

removing Channel 222C2 and adding Channel 222C3 at London.

9. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 250A and adding Channel 250C2 at De Ridder.

10. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 288A and adding Channel 288C1 at Pickford.

11. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by removing Channel 272C3 and adding Channel 275C1 at Kearney.

12. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 275A and adding Channel 275C2 at Las Vegas.

13. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 259A and adding Channel 259C3 at Bend.

14. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 251C2 and adding Channel 251C1 at Anson and by removing Channel 240C3 and adding Channel 239C2 at Big Spring and by removing Channel 284C and adding Channel 284C1 at Burkburnett and by removing Channel 236C2 and adding Channel 236C1 at Comfort and by removing Channel 241C2 and adding Channel 241C1 at Odessa and by removing Channel 285C2 and adding Channel 285C1 at Pilot Point and by removing Channel 245A and adding Channel 245C3 at Pittsburg.

15. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 249A and adding Channel 249C3 at East Wenatchee.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 000511130-0237-02; I.D. 032900C]

RIN 0648-AN25

#### Fisheries of the Exclusive Economic Zone Off Alaska; Allocation of Pacific Cod among Vessels Using Hook-and-line or Pot Gear in the Bering Sea and Aleutian Islands

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

**ACTION:** Final rule; revision of final 2000 harvest specifications; closure.

**SUMMARY:** NMFS issues regulations to implement Amendment 64 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). NMFS also revises the 2000 harvest specifications for Pacific cod in the Bering Sea and Aleutian Islands management area (BSAI) to be consistent with these regulations and closes directed fishing for Pacific cod in the BSAI by hook-and-line catcher vessels over 60 ft length overall (LOA) and pot vessels over 60 ft LOA. This closure is necessary to prevent exceeding the respective allocations of the hook-and-line and pot gear (fixed gear) Pacific cod total allowable catch (TAC) specified for each of these gear sectors in Amendment 64 and implemented by this final rule and the revised specifications. This final rule is necessary to implement Amendment 64 and to respond to the fishing industry's socioeconomic needs that have been identified by the North Pacific Fishery Management Council (Council). It is intended to promote the goals and objectives of the FMP.

**DATES:** Final rule and revisions to the specifications are effective September 1, 2000; Closure is effective 1200 hrs, Alaska local time (A.l.t.), September 1, 2000, until 2400 hrs, A.l.t., December 31, 2000.

**ADDRESSES:** Copies of Amendment 64 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) and the supplementary Final Regulatory Flexibility Analysis (FRFA) prepared for this action are available from the Council at 605 West 4th Avenue Suite 306, Anchorage, AK 99501, telephone 907-271-2809. Send

comments on any ambiguity or unnecessary complexity arising from the language used in this final rule to Regional Administrator, 709 West Ninth Street, Federal Office Building, Suite 453, National Marine Fisheries Service, Juneau, AK 99801.

#### FOR FURTHER INFORMATION CONTACT:

James Hale, 907-586-7228.

**SUPPLEMENTARY INFORMATION :** NMFS manages the groundfish fisheries in the Exclusive Economic Zone (3 to 200 miles offshore) of the BSAI pursuant to the FMP, which the Council prepared and NMFS approved in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, Pub. L. 94-265, 16 U.S.C. 1801 (Magnuson-Stevens Act).

The Council adopted Amendment 64 at its October 1999 meeting. NMFS published the Notice of Availability for the amendment in the **Federal Register** on April 11, 2000 (65 FR 19354), inviting public review and comment on the FMP amendment through June 12, 2000. NMFS approved Amendment 64 on July 12, 2000.

NMFS published a proposed rule to implement Amendment 64 and revise the 2000 harvest specifications for Pacific cod in the **Federal Register** on May 26, 2000 (65 FR 34133). The public comment period on the proposed rule ended on July 10, 2000. NMFS received a total of 14 letters of comment, 11 supporting the amendment and 3 opposing it. All comments are summarized and responded to under the Response to Comments section.

#### Background and Need for Action

Beginning in 1997, Amendment 46 to the FMP allocated the TAC for BSAI Pacific cod among vessels using jig gear, trawl gear, and fixed gear. Two percent of the TAC is reserved for jig gear, 47 percent for trawl gear, and 51 percent for fixed gear. The amendment further split the trawl allocation equally between catcher vessels and catcher/processor vessels, but no split was adopted for the 51 percent allocated to hook-and-line and pot vessels.

Increased prices for Pacific cod, reduced crab guideline harvest levels, and shortened or canceled crab seasons due to low resource abundance have resulted in increased harvests of Pacific cod by vessels using pot gear. Fishermen displaced from crab fisheries have expressed ongoing interest in fishing for Pacific cod, aggravating concerns by long-term Pacific cod fishermen about erosion of their gear harvest shares in the cod fishery in favor of new entrants using pot gear who, until very recently, focused harvest activity in the BSAI crab fisheries.

In response to these concerns, the Council initiated an analysis at its April 1999 meeting of the effects of splitting the fixed gear allocation of Pacific cod in the BSAI among hook-and-line catcher/processor vessels, hook-and-line catcher vessels, and catcher vessels and catcher/processors using pot gear. At its June 1999 meeting, the Council reviewed the analysis and drafted the following problem statement to guide further analysis of alternatives for Amendment 64:

The hook-and-line and pot fisheries for Pacific cod in the Bering Sea/Aleutian Islands are fully utilized. Competition for this resource has increased for a variety of reasons, including increased market value of cod products and a declining acceptable biological catch and total allowable catch. Longline and pot fishermen who have made significant long-term investments, have long catch histories, and are significantly dependent on the BSAI cod fisheries need protection from others who have little or limited history and wish to increase their participation in the fishery. This requires prompt action to promote stability in the BSAI fixed gear cod fishery until comprehensive rationalization is completed.

The subsequent analysis reviewed, in addition to the status quo, alternatives for separate Pacific cod allocations for the different hook-and-line and pot gear users that approximate their historical catches over the past 4 years. The options analyzed determined those percentages based on catch histories from (1) 1996 and 1997, (2) 1997 and 1998, (3) 1996 through 1998, and (4) 1995 through 1998. In general, the allocations that would result from these options ranged between 80 and 85 percent to hook-and-line vessels and between 15 and 20 percent to pot vessels.

At its October 1999 meeting, the Council adopted Amendment 64 to set Pacific cod directed fishing allowances for the different hook-and-line and pot gear users (sectors) in the following percentages: Hook-and-line catcher/processor vessels, 80 percent; hook-and-line catcher vessels, 0.3 percent; pot gear vessels, 18.3 percent; and hook-and-line or pot catcher vessels less than 60 ft LOA, 1.4 percent. These percentages represent divisions of the hook-and-line or pot gear TAC after a deduction of estimated incidental catch of Pacific cod in other groundfish hook-and-line or pot gear fisheries.

Amendment 64 requires that specific provisions for the accounting of these directed fishing allowances and the transfer of unharvested amounts of these allowances to other vessels using hook-and-line or pot gear be set forth in regulations. This final rule sets forth these provisions.

Harvests by pot and hook-and-line catcher vessels less than 60 ft LOA will accrue against the 1.4-percent allocation only after pot vessels and hook-and-line catcher vessels harvest the respective 18.3 percent and 0.3 percent allocations. Managing the allocations in this manner will ensure that cod is available to the smaller catcher vessels even after the larger vessels in their gear sector have taken their allocation. Nevertheless, if the pot gear fishery lasts longer than the hook-and-line fishery, then the small hook-and-line catcher vessels could begin (and possibly finish) harvesting the 1.4-percent allocation before catcher vessels under 60 ft LOA using pot gear have an opportunity to harvest any of the 1.4-percent allocation set aside for smaller catcher vessels.

Because a sector of the BSAI Pacific cod fishery may not be able to harvest its entire allocation in a year due to halibut bycatch constraints or, in the case of the jig fishery, insufficient effort in the fishery, the Council also provided direction on how projected unharvested amounts of a gear's directed fishing allowance may be transferred to a different user group. Unharvested amounts (roll-overs) from the jig or trawl gear allocations will be apportioned between catcher-processors using hook-and-line gear and vessels equal to or greater than 60 ft LOA using pot gear according to the actual harvest of roll-overs by these two sectors during the 3-year period from 1996 to 1998. Projections based on information in the analysis for this action indicate that 94.7 percent of the cod will be allocated to the hook-and-line catcher-processor fleet and the remaining 5.3 percent to the pot fleet. In addition, any amounts of Pacific cod annually allocated to catcher vessels using hook-and-line gear or to vessels less than 60 ft LOA that are projected to remain unharvested will be rolled over to the hook-and-line catcher-processor fleet in September.

The Pacific cod directed fishing allowances established by Amendment 64 for the different fixed gear sectors terminate on December 31, 2003. Continuing the allocation percentages of Pacific cod set forth in Amendment 64 or changing them after that date will require Council adoption and NMFS' approval of a new FMP amendment. In adopting an expiration date for the proposed amendment, the Council reasoned that 3 years would be sufficient time to evaluate the impact of this action in light of other impending changes for the BSAI fixed-gear fishery, such as upcoming Amendment 67 to require Pacific cod and gear endorsements on permits issued under the License Limitation Program (LLP).

Whereas Amendment 64 establishes allocations for different sectors of the fixed-gear fishery, upcoming Amendment 67 would limit the participants to those who meet certain historical criteria. Prior to the expiration date, the Council intends to reconsider the issue in light of other proposed changes impending for the BSAI Pacific cod groundfish fisheries, including proposed gear or species endorsements on permits issued under the license limitation program.

In adopting Amendment 64, the Council recognized that a separate regulatory amendment would be needed to apportion the 900 mt Pacific halibut prohibited species mortality limit established for nontrawl gear in regulations at § 679.21(e)(2) among catcher vessels and catcher/processor vessels fishing for Pacific cod using hook-and-line gear. Current regulations authorize only a separate Pacific halibut bycatch allowance to the "Pacific cod hook-and-line fishery" defined at § 679.21(e)(4)(ii)(A). Thus, catcher/processor vessels using hook-and-line gear to fish for Pacific cod could attain amounts of halibut bycatch mortality that would result in prohibition of directed fishing for Pacific cod by all vessels using hook-and-line gear, including catcher vessels using this gear type under a separate Pacific cod directed fishing allowance.

To respond to this concern, the Council has requested staff to develop an analysis of regulatory measures that would authorize further allocation of the Pacific halibut mortality limits among vessels using hook-and-line or pot gear. If the Council adopts such regulatory measures in the future, a proposed rule a proposed rule would be published for public review and comment.

#### **Incidental Catch Allowance (ICA)**

Pacific cod also are taken incidentally in directed fisheries using hook-and-line or pot gear for other species. To the extent practicable, NMFS credits this incidental harvest against the TAC to ensure that Pacific cod are not overharvested. This final rule requires the Regional Administrator of NMFS, Alaska Region, to annually establish an incidental catch allowance for Pacific cod taken in other directed hook-and-line and pot fisheries for groundfish. The incidental catch allowance will be deducted from the overall hook-and-line or pot gear allocation of the Pacific cod TAC before that allocation is divided among the different hook-and-line and pot gear user groups.

The incidental catch of Pacific cod occurs in non-groundfish fisheries such

as the hook-and-line gear fishery for Pacific halibut or the crab pot gear fisheries. Sufficient data currently are not collected from these fisheries that would allow NMFS to extrapolate useful estimates of incidental catch for purposes of specifying the annual ICA and deducting these amounts from the Pacific cod TAC allocated to vessels using hook-and-line or pot gear as directed fishing allowances. The total IAC amount of Pacific cod in the crab and Pacific halibut fisheries likely exceeds several thousand mt based on (1) anecdotal information on the amount of incidentally caught Pacific cod used as bait in the crab fisheries, (2) the fact that the Pacific halibut fishery during summer months typically occurs in relatively shallow water where Pacific cod are prevalent, and (3) assumptions on amount of gear deployed and incidental catch rates. In the absence of the quantitative data needed to estimate incidental Pacific cod harvests in the halibut and crab fisheries, NMFS intends to estimate the ICA only on the basis of incidental catch estimated for the non-Pacific cod hook-and-line or pot gear groundfish fisheries.

NMFS recognizes the potential biological significance of not accounting for all incidental catch of Pacific cod in non-trawl fisheries and intends to explore with the State of Alaska and the International Pacific Halibut Commission options to collect better information on incidental catch rates of non-target species in the crab and Pacific halibut fisheries. NMFS further anticipates that improved estimates of incidental catch amounts in these fisheries will be available to the Council when it reassesses BSAI Pacific cod allocation issues prior to the expiration date of Amendment 64. Until then, NMFS stock assessment scientists believe that, while the amounts of Pacific cod taken in the crab and Pacific halibut fisheries could exceed several thousand mt, this level of mortality does not pose significant concerns for overfishing or sustainable resource management of the Pacific cod resource given the conservative management of this species under the FMP. NMFS firmly believes that steps must be taken to collect the data necessary to obtain better estimates of overall mortality of

Pacific cod in the non-groundfish fisheries.

Subsequent to the Council's October 1999 adoption of Amendment 64, several owners of catcher/processor vessels using pot gear to participate in a directed fishery for Pacific cod petitioned the Council to initiate a separate FMP amendment that would authorize separate Pacific cod directed fishing allowances for catcher/processor vessels using pot gear and catcher vessels using pot gear. This petition was based on the assumptions that increased fishing effort for Pacific cod with pot gear is due primarily to catcher vessels using pot gear and that the historical harvest share of cod by catcher/processor vessels using pot gear is threatened. In response to these concerns, the Council requested staff to develop a separate FMP amendment that would authorize a further allocation of Pacific cod between these two sectors. If adopted by the Council in the future, the proposed amendment and a proposed rule to implement it would be published in the **Federal Register** for public review and comment.

#### **Revision of 2000 Harvest Specifications for Pacific Cod**

In December 1999, the Council recommended seasonal allowances for the 51 percent of the Pacific cod TAC allocated to the hook-and-line or pot gear fisheries. The seasonal allowances are authorized under § 679.20(a)(7)(iv) and are based on the criteria set forth at § 679.20(a)(7)(iv)(B). The final 2000 harvest specifications for BSAI groundfish were approved by NMFS and published in the **Federal Register** on February 18, 2000 (65 FR 8282).

By this action NMFS also revises the final 2000 harvest specifications in concert with the hook-and-line and pot gear allocations in the amendment. The final 2000 harvest specifications set the hook-and-line or pot gear allocation of the 2000 Pacific cod TAC at 91,048 mt. An incidental catch allowance of 500 mt, derived from estimates of incidental catch of Pacific cod in other groundfish fisheries from 1996-1999, will be deducted from the hook-and-line or pot gear allocation of the Pacific cod TAC before the allocation is apportioned to the separate gear sectors.

As noted in the preamble to the proposed rule (65 FR 34133, May 26,

2000), a mid-year implementation of Amendment 64 requires that any overage of a sector's annual allocation of Pacific cod be deducted proportionately from the other sectors' allocations remaining for the year. The directed fishery for Pacific cod by vessels using pot or hook-and-line gear was closed on March 10, 2000, when harvest amounts reached the first seasonal allowance of Pacific cod specified for these vessels. At that time, the pot-gear fishery had harvested 20.4 percent of the annual fixed gear directed fishing allowance. This amount represents 111 percent of the 2000 allocation for pot gear vessels (regardless of LOA) authorized by Amendment 64. Also, the hook-and-line catcher vessel fleet had harvested 0.35 percent of the directed fishing allowance for the fixed gear fleet, or 116 percent of the 2000 allocation for all hook-and-line catcher vessels (regardless of LOA) authorized under Amendment 64. Because these allocations have been exceeded, this action also closes the hook-and-line catcher vessel and pot gear sectors to further directed fishing for Pacific cod in the BSAI in 2000.

The Council intends that harvests by fixed gear sector vessels under 60 ft LOA only accrue against the allocation to fixed gear vessels under 60 ft LOA after the pot or longline catcher vessels harvested their 18.3 percent and 0.3 percent allocations, respectively. This set aside allocation provides that the smaller vessels will have Pacific cod available for harvest even after the larger vessels in their sector have taken their allocation. The hook-and-line catcher/processor and small vessel sectors' allocations are adjusted downward to account for the overharvests by pot gear and hook-and-line catcher vessels. Table 1 lists the revisions to the final 2000 allocations and seasonal apportionments of the Pacific cod TAC.

Consistent with § 679.20(a)(7)(iv)(C), any portion of the first seasonal allowance of the catcher/processor hook-and-line gear allocation that is not harvested by the end of the first season will become available on September 1, the beginning of the third season. No seasonal apportionment of the amounts of Pacific cod allocated to catcher vessels or to vessels using pot gear is specified for 2000.

TABLE 1.—YEAR 2000 GEAR SHARES AND SEASONAL APPORTIONMENTS OF THE BSAI PACIFIC COD HOOK-AND-LINE AND POT GEAR ALLOCATION

| Gear Sector                                                          | Percent | Share (mt) | Harvest (mt)<br>as of 7/13/<br>2000 | Adjusted<br>Share (mt) <sup>1</sup> | Seasonal apportionment <sup>2</sup> |             |
|----------------------------------------------------------------------|---------|------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------|
|                                                                      |         |            |                                     |                                     | Date                                | Amount (mt) |
| Hook-and-Line Catcher-Processors                                     | 80      | 72,438     | 40,433                              | 70,558                              | Jan 1-Apr 30 .....                  | 50,237      |
|                                                                      |         |            |                                     |                                     | May 1-Aug 31 ...                    | ---         |
|                                                                      |         |            |                                     |                                     | Sept 1-Dec 31 ..                    | 20,321      |
| Hook-and-Line Catcher-Vessels                                        | 0.3     | 272        | 318                                 | --                                  | Jan 1-Dec 31 ....                   | 272         |
| Pot Gear Vessels                                                     | 18.3    | 16,570     | 18,442                              | --                                  | Jan 1-Dec 31 ....                   | 16,570      |
| Catcher Vessels under 60 feet LOA using<br>Hook-and-line or Pot Gear | 1.4     | 1,268      | .....                               | 1,230                               | Jan 1-Dec 31 ....                   | 1,230       |
| Sub-total .....                                                      | 100     | 90,548     | .....                               | .....                               | .....                               | 90,548      |
| Incidental Catch Allowance                                           | .....   | 500        | .....                               | .....                               | .....                               | 500         |
| Total hook-and-line and pot gear alloca-<br>tion of Pacific cod TAC  | .....   | 91,048     | .....                               | .....                               | .....                               | 91,048      |

<sup>1</sup> Shares are adjusted proportionately to account for overages by the hook-and-line catcher vessel and pot gear sectors.

<sup>2</sup> Any unused portion of the first seasonal Pacific cod allowance specified for catcher/processors using hook-and-line fishery will be reapportioned to the third seasonal allowance.

### Response to Comments

NMFS received a total of 14 letters of comment, all of which are summarized and responded to in this section. Of the total, the 11 letters that support the amendment and make essentially the same comment are summarized under comment 1. Of the three letters opposing the amendment, the two signed by a single author, make the same objections to the amendment and are summarized under comment 2; the third letter is summarized under comment 3.

*Comment 1.* Amendment 64 is necessary to the stability and overall rationalization of the fixed gear Pacific cod fishery in the BSAI, especially with the likely increase of fishing effort by vessels formerly targeting crab. All comment writers encourage prompt implementation of the amendment, and six letters explicitly entreat NMFS to implement the amendment by September 1.

*Response.* NMFS agrees and is expediting implementation of the amendment.

*Comment 2.* Amendment 64 and its implementing rule are opposed for the following four reasons: (1) The Initial Regulatory Flexibility Analysis (IRFA) for Amendment 64 does not satisfy the requirements of the Regulatory Flexibility Act (RFA) because the IRFA estimates the number of small entities impacted by this action, rather than specifying their exact number. (2) Because the exact number of affected small entities is unknown, NMFS could not adequately consider measures that would minimize any impacts on small entities. (3) For purposes of the RFA, pot vessels constitute the “universe of small entities” potentially impacted by

this action and should, therefore, be the sole focus of any measures to mitigate this action’s impact on small entities. (4) Amendment 64 does not adhere to the conservation and community goals of the Magnuson-Stevens Act, as required by national standard 4 (allocations shall be fair and equitable), national standard 5 (conservation and management measures shall consider efficiency, but not have economic allocation as their sole purpose), and national standard 8 (conservation and management measures shall provide for the sustained participation of fishing communities and minimize adverse impacts on such communities).

*Response.* Section 603(b)(3) of the RFA requires that an IRFA contain “a description of and, where feasible, an estimate of the number of small entities” to which an action will apply. The IRFA and supplemental IRFA for Amendment 64 contain such a description and a reasonable estimate of the number of affected small entities, as defined by the RFA (see **Classification** for a summary of the IRFA and the estimated numbers of affected small entities).

For purposes of the RFA, a small entity is defined as a business that is independently owned and operated, is not dominant in its field of operation, and has combined annual receipts not in excess of \$3 million. The IRFA identifies such entities in the BSAI fixed gear Pacific cod fishery, many of which are not pot vessels. Construing pot vessels alone as the entire “universe” of affected small entities would fail to satisfy the agency’s requirements under the RFA. Those requirements are met by considering all small entities as the

“universe of small entities” potentially impacted by the action.

The EA/RIR/IRFA for Amendment 64 presented alternatives with different percentage allocations, each of which represented tradeoffs in terms of impacts. Some small entities may be negatively impacted, and others positively impacted. Amendment 64, the Council’s preferred alternative, represents the Council’s deliberate intent to minimize impacts on small entities by allocating more cod to catcher vessels delivering to shore-based processors than they have historically harvested. That allocation will tend to benefit small entities. Conversely, the freezer longline fleet, with the highest percentage of large entities, will receive a smaller allocation to balance the increase given to small entities.

Amendment 64 is consistent with all the national standards, including 4, 5, and 8 under the Magnuson-Stevens Act. National standard 4 requires that conservation and management measures not discriminate between residents of different states and that allocations be fair and equitable, be reasonably calculated to promote conservation, and implemented in such a manner that no entity receive an excessive share of fishing privileges. The allocations in Amendment 64 are made based on gear sectors and do not result in the acquisition of any particular share of the privilege by any individual entity.

These allocations reflect historical gear shares of the Pacific cod annually harvested by vessels using hook-and-line or pot gear. As such, NMFS believes that these allocations reflect historical participation in the fishery, promote stability within the Pacific cod fishery,

and are fair, equitable, and calculated to promote conservation.

While considering economic efficiency in the utilization of fishery resources, national standard 5 requires that management measures not have economic allocation as their sole purpose. The goal of Amendment 64 is to stabilize the Pacific cod fixed-gear fishery in a way that preserves the historical character of the fishery. Hence, its purpose extends beyond economics to prevent the negative social impacts caused by over-utilization by fishing communities historically dependent on the resource, and ensuing impacts on the resource.

National standard 8 requires that management measures recognize the importance of fishery resources to fishing communities and provide for the sustained participation of such communities and to the extent practicable, minimize adverse economic impacts on such communities. By basing the allocations on historical harvests by the respective gear sectors, the Council intends the amendment to stabilize the historical character of the fishery and its dependent communities.

*Comment 3.* Amendment 64 defies the conservation and community goals of the Magnuson-Stevens Act by prioritizing gear sectors that have higher bycatch rates and by laying the groundwork for a subsequent FMP amendment (the Council's proposed Amendment 67) to reduce the number of vessels eligible to fish for Pacific cod. These actions will disenfranchise smaller size vessels. By creating a limited allocation for pot vessels, Amendment 64 will increase effort in the Gulf of Alaska and in Alaska state waters by vessels displaced from the crab fishery by decreasing crab stocks. This will increase the potential for localized depletion inside the 3-mile limit and has already forced the Alaska State Board of Fisheries to establish a separate allocation and management plan for Pacific cod in State waters.

*Response.* NMFS disagrees. Amendment 64 neither prioritizes nor disenfranchises any gear sector. Rather, it establishes allocations based on historical shares of the Pacific cod harvest by the respective gear sectors. The intent of the amendment is to stabilize the fishery against increasing competition until such time as comprehensive rationalization is completed. As the authors of the comment acknowledge, their comment is directed more properly at the Council's upcoming Amendment 67, which would require area and gear endorsements for the fixed gear Pacific cod fishery as part of the License

Limitation Program. Amendment 67 has not yet been submitted to NMFS for review. When it is submitted and NMFS determines it to be adequate for public review and comment, NMFS will initiate the public process that would more appropriately focus on the issue raised in comment 3.

The final rule makes no changes in the regulations as published in the proposed rule.

#### Closure

Hook-and-line catcher vessels and pot gear vessels over 60 feet LOA have already exceeded the allocations of the fixed gear Pacific cod TAC that this action establishes as directed fishing allowances for those gear sectors: 272 mt and 16,570 mt, respectively.

In accordance with § 679.20(a)(7)(i)(C) and (D), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the hook-and-line catcher vessel and pot gear vessel directed fishing allowances for Pacific cod in the BSAI have been exceeded. Therefore, the Regional Administrator is prohibiting directed fishing for Pacific cod by hook-and-line catcher vessels and pot gear vessels over 60 ft LOA in the BSAI.

#### Classification

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

The Council prepared an EA for this FMP amendment that discusses the impact on the environment as a result of this rule. A copy of this EA is available from the Council (see ADDRESSES).

In compliance with the RFA, NMFS prepared a supplementary FRFA consisting of the IRFA, the FRFA, and the preamble to this final rule. A summary of the issues addressed by the supplementary FRFA follows.

For purposes of the RFA, all catcher vessels fishing for Pacific cod using hook-and-line or pot gear are considered small businesses, with annual receipts of less than \$3 million. Under upcoming Amendment 60 to the BSAI Groundfish FMP, approximately 330 catcher vessels would be authorized under the license limitation program (LLP) to participate in the Bering Sea Pacific cod hook-and-line or pot gear fishery. Of the 98 catcher-processor vessels potentially authorized under the LLP to fish for Pacific cod, approximately one-third could be considered small entities. Five of the ten shore-based plants and floating processors operating within Alaskan state waters and processing most of the Pacific cod harvested by hook-and-line or pot gear catcher

vessels could be considered small businesses under RFA, processing less than 2 percent of the total shoreside landings of Pacific cod by catcher vessels in 1998. Other small entities impacted by Amendment 64 are the three Alaskan communities that are home to processing plants that process limited amounts of BSAI Pacific cod: King Cove, Egegik, and Kenai.

Amendment 64 allocates more Pacific cod to catcher vessels delivering to shore-based processors than such vessels have historically harvested, which will tend to benefit small entities. Conversely, the freezer longline fleet, with the highest proportion of large entities, will receive a smaller allocation to balance the increase given to catcher vessels.

Amendment 64 allocates a portion of the Pacific cod resource away from the longline catcher-processor fleet and moves it to the catcher vessels delivering to shore-based processors or motherships. Because the longline catcher-processor fleet comprises the highest number of large entities of any sector fishing off Alaska, this allocation tends to favor small entities. By implementing the allocations by gear sector without limiting the number of vessels in any gear sector that may enter the fishery, this action may have the effect of increasing competition among users. However, the Council at its April 2000 meeting took final action to mitigate the effect of this action on competition within gear sectors by recommending for approval by NMFS a proposed amendment to require gear and species endorsements on licenses of those who wish to participate in the fixed gear BSAI Pacific cod fishery.

The magnitude of the Amendment 64's impact cannot be conclusively determined with the data currently available. Most persons operating in the fishery impacted by the action are small entities given their expected annual gross revenues of less than \$3 million, and revenues could potentially be decreased by more than 5 percent, but that depends on the level of catch that might be achieved in the absence of an allocation. Also, impacts of this action on potential revenues cannot be isolated from other factors, including price fluctuation, amount of effort exerted by latent permits, and such stock fluctuation as crab of alternative fisheries.

As with many allocation-based management measures, this action involves a percentage allocation of the TAC among competing groups of vessels. Under the final rule, vessels in each group primarily are small entities representing a tradeoff in terms of

impacts (i.e., some small entities could be negatively impacted and other positively impacted). The Council's preferred alternative will allocate more cod to catcher vessels delivering to shore based processors and motherships than they have historically harvested. That allocation will tend to benefit small entities. The freezer longline fleet, with the highest proportion of large entities, will receive a smaller allocation to balance the increase given to small catcher vessels.

A future action being considered by the Council may have mitigating effects to some degree. One of the points raised in opposition to the final rule is that considerable latent capacity exists in the pot fleet (many pot vessels are qualified under the LLP but to date have not participated to a great degree in the cod fisheries), and freezing that sectors' share of the cod quota will disadvantage those pot vessels that do participate significantly in the cod fishery. They will have potential competition for a relatively small quota from a relatively large number of qualified vessels. There are also longline vessels that represent potential latent capacity and could impact that sector in the same way, though the degree of that potential is relatively less for that sector. In any case, the Council has adopted a follow-up amendment that would create species and gear LLP endorsements for the cod fisheries, based on a minimum level of landings and years of participation. The intent of this amendment is to eliminate the latent capacity described above, and create a more stable operating environment for the remaining vessels in each of the fixed gear sectors.

September 1, 2000, is the scheduled opening date of the third season of the 2000 fixed-gear fishery for Pacific cod. If this rule implementing Amendment 64's allocations is not effective by that date, vessels using pot gear could continue to fish for Pacific cod and further erode traditional hook-and-line shares. A delay in the effectiveness of this rule beyond September 1, 2000, would unnecessarily jeopardize the stability of the fishery. It would be contrary to the public interest not to make both the allocations in this rule, and the revised specifications implementing those allocations, effective by September 1, 2000. Therefore, pursuant to authority at 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NOAA (AA) finds good cause not to delay for 30 days the effective date of this action and makes this rule effective on September 1, 2000.

To date, in 2000, the pot gear fleet has harvested 20 percent of the directed fishing allowance for the fixed gear fleet, or 111 percent of the 2000 allocation that is authorized under Amendment 64. This action closes to further fishing in 2000 that sector of the pot gear fishery engaged in directed fishing for Pacific cod, with the exception of pot gear vessels under 60 ft LOA, which will be able to fish under the allocation set aside for hook-and-line catcher vessels and pot gear vessels under 60 ft LOA. This closure must be effective by the start of the third Pacific cod season on September 1, 2000, in order to prevent the further exceeding of Amendment 64's allocations. Providing prior notice and an opportunity for public comment on this closure is impracticable and contrary to the public interest, as further delay would result in further overharvest. Accordingly, the AA finds that there is good cause not to provide prior notice and an opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B). Likewise, delaying the effectiveness of this closure beyond September 1, 2000, would allow vessels using pot gear to continue to fish for Pacific cod, further eroding traditional hook-and-line shares, and further exceeding the allocations in Amendment 64. Therefore, pursuant to authority at 5 U.S.C. 553(d)(3), the AA finds good cause not to delay for 30 days the effective date of this action and makes this closure effective on September 1, 2000. This action is required by § 679.20 and is exempt from review under E.O. 12866.

The President has directed Federal agencies to use plain language in their communication with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this final rule. Such comments should be sent to the Alaska Regional Administrator (see ADDRESSES).

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

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: August 17, 2000.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

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

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

1. The authority citation for 50 CFR part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 et seq., 1801 et seq., and 3631 et seq.

2. In § 679.20, paragraph (a)(7)(i)(C) is redesignated as paragraph (a)(7)(i)(D), paragraph (a)(7)(ii)(B) is redesignated as paragraph (a)(7)(ii)(C), paragraph (a)(7)(iii) is removed, paragraph (a)(7)(iv) is redesignated as paragraph (a)(7)(iii), redesignated paragraphs (a)(7)(i)(D), (a)(7)(ii)(C), (a)(7)(iii)(A), and (a)(7)(iii)(C) and paragraph (b)(1)(v) are revised, and new paragraphs (a)(7)(i)(C) and (a)(7)(ii)(B) are added to read as follows:

#### § 679.20 General limitations.

\* \* \* \* \*

(a) \* \* \*

(7) \* \* \*

(i) \* \* \*

(C) *Allocations among vessels using hook-and-line or pot gear (Applicable through December 31, 2003).*(1) The Regional Administrator annually will estimate the amount of Pacific cod taken as incidental catch in directed fisheries for groundfish other than Pacific cod by vessels using hook-and-line or pot gear and deduct that amount from the portion of Pacific cod TAC annually allocated to hook-and-line or pot gear under paragraph (a)(7)(i)(A) of this section. The remainder will be further allocated as directed fishing allowances as follows:

(i) 80 percent to catcher/processor vessels using hook-and-line gear;

(ii) 0.3 percent to catcher vessels using hook-and-line gear;

(iii) 18.3 percent to vessels using pot gear; and

(iv) 1.4 percent to catcher vessels less than 60 ft LOA that use either hook-and-line or pot gear.

(2) Harvests of Pacific cod made by catcher vessels less than 60 ft LOA using pot gear will not accrue to the 1.4 percent allocation under paragraph (a)(7)(i)(C)(1)(iv) of this section until vessels using pot gear have harvested the 18.3 percent allocated to all vessels using pot gear under paragraph (a)(7)(i)(C)(1)(iii) of this section.

(3) Harvests of Pacific cod made by catcher vessels less than 60 ft LOA using hook-and-line gear will not accrue to the 1.4 percent allocation under paragraph (a)(7)(i)(C)(1)(iv) of this section until catcher vessels using hook-and-line gear have harvested the 0.3 percent allocated to all catcher vessels using hook-and-line gear under

paragraph (a)(7)(i)(C)(1)(ii) of this section.

(D) The Regional Administrator may establish separate directed fishing allowances and prohibitions authorized under paragraph (d) of this section for vessels harvesting Pacific cod using trawl gear, jig gear, hook-and-line gear, or pot gear.

(ii) \* \* \*

(B) *Reallocation among vessels using hook-and-line or pot gear.* If, during a fishing year, the Regional Administrator determines that catcher vessels using hook-and-line gear or vessels less than 60 ft LOA using hook-and-line or pot gear will not be able to harvest the directed fishing allowance of Pacific cod allocated to those vessels under paragraphs (a)(7)(i)(C)(1)(ii) or (a)(7)(i)(C)(1)(iv) of this section, NMFS may reallocate the projected unused amount of Pacific cod as a directed fishing allowance to catcher/processor vessels using hook-and-line gear through notification in the **Federal Register**.

(C) *Reallocation between vessels using trawl or non-trawl gear.* If, during a fishing year, the Regional Administrator determines that vessels using trawl gear, hook-and-line gear, pot gear or jig gear will not be able to harvest the entire amount of Pacific cod in the BSAI allocated to those vessels under paragraphs (a)(7)(i)(A), (a)(7)(i)(B) or (a)(7)(i)(C) of this section, NMFS may

reallocate the projected unused amount of Pacific cod to vessels harvesting Pacific cod using the other gear type(s) through notification in the **Federal Register**, except as provided below:

(1) *Reallocation of TAC specified for jig gear.* On September 15 of each year, the Regional Administrator will reallocate any projected unused amount of Pacific cod in the BSAI allocated to vessels using jig gear only to vessels using hook-and-line or pot gear through notification in the **Federal Register**.

(2) *Reallocation of TAC to catcher/processor vessels using hook-and-line gear or vessels using pot gear.* Any unharvested amounts of Pacific cod TAC that are reallocated from vessels using trawl or jig gear to catcher/processor vessels using hook-and-line gear or vessels using pot gear to increase directed allowances established under paragraphs (a)(7)(i)(C)(1)(i) or (a)(7)(i)(C)(1)(iii) of this section, will be apportioned so that catcher/processor vessels using hook-and-line gear will receive 95 percent and vessels using pot gear will receive 5 percent of any such reallocation.

(iii) \* \* \*

(A) *Time periods.* NMFS, after consultation with the Council, may divide the directed fishing allowances allocated to vessels using hook-and-line or pot gear under paragraph (a)(7)(i)(C) of this section among the following three periods: January 1 through April

30, May 1 through August 31, and September 1 through December 31.

\* \* \* \* \*

(C) *Unused seasonal allowances.* Any unused portion of a seasonal allowance of Pacific cod allocated to vessels using hook-and-line or pot gear under paragraph (a)(7)(i)(C) will be reallocated to the remaining seasons during the current fishing year in a manner determined by NMFS, after consultation with the Council.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(v) *Pacific cod.* Any amounts of the BSAI nonspecific reserve that are apportioned to Pacific cod as provided by paragraph (b)(1)(ii) of this section must be apportioned among vessels using jig, hook-and-line or pot, and trawl gear in the same proportion specified in paragraph (a)(7)(i) of this section, unless the Regional Administrator determines under paragraph (a)(7)(ii) of this section that vessels using a certain gear type will not be able to harvest the additional amount of Pacific cod. In this case, the nonspecific reserve will be apportioned to vessels using the other gear type(s).

\* \* \* \* \*

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