

Secretary of Commerce

Final

**Environmental Assessment/ Regulatory Impact Review/Final
Regulatory Flexibility Analysis for a Regulatory Amendment
to
Limit Access by Federally-permitted vessels
To the BSAI Pacific Cod Parallel Waters Fishery**

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EXECUTIVE SUMMARY

This Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) examines the environmental, economic, and socioeconomic aspects of the proposed Federal action. The action would make changes to the Federal Fisheries Permit (FFP) and License Limitation Program (LLP) requirements for operators of pot and hook-and-line catcher processors who participate in the BSAI Pacific cod parallel waters fisheries. Specifically, the action would preclude vessel operators in the specified sectors from participating in the BSAI Pacific cod parallel waters fishery, if they do not have an LLP license with an Amendment 67 Pacific cod endorsement and the appropriate area Bering Sea (BS) or Aleutian Islands (AI) endorsement. Amendment 67 was implemented in 2003, and was intended to limit participation with hook-and-line and pot gear in the fully utilized BSAI Pacific cod fishery. Amendment 67 was implemented by issuing LLP endorsements for exclusive participation in the hook-and-line and pot gear BSAI Pacific cod fisheries by long-time participants.

The rationale for this action is concern over the impacts that increased participation in the parallel waters by operators of pot and hook-and-line catcher processors who lack Federal permits or licenses may have on long-term participants in the BSAI Pacific cod fishery. Increased parallel waters participation has the potential to erode catches of those participants who contributed catch history to BSAI Pacific cod sector allocations and depend on the BSAI Pacific cod resource. The pot catcher processor sector has historically been very small, and is allocated only 1.5% of the BSAI Pacific cod TAC. The hook-and-line catcher processor sector recently completed a voluntary capacity reduction program and, in January 2008, the owners of vessels in this fleet began repaying a \$35 million Federal loan. The sector's ability to repay the loan is based on average annual catches of the hook-and-line CP allocation by vessels that hold Amendment 67 endorsed LLP licenses.

The Council adopted the following statement of purpose and need for the proposed action:

Purpose and Need Statement

Several fixed gear CPs that do not hold the permits, licenses, and endorsements necessary to participate in the Federal waters fisheries are participating in the parallel waters fisheries, and the potential exists for that participation to increase. This vessel activity may be circumventing the intent of previous decisions made by the Council regarding license limitation and endorsements, sector allocations, and catch reporting. Additionally, the increased participation in the BSAI CP hook-and-line sector in the parallel waters fishery undermines recent capacity reduction, undertaken by that fleet. While this vessel activity could occur in numerous fisheries, it has recently occurred in the BSAI Pacific cod fishery within the CP pot and hook-and-line sectors. An increasing number of vessels without LLPs, or without Amendment 67 Pacific cod endorsements on their LLPs, have entered the BSAI Pacific cod parallel waters fishery in recent years. This vessel activity has resulted in shortened seasons, has exacerbated the race for fish, and has increased the concentration of Pacific cod harvests inside of 3 miles. The increased vessel activity and catch in the parallel waters fishery increases the complexity and difficulty in managing adherence to sector allocations; seasonal apportionments; area apportionments; and maintaining catch below ABC/TAC. Long-term participants in the fishery need protection from those who have little or no recent history and have the potential to increase their participation in the fisheries. The intent of the proposed action is to prevent fixed gear CPs that hold Federal permits and licenses, but not the necessary Amendment 67 and area endorsements, from entering the BSAI parallel waters Pacific cod fishery. This action requires prompt attention to promote stability in the fixed gear sectors that participate in the BSAI Pacific cod fishery.

Alternatives

In order to address the problem described in the purpose and need statement, the Council identified five alternatives for analysis. The exact text of the Council's motion is shown in Table 1. The Council's **preferred alternative** includes Alternative 2, Alternative 3, and Alternative 4, Option (c), as indicated by the asterisks in Table 1 below. **Alternative 1**, the requisite No Action alternative, would not make any changes to the FFP or LLP requirements for Federally-permitted vessels. **Alternative 2** (selected as part of the preferred alternative) would require that operators of catcher processors using pot or hook-and-line gear, who hold an FFP or LLP, have specific endorsements and designations on the FFP and LLP in order to participate in the BSAI Pacific cod parallel waters fishery. The FFP would be required to have a CP operation type designation, BSAI area designation, and either a pot or hook-and-line gear designation. The LLP would be required to have an Amendment 67 Pacific cod endorsement and the appropriate area endorsement (BS or AI). **Alternative 3** (selected as part of the preferred alternative) requires the above vessel operators to adhere to seasonal closures of the BSAI Pacific cod pot CP and hook-and-line CP fishery in Federal, as well as State of Alaska parallel waters. **Alternatives 4 and 5** are intended to preclude operators of Federally-permitted vessels from surrendering their FFP, in order to circumvent the restrictions proposed in Alternatives 2 and 3. Alternative 4 precludes holders of FFPs with a CP designation, BSAI area designation, and either a pot or hook-and-line gear designation, from surrendering or reactivating the FFP more than (a) once per calendar year or (b) once every 18 months; or, alternatively, (c) precludes the FFP from being surrendered during the 3-year term of the permit. The Council selected option (c), within Alternative 4, as part of the preferred alternative. In addition, the designations specified above may not be removed from the FFP during the selected time period. Alternative 5 differs from Alternative 4 in that it applies to all FFPs with a CP designation.

Table 1 Council motion on BSAI Pacific cod parallel waters fishery

For the purposes of this action, a catcher processor is defined as a vessel that is used to catch and process fish. A vessel that has a catcher processor license, but is not used to catch and process fish, is not considered a catcher processor for purposes of this action. This definition is consistent with the way in which NMFS accounts for catch, under the Amendment 85 sector allocations.

Alternative 1 No action

***Alternative 2** Require any catcher processor using pot or hook-and-line gear with an FFP or LLP to have a CP designation for vessel type of operation, a BSAI designation for area of operation, and a pot or hook-and-line gear designation on the FFP; and the appropriate Amendment 67 Pacific cod endorsement (CP pot or CP hook-and-line, corresponding to the gear type being used) and the appropriate area endorsement on the LLP in order to participate in the BSAI Pacific cod parallel waters fishery.

***Alternative 3** Require any catcher processor using pot or hook-and-line gear with an FFP or LLP that fishes in parallel waters to adhere to seasonal closures of the BSAI Pacific cod CP pot or CP hook-and-line sectors (as defined in Amendment 85) corresponding to the sector the vessel is operating in.

***Alternative 4** Vessels with a CP designation for vessel type of operation, BSAI area designation for area of operation, and hook-and-line or pot gear designation on the FFP cannot remove the CP designation, the BSAI area designation, or the pot or hook-and-line gear designation from the FFP; and can only surrender or reactivate the permit:

(a) once per calendar year

(b) once every eighteen months

*(c) FFP cannot be surrendered during the 3 year term of the permit

Alternative 5 Vessels with a CP designation on their FFP may not amend the CP designation, and may only surrender or reactivate the FFP:

- (a) once per calendar year
- (b) once every eighteen months
- (c) FFP cannot be surrendered during the 3 year term of the permit

*Asterisks indicate Alternatives and options selected by the Council as part of its preferred alternative in June 2009.

Background

The parallel waters groundfish fisheries occur in State waters (0 nm to 3 nm), adjacent to the GOA and BSAI management areas. Each year, the ADF&G commissioner opens and closes, by emergency order, parallel waters seasons in the GOA and BSAI that coincide with the Federal waters (3 nm to 200 nm) seasons in the GOA and BSAI. The same gear types that may be used in the Federal GOA and BSAI fisheries are permitted in the parallel fisheries, unless specifically prohibited under State regulations. The combined groundfish harvests in the parallel waters and Federal waters account to the Federal groundfish TACs.

Currently, vessel operators may participate in the BSAI and GOA parallel waters groundfish fisheries without holding the Federal permits, licenses, and endorsements necessary to participate in the Federal waters fisheries. This activity may be circumventing the intent of previous decisions made by the Council concerning license limitation and endorsements, sector allocations, and catch reporting. While this parallel waters activity could arise in numerous fisheries, it has recently occurred in the BSAI Pacific cod fishery, within the pot and hook-and-line CP sectors. Specifically, the majority of this activity has occurred in the Aleutian Islands, and has the potential to increase fishing pressure in that management area, creating several undesirable management issues. In December 2008, the State Board of Fisheries (BOF) took action to limit the size of hook-and-line vessels allowed to participate in the BSAI parallel waters fishery to 58 ft LOA. The vessel size restriction took effect on June 1, 2009, and precludes some of the hook-and-line vessels that lack Federal permits or licenses, and that participated in the AI parallel waters fishery in 2008, from continuing to participate in that fishery. The BOF regulation will not preclude pot vessels greater than 58 ft LOA from participating in the BSAI parallel waters fishery.

The BSAI Pacific cod TAC is allocated among gear and operation types under Amendment 85. These allocations are typically fully harvested. The initial allocations to each sector are:

- 48.7% hook-and-line CP
- 22.1% trawl CV
- 13.4% Amendment 80
- 8.4% pot CV \geq 60 ft LOA
- 2.3% AFA trawl CP
- 2.0% pot and hook-and-line CV <60 ft LOA
- 1.5% pot CP
- 1.4% jig
- 0.2% hook-and-line CV \geq 60 ft LOA

During 2008, 5 pot and hook-and-line CPs participated in the BSAI Pacific cod parallel waters fishery that did not have the Federal permits, licenses, or endorsements needed to participate in the Federal waters fishery (Table E-1). These vessels included three non-Amendment 67 endorsed pot CPs that participated in the AI parallel waters fishery during both the A and B seasons. In 2008, the number of

non-Amendment 67 pot and hook-and-line CPs that participated in the BSAI Pacific cod parallel waters fishery, and their total catch, was a relatively small component of the BSAI Pacific cod fishery (Table E-2). However, the number of CPs fishing in the parallel waters fishery has the potential to increase. Both the pot CP and hook-and-line CP allocations are fully harvested, and additional participants in the pot and hook-and-line CP sectors that do not have Amendment 67 endorsements will erode the harvests of vessels that have historically participated in the BSAI Pacific cod fishery.

Table E-1. Pot and hook-and-line catcher processors participating in the AI Pacific cod parallel waters fishery in 2008 that do not have an FFP and/or LLP with an Amendment 67 endorsement.

Vessel	FFP ^a	LLP	LLP endorsements			≤60 ft LOA	Gear used
			BS	AI	Am 67		
1*	x	x	x	x		x	HAL
2	x	x	x		x		Pot
3*							Pot & HAL
4**							Pot
5	x	x	x	x			HAL

* Vessels 1 and 3 also fished during the 2009 A season in the BSAI parallel waters P.cod fishery.

** Vessel 4 sank in October 2008.

a Indicates whether the vessel held an FFP during 2008.

Table E-2. BSAI Pacific cod catch (mt) in 2008 by Amendment 67 endorsed and non-Amendment 67 endorsed Pot and hook-and-line catcher processors.

	Amendment 67 endorsed		Non-Amendment 67 endorsed		Total BSAI catch (mt)
	Vessel count	Catch (mt)	Vessel count	Catch (mt)	
Hook-and-line CP	36	76,250	3	206	76,456
Pot CP	2	*	3	*	3,108

Source: NMFS Catch Accounting.

Regulatory Context

All vessel operators fishing for groundfish in Federal waters of the Bering Sea, Aleutian Islands, and Gulf of Alaska are required to hold a Federal fisheries permit (FFP). Operators who hold an FFP must comply with groundfish observer program regulations and with NMFS recordkeeping and reporting requirements. In addition, vessel operators who hold FFPs must carry a Vessel Monitoring System (VMS) if they participate in the directed Atka mackerel, Pacific cod, or pollock fisheries in Federal waters of the BSAI or GOA. Vessel operators who fish exclusively in the parallel and State waters fisheries do not need an FFP. The FFP is issued on a 3-year cycle and is in effect from the date of issuance through the end of the current NMFS 3-year cycle.

Currently, operators are allowed to surrender the FFP at any time during a given year and have the FFP reissued at a later date during the same calendar year. For example, an operator could surrender the FFP and fish in the parallel or State waters fisheries, to avoid having to comply with observer or VMS requirements, and later in the same calendar year, have the permit reissued in order to fish in Federal waters. There is no limit on the number of times the FFP may be surrendered and reissued within the 3-year permit cycle.

License Limitation Program (LLP)

The License Limitation Program (LLP) limits access to the groundfish and crab fisheries in the Bering Sea, Aleutian Islands, and Gulf of Alaska. Fishing under the program began in 2000. A vessel must be assigned to a valid LLP license with the appropriate gear designation, operation type, and area endorsement in order to participate in groundfish fisheries in Federal waters. In 2003, when Amendment 67 to the BSAI FMP was implemented, gear and operation specific Pacific cod endorsements were added to groundfish LLPs. Four Pacific cod endorsements were created (pot CP, hook-and-line CP, pot CV, and hook-and-line CV), and licenses qualified for endorsements by meeting historic specific landings criteria for each gear and operation type. All CPs, and CVs greater than 60 ft LOA, are required to hold a license with an Amendment 67 Pacific cod endorsement to participate in the directed Pacific cod fishery in Federal waters of the BSAI using pot or hook-and-line gear. The number of Amendment 67 endorsements on CP and CV licenses is shown in Table E-4.

Table E-4. Number of Amendment 67 endorsements on licenses with BS or AI area endorsements.

	Catcher Vessel*		Catcher Processor**	
	Pot	Hook-and-line	Pot	Hook-and-line
Bering Sea	49	2	7	37
Aleutian Islands	2	2	4	35

* On 51 CV licenses (1 CV license has both CV pot and CV HAL)

** On 48 CP licenses (2 CP licenses have both CP pot and CP HAL, 2 have CP HAL and CV pot, and one has CP pot and CV HAL)

Federal regulatory authority over vessels with Federal permits and licenses

The Council and NOAA fisheries have broad authority over vessel operators who hold Federal permits and licenses. Operators who hold FFPs or LLP licenses may be subject to Federal groundfish regulations, even while fishing in State waters adjacent to the GOA or BSAI. For example, operators who hold FFPs are subject to Federal record keeping and reporting, observer, and VMS requirements while fishing in Federal, parallel, or State waters fisheries. The Council could extend other regulations to Federally permitted vessels participating in the parallel water fisheries, as long as the action has an adequate conservation or management rationale.

Effects of the Alternatives

Under **Alternative 1**, there would be no additional restrictions limiting access to the BSAI Pacific cod parallel waters fishery. If this alternative is selected, additional non-Amendment 67 endorsed vessels could enter the BSAI Pacific cod parallel waters fishery in the future, and dilute revenues, increase costs, or both, for vessels that have participated in the fishery during recent years. Increased participation may result in negative economic impacts to current participants in the fishery. Specifically, increased participation could erode the harvests of long-term participants. If effort increases substantially in a particular sector, the erosion of harvests resulting from new entry into the fishery will be exacerbated, because each sector's catch is constrained by its allocation. The number of vessels that might enter the fishery in the absence of this action is unknown, and would depend on future market conditions, the size of groundfish TACs, opportunities to participate in other fisheries, operating costs in the fisheries, and the future regulatory environment, among other factors.

Alternative 2 provides protection for operators of pot and hook-and-line catcher processors who hold Amendment 67 endorsed licenses, by preventing the erosion of their harvests via the entry of new participants into the BSAI Pacific cod parallel waters fishery. The Council established Amendment 67 Pacific cod endorsements in 2003, to limit access to the pot and hook-and-line allocations to those participants who had catch history in the BSAI Pacific cod fishery. Parallel waters participation by pot and hook-and-line catcher processors that do not hold LLP licenses with Amendment 67 endorsements reduces the amount of TAC available to participants who hold endorsed licenses. The proposed action would extend the Amendment 67 endorsement requirement to the parallel waters fishery for operators of pot and hook-and-line catcher processors who hold an FFP or LLP, but would not preclude operators who do not hold an FFP or LLP from entering the parallel waters fishery. The recent action taken by the Board of Fisheries to limit vessels using hook-and-line gear to 58 ft LOA would preclude larger vessels, including those that do not have an LLP or FFP, from entering the hook-and-line fishery in parallel waters, but would not preclude larger pot CPs from entry.

Alternative 2 further limits the number of fisheries available to operators of pot and hook-and-line catcher processors who hold an FFP or LLP, but do not hold an Amendment 67 endorsed license. The vessels that participated in the AI parallel waters fishery in 2008 are relatively recent entrants to this fishery. Prior to 2008, there were fewer than 3 non-Amendment 67 endorsed pot and hook-and-line catcher processors (total) participating in the BSAI Pacific cod parallel waters fishery, but owing to confidentiality considerations their harvests cannot be reported. In 2008, 5 such vessels participated in this fishery. In addition, several of these vessels also participated in the AI State-waters Pacific cod fishery, GOA Pacific cod fishery, and sablefish IFQ fishery; and, under the proposed action, these vessels would continue to have access to these fisheries.

Alternative 3, in tandem with the recent Board of Fisheries action, potentially limits the number of pot and hook-and-line catcher processors and hook-and-line vessels >58 ft LOA that could continue to fish in parallel waters after the respective sector allocations have been fully harvested. This fishing activity could result in overages by the pot and hook-and-line CP sectors. If this occurs, NMFS may have to close other sectors early, to accommodate the overages. Alternative 3, in tandem with the Board of Fisheries action, would not preclude hook-and-line vessels ≤58 ft LOA, pot catcher vessels, trawl vessels, jig vessels, or any non-Federally permitted vessel, from fishing in parallel waters after the respective sector allocations have been fully harvested. This fishing activity could also result in overages and the *de facto* reallocation of TAC among the sectors. Finally, **Alternative 4 and Alternative 5** limit the potential for FFPs to be surrendered. Again, the difference between the alternatives is that Alternative 4 applies only to FFPs with specific designations (CP, BSAI, and pot or hook-and-line), while Alternative 5 applies to all FFPs with a CP designation. Alternatives 2 and 3 would make it more difficult for vessel operators to circumvent Federal regulations by temporarily surrendering the FFP. However, it would also mean that vessels greater than 60 ft LOA that retain the FFP would be required to have observer coverage during more fishing trips. These requirements would impose additional costs on these vessels. From a net National benefit perspective, these costs would be fully offset by the acquisition of harvest and effort data that are critical to achieving management obligations and enforcement responsibilities for these public resources.

Summary of preferred alternative

The Council's "preferred" alternative includes Alternative 2, Alternative 3, and Alternative 4, with Option (c). **Alternative 2** requires that operators of catcher processors using pot or hook-and-line gear in the BSAI Pacific cod parallel waters fishery hold an FFP or LLP with specific endorsements and designations. Such an FFP would be required to have a CP operation type designation, BSAI area designation, and either a pot or hook-and-line gear designation. The LLP would be required to have an Amendment 67 Pacific cod endorsement and the appropriate area endorsement. **Alternative 3** requires

the above vessel operators to adhere to seasonal closures of the BSAI Pacific cod pot CP and hook-and-line CP sectors. Within **Alternative 4**, the Council recommended Option (c), which precludes persons who hold an FFP with the specified designations (CP, BSAI, and pot or hook-and-line) from surrendering the FFP during the 3-year term of the permit. In addition, the designations specified above may not be removed from the FFP during the selected time period.

The primary purpose of the preferred alternative, recommended by the Council, is to preclude operators of pot and hook-and-line catcher processors who hold FFPs or LLP licenses, but lack specific designations and endorsements, from participating in the BSAI Pacific cod parallel waters fishery. An increase in participation in the BSAI Pacific cod parallel waters fishery by operators who lack such permits and LLP licenses would erode the harvests of vessels that contributed catch history to the Amendment 85 allocations and are economically dependent on this fishery. Most of the vessel operators who do not hold LLP licenses with a Pacific cod endorsement, and who have fished in parallel waters, are recent entrants to the fishery, and have not demonstrated long-term economic dependence on the fishery. Second, the preferred alternatives would preclude the specified operators from continuing to fish past the end of the pot CP and hook-and-line CP sector closures. Such activity occurred in 2008 and 2009, and has the potential to make it difficult for inseason managers to adhere to seasonal TACs. Finally, the amendment package precludes the specified FFPs from being surrendered during the 3-year term of the permit, which makes it more difficult for vessel operators to circumvent this new set of regulations.

The Council did not select Alternative 5, which would have extended the restrictions on surrendering the FFP to any FFP with a CP designation. During its deliberations, the Council noted that the proposed action was intended to apply specifically to operators of pot and hook-and-line CPs in the BSAI Pacific cod fishery. Consequently, the Council chose Alternative 4, which applies specifically to the universe of FFPs with CP, BSAI, and pot or hook-and-line designations, and, therefore, to the sectors identified in the purpose and need statement. The Council selected the most restrictive option under Alternative 4.

1 INTRODUCTION

The groundfish fisheries in the Exclusive Economic Zone (EEZ) off Alaska are managed by the National Marine Fisheries Service (NMFS) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Under the authority of the MSA, the North Pacific Fishery Management Council (Council) developed Fishery Management Plans for the groundfish fisheries of the Gulf of Alaska management area (GOA) and Bering Sea and Aleutian Islands management area (BSAI). This Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) examines the environmental, economic, and socioeconomic aspects of a proposed Federal regulatory action. The action would revise the Federal Fisheries Permit (FFP) and License Limitation Program (LLP) requirements for operators of “pot” and “hook-and-line” catcher processors who participate in the BSAI Pacific cod parallel waters fisheries. Specifically, the action would preclude vessel operators in the specified sectors from participating in the BSAI Pacific cod parallel waters fishery if they do not have an LLP license with an Amendment 67 Pacific cod endorsement and the appropriate area (BS or AI) endorsement. Amendment 67 was implemented in 2003, and was intended to limit participation with hook-and-line and pot gear in the fully utilized BSAI Pacific cod fishery. Amendment 67 was implemented by issuing LLP endorsements, for exclusive participation in the hook-and-line and pot gear BSAI Pacific cod fisheries, to long-time participants.

The proposed action would also require the above Federally-permitted or licensed vessel operators to adhere to seasonal closures of the BSAI Pacific cod pot or hook-and-line catcher processor sectors, and would preclude those operators from surrendering the FFP during the 3-year term of the permit. In sum, the action would preclude operators of pot and hook-and-line catcher processors from circumventing the intent of previous Council decisions regarding license limitation, sector allocations, and catch reporting while participating in the BSAI Pacific cod parallel waters fishery.

Executive Order 12866 (E.O. 12866) requires preparation of a Regulatory Impact Review (RIR) to assess the social and economic costs and benefits of available regulatory alternatives, in order to determine whether a proposed regulatory action is economically significant, as defined by the order. This analysis is included in **Chapter 2**. An Environmental Assessment (EA) is required by the National Environmental Policy Act of 1969 (NEPA) to determine whether the proposed action will result in a significant impact on the human environment. If the action is determined not to be significant, based on an analysis of the relevant considerations, the EA and finding of no significant impact (FONSI) would be the final environmental documents required by NEPA. An Environmental Impact statement (EIS) must be prepared for major Federal actions significantly affecting the human environment.

The purpose of the EA is to analyze the environmental impacts of the proposed Federal action. The human environment is defined by the Council on Environmental Quality as the natural and physical environment and the relationships of people with that environment (40 CFR 1508.14). This means that economic or social effects are not intended, by themselves, to require preparation of an EA. However, when an EA is prepared, and socio-economic and natural or physical environmental impacts are interrelated, the EA must discuss all of these impacts on the quality of the human environment. NEPA requires a description of the purpose and need for the proposed action, as well as a description of alternatives which may address the problem. This information is included in **Chapter 3** of this document, as well as a description of the affected human environment and information on the impacts of the alternatives on that environment. **Chapter 4** addresses requirements of the Regulatory Flexibility Act (RFA). The RFA requires an analysis of potential adverse economic impacts accruing to small entities that would be directly regulated by the proposed action. **Chapter 5** addresses other applicable laws, including the Magnuson Stevens Act and Marine Mammal Protection Act. The references and literature cited are in **Chapter 6**, the list of preparers is in **Chapter 7**, and the list of agencies and individuals consulted is in **Chapter 8**.

2 REGULATORY IMPACT REVIEW

An RIR is required under Presidential Executive Order (E.O.) 12866 (58 FR 51735; October 4, 1993). The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following Statement from the Order:

“In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nonetheless essential to consider. Further, in choosing among alternative regulatory approaches agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.”

E.O. 12866 requires that the Office of Management and Budget review proposed regulatory programs that are considered to be “significant.” A “significant regulatory action” is one that is likely to:

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, local or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.

2.1 Introduction and Problem Statement

At its April 2008 meeting, the Council requested that staff develop a discussion paper to address potential Council actions concerning Federal permit and license requirements for vessel operators who participate in the parallel waters fisheries. Specifically, the Council requested that the discussion paper focus on operators of hook-and-line and pot catcher processors who are participating in the BSAI Pacific cod parallel waters fishery, yet do not hold the Federal permits and licenses required to fish in Federal waters. The intent of the discussion paper was to explore potential management measures that could apply specifically to the BSAI Pacific cod parallel waters fishery, but could also be applied more broadly to other parallel waters fisheries. The Council reviewed the discussion paper at the October 2008 meeting and initiated a regulatory amendment analysis (EA/RIR/IRFA). In February 2009, the Council made an initial review of the draft analysis, and released the document for public review. The Council took final action and selected a preferred alternative at its June 2009 meeting. The proposed rule for this action was published on March 11, 2011 (76 FR 13331). One public comment was submitted on the proposed rule, in support of the action. The final rule includes the public comment and response.

The sectors directly affected by the proposed action are the pot and hook-and-line catcher processor sectors in the BSAI Pacific cod fishery. The action would preclude operators of catcher processors who hold an FFP or LLP from participating in the BSAI Pacific cod parallel waters fishery using pot or hook-and-line gear, if the FFP and LLP do not have specific designations and endorsements. The action would also require that the above operators adhere to seasonal closures of their respective sectors, and would

preclude those operators from surrendering and later reapplying for the FFP within the 3-year term of the permit. The intent of the action is to prevent operators of pot and/or hook-and-line catcher processors from circumventing the intent of previous Council decisions regarding license limitation, sector allocations, and catch reporting, while participating in the BSAI Pacific cod parallel waters fishery.

The rationale for this action is concern over the impacts that increased participation in the parallel waters by operators of pot and hook-and-line catcher processors who lack Federal permits or licenses may have on long-term participants in the BSAI Pacific cod fishery. Increased parallel waters participation has the potential to erode catches of those participants who contributed catch history to the Amendment 85 Pacific cod sector allocations and depend on the BSAI Pacific cod resource. The Amendment 85 sector allocations were implemented in 2007, and revised the allocations established under several previous BSAI FMP amendments. The proposed action is intended to provide protection for operators of pot and hook-and-line catcher processors, who hold LLP licenses with Amendment 67 Pacific cod endorsements, from entry into the parallel waters fishery by operators who do not hold these license endorsements. The pot catcher processor sector has historically been very small, and the Amendment 85 allocation to this sector is only 1.5% of the BSAI Pacific cod TAC. The hook-and-line catcher processor sector recently completed a voluntary capacity reduction program and, in January 2008, the owners of vessels in this fleet began repaying a \$35 million Federal loan. The sector's ability to repay the loan is based on average annual catches of the hook-and-line CP allocation by vessels that hold Amendment 67 endorsed LLP licenses.

The scope of this action is limited to operators of pot and hook-and-line catcher processors who hold an FFP or LLP. The action would not preclude operators of catcher processors who do not hold either an FFP or LLP from participating in the BSAI Pacific cod parallel waters fishery. Finally, it is important to note that in December 2008, the Alaska State Board of Fisheries (BOF) took action to limit the size of hook-and-line vessels allowed to participate in the BSAI parallel waters fishery to 58 ft LOA. The vessel size restriction took effect on June 1, 2009, and precludes some of the vessels that lack Federal permits or licenses, and that participated in the AI parallel waters fishery in 2008, from continuing to participate in that fishery using hook-and-line gear.

Draft Purpose and Need Statement

The Council adopted the following statement of purpose and need:

Several fixed gear CPs are participating in the parallel waters fisheries that do not hold the permits, licenses, and endorsements necessary to participate in the Federal waters fisheries, and the potential exists for that participation to increase. This vessel activity may be circumventing the intent of previous decisions made by the Council regarding license limitation and endorsements, sector allocations, and catch reporting. Additionally, the increased participation in the BSAI CP hook-and-line sector in the parallel waters fishery undermines recent capacity reduction undertaken by that fleet. While this vessel activity could occur in numerous fisheries, it has recently occurred in the BSAI Pacific cod fishery within the CP pot and hook-and-line sectors. An increasing number of vessels without LLPs, or without Amendment 67 Pacific cod endorsements on their LLPs, have entered the BSAI Pacific cod parallel waters fishery in recent years. This vessel activity has resulted in shortened seasons, has exacerbated the race for fish, and has increased the concentration of Pacific cod harvest inside of 3 miles. The increased vessel activity and catch in the parallel waters fishery increases the complexity and difficulty in managing adherence to sector allocations; seasonal apportionments; area apportionments; and maintaining catch below ABC/TAC. Long-term participants in the fishery need protection from those who have little or no recent history and have the potential to increase their participation in the fisheries. The intent of the proposed action is to prevent fixed gear CPs that hold Federal permits and licenses, but not the necessary Amendment 67 and area endorsements, from entering the BSAI parallel waters Pacific cod fishery. This action requires prompt attention to promote stability in the fixed gear sectors that participate in the BSAI Pacific cod fishery.

2.2 Description of the Alternatives

In order to address the problem described in the purpose and need statement, the Council identified five alternatives for analysis. The exact text of the Council’s motion is shown in Table 1. The Council’s **preferred alternative** includes Alternative 2, Alternative 3, and Alternative 4 with Option (c), as indicated by the asterisks in Table 1 below.

Alternative 1 would not make any changes to the FFP or LLP requirements for Federally-permitted vessels. **Alternative 2** (selected as part of the preferred alternative) would require that operators of catcher processors using pot or hook-and-line gear, who hold an FFP or LLP, have specific endorsements and designations on the FFP and LLP in order to participate in the BSAI Pacific cod parallel waters fishery. The FFP would be required to have a CP operation type designation, BSAI area designation, and either a pot or hook-and-line gear designation. The LLP would be required to have an Amendment 67 Pacific cod endorsement and the appropriate area endorsement (BS or AI). **Alternative 3** (selected as part of the preferred alternative) requires the above vessel operators to adhere to seasonal closures of the BSAI Pacific cod pot CP and hook-and-line CP fishery in Federal (as appropriate to their gear type), as well as State of Alaska parallel waters. **Alternatives 4 and 5** are intended to preclude operators of Federally-permitted vessels from surrendering the FFP in order to circumvent the restrictions proposed in Alternatives 2 and 3. Alternative 4 precludes holders of FFPs with a CP designation, BSAI area designation, and either a pot or hook-and-line gear designation from surrendering or reactivating the FFP more than (a) once per calendar year or (b) once every 18 months; or, alternatively, (c) precludes the FFP from being surrendered during the 3-year term of the permit. The Council selected option (c) within Alternative 4 as part of the preferred alternative. In addition, the designations specified above may not be removed from the FFP during the selected time period. Alternative 5 differs from Alternative 4 in that it applies to all FFPs with a CP designation.

Table 2 Council motion on BSAI Pacific cod parallel waters fishery

For the purposes of this action, a catcher processor is defined as a vessel that is used to catch and process fish. A vessel that has a catcher processor license, but is not used to catch and process fish, is not considered a catcher processor for purposes of this action. This definition is consistent with the way in which NMFS accounts for catch under the Amendment 85 sector allocations.

Alternative 1 No action

***Alternative 2** Require any catcher processor using pot or hook-and-line gear with an FFP or LLP to have a CP designation for vessel type of operation, a BSAI designation for area of operation, and a pot or hook-and-line gear designation on the FFP; and the appropriate Amendment 67 Pacific cod endorsement (CP pot or CP hook-and-line, corresponding to the gear type being used) and the appropriate area endorsement on the LLP in order to participate in the BSAI Pacific cod parallel waters fishery.

***Alternative 3** Require any catcher processor using pot or hook-and-line gear with an FFP or LLP that fishes in parallel waters to adhere to seasonal closures of the BSAI Pacific cod CP pot or CP hook-and-line sectors (as defined in Amendment 85) corresponding to the sector the vessel is operating in.

***Alternative 4** Vessels with a CP designation for vessel type of operation, BSAI area designation for area of operation, and hook-and-line or pot gear designation on the FFP cannot remove the CP designation, the BSAI area designation, or the pot or hook-and-line gear designation from the FFP; and can only surrender or reactivate the permit:

(a) once per calendar year

(b) once every eighteen months

* (c) FFP cannot be surrendered during the 3 year term of the permit

Alternative 5 Vessels with a CP designation on their FFP may not amend the CP designation, and may only surrender or reactivate the FFP:

- (a) once per calendar year
- (b) once every eighteen months
- (c) FFP cannot be surrendered during the 3 year term of the permit

*Asterisks indicate Alternatives and options selected by the Council as part of its preferred alternative in June 2009.

Options considered and rejected

The Council's motion from the October 2008 meeting included two options. One option would have required operators of any pot or hook-and-line CP with an LLP or FFP to surrender both the LLP and FFP prior to participating in the BSAI Pacific cod parallel waters fishery. NOAA General Counsel expressed several legal concerns with this option. The primary concern identified was that requiring a vessel owner or operator to relinquish the LLP and FFP in order to participate in the parallel waters fishery appears to be contrary to conservation and management objectives, if that action would also remove record keeping, reporting, and observer coverage requirements. While this approach may dissuade some persons from participating in the parallel fishery, it would also weaken existing conservation and management authority and significantly reduce the amount of fisheries information reported to NMFS. The second concern identified was the issue of fairness and equity. If a person is required to transfer the LLP in order to participate in the parallel fishery, the administrative record would need to clearly show a Federal purpose and benefit. Finally, the third concern identified was that this approach appeared to only address an allocation issue, and NMFS is not authorized to resolve issues that are exclusively economic allocation problems. NMFS has the authority to resolve conservation and management issues. The requirement to relinquish the LLP and FFP does not appear to have a nexus to a conservation or management objective.

As a result of these legal concerns, NMFS recommended that the Council consider whether continued development of this approach would be the best use of limited staff resources. At the December 2008 meeting, the Council approved a motion to drop this option from the analysis.

2.3 Background

The parallel waters groundfish fisheries occur in State waters (0 nm to 3 nm) adjacent to the GOA and BSAI management areas. Each year, the ADF&G commissioner opens and closes, by emergency order, parallel waters seasons in the GOA and BSAI that coincide with the Federal waters (3 nm to 200 nm) seasons in the GOA and BSAI. The same gear types that may be used in the Federal GOA and BSAI fisheries are permitted in the parallel fisheries, unless specifically prohibited under State regulations. The combined groundfish harvests in the parallel waters and Federal waters account to the Federal groundfish TACs. The parallel waters fisheries are managed separately from the State waters groundfish fisheries. The State waters fisheries occur during distinct seasons that generally do not overlap the parallel and Federal waters seasons, and are managed by ADF&G under a Guideline Harvest Level (GHL) and a distinct set of regulations. For example, the Aleutian Islands State waters Pacific cod fishery regulations are described in Section 2.3.3. The remainder of this document addresses management of the parallel waters fisheries.

Currently, vessel operators may participate in the BSAI and GOA parallel waters groundfish fisheries without holding the Federal permits, licenses, and endorsements necessary to participate in the Federal

waters fisheries. This activity may be circumventing the intent of previous decisions made by the Council concerning license limitation and endorsements, sector allocations, and catch reporting. While this parallel waters activity could arise in numerous fisheries, it has recently occurred in the BSAI Pacific cod fishery, within the pot and hook-and-line CP sectors. Specifically, the majority of this activity has occurred in the Aleutian Islands, and has the potential to increase fishing pressure in that management area, creating several undesirable and potentially costly management issues. In December 2008, the State Board of Fisheries (BOF) took action to limit the size of hook-and-line vessels allowed to participate in the BSAI parallel waters fishery to 58 ft LOA. The vessel size restriction took effect on June 1, 2009, and precludes some of the hook-and-line vessels that lack Federal permits or licenses, and that participated in the AI parallel waters fishery in 2008, from continuing to participate in that fishery. The BOF regulation will not preclude pot vessels greater than 58 ft LOA from participating in the BSAI parallel waters fishery.

2.3.1 Management of the BSAI Pacific cod fishery

The BSAI Pacific cod TAC is allocated among gear and operation types, under Amendment 85, but is not allocated spatially between the BS and AI management areas or between Federal and parallel waters. As a result, the proportion of catch harvested in each management area, and the proportion of catch harvested in parallel and Federal waters, varies from year to year. The BS and AI management areas are comprised of the Federal management areas shown below in Figure 1. The AI is comprised of Areas 541, 542, and 543, and the BS is comprised of the remainder of the management areas. The Council has considered options to split the BSAI Pacific cod TAC into separate BS and AI TACs. Currently, the best estimate of long-term average biomass distribution of the Pacific cod stock is 84% in the BS and 16% in the AI (Thompson et al., 2007). There was a difference between the exploitation rates for the BS and AI Pacific cod stocks in 2007. The exploitation rate was estimated to be 22% of the biomass in the AI and 17% in the BS (Ormseth et al., 2008). In 2007 and 2008, approximately 20% of the overall BSAI Pacific cod catch was harvested in the AI (see Table 2). If the BSAI Pacific cod TAC is split into BS and AI subarea TACs, the proportion of the TAC harvested in each management area would be capped.

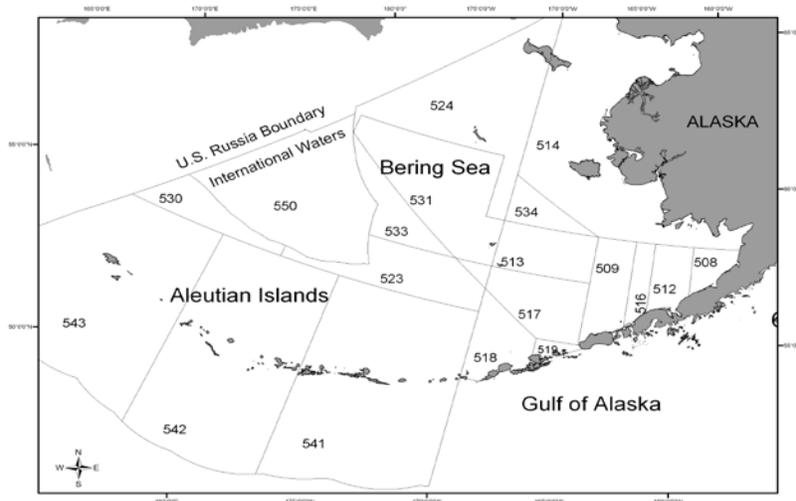


Figure 1 BS and AI Federal management areas

Table 3. Retained catch (mt) of Pacific cod from the BSAI parallel and State waters fisheries, and total retained catch from the BSAI Pacific cod fishery during 1996-2007 (all gear types).

Year	Aleutian Islands			Bering Sea	
	State waters catch	Parallel waters catch	State, Parallel, and Federal catch	Parallel waters catch	Parallel and Federal catch
1996	--	3,662	28,294	4,500	184,499
1997	--	309*	23,048	1,711	212,406
1998	--	3,680	34,075	1,682	154,963
1999	--	6,583	27,203	1,578	131,863
2000	--	5,503	33,786	1,304	140,021
2001	--	3,702	32,693	2,735	128,835
2002	--	5,877	29,121	1,594	150,090
2003	--	5,566	31,859	3,204	161,511
2004	--	4,634	28,287	4,034	165,429
2005	--	1,671	21,214	2,740	166,324
2006	3,955	1,290	22,828	1,805	152,970
2007	5,110	2,193	31,478	960	127,066
2008	5,378	2,877	29,136	1,540	121,350

Source: Parallel and State waters retained catch data from ADF&G Fish Tickets. Total retained catch data from NMFS Blend/Catch Accounting database. Aleutian Islands State waters Pacific cod fishery began in 2006. Table excludes CDQ catch. *On May 27, 1997, NMFS placed Pacific cod on PSC status for vessels using trawl gear in the Aleutian Islands to prevent overfishing of shortraker/rougheye rockfish.

Table 2 summarizes annual retained harvests of Pacific cod from the BS and AI management areas, including harvests from the Federal, parallel, and State waters fisheries. In addition, Table 2 separately reports retained harvests from the parallel and State waters fisheries in the BS and AI. In the BS management area, all inside waters harvests are from the parallel waters fishery. In the AI management area, inside waters catch includes harvests from the parallel and State waters fisheries. The Aleutian Islands State waters Pacific cod fishery was initiated in 2006, and the GHF was calculated as 3% of the BSAI Pacific cod ABC.

The retained catch data reported in Table 2 are derived from a combination of State and Federal sources. The NMFS Catch Accounting database does not track catch by ADF&G statistical area, and harvests in parallel waters cannot be distinguished from harvests in Federal waters. ADF&G Fish Tickets record harvests by ADF&G statistical area, and contain a complete record of groundfish harvests in the parallel and State waters fisheries. However, ADF&G Fish Tickets do not contain a complete record of groundfish harvests in Federal waters. Therefore, total retained catch data is from the NMFS Catch Accounting database, and parallel and State waters catch data is from ADF&G Fish Tickets.

Table 3 reports catch in the AI State waters and parallel waters Pacific cod fisheries by gear and operation type. During 2006 through 2008, trawl CVs harvested a large proportion of the catch in the AI State waters and parallel waters fisheries. No pot CPs participated in the AI State waters fishery in 2006, but in 2007, 6 pot CPs harvested 1,194 mt and in 2008, 4 pot CPs harvested 1,717 mt. Participation by pot CPs in the parallel waters fishery increased from 1 vessel in 2006 and 2007, to 3 vessels in 2008. Catch by the 3 pot CPs in 2008 cannot be reported, because only 2 other pot CPs participated in the BSAI Pacific cod fishery, and reporting catch by the 3 pot CPs that fished in the parallel waters would allow the catch by the other vessels to be calculated, thus, violating the data confidentiality requirement.

Table 4. Retained catch (mt) from the AI State and parallel waters Pacific cod fishery

Year	Operation	Gear	Aleutian Islands			
			State waters fishery		Parallel waters fishery	
			Vessel count	Tons	Vessel count	Tons
2006	CP	HAL	5	621	4	238
	CP	POT	0	0	1	*
	CP	TRW	*	*	2	*
	CV	HAL	4	29	4	4
	CV	JIG	0	0	1	*
	CV	POT	*	*	3	330
	CV	TRW	19	2,962	7	315
Total			3,955		1,290	

Year	Operation	Gear	Aleutian Islands			
			State waters fishery		Parallel waters fishery	
			Vessel count	Tons	Vessel count	Tons
2007	CP	HAL	0	0	4	326
	CP	POT	6	1,194	1	*
	CP	TRW	0	0	3	51
	CV	HAL	7	459	5	17
	CV	JIG	1	*	1	*
	CV	POT	5	*	1	*
	CV	TRW	20	3,069	22	1,626
Total			5,110		2,193	

Year	Operation	Gear	Aleutian Islands			
			State waters fishery		Parallel waters fishery	
			Vessel count	Tons	Vessel count	Tons
2008	CP	HAL	1	*	4	292
	CP	POT	4	1,717	3	*
	CP	TRW	1	*	1	*
	CV	HAL	8	*	8	297
	CV	JIG	9	137	5	42
	CV	POT	11	540	1	*
	CV	TRW	22	2,753	16	1,135
Total			5,378		2,877	

Source: ADF&G Fish Tickets.

The percentage of BS and AI Pacific cod catch that was harvested in the parallel and State waters fisheries is shown in Figure 2. Parallel and State waters catch in the Aleutian Islands has ranged from 1.3% to 28.3% of total catch, during 1996 through 2008. During 2006 through 2008, Pacific cod catch in the parallel and State waters fisheries comprised more than 23% of total retained catch in the Aleutian Islands. In those years, the majority of this catch was from the Aleutian Islands State waters fishery (Table 1). In the Bering Sea, parallel waters Pacific cod catch is typically a very small percentage of overall catch. Parallel waters Pacific cod catch in the BS has consistently remained between 1% and 3% of total retained Pacific cod catch in the management area.

The proportion of AI P.cod catch harvested from the State and parallel waters fisheries may increase, if additional catcher processors participate in the parallel waters cod fishery. The AI State waters GHLL is currently set at 3% of the BSAI Pacific cod ABC, and was 5,280 mt in 2008. The GHLL limits the annual catch in the Aleutian Islands State waters fishery. However, because the Federal BSAI Pacific cod TAC is not allocated between the BS and AI management areas or between the Federal and parallel waters

fisheries, P.cod catch in the AI parallel waters fishery has the potential to increase. If the BSAI Pacific cod TAC is split into separate BS and AI subarea TACs, the proportion of the TAC harvested in each management area would be capped, but, unless the subarea TACs are further apportioned into parallel waters and Federal waters TACs, the proportion of the AI TAC that is harvested in the parallel waters fishery could increase.

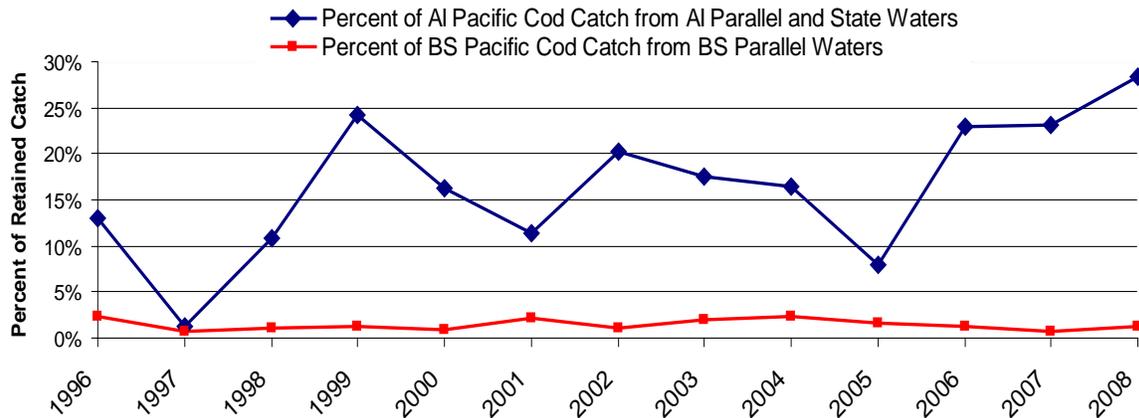


Figure 2. Percent of retained Bering Sea (BS) and Aleutian Islands (AI) Pacific cod catch from the parallel and State waters fisheries.

Table 4 reports the number of vessels that participated in the BSAI Pacific cod fishery in each of the fixed gear sectors, and each sector’s final allocation and catch. Note that vessel counts may include some vessels that only had incidental catches of Pacific cod. Also, note that the final allocations reported in Table 3 account for any rollovers to or from other sectors. During recent years, unused jig and trawl CV Pacific cod has been rolled over to several of the fixed gear sectors. Unharvested jig Pacific cod is rolled over to <60 ft hook-and-line and pot CVs. Unharvested trawl CV Pacific cod is first rolled over to jig or <60 ft LOA hook-and-line and pot CVs; second to ≥60 ft LOA hook-and-line and pot CVs; third to AFA trawl CPs and non-AFA trawl CPs; and finally to hook-and-line CPs. All of the final allocations to the pot and hook-and-line sectors have been at least 90% harvested since 2004, with the exception of the <60 ft pot and hook-and-line allocation in 2004.

Under Amendment 85, the initial allocations of the BSAI Pacific cod TAC to the sectors are:

- 48.7% hook-and-line CP
- 22.1% trawl CV
- 13.4% Amendment 80
- 8.4% pot CV ≥60 ft LOA
- 2.3% AFA trawl CP
- 2.0% pot and hook-and-line CV <60 ft LOA
- 1.5% pot CP
- 1.4% jig
- 0.2% hook-and-line CV ≥60 ft LOA

Table 5. Final allocations (including rollover amounts) and catches (mt) in the BSAI Pacific cod fishery by the fixed gear sectors.

Year		Jig CV	HAL & Pot <60 ft	HAL CV ≥60 ft**	Pot CV	HAL CP	Pot CP
2004	Vessel count	17	25	28	64	39	4
	Final allocation*	442	2,961	303	11,735	97,795	3,432
	Catch	231	2,037	289	12,311	95,095	3,234
	Percent harvested	52%	69%	95%	105%	97%	94%
2005	Vessel count	19	42	24	51	39	2
	Final allocation*	166	2,601	230	12,828	99,519	3,352
	Catch	117	2,364	230	12,274	100,327	3,339
	Percent harvested	70%	91%	100%	96%	101%	100%
2006	Vessel count	12	46	23	49	40	4
	Final allocation*	214	3,242	267	13,880	84,709	3,033
	Catch	88	3,200	245	13,375	85,109	3,149
	Percent harvested	41%	99%	92%	96%	100%	104%
2007	Vessel count	11	50	17	45	37	3
	Final allocation*	126	2,928	240	12,129	68,105	2,668
	Catch	83	2,928	215	12,061	69,018	2,758
	Percent harvested	66%	100%	90%	99%	101%	103%
2008	Vessel count	15	56	24	43	39	5
	Final allocation*	180	5,210	0	11,422	76,074	3,089
	Catch	176	5,091	8	11,357	76,456	3,108
	Percent harvested	98%	98%		99%	101%	101%

Source: NMFS annual catch reports and NMFS Catch Accounting database (vessel counts). Non-CDQ catch.

* Note that final allocations include any rollover amounts.

** Most hook-and-line CVs ≥60 ft were not targeting Pacific cod, and only had incidental catches.

During 2008, 5 pot and hook-and-line CPs participated in the BSAI Pacific cod parallel waters fishery that do not have the Federal permits, licenses, or endorsements needed to participate in the Federal waters fishery (Table 5). These vessels included 3 non-Amendment 67 endorsed pot CPs that participated in the AI parallel waters fishery during both the A and B seasons. Catch by the 3 non-Amendment 67 endorsed pot CPs that fished in the AI parallel waters fishery during 2008 cannot be reported, because it would reveal the catch by the 2 Amendment 67-endorsed pot CPs that fished during 2008. Three non-Amendment 67 endorsed hook-and-line CPs fished in the AI parallel waters fishery during the 2008 B season; no non-endorsed hook-and-line CPs fished during the 2008 A season. One of the non-Amendment 67 endorsed hook-and-line CPs began fishing when the hook-and-line season opened on August 15 and switched to pot gear on September 1, when that season opened. During the 2009 A season, 2 non-Amendment 67 endorsed pot and hook-and-line CPs participated in the BSAI Pacific cod parallel waters fishery (one pot CP and one hook-and-line CP). Again, catch by these vessels cannot be reported, due to confidentiality restrictions.

Table 6. Pot and hook-and-line catcher processors participating in the AI Pacific cod parallel waters fishery in 2008 that do not have an FFP and/or LLP with an Amendment 67 endorsement.

Vessel	FFP ^a	LLP	LLP endorsements			≤60 ft LOA	Gear used
			BS	AI	Am 67		
1*	x	x	x	x		x	HAL
2	x	x	x		x		Pot
3*							Pot & HAL
4**							Pot
5	x	x	x	x			HAL

* Vessels 1 and 3 also fished during the 2009 A season in the BSAI parallel waters PCod fishery.

** Vessel 4 sank in October 2008.

a Indicates whether the vessel held an FFP during 2008.

In 2008, the number of non-Amendment 67 pot and hook-and-line CPs that participated in the BSAI Pacific cod parallel waters fishery, and their total catch, was a relatively small component of the BSAI Pacific cod fishery (Table 6). However, the number of CPs fishing in the parallel waters fishery has the potential to increase. Both the pot and hook-and-line allocations are fully harvested, and additional participants in the pot and hook-and-line CP sectors that do not have Amendment 67 endorsements will erode the catches of vessels that have historically participated in the BSAI Pacific cod fishery. As noted earlier, in December 2008, the BOF took action to limit the size of hook-and-line vessels allowed to participate in the parallel waters fishery to 58 ft LOA. The vessel size restriction took effect on June 1, 2009, and will preclude some of the vessels that participated in the BSAI Pacific cod parallel waters fishery in 2008, from participating in the future. For example, under the BOF action, vessel 3 and vessel 5 (see Table 5) will not be eligible to participate in the AI parallel waters fishery using hook-and-line gear. However, vessel 3 used both pot and hook-and-line gear in 2008, and may continue to fish in the AI parallel waters fishery using pot gear. Vessel 1 is ≤58 ft LOA and is not constrained by the BOF regulation. The BOF regulation does not apply to vessels using pot gear in the BSAI Pacific cod parallel waters fishery.

Table 7. BSAI Pacific cod catch (mt) in 2008 by Amendment 67 endorsed and non-Amendment 67 endorsed pot and hook-and-line catcher processors.

	Amendment 67 endorsed		Non-Amendment 67 endorsed		Total BSAI catch (mt)
	Vessel count	Catch (mt)	Vessel count	Catch (mt)	
Hook-and-line CP	36	76,250	3	206	76,456
Pot CP	2	*	3	*	3,108

Source: NMFS Catch Accounting.

2.3.2 Regulatory Context and Management Issues

2.3.2.1 Definition of a catcher processor

The alternatives apply specifically to vessels operating as catcher processors, based on the catcher processor definition in 679.2:

679.2 Catcher/processor:

(1) With respect to groundfish recordkeeping and reporting, a vessel that is used for catching fish and processing that fish.

This is the definition that NMFS inseason management uses to account for BSAI Pacific cod catch, under the Amendment 85 allocations. Catch is deducted from the allocation corresponding to a vessel's actual mode of operation, rather than its potential mode of operation. For example, some vessel operators hold Amendment 67 CP endorsements on their LLP, but choose to operate as CVs. Catch by these vessels is counted against the appropriate CV allocation, not to a CP allocation. The options under consideration for the proposed action would apply to CPs meeting the above definition.

2.3.2.2 Federal Fisheries Permit (FFP) requirements

All vessel operators fishing for groundfish in Federal waters of the Bering Sea, Aleutian Islands, and Gulf of Alaska are required to hold a Federal fisheries permit (FFP). Also, any vessel operator who fishes in Federal waters of the BSAI or GOA for any non-groundfish species (e.g., IFQ halibut, crab, salmon, scallops, herring), and who is required to retain any bycatch of groundfish, must obtain an FFP (679.4). Operators who hold an FFP must comply with groundfish observer program regulations and with NMFS recordkeeping and reporting requirements. In addition, vessel operators who hold FFPs must carry a Vessel Monitoring System (VMS), if they participate in the directed Atka mackerel, Pacific cod, or pollock fisheries in Federal waters of the BSAI or GOA. Operators who participate in these directed fisheries must also have an endorsement on the FFP that indicates the use of pot, trawl, or hook-and-line gear in these fisheries.

The catch reporting, observer, and VMS requirements apply to all vessel operators who hold FFPs, regardless of whether they are fishing in Federal waters or State of Alaska waters. However, vessel operators who fish exclusively in the parallel and State waters fisheries do not need an FFP, and operators who do not hold FFPs are not subject to NMFS recordkeeping and reporting requirements, or Federal observer or VMS requirements. The FFP is issued on a 3-year cycle and is in effect from the date of issuance through the end of the current NMFS 3-year cycle.

FFP Management Issues

In the proposed action, there are 2 alternatives to place restrictions on the frequency with which vessel operators may surrender and reactivate their FFP (Alternative 4 and 5). Currently, operators are allowed to surrender an FFP at any time during a given year and have that FFP reissued at a later date during the same calendar year. For example, an operator could surrender the FFP to avoid having to comply with observer or VMS requirements, while fishing in the parallel or State waters fisheries, and later in the same calendar year, have the permit reissued in order to fish in Federal waters. There is presently no limit on the number of times the FFP may be surrendered and reissued within the 3-year permit cycle.

Table 7 reports the number of FFPs (as of May 2008) with CP designations, BSAI or GOA area endorsements, pot or hook-and-line gear endorsements, and Pacific cod pot or Pacific cod hook-and-line species endorsements. It is important to note that on the FFP application, any vessel operator may apply for a CP or CV designation (or both), as well as any area, gear, species endorsements. The FFP, by itself, does not authorize a vessel operator to participate in directed groundfish fisheries in Federal waters. An operator is also required to hold an LLP with the appropriate gear, area, and (where applicable) species endorsements. The LLP requirement is described in detail in the next section. More vessel operators hold FFPs with BSAI and CP designations than the number of CPs that fish in the BSAI in a given year. Similarly, more vessel operators hold FFPs with BSAI, CP, and pot or hook-and-line Pacific cod endorsements, than the number of vessels participating in those fisheries during a given year.

Table 8. Total number of Federal Fisheries Permits (FFPs) in 2008 with a CP designation; and number of FFPs with BSAI or GOA area endorsements, pot or hook-and-line gear endorsements, and Pacific cod pot or Pacific cod hook-and-line species endorsements.

	CP and BSAI endorsed FFPs	CP and GOA endorsed FFPs
Pot and CP endorsed	32	41
Pot Pacific cod and CP endorsed	19	24
Hook-and-line and CP endorsed	57	109
Hook-and-line Pacific cod and CP endorsed	51	66
Total CP endorsed (trawl, jig, pot, hook-and-line)	114	161

Source: RAM 2008 Federal Fisheries Permit list.

2.3.2.3 License Limitation Program (LLP)

The License Limitation Program (LLP) limits access to the groundfish and crab fisheries in the Bering Sea, Aleutian Islands, and Gulf of Alaska. Fishing under the program began in 2000. A vessel must be assigned to a valid LLP license, with the appropriate gear designation, operation type, and area endorsement, in order to participate in groundfish fisheries in Federal waters. Current regulations allow license holders to transfer groundfish or crab licenses to another vessel once per calendar year (Jan 1 – Dec 31) (679.4(k)(7)). For example, if a license is transferred on Sept 1 to a different vessel, it can be transferred back to the original vessel on Jan 1 of the following year. Also, license holders can unassign a vessel from a license, without assigning the license to another vessel. However, any future vessel assignment to that license, even to the former vessel, is counted as a transfer.

In 2003, when Amendment 67 to the BSAI FMP was implemented, gear and operation specific Pacific cod endorsements were added to groundfish LLPs. Four Pacific cod endorsements were created (pot CP, hook-and-line CP, pot CV, and hook-and-line CV), and licenses qualified for endorsements by meeting historical specific landings criteria for each gear and operation type. All CPs, and CVs greater than 60 ft LOA, are required to hold a license with an Amendment 67 Pacific cod endorsement to participate in the directed Pacific cod fishery in Federal waters of the BSAI using pot or hook-and-line gear.

There are several exceptions to the LLP requirement:

1. Vessels fishing in the parallel waters fisheries.
2. Vessels less than 26 ft LOA fishing in the GOA.
3. Vessels less than 32 ft LOA fishing in the BSAI.
4. Vessels less than 60 ft LOA using jig gear in the BSAI, subject to gear restrictions. Any vessel using jig gear in the GOA, subject to gear restrictions.¹
5. Vessels not directed fishing for LLP groundfish species (including IFQ halibut or sablefish) may retain incidentally caught groundfish up to the Maximum Retainable Allowance (MRA).
6. Catcher vessels less than 60 ft LOA are not required to hold an Amendment 67 Pacific cod endorsement to participate in the fixed gear BSAI Pacific cod fishery.

¹ The GOA jig gear LLP exemption was part of the fixed gear recency action taken on April 2009.

The number of Amendment 67 endorsements on CP and CV licenses is shown in Table 8. There are only 7 pot CP licenses, including 3 licenses with only a Bering Sea endorsement and 4 licenses with both BS and AI endorsements. There are 37 licenses with a hook-and-line CP endorsement, including 35 licenses with both BS and AI endorsements and 2 licenses with only a BS endorsement.

Table 9. Number of Amendment 67 endorsements on licenses with BS or AI area endorsements.

	Catcher Vessel*		Catcher Processor**	
	Pot	Hook-and-line	Pot	Hook-and-line
Bering Sea	49	2	7	37
Aleutian Islands	2	2	4	35

* On 51 CV licenses (1 CV license has both CV pot and CV HAL endorsements)

** On 48 CP licenses (2 CP licenses have both CP pot and CP HAL endorsements, 2 have CP HAL and CV pot endorsements, and one has CP pot and CV HAL endorsements)

Currently, there are two primary LLP license issues related to management of the BSAI Pacific cod fishery:

1. Pot and hook-and-line CPs that hold an LLP license, but do not have Amendment 67 Pacific endorsements and/or the appropriate area endorsements, are participating in the BSAI Pacific cod fishery in parallel waters.
2. Pot and hook-and-line CPs that do not hold an LLP license are participating in the BSAI Pacific cod fishery in parallel waters.

2.3.2.4 Federal regulatory authority over vessels with Federal permits and licenses

The Council and NOAA Fisheries have broad authority over vessel operators who hold Federal permits and licenses. Operators who hold FFPs or LLP licenses may be subject to Federal groundfish regulations, even while fishing in State waters adjacent to the GOA or BSAI. For example, operators who hold FFPs are subject to Federal record keeping and reporting, observer, and VMS requirements, while fishing in Federal, parallel, or State waters fisheries.

Another example of Federal regulations that apply specifically to Federally-permitted vessels are the sideboard regulations that were implemented in 2006, to limit harvests of GOA Pacific cod by vessels that received initial allocations of *Opilio* crab quota. The regulations were written such that operators cannot easily circumvent sideboard closures by fishing in parallel waters fisheries. Operators who hold *either* an FFP or an LLP are subject to the sideboards, while participating in any groundfish fishery in the parallel waters fisheries in the GOA (680.22). An operator could easily surrender the FFP, to circumvent the GOA Pacific cod sideboard restrictions, and later have the FFP reissued to the same vessel. There is currently no restriction on the number of times a holder of an FFP can surrender a permit and have it reissued. However, the sideboard regulations are written such that they apply to operators who hold either an FFP or LLP, and operators who hold crab or groundfish LLP licenses would also have to surrender these licenses or transfer them to another vessel in order to circumvent the sideboard regulations. This is less likely to occur, because LLP licenses can only be transferred once per calendar year. License holders who transfer their crab and groundfish LLP licenses to another vessel would lose eligibility to participate in the crab and groundfish fisheries in Federal waters for the remainder of the calendar year (through Dec 31st).

The Council could extend other regulations to Federally-permitted vessel operators participating in the parallel water fisheries, as long as the action has an adequate conservation or management rationale. The proposed action would extend the LLP and Amendment 67 endorsement requirement to pot and hook-and-line CPs fishing in the BSAI Pacific cod parallel waters fishery. The requirement would only apply to vessel operators who hold an FFP or LLP.

2.3.3 Interactions with State management measures

2.3.3.1 Recent BOF action on BSAI parallel waters fishery

The State of Alaska manages the parallel waters fishery, and each year, adopts by emergency order Federal groundfish seasons, bycatch limits, and authorized gear types. However, the State does not recognize sector allocations, based on processing activity.² As a result, the State cannot specifically restrict catcher processors from participating in the parallel waters fisheries. The State can, however, limit participation on the basis of vessel length. As noted earlier, the BOF recently limited the size of hook-and-line vessels allowed to participate in the BSAI Pacific cod parallel waters fishery to 58 ft LOA. Most catcher processors are larger than 58 ft LOA, and this management measure likely will prevent any significant increase in fishing effort in the parallel waters fishery by catcher processors. In the past, the BSAI parallel waters fishery has mostly been prosecuted by small catcher vessels delivering to shoreside plants. The BOF action does not apply to vessels using pot gear. The proposed regulatory action would complement the BOF action, by limiting participation in the BSAI Pacific cod parallel waters pot CP fishery.

2.3.3.2 Seasonal sector allocation closures

Another management issue that has arisen is that vessels are fishing for Pacific cod in the BSAI parallel waters fishery after the TAC for their respective sector has been harvested and the season is closed. Again, the State recognizes sector allocations by gear type, but does not recognize the separate CP and CV allocations. If the directed fishery for one of the gear sectors is open in Federal waters, any vessel using that gear type and meeting any applicable vessel length restrictions, is eligible to participate in the parallel waters fishery.

For example, hook-and-line catcher vessels may participate in the parallel waters fishery even when the adjacent Federal waters fishery is only open to hook-and-line catcher processors. In the same way, hook-and-line catcher processors may participate in the parallel waters fishery, even if it is only open to hook-and-line catcher vessels in adjacent Federal waters. In practice, NMFS inseason management accounts for the parallel waters catch by gear and operation type. In the BSAI Pacific cod fishery, parallel waters catch is deducted from the appropriate Amendment 85 allocation, based on the gear and operation type of the harvesting vessel. However, if one sector's season closes and vessels in that sector continue to fish in the parallel waters fishery, this would conflict with the Federal allocations. If the catch is counted against another sector's allocation, this would effectively result in a reallocation of the TAC.

2.3.3.3 State waters Aleutian Islands Pacific cod fishery

The AI State waters fishery was initiated in 2006, and occurs in the Aleutian Islands west of 170° longitude. Several aspects of the AI State waters fishery are relevant to the proposed action, because the pot and hook-and-line CPs that have participated in the AI parallel waters fishery are also eligible to

² State v. Grunert, 139 P.2d 1226 (Alaska 2006); Grunert v. State, 109 P.2d 924 (Alaska 2005). In the 2005 case, the Alaska Supreme Court ruled that the Board of Fisheries could not allocate within a single fishery. 109 P.2d at 931-32. In the 2006 case, the Court held that 'fisheries' could only be distinguished by differences in the gear that is actually used to harvest the fish. 139 P.2d at 1235-39.

participate in the AI State waters fishery. During 2008, 4 of the 5 pot and hook-and-line CPs that fished in the AI parallel waters Pacific cod fishery also participated in the AI State waters Pacific cod fishery. The AI State waters fishery is open to most gear types, with vessel length restrictions, and provides an opportunity for vessels that do not have LLPs with Amendment 67 and/or AI area endorsements to fish for Pacific cod in the Aleutian Islands. Key aspects of the fishery are summarized below:

- The GHL for the AI State waters fishery is calculated as 3% of the Federal BSAI Pacific cod ABC. In 2008, the GHL was 5,280 mt.
- The A season starts on or after March 15, and only after the Federal Pacific cod trawl CV A season is closed. All parallel waters seasons are closed during the State waters season. The State waters B season starts on June 10. If the State waters B season GHL has not been taken by September 1, the State will close the State waters B season and reopen the parallel season.
- Legal fishing gear includes pot, jig, hand troll, non-pelagic trawl, and longline gear. Non-pelagic trawl and longline gear may not be used during May 1 through September 15, unless vessels are operating in the <60 ft LOA vessel size limitation areas near Adak.
- Vessel size limits are 100 ft LOA for non-pelagic trawl gear, 125 ft LOA for pot gear, and 58 ft LOA for longline and jig gear. Beginning in 2009, vessel size limits are 60 ft during the B season (all gear types, including hook-and-line).
- Vessels must register the type of gear to be used with ADF&G. Vessels may be concurrently registered to use both hook-and-line and jig gear, but may not be concurrently registered to harvest Pacific cod with any other gear types. A vessel's gear registration may be changed during a State waters season, but may not change while unprocessed fish are on board the vessel.
- The daily trip limit is 150,000 lbs of Pacific cod. A vessel may not have more than 150,000 lbs of unprocessed Pacific cod on board the vessel at any time. A vessel may not have more processed fish on board than the round weight equivalent of the fish reported on ADF&G fish tickets during the AI State waters Pacific cod fishery. Participants must notify ADF&G daily of the amount harvested and total amount on board.
- All Pacific cod harvested must be retained. Any overage must be reported immediately. All proceeds from the sale of Pacific cod in excess of the trip and on board amounts specified above shall be surrendered to the State.
- A maximum of 70% of the GHL may be harvested prior to June 10. A total of 30% of the GHL plus any unharvested GHL from the A season may be rolled over to the B season, up to a maximum of 70%.
- Observer coverage is not required in the State waters fishery, unless a vessel has an FFP. Vessels that have FFPs are subject to observer coverage requirements while operating in the State waters fishery, and this observer coverage can be counted toward the Federal observer coverage requirements.

2.3.4 BSAI Pacific Cod TAC Split

The Council is considering initiating an analysis to split the BSAI Pacific cod TAC into BS and AI subarea TACs. At the October 2008 meeting, the Council received a report from the SSC regarding the potential TAC split. The SSC reviewed a paper by Alaska Fisheries Science Center staff that compiled all

of the currently available biological information on the BS and AI Pacific cod stocks. After reviewing this information, the SSC recommended that a precautionary approach should be taken, by specifying a combined BSAI OFL for Pacific cod and separate BS and AI ABCs. At that time, the Council requested that staff prepare an updated discussion paper, describing the draft problem statement and potential alternatives for apportioning the BSAI sector allocations between the BS and AI.

The Council reviewed this discussion paper at the December 2008 meeting. The discussion paper noted that any change in the current management of the BSAI Pacific cod fishery would require consultation with NMFS Protected Resources (PR). Consultation with PR would be necessary, because the proposed TAC split could change the timing and distribution of fishing effort for Pacific cod in the BS and AI, and these changes could potentially impact Steller sea lions. NMFS PR is currently developing a new status quo Biological Opinion on the impacts of the current Alaska groundfish fisheries on Steller sea lions. The document is scheduled to be released in March 2010.

If the BSAI Pacific cod TAC is split into separate BS and AI subarea TACs, as the result of a future Council action, the amount of catch that may be harvested from each of the management areas by each sector could be capped. However, unless the subarea TACs are further divided into parallel and Federal waters apportionments, the potential exists for an increase in the proportion of the subarea TACs that is harvested from the parallel waters fishery.

2.4 Analysis of the Alternatives

The following section discusses the potential effects of each of the 5 alternatives considered by the Council, when it took final action on the amendment package in June 2009, including alternatives not selected as part of the preferred alternative. The Council selected Alternative 2, Alternative 3, and Alternative 4 with Option (c), as their “preferred alternative”. Following the discussion of the effects of each of the alternatives is a summary section that describes the overall effects of the preferred alternative.

2.4.1 Alternative 1— No Action

Under Alternative 1, the no action alternative, operators of pot and hook-and-line catcher processors who hold an FFP or LLP could continue to participate in the BSAI Pacific cod parallel waters fishery, without holding an LLP license with the appropriate area and Amendment 67 Pacific cod endorsements. In addition, operators of pot and hook-and-line CPs could continue to fish in the BSAI Pacific cod parallel waters fishery after the pot and hook-and-line CP allocations have been fully harvested, as long as the pot and hook-and-line CV seasons are still open. Finally, there would be no restrictions to preclude operators of pot and hook-and-line CPs from surrendering and reapplying for the FFP. The recent BOF action limits the size of hook-and-line vessels allowed to participate in the parallel waters fishery to 58 ft LOA.

Action Alternatives

Prior to taking final action, the Council indicated its intent to choose one or more of the action alternatives (Alternatives 2, 3, 4, and/or 5). Alternatives 2 and 3 each accomplish a distinct objective, and one or both of these alternatives could be selected. Alternatives 4 and 5 are different approaches to accomplishing the same objective, and the Council could select either one (but not both) of these alternatives. The analysis evaluates each alternative individually, and also evaluates possible combinations of alternatives (Alternatives 2, 3, and/or 4, and Alternatives 2, 3, and/or 5).

2.4.2 Alternative 2— Extend Pacific Cod Endorsement Requirement to Parallel Waters

Alternative 2 (selected as part of the Council’s preferred alternative) requires that operators of catcher processors using pot or hook-and-line gear, and that are assigned to an FFP or LLP license, have specific endorsements and designations on those FFP and LLP license in order to participate in the BSAI Pacific cod parallel waters fishery. The FFP would be required to have a CP operation type designation, BSAI area designation, and either a pot or hook-and-line gear designation. The LLP would be required to have an Amendment 67 Pacific cod endorsement and the appropriate area endorsement. Currently, the FFP and LLP license are only required in Federal waters. While Alternative 2 has the potential to limit entry to the pot and hook-and-line CP sectors in the BSAI Pacific cod parallel waters fishery, it would not preclude a vessel without an FFP or LLP license from participating in the BSAI Pacific cod parallel waters fishery.

Table 10. Impact of Alternative 2 on non-Amendment 67 and/or AI endorsed pot and hook-and-line CPs that participated in the AI parallel waters fishery during 2008.

Vessel	FFP ^a	LLP ^b	LLP endorsements ^c			≤60 ft LOA	Gear used ^d	Alternative 2 applies?
			BS	AI	Am 67			
1	x	x	X	x		x	HAL	Yes
2	x	x	X		x		Pot	Yes
3							Pot & HAL	No
4**							Pot	No
5	x	x	X	x			HAL	Yes

a Indicates whether the vessel held an FFP during 2008 permit cycle. Vessel 3 held an FFP during the 2006-2008 permit cycle, but surrendered it prior to 2008.

b Indicates whether a groundfish LLP license was assigned to the vessel in 2008

c Indicates whether the LLP license has BS and AI area endorsements and an Amendment 67 endorsement.

d Indicates the gear type used during 2008 in the BSAI Pacific cod fishery

** Vessel 4 sank in October 2008

Table 9 summarizes the potential effect of Alternative 2 on operators of the non-Amendment 67 and/or AI endorsed pot and hook-and-line catcher processors that participated in the AI Pacific cod parallel waters fishery during 2008. Three of the 5 vessel operators held an FFP and LLP in 2008, but the licenses did not have both an Amendment 67 endorsement and an AI area endorsement. Alternative 2 would have precluded these vessel operators from participating in the 2008 AI Pacific cod parallel waters fishery. The remaining two of the 5 vessel operators did not hold either an FFP or LLP in 2008, and the proposed action would not have precluded these operators from participating in the parallel waters fishery. However, one of these operators (Vessel 3) held an FFP during the 2006 through 2008 permit cycle, but surrendered it prior to 2008. Alternative 2 would apply to this vessel operator, if the Council also adopts restrictions on an operator’s ability to surrender the FFP during the 3 year permit cycle, as under either Alternative 4 or Alternative 5.

In sum, Alternative 2 protects operators of pot and hook-and-line CPs who hold Amendment 67-endorsed licenses from erosion of their historical catch amounts in the BSAI Pacific cod fishery,³ attributable solely to increased participation by non-Amendment 67 endorsed vessels. Alternative 2 does not apply to operators of pot and hook-and-line CPs who do not hold an FFP or LLP. However, the recent BOF action will preclude all vessels greater than 58 ft LOA from participating in the BSAI Pacific cod parallel waters fishery using hook-and-line gear. This regulation will apply to vessels, regardless of their FFP or LLP

³ This action would, in no way, “assure” a specific amount of catch to a given vessel, but only preclude new entrants from competing away a share of the aggregate catch of present participants.

status. Even vessel operators who hold an Amendment 67 endorsed LLP will be restricted from participating in the parallel waters fishery using hook-and-line gear, if their vessel exceeds 58 ft LOA.

2.4.3 Alternative 3 — Seasonal closures of sector allocations

Under Alternative 3 (selected as part of the preferred alternative), operators of pot and hook-and-line catcher processors who hold an FFP or LLP would be required to adhere to seasonal closures of the respective BSAI Pacific cod sectors, even while fishing in parallel waters. The purpose of Alternative 3 is to prevent vessel operators from circumventing the seasonal sector closures by fishing in the parallel waters fishery. In 2008, 4 of the 5 pot catcher processors that participated in the BSAI Pacific cod fishery during the B season continued to fish in the parallel fishery after the pot CP B season closed. This vessel activity occurred because the BSAI Pacific cod fishery is allocated by gear type and operation type, and the State recognizes allocations by gear type, but does not recognize the separate CP and CV allocations. As long as either the CP or CV season for a given gear type is open in Federal waters, vessels of either operation type may continue to fish in the State managed parallel waters fishery, using that gear type.

When this occurred in 2008, parallel waters catch, by those pot CPs that continued to fish, accrued to the pot CP allocation, and the sector had an overage of 768 mt. The overage was accommodated by a rollover of unused TAC from the pot CV sector. NMFS inseason management staff indicated that, if pot CPs were to continue fishing after the A season closed, the overage would first accrue to the pot CP B season allocation. If that allocation is fully harvested, the overage would accrue to the pot CV A season allocation until it is fully harvested. At that point, all vessels using pot gear would be required to stop fishing in both parallel and Federal waters. One factor that complicates management of A season overages is that total A season harvests are limited to 70% of the BSAI Pacific cod TAC, under the Steller sea lion management measures. The A season Pacific cod sector allocations are typically fully harvested. As a result, to comply with the seasonal apportionments, any A season overages by one or more sectors would likely require NMFS to close the A seasons of other sectors early. In effect, the A season TACs would be reallocated, to accommodate the overages. In 2009, two pot CPs continued to fish after the pot CP closure on January 28, because the ≥ 60 ft LOA pot CV fishery was still open. However, the pot CV fishery closed on February 1, and the additional amount of Pacific cod harvested by pot CPs after the sector closure was relatively small.

Finally, it is important to note that Alternative 3 only applies to pot and hook-and-line CPs with an FFP or LLP. Pot or hook-and-line CPs without an FFP or LLP could continue to fish in the parallel waters fishery after the respective sectors close, as long as the pot or hook-and-line CV season is still open in Federal waters. In addition, Alternative 3 does not apply to pot and hook-and-line catcher vessels, or to vessels using trawl or jig gear.

2.4.4 Alternative 4 and Alternative 5— Federal Fisheries Permit restrictions

Currently, a vessel operator may freely surrender, and later reapply for, their FFP at any time. Operators who surrender the FFP do not have to comply with observer, VMS, or NMFS record keeping and reporting requirements while participating in the parallel or State waters fisheries. Under Alternative 2, the management measures that limit entry to the BSAI Pacific cod parallel waters fishery apply to operators who hold an FFP or LLP. However, if the FFP may be surrendered at any time, without any restrictions on when it may be reissued, any parallel waters management measures the Council adopts may be easily circumvented, to the detriment of the resource, as well as other users.

The Council considered two alternatives, Alternative 4 and Alternative 5, to preclude operators from surrendering and reactivating the FFP within a specified time period. Under both alternatives, there are three suboptions: (a) the FFP may only be surrendered or reactivated once every calendar year (Jan 1-Dec 31), (b) the FFP may only be surrendered or reactivated once every 18 months, or (c) the FFP may

not be surrendered during the 3 year term of the permit. Similar to the LLP transfer regulations, only one FFP ‘transaction’ would be allowed during the specified time periods in options (a) and (b); surrendering the permit would count as one transaction, and reactivating it would count as another transaction. For example, under the calendar year suboption, the FFP could be surrendered in year 1, reactivated in year 2, and surrendered again in year 3. Consequently, the operator could surrender the FFP and participate in the parallel waters fisheries twice within the 3-year permit cycle. Under the 18-month suboption, an operator would only have one opportunity to surrender the FFP during the 3-year permit cycle, and would have to wait a full 18 months to reactivate the permit. Under the third suboption, the FFP could not be surrendered during the 3-year term of the permit.

The difference between the alternatives is that Alternative 4 only applies to FFPs with a CP operation type designation, BSAI area designation, and either a pot or hook-and-line gear designation, and Alternative 5 applies to all FFPs with a CP designation. Currently, any designation on the FFP may be amended at any time. As a result, an FFP holder could amend the FFP and remove the CP designation, and the restrictions proposed in Alternatives 4 and 5 would no longer apply to the FFP. Both alternatives specifically address this issue by precluding FFP holders from removing the CP designation on the FFP. In addition, Alternative 4 precludes FFP holders from removing the BSAI area designation and pot and hook-and-line gear designation.

Under Alternative 4 (selected as part of the preferred alternative), an operator who holds an FFP that lacks one of the 3 specified designations (CP, BSAI, pot or hook-and-line), and does not hold an LLP, could circumvent the restrictions in Alternatives 2 and 3 by surrendering the FFP prior to participating in the BSAI Pacific cod parallel waters fishery. Alternative 5 applies to all FFPs with a CP designation. Consequently, under Alternative 5, fewer operators have the ability to circumvent the restrictions proposed in Alternatives 2 and 3.

NMFS provided data showing the number of FFPs with CP designations that were surrendered during 2002 through 2008. In general, it is uncommon for holders of FFPs with CP designations to surrender the FFP. Only 8 FFPs with CP designations were surrendered during the 2006 through 2008 permit cycle (out of more than 150 FFPs with a CP designation), including 4 of the 5 non-Amendment 67 endorsed CPs that participated in the AI Pacific cod parallel waters fishery in 2008. FFP surrender data during 2002 through 2005 were also examined, and only 3 vessels that held FFPs with a CP designation surrendered the FFP during this time period. All of the operators who surrendered the FFP only used fixed gear during the years examined. The dates when the FFPs were surrendered, and subsequent fishing activity by the vessels, indicate that most operators surrendered the FFP prior to participating in the GOA or AI parallel or State waters Pacific cod fisheries or other State waters non-groundfish fisheries. Even though it is relatively uncommon for FFPs with CP designations to be surrendered, this option is being used to circumvent regulations that apply to Federal permit holders.

Alternatives 4 and 5 are not likely to impact the operations of most catcher processors, because few CP operators have surrendered the FFP. However, CP operators who have historically surrendered the FFP prior to participating in the parallel or State waters groundfish fisheries would be precluded from doing this. If Alternative 4 or Alternative 5 is selected, these vessels would have to carry observers during at least some portion of these fishing trips, depending on whether the vessel is in the 30% observed fleet (i.e., 60 ft to 125 ft LOA) or >125 ft LOA and, thus, in the 100% observed fleet.

2.5 Effects on harvesters

Under **Alternative 1**, there would be no additional restrictions limiting access to the BSAI Pacific cod parallel waters fishery. If this alternative is selected, additional non-Amendment 67 endorsed vessels

could enter the BSAI Pacific cod parallel waters fishery and dilute revenues, increase costs, or both, for vessels that have participated in the fishery during recent years. Several exogenous factors may impact entry into the parallel waters fishery. For example, the increasing limits on entry into new fisheries, and the prospect that catch histories may be significant determinants of future share-based access, may induce some operators to maximize participation in any and all available open access opportunities (i.e., fishing for history). Immediate economic profitability may be secondary to obtaining fishing history. Similarly, in difficult economic times, when few alternatives exist, entry of otherwise underutilized or idle vessels and gear may be the best of available options. If operating costs can be covered, entry into the parallel waters fisheries may be a viable short term strategy for some fishing operations. The number of vessels that might enter the fishery in the absence of this action is unknown, and depends on future market conditions, the size of groundfish TACs, opportunities to participate in other fisheries, the future regulatory environment, and variable operating costs (e.g., fuel) in the fisheries. Consequently, this analysis does not provide a quantitative estimate of the potential economic impacts of the no action alternative.

Alternative 2 provides protection for operators of pot and hook-and-line catcher processors who hold Amendment 67 endorsed licenses, by preventing the erosion of harvests via the entry of new participants into the BSAI Pacific cod parallel waters fishery. The Council established Amendment 67 Pacific cod endorsements in 2003, to limit access to the pot and hook-and-line allocations to those participants who had catch history in the BSAI Pacific cod fishery. Parallel waters participation by pot and hook-and-line catcher processors that do not hold LLP licenses with Amendment 67 endorsements reduces the amount of TAC available to participants who hold endorsed licenses. The proposed action would extend the Amendment 67 endorsement requirement to the parallel waters fishery for operators of pot and hook-and-line catcher processors who hold an FFP or LLP, but would not preclude operators who do not hold an FFP or LLP from entering the parallel waters fishery. The recent action taken by the Board of Fisheries to limit vessels using hook-and-line gear in the parallel waters Pacific cod fisheries to 58 ft LOA would preclude larger vessels, including those that do not have an LLP or FFP, from entering these hook-and-line fisheries.

Alternative 2 further limits the number of fisheries available to operators of pot and hook-and-line catcher processors who hold an FFP or LLP, but do not hold an Amendment 67 endorsed license. The vessels that participated in the AI parallel waters fishery in 2008 are relatively recent entrants to this fishery. Prior to 2008, there were fewer than 3 non-Amendment 67 endorsed pot and hook-and-line catcher processors (total) participating in the BSAI Pacific cod parallel waters fishery (their harvests cannot be reported due to confidentiality constraints). In 2008, 5 such vessels participated in the fishery. During 2008, several of these vessels also participated in the AI State waters Pacific cod fishery, GOA Pacific cod fishery, and sablefish IFQ fishery, and under the proposed action, these vessels would continue to have access to these fisheries.

Increases in Pacific cod prices in recent years have the potential to attract new effort into the fishery. In the absence of this action, effort in the BSAI Pacific cod parallel waters fishery would not necessarily increase. The entry of new effort would depend on future market conditions, stock conditions in the fisheries, the future regulatory environment, operating cost factors, and opportunities to participate in other fisheries. The proposed action would preclude the potential entry of Federally-permitted, but non-Amendment 67 endorsed vessels into the fishery. Therefore, the short term effects on efficiency should be negligible. In the longer term, the proposed action has the potential to limit overcrowding in the fisheries. However, in the absence of this action, the number of vessels that would enter these parallel waters fisheries is unknown. Therefore, the economic effects of the proposed action cannot be precisely quantified.

Alternative 3, in tandem with the recent BOF action, potentially limits the number of pot and hook-and-line catcher processors and hook-and-line vessels >58 ft LOA that could continue to fish in parallel waters, after the respective sector allocations have been fully harvested. Such “post-closure” fishing activity may result in catch overages by the pot and hook-and-line CP sectors. If this occurs, NMFS may have to close other sectors prematurely, to accommodate these overages and protect the resource. In effect, the TAC would be reallocated, undermining the Council’s sector allocation management structure. Alternative 3, in tandem with the BOF action, would not preclude hook-and-line vessels ≤58 ft LOA, pot catcher vessels, trawl, or jig vessels (nor any non-Federally permitted vessel) from fishing in parallel waters after the respective sector allocations have been fully harvested. This fishing activity could also result in overages and the reallocation of TAC among the sectors and, as such, bears close monitoring. Finally, **Alternative 4 and Alternative 5**, respectively, limit the potential for FFPs to be surrendered. Again, the difference between the alternatives is that Alternative 4 applies only to FFPs with specific designations (e.g., CP, BSAI, pot, or hook-and-line), while Alternative 5 applies to all FFPs with a CP designation. These alternatives make it more difficult for vessel operators to circumvent Federal regulations proposed in Alternatives 2 and 3, by temporarily surrendering their FFP. However, it would also mean that vessels greater than 60 ft LOA that retain their FFP could be required to have observer coverage during more fishing trips. In the past, some vessel operators surrendered their FFP and participated exclusively in the parallel or State waters Pacific cod fisheries, and did not have to carry observer coverage, meet Federal fishery management reporting and record keeping requirements, or use VMS during these fishing trips.

These requirements would impose additional costs on these vessels. The fishing industry pays all of the direct costs of placing observers on their vessels, including salary, insurance, housing, and transportation. The last estimate of industry costs (circa 2004) was \$355/day, including travel. Note that the \$355 per observer day is an estimate. Actual costs vary on a case by case basis, depending on the fishery, duration of observer coverage, and logistics. Some of the factors that tend to increase observer coverage costs include:

- Operation out of remote ports with high transportation costs.
- Short-term “pulse” fisheries.
- Small-scale fisheries with few participants.
- Fishery disruptions, changing fishing plans, and lack of advance planning.

Anecdotal information from observer providers has suggested that, when the above circumstances occur, it is not uncommon for observer coverage costs to exceed \$500 to \$600 per day (NPFMC, 2008).

2.6 Effects on processors and communities

The proposed action would not directly impact the Amendment 85 sector allocations to catcher vessels and catcher processors. Each of the CV and CP sectors will continue to receive a percent allocation of the BSAI Pacific cod TAC. Catcher vessel landings from the BSAI Pacific cod fishery are primarily delivered to shoreside processors in Dutch Harbor and other Alaska communities and to at-sea processors. The proposed action is not expected to directly impact the distribution of catcher vessel landings among shoreside processing communities or at-sea processors. The proposed action, in tandem with the recent BOF action, may stabilize the number of participants in the pot and hook-and-line catcher processor sectors in the BSAI parallel waters Pacific cod fishery. Those catcher processors that hold Amendment 67 endorsed licenses may benefit from more stable fishing conditions in the BSAI Pacific cod fishery, as a result of this action.

Under Alternative 2, which is part of the Council’s preferred alternative, it is possible that fewer pot and hook-and-line catcher processors would participate in the BSAI Pacific cod parallel waters fishery. Fewer vessels in the BSAI Pacific cod pot and hook-and-line catcher processor fleet may mean that fewer

onshore fleet support services would be needed in Seattle and in Dutch Harbor, as compared to a future under the status quo, Alternative 1. Recall that the present action is largely “pre-emptive” and, as such, does not displace significant numbers of currently participating operations from the parallel waters P. cod fisheries. Instead, it seeks to inure relative stability in these fisheries, based upon Council intent with respect to Pacific cod sector allocations in the BSAI. Future crew employment opportunities may be reduced, if fewer vessels are eligible to participate in the BSAI Pacific cod pot and hook-and-line CP fisheries. At the same time, crew employed by the existing fleets participating in these fisheries will benefit from increased economic and operational stability resulting from the proposed action. For example, those vessels that remain eligible to participate in the fishery will likely experience increased fishing opportunities and higher per capita incomes.

2.7 Effects on management, monitoring, and enforcement

2.7.1 Federal fisheries permit issues

Under Alternative 1 (i.e., the no action alternative), NMFS renews all FFPs on a 3-year cycle, regardless of when the permit was first issued. This simplifies administration of the FFP. However, the FFP may be surrendered or amended at any time, and, if surrendered, the FFP may be later reissued, if the vessel operator reapplies for the FFP. Under Alternative 4 and Alternative 5, FFPs, with the endorsement(s) identified by the Council, could no longer be surrendered and then reissued within a specified time period. Existing FFPs that have the set of endorsements identified by the Council could be identified as ineligible to be relinquished and reissued within a specific time period (e.g., a calendar year, 18 months, 2 years, or the 3 year term of the permit) upon implementation of the action. Under either Alternative 4 or Alternative 5, the CP designation on the FFP could not be amended during the specified time period, and this restriction would take place upon implementation of the action. Newly issued FFPs would also be subject to this restriction.

2.7.2 Catch reporting issues

Several pot and hook-and-line CPs that participated in the 2008 BSAI Pacific cod parallel waters fishery did not have FFPs during all or part of the year. Vessels that do not have FFPs are not required to comply with Federal record keeping and reporting requirements. Instead of submitting electronic Production Reports, these vessels are only required to submit paper Fish Tickets to ADF&G. The catch totals on paper Fish Tickets are not available on a timely basis to NMFS inseason management. During 2008, the lack of official catch reporting made it difficult for inseason managers to determine appropriate closure dates for the pot CP allocation, risking premature closures (e.g., loss of revenues, *de facto* reapportionment of TAC, or failure to achieve OY) or excess catches by the sector (e.g., risk to the stock, localized depletion, shifting adverse economic effects to other gear-groups/ operating mode sectors, *de facto* sector TAC share reapportionment).

As an interim solution, recognizing these threats, NMFS and ADF&G staff worked together to track vessels that fished in parallel waters and did not have FFPs. During 2008, these CPs voluntarily reported their catch to NMFS, and inseason management was able to close the pot CP allocation with only a 4% overage (i.e., regarded as a good management performance, given the regulated open access rules governing these fisheries). Some vessels used eLandings and sent NMFS electronic Production Reports. In other cases, vessels provided verbal catch reports to NMFS, and when NMFS received ADF&G fish tickets for these vessels, the catch data were entered as a Production Report into the Catch Accounting system. NMFS cannot require vessels that do not hold an FFP and that only fish in State waters (including parallel waters fisheries) to submit electronic Production Reports.

The BOF took final action in December 2008, to amend the catch reporting requirements for vessels participating in the parallel waters fishery. The action amends the State’s management plan for the parallel groundfish fisheries (5 AAC 28.087). During the parallel fishery, vessels will be required to

adhere to Federal catch reporting requirements. As a result, catcher processors fishing in parallel waters will be required to submit electronic Production Reports to NMFS through eLandings.

2.8 Potential actions for vessels with no FFP or LLP

In December 2008, the BOF also took final action to limit the size of vessels using hook-and-line gear in the BSAI Pacific cod parallel waters fishery to 58 ft LOA. The vessel size restriction will take effect on June 1, 2009. The BOF action applies to all vessels, including those that do not have an FFP or LLP. However, the action does not apply to vessels using pot gear. The BOF could extend this regulation to pot gear, but there are large pot CVs that participate in this fishery that would also be excluded from the parallel waters fishery, an outcome that the BOF did not pursue.

2.9 Interactions with Freezer Longliner Capacity Reduction Program

The owners of the BSAI hook-and-line catcher processor fleet are participating in the Fishing Capacity Reduction Program, a buyback program that will reduce current and future effort in the non-pollock groundfish fisheries in the BSAI, by retiring vessels, licenses, and vessel histories. Participants in the buyback include the owners of the 36 vessels that hold Amendment 67 endorsed hook-and-line CP licenses.⁴ On January 5, 2007, the Freezer Longliner Coalition Cooperative (FLCC) submitted their Fishing Capacity Reduction Plan to NMFS. The Plan included 4 offers for catcher processor groundfish licenses that would be removed from the fishery, selected by FLCC members. They included 3 active fishing licenses associated with catcher processor vessels and one inactive license not attached to a vessel. The Federal loan requested was \$35 million, to be repaid over a 30 year period, based on a percentage of future landings of BSAI Pacific cod. The FLCC plan was approved by NMFS on March 16, 2007, and approved unanimously by FLCC members on April 6, 2007. On May 29, 2007, NMFS disbursed payments to the owners of the 4 fishing licenses that were being relinquished under the capacity reduction program.

The reduction program is now complete, and in January 2008 the participants began repaying the \$35 million Federal loan. The loan will be repaid over an estimated 30-year term, but fees will continue to be collected indefinitely, for as long as necessary until the loan is fully repaid. The fee amount collected by NMFS is based on the annual principal and interest due, and can be up to 5% of the ex-vessel revenues from the BSAI Pacific cod landings by the buyback participants. If this amount is insufficient to repay the annual principal and interest due, additional fees may be assessed on non-cod landings of the buyback participants. In 2008, vessels paid \$0.02 per round pound of BSAI Pacific cod landings. The ability of buyback participants to repay the loan is based on the average historical harvests of the vessels in the fleet.

The proposed action would limit entry into the hook-and-line CP sector by vessel operators that do not hold LLPs with Amendment 67 cod endorsements. These operators did not participate in the buyback and are not contributing to repayment of the Federal loan. An increase in BSAI Pacific cod catch by operators who do not have Amendment 67 endorsed licenses has the potential to erode harvests of those operators who participated in the buyback, and could result in buyback participants paying a higher percentage of their annual gross revenues from their fishing activity toward the repayment of the buyback loan.

⁴ There are 37 hook-and-line CP Amendment 67 endorsed licenses. One of the licenses has not been active, and 36 of the licenses are assigned to vessels that are active participants in the BSAI Pacific cod fishery.

2.10 Net Benefits to the Nation

Overall, this action is likely to have a limited effect on net benefits realized by the Nation. Under the status quo (Alternative 1), operators of pot and hook-and-line catcher processors who do not currently hold an LLP license with an Amendment 67 endorsement would continue to have the potential to enter the BSAI Pacific cod parallel waters fishery, increasing overall effort in the fishery. This increase in effort could contribute to losses of production efficiency. Costs could rise slightly if participants perceive a need to increase effort to secure their historical harvest levels. The increase in effort could contribute to more aggressive fishing and processing practices, both of which result in lower quality and less value added production. The extent of these potential effects is very difficult to predict and depends on several factors, including future TAC levels, market conditions, and operating costs, among others. If growth in numbers of participants and effort in the parallel waters P. cod fisheries continue, management costs will rise, stocks may be placed at higher risk of periodic excess removals – perhaps prompting excessively conservative inseason management and failure to achieve TAC and OY – , Council objectives for sector allocations may be subverted, resulting in a *de facto* reapportionment of the Pacific cod resource, repayment of the Federal buyback loan could be delayed (or in the worst case defaulted upon), consumers could face a decline in supply of U.S.-produced Pacific cod in the domestic market, lower quality, and/or higher prices. Avoidance of some or all of these outcomes would result in a net benefit to the Nation, attributable to the proposed action.

Under the proposed action (Alternative 2, in combination with Alternative 3 and Alternative 4), operators of pot and hook-and-line catcher processors who hold an FFP or LLP could not enter the BSAI Pacific cod parallel waters fishery, unless such a license is Amendment 67 endorsed. Operators who do not hold any Federal permits or licenses could continue to access the fishery. The proposed action may reduce the potential for an influx of pot and hook-and-line CP effort into the parallel waters fishery. This could contribute to production efficiency, if a substantial increase in pot and hook-and-line CP effort were to occur in the absence of this action. Limiting the number of participants in the fishery could contribute to slowing down the fishery and removing the economic incentive to adopt wasteful aggressive fishing practices.

The formation of harvester cooperatives would result in a substantial increase in production efficiency. Individual sectors may be more likely to form cooperatives, if all eligible participants are easily identified through a restrictive license limitation program and separate allocations are made to each sector. The combined effect of several management measures, including the BSAI Pacific cod sector allocations, the Amendment 67 endorsement requirement that limits entry to the directed Pacific cod fisheries, the recent BOF decision to limit vessels using hook-and-line gear to 58 ft LOA in the BSAI Pacific cod parallel waters fishery, and the additional management measures in this proposed action, may provide the incentive for the formation of a hook-and-line CP harvest cooperative. All vessel owners within the sector would need to voluntarily join a cooperative and abide by its bylaws, or additional regulations would need to be implemented to provide NOAA fisheries with the necessary authority to allocate Pacific cod to individual cooperatives.

In 2006 through 2009, the freezer longliners set up an informal ‘PSC co-op’, with NMFS inseason management, during the GOA Pacific cod B season. This informal cooperation in sharing Prohibited Species Catch allowances suggests that this sector may have the potential to establish a formal harvester cooperative. If vessels in this sector form a harvester cooperative, this sector could potentially take advantage of increased production efficiencies of fishing cooperatively, but still would not be able to increase the sector’s overall harvest share of the BSAI Pacific cod TAC.

Minor changes in consumer surplus could accompany any change in production outputs. Specifically, changes in product outputs and quality could have effects on consumers. The difference in consumer surplus across the alternatives is likely to be relatively small. The status quo, which would not change the

conditions for entry into the fisheries, would be expected to yield the lowest net consumer surplus of the alternative under consideration and, in the worst case described above, could result in consumer surplus losses. In addition, the change in U.S. consumer surplus is likely to be diluted, since much of the production from these fisheries is exported for overseas secondary processing and consumption. As a result, only an ill-defined portion of any consumer surplus change, resulting from the proposed action, is likely to be realized by U.S. consumers.

Implementation of the proposed action would require NOAA fisheries to track FFPs with catcher processor designations, BSAI area designations, and pot or hook-and-line gear designations with a different system than is used presently. These FFPs could no longer be surrendered and reissued without restrictions during the three-year term of the permit. These costs would not be incurred under the no action alternative. The main economic benefit from the proposed action is that it will prevent the expansion of effort by Federally-permitted vessels that do not hold Amendment 67 endorsed licenses into the BSAI Pacific cod parallel waters fishery and, thus, the *de facto* circumvention of the Council's intent regarding sector allocation of Pacific cod, but it will not preclude an increase in effort by non-Federally permitted vessels. Therefore, the action has the potential to benefit license holders who are economically dependent on the BSAI Pacific cod fishery (as evidenced by their Amendment 67 endorsed license), but this benefit may not be realized if there is a significant increase in effort by non-Federally permitted vessels. The costs of the proposed action will be incurred by those vessel operators who must forgo the opportunity to freely enter into the BSAI parallel waters cod fishery. The extent, nature, and distribution of such costs, as well as the number of such future would-be entrants, cannot be anticipated, *a priori*.

2.11 Summary of Preferred Alternative

The section summarizes the potential effects of the Council's recommended alternative, which consists of Alternative 2, Alternative 3, and Alternative 4 with Option (c). **Alternative 2** requires that operators of catcher processors using pot or hook-and-line gear in the BSAI Pacific cod parallel waters fishery hold an FFP or LLP with specific endorsements and designations. The FFP would be required to have a CP operation type designation, BSAI area designation, and either a pot or a hook-and-line gear designation. The LLP would be required to have an Amendment 67 Pacific cod endorsement and the appropriate area endorsement. **Alternative 3** requires the above vessel operators to adhere to seasonal closures of the BSAI Pacific cod pot CP or hook-and-line CP sectors, as appropriate to their gear/operational mode. Within **Alternative 4**, the Council recommended Option (c), which precludes persons who hold an FFP with the specified designations (CP, BSAI, pot, or hook-and-line) from surrendering the FFP during the 3-year term of the permit. In addition, the designations specified above may not be removed from the FFP during the selected time period.

3 ENVIRONMENTAL ASSESSMENT

The purpose of this section is to analyze the environmental impacts of the proposed Federal action to make changes to the Federal Fisheries Permit (FFP) and License Limitation Program (LLP) requirements for catcher processors using pot or hook-and-line gear to participate in the BSAI Pacific cod parallel waters fisheries. An environmental assessment (EA) is intended to provide evidence of whether or not the environmental impacts of the action are expected to be significant (40 CFR 1508.9).

3.1 Purpose and need

The Council adopted the following statement of purpose and need:

Several fixed gear CPs are participating in the parallel waters fisheries that do not hold the permits, licenses, and endorsements necessary to participate in the Federal waters fisheries, and the potential exists for that participation to increase. This vessel activity may be circumventing the intent of previous decisions made by the Council regarding license limitation and endorsements, sector allocations, and catch reporting. Additionally, the increased participation in the BSAI CP hook-and-line sector in the parallel waters fishery undermines recent capacity reduction undertaken by that fleet. While this vessel activity could occur in numerous fisheries, it has recently occurred in the BSAI Pacific cod fishery within the CP pot and hook-and-line sectors. An increasing number of vessels without LLPs, or without Amendment 67 Pacific cod endorsements on their LLPs, have entered the BSAI Pacific cod parallel waters fishery in recent years. This vessel activity has resulted in shortened seasons, has exacerbated the race for fish, and has increased the concentration of Pacific cod harvest inside of 3 miles. The increased vessel activity and catch in the parallel waters fishery increases the complexity and difficulty in managing adherence to sector allocations; seasonal apportionments; area apportionments; and maintaining catch below ABC/TAC. Long-term participants in the fishery need protection from those who have little or no recent history and have the potential to increase their participation in the fisheries. The intent of the proposed action is to prevent fixed gear CPs which hold Federal permits and licenses, but not the necessary Amendment 67 and area endorsements, from entering the BSAI parallel waters Pacific cod fishery. This action requires prompt attention to promote stability in the fixed gear sectors that participate in the BSAI Pacific cod fishery.

In order to address the problem identified in the purpose and need statement, the Council identified the following alternatives and options for analysis. The alternatives are discussed in detail in Chapter 2 of this document. The Council's preferred alternatives (Alternative 2, Alternative 3, and Alternative 4, Option (c)) are indicated with asterisks.

For the purposes of this action, a catcher processor is defined as a vessel that is used to catch and process fish. A vessel that has a catcher processor license, but is not used to catch and process fish, is not considered a catcher processor for purposes of this action. This definition is consistent with the way in which NMFS accounts for catch under the Amendment 85 sector allocations.

Alternative 1 No action

***Alternative 2** Require any catcher processor using pot or hook-and-line gear with an FFP or LLP to have a CP designation for vessel type of operation, a BSAI designation for area of operation, and a pot or hook-and-line gear designation on the FFP; and the appropriate Amendment 67 Pacific cod endorsement (CP pot or CP hook-and-line, corresponding to the gear type being used) and the appropriate area endorsement on the LLP in order to participate in the BSAI Pacific cod parallel waters fishery.

***Alternative 3** Require any catcher processor using pot or hook-and-line gear with an FFP or LLP that fishes in parallel waters to adhere to seasonal closures of the BSAI Pacific cod CP pot or CP hook-and-line sectors (as defined in Amendment 85) corresponding to the sector the vessel is operating in.

***Alternative 4** Vessels with a CP designation for vessel type of operation, BSAI area designation for area of operation, and hook-and-line or pot gear designation on the FFP cannot remove the CP designation, the BSAI area designation, or the pot or hook-and-line gear designation from the FFP; and can only surrender or reactivate the permit:

(a) once per calendar year

(b) once every eighteen months

*(c) FFP cannot be surrendered during the 3 year term of the permit

Alternative 5 Vessels with a CP designation on their FFP may not amend the CP designation, and may only surrender or reactivate the FFP:

(a) once per calendar year

(b) once every eighteen months

(c) FFP cannot be surrendered during the 3 year term of the permit

*Asterisks indicate Alternatives and options selected by the Council in June 2009 as part of the preferred alternative.

3.2 Probable Environmental Impacts

This section describes the potential effects of the alternatives on the biological, physical, and human environment. The physical and biological effects of the alternatives are discussed together in Section 3.2.1. Economic and socioeconomic effects of the alternatives are primarily discussed in the RIR, but are summarized in Section 3.2.2. Cumulative effects are addressed in Section 3.2.3.

3.2.1 Physical and Biological Impacts

Alternative 1

Under Alternative 1, the no action alternative, there would be no changes in management of the BSAI Pacific cod fishery. Status quo management of the BSAI Pacific cod fishery is evaluated annually as part of the decision-making on annual harvest specifications for the BSAI and GOA groundfish fisheries (NMFS 2008). Under status quo management, there is a low probability of overfishing the target species or generating significant adverse impacts to other species (target, non-specified, forage, or prohibited species) or to essential fish habitat.

Under Alternative 1, the potential exists for the proportion of the BSAI Pacific cod TAC that is harvested in the AI to increase as a result of increased participation in the parallel waters fishery. To date, catch by non-Amendment 67 endorsed vessels in the AI has been a relatively small component of the overall AI catch. The majority of the Pacific cod fishing grounds available in State waters in the BSAI is found within the AI subarea. As a result, new effort in the BSAI parallel waters fishery is likely to occur in the AI. While increased parallel waters effort and catch is possible in the absence of this action, it is not possible to speculate how many additional vessels and how much additional effort might enter the AI parallel waters fishery.

Currently, the BSAI Pacific cod TAC is not split into BS and AI subarea TACs, and there is no limit on the proportion of the TAC that may be harvested in the AI. There is also no limit on the proportion of the TAC that may be harvested in the parallel waters fishery. The best estimate of long-term average biomass distribution of the Pacific cod stock is 84% in the BS and 16% in the AI (Thompson et al., 2007). There was a difference between the exploitation rates for the BS and AI Pacific cod stocks in 2007. The exploitation rate was estimated to be 22% of the biomass in the AI and 17% in the BS (Ormseth et al., 2008). The SSC has not identified this difference as a conservation concern. However, at the October 2008 meeting, the Council received a report from the SSC regarding the potential TAC split. The SSC recommended that a precautionary approach should be taken by specifying a combined BSAI OFL for Pacific cod and separate BS and AI ABCs. The AI stock has generally declined since 1976, with the exception of a small peak in the early 1990s (Kinzey and Punt, in review). There is continued interest in recent scientific information that may suggest that there are genetic differences between the AI and other sampled Pacific cod populations (Kodiak Island, Unimak Pass) (Cunningham et al., in prep). In addition, evidence of differences in exploitation rates in the BS and AI, as well as research suggesting different population trajectories in the two areas, may influence consideration of managing the Pacific cod fishery in the AI separately from that in the BS (Gaichas and Aydin, 2007; Ormseth et al., 2008).

Vessels participating in the BSAI Pacific cod parallel waters fishery would have to comply with existing Federal regulations protecting Steller sea lion rookeries and haulouts.⁵ The 2008 survey of adult and juvenile Steller sea lions showed a 7% increase in the eastern Aleutian Islands, a 30% decline in the central Aleutian Islands, and a 16% decline in the western Aleutian Islands from 2004 to 2008 (Fritz et al., 2008). However, while the no action alternative could result in an increase in fishing effort for Pacific cod in the AI management area, effort would still be restricted to areas outside the Steller sea lion protection areas. However, SSLs forage not only in nearshore areas but also further offshore, depending on sea lion age and season. In general, winter is a period where SSLs tend to forage further offshore. Tagging studies have indicated that some sea lion trips extend offshore well beyond the current closure areas. Tagging also has demonstrated that sea lions move along the coast, and venture outside current closed areas while remaining in nearshore waters. During summer months, foraging tends to be closer to shore. Increased fishing effort in the general area could increase removals of potential SSL prey items, in this case Pacific cod. Pacific cod are one of three prey species targeted by fisheries that are under special restrictions for protection of SSLs. The most recent Section 7 consultation and Biological Opinion established the current sea lion protection measures, but that consultation was based on the status quo of the early 2000s. In recent years, the AI Pacific cod fishery has changed and harvests in parallel waters are increasing. A trend toward increasing removals of cod biomass from a particular region in the Aleutian Islands could be considered a change in the action upon which the Council/Sustainable Fisheries Division of NMFS and the NMFS Office of Protected Resources originally consulted. In such a case, reinitiation of consultation could be required to ensure that these increased levels of cod harvests within the region are not jeopardizing the SSL or adversely modifying its designated critical habitat.

In addition to SSLs, increased fishing activity for Pacific cod could increase the potential interactions between this fishery and other marine mammals and seabirds. Cod are prey for other marine mammals such as northern sea lions which may prey on cod during both their spring and fall migrations through Aleutian Island passes en route to or returning from their summering areas on the Pribilof Islands. Fur seals are declining in abundance; an increase in cod fishing during spring and fall time periods may increase removals of fur seal prey. Short-tailed albatrosses, and endangered species, concentrate in the Aleutians for feeding year round. Hooking mortalities for short-tailed albatross are very rare, and currently all north Pacific groundfish fisheries are under a stringent take allowance. However, increases in hook and line fishing activities could increase potential interactions with short-tailed albatross resulting in greater probability of hooking injury or mortality. This potential is partially mitigated by the mandatory seabird avoidance gear requirements in all Federal fisheries.

⁵See <http://www.fakr.noaa.gov/sustainablefisheries/2003hrvstspecssl.htm> for regulations and maps.

The Aleutians also provide winter habitat for the threatened Steller's eider; while cod fishing likely does not overlap with Steller's eider feeding areas, potential impacts could include interactions when vessels transit inshore areas and accidental spills of oil or other contaminants. The recently listed southwest Alaska Distinct Population Segment of northern sea otter has declined significantly in the Aleutian Islands area. Again, while the cod fishery itself does not remove prey for sea otters, increased fishing activities in general may increase the potential for spills of contaminants that could adversely affect sea otters.

The rocky shores and islands of the Aleutian Islands provide nesting habitat for millions of seabirds. Most of the Aleutian Islands are part of the Alaska Coastal Maritime National Wildlife Refuge which was established to conserve nesting and foraging habitat for millions of seabirds and year round habitat for thousands of marine mammals. Albatrosses, fulmars, shearwaters, petrels, murrelets, kittiwakes, auklets, puffins, cormorants and gulls are abundant throughout the region. The region also is habitat for porpoises and whales, and thousands of harbor seals occupy haulouts and rookeries along the coast. Cod is an important prey item for many species, principally in its juvenile form. Fishing activities may increase vessel noise and resultant disturbance to marine mammals, and may increase the potential for marine mammal and seabird collisions with vessels. Vessel lighting may attract seabirds, resulting in bird strikes with vessel superstructures; this is a particular concern for shearwaters. Oil and other contaminants from vessel incidents can foul seabirds and marine mammals at sea or drift ashore and impact beaches and shorelines and the prey organisms inhabiting these areas. Accidental release or loss of fishing gear or fishing-related debris (packing containers, straps, bands, fishing line, hooks) may increase the potential for entanglement of marine mammals and seabirds and resultant injury or mortality. This is of particular concern for endangered or threatened species. Contaminants may affect the forage base for important commercial species or prey for marine mammals or birds. Rats (primarily Norway rats) may be aboard some vessels; incidents that release rats to lands where seabirds nest can result in devastation to seabird colonies. Generally, domestic fishing vessels are rat free; the State of Alaska and the USFWS have programs in place to ensure rats do not gain access to rat-free lands in this region.

The Council and NOAA Fisheries have also recently closed much of the AI management area to fishing to mitigate any potential adverse effects to essential fish habitat,⁶ and vessels would also be subject to those closure areas. Given the measures currently in place to protect the physical and biological environment, the potential effect of an increase in effort in the AI parallel waters Pacific cod fishery on an ecosystem scale would be limited. As a result, no significant adverse impacts to marine mammals, seabirds, habitat, or ecosystem relations are anticipated.

Alternative 2

Alternative 2 (selected as part of the preferred alternative) has the potential to limit growth in participation by pot and hook-and-line catcher processors in the BSAI Pacific cod parallel waters fishery. To the extent that this may help prevent an increase in the exploitation rate of the AI Pacific cod stock, and an increase in the proportion of the TAC harvested in parallel waters, this action may have some beneficial impact on the stock. However, the SSC has not identified current exploitation rates to be a conservation concern. In addition, although Alternative 2 limits participation by certain vessel types, it would not preclude an increase in participation by trawl catcher processors or by catcher vessels using any gear type. In addition, the action would not preclude vessels without an FFP or LLP from entering the parallel waters fishery. Moreover, the action would not preclude operators of Amendment 67 endorsed vessels from increasing their level of effort or provide an incentive for these operators to increase their level of effort in the BSAI Pacific cod parallel waters fishery. Recent action by the BOF would, however, preclude any vessel larger than 58 ft LOA using hook-and-line gear from participating in

⁶See <http://www.fakr.noaa.gov/habitat/efh.htm> for further details.

the BSAI Pacific cod parallel waters fishery. Under either of the alternatives, increased parallel waters effort and catch is possible, but not expected. Significant adverse impacts on fish species or other components of the physical and biological environment are not likely to occur.

Limitations to Pacific cod fishing could alleviate some of the concerns identified above for fishery interactions with marine mammals and seabirds. Reducing fishing effort or maintaining a level of effort similar to the conditions under which the previous ESA Section 7 consultation occurred would limit adverse impacts to SSLs primarily through limitations on prey removal. Closed areas around some SSL rookeries and haulouts already provide spatial controls over prey removals, but as described above, SSLs forage further offshore, particularly in winter. Concerns over declines in SSLs in the western and central Aleutian Islands may be related to a number of issues, but to date prey removal has not been identified as a principal issue of concern. However, reducing the potential for continued increases in Pacific cod fishing and cod removals could be considered beneficial to Steller sea lions. Reduced fishing activity also will reduce the opportunities for accidental contaminant spills or loss of fishing gear or other fishing debris, and reduce the potential for these interactions between fishing and seabirds and marine mammals.

Alternative 3

Alternative 3 (selected as part of the preferred alternative) requires that operators of pot and hook-and-line catcher processors who hold an FFP or LLP adhere to seasonal closures of their respective BSAI Pacific cod sector allocations, as defined in Amendment 85. This alternative would increase the ability of inseason managers to adhere to the seasonal apportionments of the TAC for each sector. The seasonal apportionments were established under Steller sea lion management measures, and are intended to disperse fishing effort temporally between the seasons. Currently, when vessels in a sector continue to fish after the A season apportionment to that sector has been fully harvested, NMFS counts that catch against the sector's B season apportionment. As a result, a sector could take more of its annual apportionment from one season. Under Alternative 3, Federally-permitted vessels would be required to stop fishing when the seasonal apportionment for their respective sector has been fully harvested.

Alternatives 4 and 5

The Council considered two approaches, Alternatives 4 and 5, to preclude vessel operators who hold an FFP with a CP designation from surrendering and reactivating the FFP on an unlimited basis. The difference between the alternatives is that Alternative 4 applies to operators of hook-and-line and pot CPs who hold an FFP with a CP designation, and Alternative 5 applies to all vessel operators who hold an FFP with a CP designation. The Council selected Alternative 4, Option (c) as part of the preferred alternative.

Vessel operators who surrender the FFP are not required to participate in the Federal Observer program, carry VMS, or comply with NMFS recordkeeping or reporting requirements. All of these requirements enhance management and conservation of the fisheries. For example, increased observer coverage improves bycatch monitoring by improving the quality of data available to inseason managers. Data collected by VMS is used to enforce area closures around sea lion rookeries and haulouts and gear closures in sensitive habitat. To the extent that Alternatives 4 and 5 would result in increased observer and VMS coverage of the vessels that participate in the parallel waters groundfish fisheries, the proposed action could result in improved bycatch monitoring, data quality, and enforcement of closed areas.

3.2.2 Economic and Socioeconomic Impacts

The economic and socioeconomic impacts of the proposed action are addressed in the Regulatory Impact Review, in Chapter 2 of this document. Alternative 2 precludes operators of pot and hook-and-line catcher processors who hold an FFP or LLP, but do not hold an LLP license with an Amendment 67

Pacific cod endorsement, from participating in the BSAI Pacific cod parallel waters fishery. Currently, the LLP is only required in Federal waters. In 2008, there were 5 pot and hook-and-line catcher processors that participated in the BSAI Pacific cod parallel waters fishery that did not have the Federal permits and licenses required to participate in the Federal waters fishery. In previous years, this vessel activity was uncommon. Precluding these vessels from participating in the BSAI Pacific cod parallel waters fishery may protect historic harvests of long term pot and hook-and-line catcher processor participants.

Alternative 3 requires operators of pot and hook-and-line catcher processors who hold an FFP or LLP to adhere to the seasonal closures of the BSAI Pacific cod fishery for their respective Amendment 85 sectors while fishing in parallel waters. Finally, Alternatives 4 and 5 prevent vessel operators from surrendering and later reapplying for the FFP within a specified time period (calendar year, 18 months, or the 3-year term of the permit). While Alternative 2 has the potential to limit entry to the pot and hook-and-line CP sectors in the BSAI Pacific cod parallel waters fishery, it would not preclude a vessel without an FFP or LLP from participating in the BSAI Pacific cod parallel waters fishery.

3.2.3 Cumulative Impacts

An analysis of the potential cumulative effects of a proposed action and its alternatives is a requirement of NEPA. Cumulative effects are those combined effects on the quality of the human environment that result from the incremental impact of the proposed action when added to other past, present, and reasonably foreseeable future actions, regardless of what Federal or non-Federal agency or person undertakes such other actions (40 CFR 1508.7, 1508.25(a), and 1508.25(c)). Cumulative impacts can result from individually minor, but collectively significant, actions taking place over a period of time. The concept behind cumulative effects analysis is to capture the total effects of many actions over time that would be missed by only evaluating each action individually. At the same time, the CEQ guidelines recognize that it is not practical to analyze the cumulative effects of an action on the universe but to focus on those effects that are truly meaningful.

The 2004 Final Alaska Groundfish Fisheries Programmatic Supplemental Environmental Impact Statement (Groundfish PSEIS; NOAA 2004) assesses the potential direct and indirect effects of groundfish FMP policy alternatives in combination with other factors that affect physical, biological and socioeconomic resource components of the BSAI and GOA environment. To the extent practicable, this analysis incorporates by reference the cumulative effects analysis of the Groundfish PSEIS, including the persistent effects of past actions and the effects of reasonable foreseeable future actions.

Beyond the cumulative impacts analysis documented in the Groundfish PSEIS, no additional past, present, or reasonably foreseeable cumulative negative impacts on the biological and physical environment (including fish stocks, essential fish habitat, ESA-listed species, marine mammals, seabirds, or marine ecosystems), fishing communities, fishing safety, or consumers have been identified that would arise from the proposed action. The proposed action is consistent with the Council's long established policies for broad, ecosystem-based fishery management. Specifically, Alternative 2 could result in enhanced catch reporting and inseason management of the BSAI Pacific cod fishery, which could improve ecosystem management.

While there are no expected cumulative adverse impacts on the biological and physical environment, fishing communities, fishing safety, or consumers, there may be economic effects on the pot and hook-and-line catcher processor sectors as a result of the proposed action in combination with other actions. As discussed below, participants in the pot and hook-and-line catcher processor sectors have experienced several regulatory changes in recent years that have affected their economic performance. Moreover, a

number of reasonably foreseeable future actions are expected to affect economic conditions for these sectors.

3.2.3.1 Past and Present Actions

The cumulative impacts from past management actions have created the conditions that have led to the proposed action. Specifically, as a result of the allocation of the BSAI Pacific cod TAC under Amendment 85 and the capacity reduction (buyback) undertaken by the freezer longliner sector in 2007, longtime participants in the BSAI Pacific cod fishery are concerned with the potential for new entry into the BSAI Pacific cod parallel waters fishery. Some of the management actions that have contributed to the existing conditions are listed below:

- Implementation of the License Limitation Program (LLP) in 2000
- Adoption of BSAI Amendment 67 in 2003, which established an LLP endorsement requirement in the non-trawl BSAI Pacific cod fishery for vessels $\geq 60'$ LOA
- Implementation of the BSAI crab rationalization program in 2005
- BSAI Pacific cod sector allocations, established most recently under Amendment 85 (2006)
- Freezer Longliner Capacity Reduction Program (implemented in 2007), and repayment of \$35 million Federal loan over a 30-year period, beginning in 2008
- Trawl recency action, including additional AI area endorsements added to CV licenses.

3.2.3.2 Reasonably Foreseeable Future Actions

The Council is considering initiating an analysis to split the BSAI Pacific cod TAC into separate BS and AI TACs, but this analysis will likely be delayed until the revised Steller sea lion Biological Opinion is released in March 2010. If the BSAI Pacific cod TAC is split into subarea TACs, the total amount of cod that could be harvested in the Aleutian Islands would be capped, but the amount of cod harvested from parallel waters would not necessarily be limited to a proportion of the AI subarea TAC.

4 FINAL REGULATORY FLEXIBILITY ANALYSIS

4.1 Introduction

This Final Regulatory Flexibility Analysis (FRFA) addresses the statutory requirements of the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 601-612). This FRFA evaluates the potential adverse economic impacts on small entities directly regulated by the action.

4.2 The Purpose of a FRFA

The RFA, first enacted in 1980, was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a Federal regulation. Major goals of the RFA are: (1) to increase agency awareness and understanding of the impact of their regulations on small business, (2) to require that agencies communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities. The RFA emphasizes predicting impacts on small entities as a group distinct from other entities, and on

the consideration of alternatives that may minimize adverse economic impacts, while still achieving the stated objective of the action.

On March 29, 1996, President Clinton signed the SBREFA. Among other things, the new law amended the RFA to allow judicial review of an agency's compliance with the RFA. The 1996 amendments also updated the requirements for a final regulatory flexibility analysis, including a description of the steps an agency must take to minimize the significant economic impact on small entities. Finally, the 1996 amendments expanded the authority of the Chief Counsel for Advocacy of the Small Business Administration (SBA) to file *amicus* briefs in court proceedings involving an agency's alleged violation of the RFA.

In determining the scope, or 'universe', of the entities to be considered in a FRFA, NMFS generally includes only those entities that can reasonably be expected to be directly regulated by this action. If the effects of the rule fall primarily on a distinct segment, or portion thereof, of the industry (e.g., user group, gear type, geographic area), that segment would be considered the universe for the purpose of this analysis.

Data on cost structure, affiliation, and operational procedures and strategies in the fishing sectors subject to the regulatory action are insufficient, at present, to permit preparation of a "factual basis" upon which to certify that the preferred alternative does not have the potential to result in "significant economic impacts on a substantial number of small entities" (as those terms are defined under RFA). Because based on all available information it is not possible to "certify" this outcome, should the action be adopted, a formal FRFA has been prepared and is included in this package for the final rule.

4.3 What is required in a FRFA?

Under 5 U.S.C., Section 604(a), each FRFA is required to contain:

- (1) a succinct statement of the need for, and objectives of, the rule;
- (2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the final rule as a result of such comments;
- (3) a description of, and an estimate of, the number of small entities to which the rule will apply or an explanation of why no such estimate is available;
- (4) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
and
- (5) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

4.4 What is a small entity

The RFA recognizes and defines three kinds of small entities: (1) small businesses, (2) small non-profit organizations, and (3) small government jurisdictions.

Small businesses. Section 601(3) of the RFA defines a ‘small business’ as having the same meaning as ‘small business concern’, which is defined under Section 3 of the Small Business Act. ‘Small business’ or ‘small business concern’ includes any firm that is independently owned and operated and not dominant in its field of operation. The SBA has further defined a “small business concern” as one “organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor...A small business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the firm is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture.”

The SBA has established size criteria for all major industry sectors in the United States, including fish harvesting and fish processing businesses. Effective January 5, 2006, 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.⁷ 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. 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. Finally, a wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

The SBA has established “principles of affiliation” to determine whether a business concern is “independently owned and operated.” In general, business concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are treated as one party with such interests aggregated when measuring the size of the concern in question. The SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern’s size. However, business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community Development Corporations authorized by 42 U.S.C. 9805 are not considered affiliates of such entities, or with other concerns owned by these entities solely because of their common ownership.

Affiliation may be based on stock ownership when: (1) a person is an affiliate of a concern if the person owns or controls, or has the power to control 50 percent or more of its voting stock, or a block of stock

⁷Effective January 6, 2006, SBA updated the Gross Annual Receipts thresholds for determining "small entity" status under the RFA. This is a periodic action to account for the impact of economic inflation. The revised threshold for "commercial fishing" operations (which, at present, has been determined by NMFS HQ to include catcher-processors, as well as catcher vessels) changed from \$3.5 million to \$4.0 million in annual gross receipts, from all its economic activities and affiliated operations, worldwide.

which affords control because it is large compared to other outstanding blocks of stock, or (2) if two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, with minority holdings that are equal or approximately equal in size, but the aggregate of these minority holdings is large as compared with any other stock holding, each such person is presumed to be an affiliate of the concern.

Affiliation may be based on common management or joint venture arrangements. Affiliation arises where one or more officers, directors, or general partners, controls the board of directors and/or the management of another concern. Parties to a joint venture also may be affiliates. A contractor and subcontractor are treated as joint venturers if the ostensible subcontractor will perform primary and vital requirements of a contract or if the prime contractor is unusually reliant upon the ostensible subcontractor. All requirements of the contract are considered in reviewing such relationship, including contract management, technical responsibilities, and the percentage of subcontracted work.

Small organizations. The RFA defines “small organizations” as any not-for-profit enterprise that is independently owned and operated, and is not dominant in its field.

Small governmental jurisdictions. The RFA defines “small governmental jurisdictions” as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of fewer than 50,000.

4.5 A succinct statement of the need for, and objectives of the final rule

Several fixed gear CPs are participating in the parallel waters fisheries that do not hold the permits, licenses, and endorsements necessary to participate in the Federal waters fisheries, and the potential exists for that participation to increase. This vessel activity may be circumventing the intent of previous decisions made by the Council regarding license limitation and endorsements, sector allocations, and catch reporting. Additionally, the increased participation in the BSAI CP hook-and-line sector in the parallel waters fishery undermines recent capacity reduction undertaken by that fleet. While this vessel activity could occur in numerous fisheries, it has recently occurred in the BSAI Pacific cod fishery within the CP pot and hook-and-line sectors. An increasing number of vessels without LLPs, or without Amendment 67 Pacific cod endorsements on their LLPs, have entered the BSAI Pacific cod parallel waters fishery in recent years. This vessel activity has resulted in shortened seasons, has exacerbated the race for fish, and has increased the concentration of Pacific cod harvest inside of 3 miles. The increased vessel activity and catch in the parallel waters fishery increases the complexity and difficulty in managing adherence to sector allocations; seasonal apportionments; area apportionments; and maintaining catch below ABC/TAC. Long-term participants in the fishery need protection from those who have little or no recent history and have the potential to increase their participation in the fisheries.

The action would preclude operators of pot and hook-and-line catcher processors who hold an FFP or LLP from participating in the BSAI Pacific cod parallel waters fishery, if they do not have the appropriate area and Amendment 67 endorsements on their LLP license. The action would also require that these operators adhere to seasonal closures of the BSAI Pacific cod fishery for their respective sectors, as defined in Amendment 85, and would restrict those operators from surrendering and later reapplying for the FFP within a specified time period. The intent of the amendment is to preclude operators of pot and hook-and-line catcher processors from circumventing the intent of previous Council decisions regarding license limitation, sector allocations, and catch reporting while participating in the BSAI Pacific cod parallel waters fishery.

4.6 Public Comments

The proposed rule was published on March 11, 2011 (76 FR 13331). An IRFA was prepared for the proposed rule, and described in the classifications section of the preamble to the rule. The public comment period ended on April 11, 2011. One comment was received on the IRFA in support of the action.

4.7 Number of Small Entities Impacted by the Final Rule

In order to estimate the number of small entities that would be directly regulated by the action, the most recent earnings data available (2008) from all commercial fisheries in and off Alaska were summed for each pot and hook-and-line catcher processor that participated in the BSAI Pacific cod fishery, during 2008. Of 44 pot and hook-and-line catcher processors that participated in the BSAI Pacific cod fishery during 2008, 9 vessels had gross earnings from all fisheries in and off Alaska of less than \$4 million. At least 5 of the 9 vessels with annual earnings of less than \$4 million are linked by ownership affiliation with a large entity, and are considered large entities. As a result, 4 of the 44 vessels directly regulated by this action are considered small entities for the purposes of the RFA. It is possible that some of these vessels are also linked by affiliation, as defined under SBA criteria, which may then qualify them as large entities, but information is not available to identify ownership status of all vessels at an entity level. Therefore, the FRFA may overestimate the number of small entities directly regulated by the action.

4.8 Recordkeeping and Reporting Requirements

Alternative 4 and Alternative 5 limit the ability of catcher processor operators to surrender and then reapply for the FFP within a specified time period. Alternative 4 would only apply to FFPs with a CP, BSAI, and pot or hook-and-line designation, and Alternative 5 would apply to all FFPs with a CP designation. Implementation of either of these alternatives would mean that a vessel operator who obtains an FFP with the specified designations would not be allowed to surrender and then reapply for the FFP within a specified time period, and would be subject to NMFS recordkeeping and reporting requirements for as long as they hold the FFP. The Council selected Alternative 4, Option (c) as part of its preferred alternative. The preferred alternative will require NOAA Fisheries to implement a program to track FFPs that may not be surrendered during the 3-year term of the permit.

4.9 Description of any Significant Alternatives taken to minimize the significant economic impact to small entities

A FRFA must describe the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected. “Significant alternatives” are those that achieve the stated objectives for the action, consistent with prevailing law, with potentially lesser adverse economic impacts on small entities, as a whole.

Alternative 1 is the status quo, and makes no change to the existing regulations that apply to vessels participating in the BSAI Pacific cod parallel waters fishery. The preferred alternative includes Alternative 2, Alternative 3, and Alternative 4, Option (c). Alternative 2 precludes CP operators who hold an FFP or LLP from participating in the BSAI Pacific cod parallel waters fishery if they do not have the appropriate area and Amendment 67 endorsements on the LLP license. Alternative 3 requires that operators of pot and hook-and-line catcher processors who hold an FFP or LLP adhere to seasonal closures of their respective BSAI Pacific cod sector allocations, as defined in Amendment 85. Alternative

4, Option (c) precludes vessel operators with a CP, BSAI, and pot or hook-and-line designation on the FFP from surrendering and reactivating the FFP during the 3-year term of the permit.

The intent of the amendment is to preclude operators of pot and hook-and-line catcher processors from circumventing the intent of previous Council decisions regarding license limitation, sector allocations, and catch reporting while participating in the BSAI Pacific cod parallel waters fishery. New entrants to the fishery who do not hold Amendment 67 endorsed LLP licenses could cause economic dislocation for participants who have exhibited dependence on the pot or hook-and-line CP sector allocations.

The majority of the directly regulated entities under this action are not considered small entities, as defined under the RFA. Within the universe of small entities that would be directly regulated by this action, impacts may accrue differently (i.e., some small entities could be negatively affected, while others positively affected.) Thus, the action represents tradeoffs in terms of impacts on small entities. However, the Council deliberately sought to provide regulatory relief for the smallest of the small entities participating in the fisheries of interest, by exempting catcher vessels from the regulatory changes. That is, the restrictions on participation in the BSAI Pacific cod parallel waters fishery would only apply to pot catcher processors and hook-and-line catcher processors, therefore, only these CPs are considered here.

Overall, it is unlikely that Alternative 2 would preclude vessels with a high degree of economic dependence upon the pot or hook-and-line groundfish fisheries from participating in the parallel waters fishery. Most of the vessel operators who are highly dependent on these fisheries hold an LLP license with pot or hook-and-line Pacific cod endorsement. These licenses were issued in 2003, under Amendment 67, to those participants that demonstrated recent catch history in the BSAI Pacific cod fishery. Most of the CP vessel operators who do not hold LLP licenses with a Pacific cod endorsement, and who have fished in parallel waters, are recent entrants to the fishery, and have not demonstrated long-term economic dependence on the fishery. These CP operators will, all else equal, continue to have access to the Aleutian Islands State waters fishery, after implementation of the action. Based upon the best available scientific data, and consideration of the objectives of this action, it appears that there are no alternatives to the action that have the potential to accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes and have the potential to minimize any significant adverse economic impact of the rule on small entities.

5 CONSISTENCY WITH APPLICABLE LAW AND POLICY

This section examines the consistency of the LLP trawl recency alternatives with the National Standards and Fishery Impact Statement requirements in the Magnuson-Stevens Act and Executive Order 12866.

5.1 National Standards

Below are the ten National Standards as contained in the Magnuson-Stevens Act, and a brief discussion of the consistency of the alternatives with each of those National Standards, as applicable.

National Standard 1

Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery.

None of the alternatives considered in this action would result in overfishing of groundfish in the BSAI or GOA. The alternatives would also not impact, on a continuing basis, the ability to achieve the optimum yield from each groundfish fishery.

National Standard 2

Conservation and management measures shall be based upon the best scientific information available.

The analysis for this action is based upon the best and most recent scientific information available.

National Standard 3

To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

The action is consistent with the management of individual stocks as a unit or interrelated stocks as a unit or in close coordination.

National Standard 4

Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be (A) fair and equitable to all such fishermen, (B) reasonably calculated to promote conservation, and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

The alternatives treat all vessels the same. The alternatives would be implemented without discrimination among participants and are intended to promote conservation of the Pacific cod resource in the BSAI.

National Standard 5

Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources, except that no such measure shall have economic allocation as its sole purpose.

This action will potentially improve efficiency in utilization of the Pacific cod resource in the BSAI by preventing future increased crowding in the fishery through entry of vessels that do not have LLP licenses with BS or AI area endorsements and an Amendment 67 Pacific cod endorsement.

National Standard 6

Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

None of the alternatives is expected to affect the availability of and variability in the groundfish resources in the BSAI and GOA in future years. The BSAI Pacific cod harvest would be managed to and limited by the TACs for each species, regardless of the action considered in this action.

National Standard 7

Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

This action does not duplicate any other management action.

National Standard 8

Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

This action is not expected to have adverse impacts on communities or affect community sustainability, primarily because it is unlikely that the action alternatives would preclude catcher processors with a high degree of economic dependence on the BSAI Pacific cod fishery from continuing to participate in the BSAI Pacific cod parallel waters fishery. Catcher processors with recent pot or hook-and-line participation in and dependence on the BSAI Pacific cod fishery received Amendment 67 Pacific cod endorsements on their LLP licenses in 2003. These include catcher processors that are homeported in communities in Alaska as well as other States.

National Standard 9

Conservation and management measures shall, to the extent practicable, (A) minimize bycatch, and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

By preventing future crowding in the BSAI Pacific cod parallel waters fishery, the action could help to minimize bycatch and bycatch mortality by preventing any exacerbation of the race for fish.

National Standard 10

Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

The action could promote safety at sea by increasing the number of vessels that have USCG safety inspections. All commercial fishing vessels must comply with USCG safety regulations and carry specific safety equipment, but the safety inspections ensure that vessels are in compliance. Currently, the USCG safety inspections are voluntary. However, vessels that participate in the Federal Observer program are required to have a biennial safety inspection and carry a USCG decal. The action would preclude Federally-permitted catcher processors from surrendering and reactivating the FFP on an unlimited basis, making it more likely that these vessels will continually hold Federal fisheries permits, participate in the Observer program, and have a biennial safety inspection. Vessels that hold an FFP are also required to carry a VMS, and this geographic location data is available to USCG search and rescue personnel. The VMS data provides search and rescue personnel with real-time vessel location data, and may be used in addition to data from emergency locator devices to conduct searches for vessels in distress.

5.2 Section 303(a)(9) – Fisheries Impact Statement

Section 303(a)(9) of the Magnuson-Stevens Act requires that any management measure submitted by the Council take into account potential impacts on the participants in the fisheries, as well as participants in adjacent fisheries. The impacts on participants in the pot and hook-and-line Pacific cod fisheries in the BSAI have been discussed in previous sections of this document (see Section 2). The alternatives are not anticipated to have effects on participants in other fisheries.

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