

Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2003 TAC of sablefish for vessels using trawl gear in the Central Regulatory Area of the GOA was established as 1,288 metric tons (mt) by the final 2003 harvest specifications for groundfish in the GOA (68 FR 9924, March 3, 2003).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the allocation of the sablefish TAC assigned to trawl gear in the Central Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of sablefish by vessels using trawl gear in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the prohibition of retention, lead to exceeding the 2003 TAC of sablefish assigned to vessels using trawl gear in the Central Regulatory Area of the GOA, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 23, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 03-19360 Filed 7-25-03; 2:05 pm]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 030416087-3176-02; 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:** Final rule.

**SUMMARY:** NMFS issues a final 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:** Effective on August 29, 2003.

**ADDRESSES:** Copies of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) and the Final Regulatory Flexibility Analysis (FRFA) prepared for this action are available from NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall, telephone 907-586-7247. Copies of the Environmental Assessment (EA)/RIR/IRFA prepared for Amendment 67 and the 2002 Stock Assessment and Fishery Evaluation (SAFE) Report 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 email at [melanie.brown@noaa.gov](mailto:melanie.brown@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fisheries in the exclusive economic zone of the BSAI under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management 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

The background regarding this action is detailed in the preamble to the proposed rule published April 25, 2003 (68 FR 20360). Public comments on the proposed rule were invited through May 27, 2003. Background regarding the LLP may be found in the final rule implementing the LLP (63 FR 52642, October 1, 1998).

This action amends the regulatory language at § 679.4(k)(9)(iii)(F) to specify that a person who owns the qualifying harvest history of Pacific cod from a vessel, but who also owned a LLP-qualifying groundfish fishing history from a different vessel at the time the qualifying Pacific cod threshold harvests were made, is 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 also are 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 and/or pot gear fisheries. This amendment limits the number of vessels allowed to participate in the Pacific cod hook-and-line and/or pot gear fisheries, as intended by the Council in developing the LLP.

#### Comments

The only comment received on the proposed rule is summarized here.

*Comment:* The author of the comment supports the intent to allow additional participation in the BSAI Pacific cod hook-and-line and pot fisheries, but is concerned that part of the new regulatory amendment would be overly restrictive. The author states that the regulatory amendment would alter the effects of the existing exemptions for eligibility for a Pacific cod endorsement, including the hardship provisions. The language at § 679.4(k)(9)(iii)(F)(3) may be inconsistent with some circumstances of the hardship provision. The author stated that the hardship provisions allow Pacific cod harvested from a single vessel to be used to meet the

eligibility criteria for a Pacific cod endorsement on more than one LLP license and that language at § 679.4(k)(9)(iii)(F)(3) may not allow for this application of the hardship provisions.

*Response:* NMFS has determined that the proposed regulatory language has no effect on the current exemptions for Pacific cod endorsement eligibility or on the "hardship" (unavoidable circumstance) provisions. The current regulation at § 679.4(k)(9)(v)(A) authorizes, in limited instances, the combination of qualifying harvests from a sunken vessel with harvests from a replacement vessel to satisfy the endorsement requirements. This final rule does not change that section. Section 679.4(k)(9)(v)(B), in very limited situations, allows the agency to make conjectures regarding qualifying harvests, for circumstances beyond the applicant's control, if an applicant can demonstrate on the record that qualifying harvests would have been made. This "hardship" provision is not affected by this final rule. This final rule simply clarifies, consistent with Council intent, that the fishing activities of one vessel may not give rise to Pacific cod endorsements on more than one LLP license.

#### Changes From the Proposed Rule

Section 679.4(k)(9)(iii)(F)(2) was changed in the final rule from the proposed rule to improve the clarity of the text. The phrase "by that vessel" was considered redundant and is removed. To clarify the type of endorsement-qualifying harvest history, the words "Pacific cod" were inserted before the text "endorsement-qualifying harvest." These changes provide clarity and are not substantial.

#### Classification

NMFS prepared a FRFA 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 Enforcement Fairness Act of 1996 (5 U.S.C. 604(a)). The intentions of this action were explained in the preamble to the proposed rule (68 FR 20360, April 25, 2003).

An IRFA was prepared for the proposed rule and was described in the Classification section of the preamble to

the proposed rule. The public comment period ended on May 27, 2003. No comments were received on the economic impacts of the proposed rule.

The entities regulated by this action are those that did not qualify for a Pacific cod endorsement under a final rule published on April 15, 2002 (67 FR 18129), and would qualify under the approach as proposed by the Council in October 2002. According to an analysis prepared to support the Council's October 2002 deliberations, six entities appear to be affected by this action. Two of these are freezer longliners (hook-and-line catcher-processor vessels); one is a pot catcher processor vessel and three are pot catcher vessels. The economic appendix to the 2002 SAFE Report (see **ADDRESSES**) indicates that 31 hook-and-line catcher processor vessels active in the BSAI harvesting of Pacific cod were worth less than \$3.5 million each in 2001, while 14 harvesting of Pacific cod were worth more than \$3.5 million each. All BSAI pot catcher processor vessels and pot catcher vessels are small entities. Thus, about two-thirds of the vessels in this class in the BSAI are small entities. All six entities were treated as small entities for the purpose of this analysis.

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

This action has no adverse economic impacts on these entities. Each of these six small entities would be allowed to claim additional annual harvests to qualify for the BSAI Pacific cod endorsements to the LLP.

A status quo alternative to the action was considered but not adopted. It does not achieve the stated objective of the Council for this action or reduce the potential adverse economic burden on the small entities identified as subject to direct regulation by this action.

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

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

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 24, 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 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 Would 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, the person who owned such Pacific cod 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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