reason.

### **Classification**

The Assistant Administrator for Fisheries, NOAA, has determined that this proposed rule is consistent with Amendment 34 to the Crab FMP, the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An RIR was prepared for proposed Action 1 and Action 2 that assesses all costs and benefits of available regulatory

alternatives. The RIR describes the potential size, distribution, and magnitude of the economic impacts that these actions may be expected to have. Additionally, an IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act, which describes the impact this proposed rule would have on small entities. Copies of the RIR/IRFA prepared for this proposed rule are available from NMFS (*see ADDRESSES*). The RIR/IRFA prepared for this proposed rule incorporates by reference an extensive RIR and Final Regulatory Flexibility Analysis prepared for the CR Program that detailed its impacts on small entities.

The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A detailed description of the actions, the reasons why they are being considered, and a statement of the objectives of, and the legal basis for, these actions are contained in the preamble of this proposed rule and are not repeated here. The IRFA prepared for these actions describes in detail why the actions are being proposed; describes the objectives and legal basis for the proposed rule; describes and estimates the number of small entities to which the proposed rule would apply; describes any projected reporting, recordkeeping, or other compliance requirements of the proposed rule; identifies no overlapping, duplicative, or conflicting Federal rules; and describes any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes, and that would minimize any significant adverse economic impact of the proposed rule on small entities. A summary of that analysis follows. A discussion of the analysis is also found in the preamble to this proposed rule.

The principal objective of the proposed rule is to rectify an economic burden that was unintentionally imposed on a small group of non-AFA crab vessels by implementation of the sideboard limit provisions of the CR Program. Proposed Action 1 and Action 2 would relieve catch restrictions that apply to certain non-AFA crab vessels in GOA Pacific cod and pollock fisheries. NMFS expects the relief from sideboard limit restrictions would enable these vessels to increase participation in these fisheries as compared to their participation in these fisheries while subject to the sideboard restrictions, thus potentially increasing gross revenues for the vessels exempted by the proposed actions.

The entities directly regulated by the proposed actions are those non-AFA

crab vessels that target Pacific cod and pollock in Federal and State parallel fisheries in the GOA. For purposes of an IRFA, the Small Business Administration (SBA) has established that a business involved in fish harvesting is a small business if it is independently owned and operated, not dominant in its field of operation (including its affiliates), and if it has combined annual gross receipts not in excess of \$4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. Because the SBA does not have a size criterion for businesses that are involved in both the harvesting and processing of seafood products, NMFS has in the past applied and continues to apply SBA's fish harvesting criterion for these businesses because catcher/processors are first and foremost harvesting businesses. Therefore, a business involved in both the harvesting and processing of seafood products is a small business if it meets the \$4.0 million criterion for fish harvesting operations. NMFS is currently reviewing its small entity size classification for all catcher/processors in the United States. However, until new guidance is adopted, NMFS will continue to use the annual receipts standard for catcher/processors.

The Council analyzed two alternatives for Action 1 and two alternatives for Action 2. Alternative 1 for each action was the status quo. Alternative 2 for each action included different catch threshold options for vessels and groundfish LLP licenses to qualify for an exemption from non-AFA crab vessel GOA Pacific cod and pollock sideboard limits. Alternative 2 for Action 1 included five options. The 1996 through 2000 catch thresholds for the five options were: (1) Option 2.1—a maximum of 0.22 percent (1,212,673 lbs or 550 mt) of total Bering Sea snow crab catch and a minimum of 500 mt of GOA Pacific cod; (2) Option 2.2—a maximum of 500,000 lbs of Bering Sea snow crab and a minimum of 2,500 mt of GOA Pacific cod; (3) Option 2.3—a maximum of 500,000 lbs of Bering Sea snow crab and a minimum of 680 mt of GOA Pacific cod; (4) Option 2.3.1—a maximum of 500,000 lbs of Bering Sea snow crab, a minimum of 680 mt of GOA Pacific cod, and a minimum of 20 GOA pollock landings; and (5) Option 2.4 (preferred alternative)—a maximum of 750,000 lbs of Bering Sea snow crab

and a minimum of 680 mt of GOA Pacific cod. Alternative 2 for Action 2 included three options. Each option had a maximum catch threshold of 0.22 percent (1,212,673 lbs or 550 mt) of total Bering Sea snow crab catch from 1996 through 2000. The minimum GOA pollock landing thresholds from 1996 through 2000 for each option were: (1) Option 2.1—5 pollock landings; (2) Option 2.2—10 pollock landings; and (3) Option 2.3—20 pollock landings. The Council and NMFS determined that the status quo alternatives do not contain exemption criteria that includes all non-AFA crab vessels with demonstrated dependence on GOA Pacific cod and pollock fisheries. This outcome is inconsistent with the Council's intent in establishing the non-AFA crab vessel GOA sideboards, which was to enable non-AFA crab vessels with relatively small amounts of Bering Sea snow crab QS, but with relatively significant participation in GOA groundfish fisheries, to continue fishing in GOA groundfish fisheries without being subject to the sideboard limit restrictions. Compared with the status quo, the alternatives recommended by the Council and NMFS are the alternatives that would most benefit non-AFA crab vessels that the Council deemed are dependent on GOA Pacific cod and pollock fisheries. The recommended alternatives also would have a low likelihood of negatively impacting other participants in these GOA fisheries.

The IRFA prepared for the proposed actions matched earnings from all fisheries in and off Alaska for 2007 with the non-AFA crab vessels that participated in the GOA Pacific cod and pollock fisheries for that year. For all of the options considered by the Council, a total of six vessel operators could be directly regulated by Action 1 to revise the criteria for exemption from non-AFA Pacific cod sideboard limits in the GOA. Of these six vessel operations, five operate catcher vessels and each produced gross earnings less than \$4 million, thus categorizing them as small entities. The remaining operation, a catcher/processor, produced gross earnings greater than \$4 million, categorizing the operation as a large entity. Of the four vessel operations that could be directly regulated by all options the Council considered under Action 2 to establish criteria for exemption from the non-AFA pollock sideboard limits in the GOA, NMFS estimates that all four entities operate catcher vessels and are small entities. One small entity would qualify for an exemption under Action 1 and Action 2.

NMFS estimates—under all options that the Council considered under Action 1 and Action 2—a maximum of nine entities could be directly regulated under Action 1 and Action 2, and eight of these entities are small entities.

Under the Council's preferred alternative for Action 1, three operations would be directly regulated by the proposed action, and all of these are estimated to be small entities. Under the Council's preferred alternative for Action 2, one operation would be directly regulated by the proposed action and is estimated to be a small entity. This small entity would qualify for exemptions under Action 1 and Action 2. NMFS estimates that under the Council's preferred alternatives and this proposed rule, a maximum of three small entities would be directly regulated under Action 1 and Action 2. All of the entities that would be directly regulated under the proposed actions would be expected to benefit from the actions relative to the status quo alternative because the proposed actions would relieve restrictions that limit their ability to conduct directed fishing for GOA Pacific cod and pollock. The proposed action would not be expected to have adverse impacts on any of the directly regulated small entities.

Other options considered by the Council for both Action 1 and Action 2 would have potentially benefited up to five additional small entities, for a total of eight small entities under both actions. However, based on landings and participation data, the Council and NMFS determined that these five vessel operations were not sufficiently dependent on the GOA Pacific cod and pollock fisheries, and should not qualify for exemption from the non-AFA crab vessel sideboard limits in the GOA under Amendment 34. Exempting these entities from the GOA sideboard limits would not be consistent with the Council's objective for these actions, which was to exempt from the sideboard limits only those vessel operations that demonstrated significant participation in, and dependence on, GOA Pacific cod and pollock fisheries. The Council and NMFS also concluded that exempting nine entities from the sideboard limits under the least restrictive options considered for Action 1 and Action 2 would almost double the current number of exempt non-AFA crab vessels (five), and potentially have a negative impact on the ability of other participants in the GOA Pacific cod and pollock fisheries to maintain their historical levels of participation. Two small entities that would have qualified under each of the other four options for Action 1 would be able to continue to

participate in the GOA Pacific cod sideboard fishery under Amendment 34. Three small entities that would have qualified under each of the other two options for Action 2 would continue to be subject to the GOA pollock sideboards under Amendment 34. These small entities likely would not be able to participate in the GOA pollock fishery because NMFS likely would continue to find the GOA pollock sideboard limits are insufficient amounts for directed fishing.

The proposed rule would not change existing reporting, recordkeeping, and other compliance requirements. The analysis revealed no Federal rules that would conflict with, overlap, or be duplicated by the alternatives under consideration.

#### List of Subjects in 50 CFR Part 680

Alaska, Fisheries.

Dated: March 22, 2011.

#### Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 680 is proposed to be amended as follows:

#### PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 680 continues to read as follows:

**Authority:** 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

2. In § 680.22:

a. Revise paragraph (a)(3)

b. Add paragraph (a)(4).

c. Revise the introductory text of paragraph (d).

d. Redesignate paragraph (d)(2) as (d)(3), and revise redesignated paragraph (d)(3).

e. Add paragraph (d)(2).

#### § 680.22 Sideboard protections for GOA groundfish fisheries.

\* \* \* \* \*

(a) \* \* \*

(3) *Vessels and LLP licenses exempt from Pacific cod sideboard closures in the GOA.* Any vessel or LLP license that NMFS has determined meets either of the following criteria is exempt from sideboard directed fishing closures for Pacific cod in the GOA:

(i) Any vessel subject to GOA groundfish closures under paragraph (a)(1)(i) of this section that landed less than 750,000 lb (340.2 mt), in raw weight equivalents, of Bering Sea snow crab and more than 680 mt (1,499,143 lb), in round weight equivalents, of

Pacific cod harvested from the GOA between January 1, 1996, and December 31, 2000; and

(ii) Any LLP license that:

(A) Was initially issued based on the catch history of a vessel meeting the criteria in paragraph (a)(3)(i) of this section; and

(B) Did not generate crab QS based on legal landings from any vessel other than the vessel meeting the criteria in paragraph (a)(3)(i) of this section.

(4) *Vessels and LLP licenses exempt from pollock sideboard closures in the GOA.* Any vessel or LLP license that NMFS has determined meets either of the following criteria is exempt from sideboard directed fishing closures for pollock in the GOA:

(i) Any vessel subject to GOA groundfish closures under paragraph (a)(1)(i) of this section that landed less than 1,212,673 lb (550 mt), in raw weight equivalents, of Bering Sea snow crab, and had 20 or more legal landings of pollock harvested from the GOA between January 1, 1996, and December 31, 2000; and

(ii) Any LLP license that:

(A) Was initially issued based on the catch history of a vessel meeting the criteria in paragraph (a)(4)(i) of this section; and

(B) Did not generate crab QS based on legal landings from any vessel other than the vessel meeting the criteria in paragraph (a)(4)(i) of this section.

\* \* \* \* \*

(d) *Determination of GOA groundfish sideboard ratios.* Except for fixed-gear sablefish, sideboard ratios for each GOA groundfish species, species group, season, and area for which annual specifications are made are established according to the following formulas:

\* \* \* \* \*

(2) *Pollock.* The sideboard ratios for pollock are calculated by dividing the aggregate retained catch of pollock by vessels that are subject to sideboard directed fishing closures under paragraph (a)(1) of this section and that do not meet the criteria in paragraph (a)(4) of this section by the total retained catch of pollock by all groundfish vessels between 1996 and 2000.

(3) *Groundfish other than Pacific cod and pollock.* The sideboard ratios for groundfish species and species groups other than Pacific cod and pollock are calculated by dividing the aggregate landed catch by vessels subject to sideboard directed fishing closures under paragraph (a)(1) of this section by the total landed catch of that species by

all groundfish vessels between 1996 and 2000.

\* \* \* \* \*

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